

CORRECT STATEMENT

OF THE

WHOLE PRELIMINARY CONTROVERSY

BETWEEN

THO. O. SELFRIDGE AND BENJ. AUSTIN;

ALSO.

A BRIEF ACCOUNT

OF THE

CATASTROPHE IN STATE STREET, BOSTON,

ON THE 4th AUGUST, 1806:

WITH SOME REMARKS,

BY THO. O. SELFRIDGE.

..... "HE TAKES MY LIFE,
"WHEN HE DOTH TAKE THE MEANS WHEREBY I LIVE."

SHAKESPEARE.

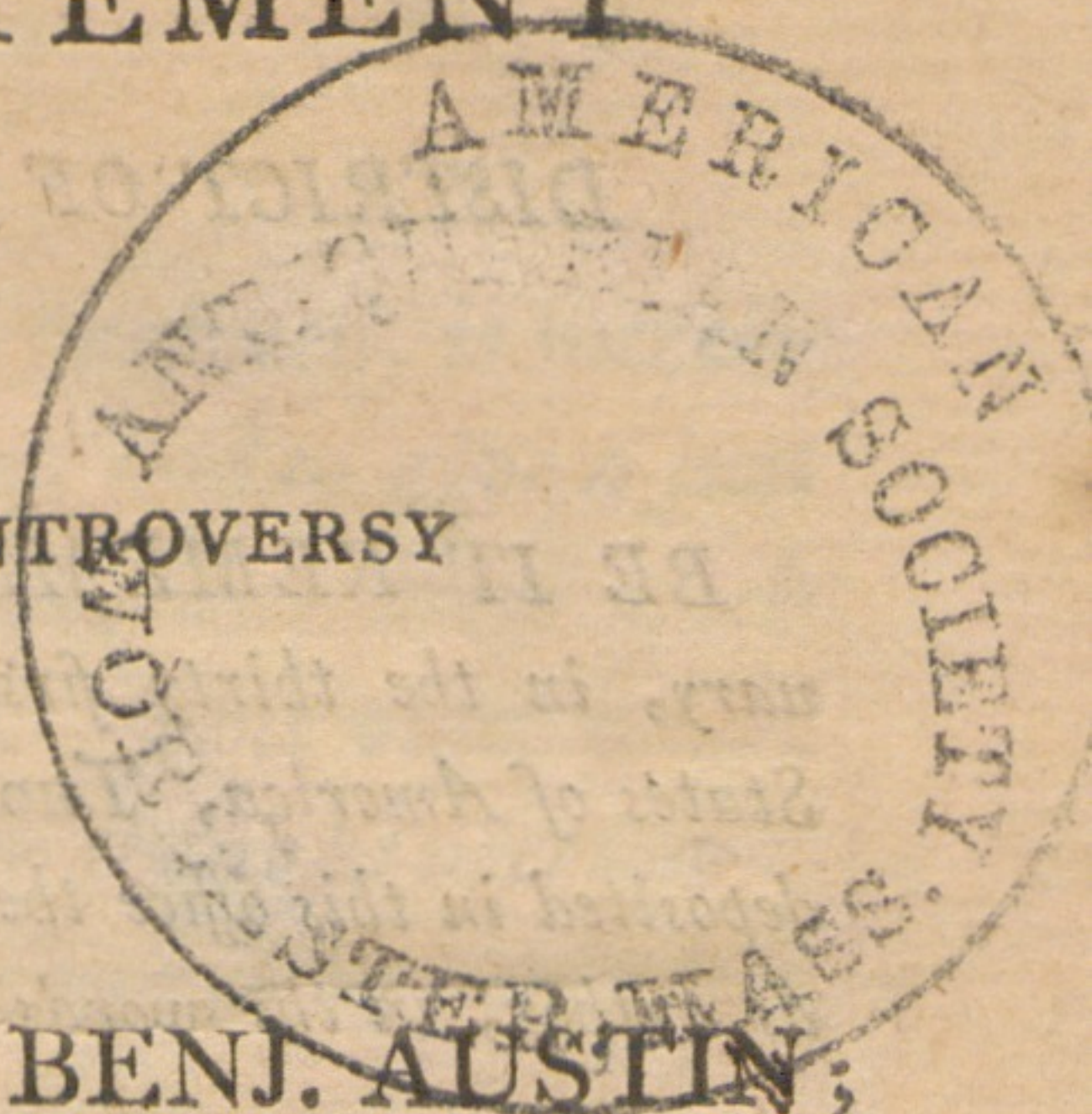
CHARLESTOWN:

PRINTED BY SAMUEL ETHERIDGE,

FOR THE AUTHOR.

1807.

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1797

DISTRICT OF MASSACHUSETTS, TO WIT:

BE IT REMEMBERED, that on the twentieth day of January, in the thirty first year of the Independence of the United States of America, THOMAS O. SELFRIDGE, of the said district, has deposited in this office the title of a book, the right whereof he claims as author, in the words following, to wit :

" A Correct Statement of the whole Preliminary Controversy between THO. O. SELFRIDGE and BENJ. AUSTIN; also a Brief Account of the Catastrophe in State street, Boston, on the 4th August, 1806: with some remarks, by THO. O. SELFRIDGE.

*..... " He takes my life,
" When he doth take the means whereby I live."*

"SHAKESPEARE."

In conformity to the act of the Congress of the United States, intituled, " An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the Times therein mentioned ;" and also to an Act, intituled, " An Act supplementary to an Act, intituled, An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies during the times therein mentioned ; and extending the Benefits thereof to the Arts of Designing, Engraving and Etching Historical, and other Prints."

*W. S. SHAW, Clerk
Of the District of Massachusetts.*

PREFACE.

THE publication to which this is prefixed, is merely intended to remove false impressions, and to give a just view of a subject which, heretofore, has been much talked of, and but little understood. This view would have been superfluous, had it not been thought necessary to diffuse information extensively upon so important a subject.

The report of the trial will necessarily be so voluminous, as to preclude so general a circulation of it as could be wished. Those, however, who doubt my statement, are referred to that document to prove its authenticity, whenever extrinsic evidence can be rendered auxiliary to its illucidation. There are also some other references for those who are obstinately scrupulous in yielding credence to a plain tale.

I have cautiously abstained from intermingling any assertions of my own, which do not derive weight from collateral sources.

Impressed with these ideas, I submit the following brief statement, to an anxious and an inquisitive public; without any other request, than that it may be read, in the same spirit, with which it was written and collated.

THO. O. SELFRIDGE.

JANUARY 8th, 1807.

STATEMENT OF THE CONTROVERSY, WITH REMARKS.

THE unfortunate rencounter, between myself and Mr. CHARLES AUSTIN, on the 4th of August, which eventuated in his death, has not only given rise to innumerable groundless reports, wholly unconnected with the meeting, or with the circumstances which led to it; but has excited the prejudices, awakened the passions, and agitated the feelings of the community, in a manner which has neither precedent nor parallel. A few, without any knowledge of the facts, but confident that I could commit no act of atrocity, instantly justified what I had done, upon the presumption that I was impelled to the act by a real or an apparent necessity: but the enraged violence of some, could only be appeased by the assurance of guilt, and the promise of blood; while others were willing to await the event of a trial, and to acquiesce in the decision of law.

The coroner's inquest, which is altogether an *ex-parte* examination, was urged by the wicked, and believed by the ignorant, to be conclusive evidence of guilt; when, in legal consideration, it has no bearing upon the guilt or innocence of the party, by whose agency the deceased came to his end. The verdict returned by the coroner, cannot pass in evidence to the jury of trials, to prove even the death of the deceased; much less can it pass in evidence to prove the guilty intention of the accused: and so far as this verdict has been used to call into action the

angry passions, and to make injurious impressions upon the public mind, with respect to me and my cause, so far this conduct has been unwarrantably cruel. Beside, it ought to be remarked, that all the witnesses who were sworn before the jury, summoned by the coroner, are men whose political opinions are not coincident with my own ; and that upon the trial, they so disagreed among themselves, and were so directly contradicted by numerous other witnesses, some of whom also entertain political opinions different from my own, that the attorney general did not at all rely upon their evidence in the close of the cause. What weight then, ought judicious men to give to a verdict founded upon such testimony when these circumstances are known ?

Nothing of a political nature ought ever, in the remotest degree, to have been connected with this transaction ; for it was a mere personal controversy. But unprincipled men, who ever keep a catlike watch for disastrous occurrences to turn to their own account, have, by base and factitious means, tinged the cause with the spirit of party, and given to the question a political turn. Pending the prosecution, I sedulously exerted myself to suppress all favorable publications ; and uniformly declared to those with whom I was most intimate, that I wished there might be a respectable number of those gentlemen, who denominate themselves republicans, among my triers ; to the end, that the *bounds* of obloquy might not have it to say, after my acquittal, that my innocence was equivocal, because that I had been acquitted by a jury wholly composed of federalists. Nevertheless, the proceedings of those, who have not the same views of rectitude which I have, gave me some alarming apprehensions ; for I felt that such extreme injustice might possibly

involve me in ruin and my family in want. I feared that certain publications would have the tendency, not only to fix the opinions, but to inflame the minds of a large portion of my fellow citizens; while others would be deterred from rendering me those kind offices which humanity required, and which justice would permit; lest they should incur the vengeance of those who were leading popular passion, and misleading popular judgment. Indeed such was the system of terror and intimidation, pursued by the abettors of sanguinary justice, that it was with great difficulty that a witness could be induced to declare what he knew; and when he yielded to the dictates of justice and humanity, he told his story with injunctions of secrecy, and in the trepidation of fear. And several timid persons were so actually panic struck, that they were silent till after my acquittal; but have since given information, that they knew facts as material as any which transpired upon the trial.

The ferocious fury of the governmental paper ran so high, and the spirit of persecution was so envenomed, that I deemed it inexpedient to move for a *habeus corpus*, and to show to the court that the killing was an act of justifiable selfdefence, and thereby intitle myself to a liberation from confinement; for when I learnt the nature of the evidence before the coroner's inquest, and recollected what it was before the committing magistrate, I was led to believe that a disclosure of the facts which constituted my defence, would ultimately endanger my safety. Moreover, it was seriously suggested to me, that I might not be secure against those who have so frequently threatened to assassinate me, in case I should ever reappear in the streets. Upon what principle of religion, morality, or policy, those persons who are the advo-

cates of inflicting summary justice proceed, I know not: if I were as guilty as they seemed to wish me, they expressed a desire to commit a crime, equal in magnitude to mine; and the same rule would have authorized others to have satisfied the demands of justice upon my executioners, in the same manner in which they executed them upon me, and so on. The consequence of this judiciary system would be, the extermination of the human race. Have we not those among us who wish that a government of laws may give place to a government of men?

It was my earnest and uniform desire that the grand jury should have found a bill for murder; not that I wished for a moment to lie under the horrid imputation of that crime, but because I wished to meet the charge in its most formidable aspect, the more effectually to silence the tongue of detraction; and because in that case I should have had the advantage of the opinion of a full court, of which I could not avail myself upon a charge of homicide, of a grade inferior to murder. Although the preliminary circumstances, in strict law, were not pertinent to the issue, yet by mutual consent they were thoroughly examined; for through the whole transaction I did not wish to hide a fact or exclude a circumstance. My council will do me the justice to vouch for this declaration. Although the indictment negatived all idea of malice, which is the principal ingredient in the crime of murder, the course of the examination was similar to what it would have been upon a charge of homicide of a higher grade. The trial having assumed this shape, if the evidence would have authorized the jury to have returned a verdict of "guilty" upon an indictment for murder, they were bound to convict

me upon the issue which was tried ; for the greater crime includes the less.

It may not be wholly amiss to submit, with great deference, a few observations upon the *rights and duties* of grand jurors ; for it is humbly presumed that the jurors in this case have established a precedent, tending to relieve the citizen from the thralldom of oppression, and to promote the general liberty. The ordinary routine of business has heretofore been, for the attorney general to produce such witnesses as he saw fit, and leave it to the jury, upon their evidence, to find, or reject a bill, as their discretion should dictate. If this is a matter of legal right in the attorney general, and if the jury have no power to call upon whomsoever they please, to testify, a juror may be bound to find a bill upon the evidence before him, upon which alone he can act, against his own positive knowledge, that the person accused did not commit the offence in question ; or he may be obliged, from the insufficiency of the evidence produced, to find no bill, when he is certain that the person charged with the perpetration of a crime, is the real author of it. In these cases, either of which may happen, how can a juror, who has sworn “true presentment to make,” justify his conduct to his conscience, when he has acted, in each case, in direct repugnance to his own knowledge of the truth ? A man of tender conscience, in this predicament, would be extremely perplexed. This mode of procedure, however, is liable to still more formidable objections. Suppose, for a moment, an attorney general *susceptible of bribery* ; he could withhold important evidence from the jury, so that no presentment could be made : and the most flagitious malefactor, who could purchase the conscience of the attorney general, would elude the grasp of justice. On

the other hand, *suppose an attorney general sufficiently depraved to practice oppression upon an individual against whom he entertained a spleen*, he might bring forward prejudiced and corrupt witnesses, and disgrace and harass an innocent man with a bill for an infamous crime, when if he produced other witnesses of whom he had knowledge, no bill would have been found, and no stigma would have been attached to innocence. But if the grand jury have the right, (and, with great deference to established practice, I say it is their duty) to send for any witness or witnesses, and compel their attendance, whom they know or believe to have any knowledge of the matter before them; generally speaking, they would leave no man unpresented who ought to be presented, and present no man who ought not to be presented; and the possible resulting evils which I have stated in the two preceding cases, would be obviated. There is one other grievance which may arise from the recent practice. Jurors, who are not accustomed to the usage of courts, cannot be supposed to possess that dexterity in examining a witness, which is common to an astute lawyer, versed in practice. When a witness is shrewdly examined upon one side, without being cross-examined with the same degree of acumen, his testimony may make a very different impression from what it otherwise would do, and operate unjustly upon a blameless citizen. It also gives the government an undue advantage over the person who is to be tried, by enabling the council for the prosecution, previously, not only to arrange and digest his facts, but to select and retain such as support the prosecution; while he rejects all such as favor the prisoner, howsoever important they may be to him. As the grand jury is sworn to secrecy, the accused may

forever remain ignorant of the existence of such testimony and be convicted for the want of it. In the case in question, Mr. Glover and Mr. Wiggin,* two material witnesses in the defence, were summoned or recognized by the government, and were sworn before the grand jury; but they were not called by the government upon the trial; and neither the attorney nor solicitor general informed me, that they could testify to facts essential to my defence, although they both knew it. For what purpose Mr. Lane,† Mr. Howe, and Mr. Frost could have been introduced as witnesses upon the trial, after the counsel for the government knew the nature of their evidence, it is difficult to conceive. Perjury always strikes with horror; and a good man would not only shudder at swearing to what is false through mistake, but he would be exceedingly cautious how he placed a third person in that awful and responsible situation. It appears by the solicitor general's opening, (trial, page 14th) that the government did not place the least reliance upon the evidence of the three last mentioned gentlemen; for the position upon which the solicitor put the cause, is totally different from the ground upon which their testimony would have placed it, in case they were consistent one with another.‡ These political minions of the attorney general, were but sordidly treated by their magnus apollo. Lest some mistake be apprehended, I will quote the passage to which I allude. "It will appear, that the deceased came with a stick in his hand, in a manner to make an assault; but from the evidence we shall introduce" (leaving out however the strongest) "it will be impossible, I think, to decide whether the pistol was discharged, and the

* See trial.

† See trial.

‡ See trial.

death wound given, before or after Austin gave Selfridge a blow."

It is generally easy to point out, but not so easy to remove difficulties; but the present case seems an exception to this rule. Let the attorney general officially lay before the grand jury his complaints, witnesses to support them, &c. and let that be an end of his duty, till the jury have sent for, and gone through an examination of all the witnesses they may choose to call. If the jury then do not undertake to decide the law arising from the facts in any particular case, (which they have a right to do) let them make a statement of the case, and advise thereon with the counsel for the government; but if they do not wish for such advice, let them inform the attorney that they have found a bill against A B for —; and let the jury then furnish the attorney with the names of the witnesses to support the prosecution; and let the attorney furnish the jury with an indictment in technical form, for the sanction of their signature. In England, where liberty is better secured to the subject than in any other country, the prosecutor for the crown draws his bill of indictment, and gives it to the jury; and when the evidence offered, is competent to authorize a finding, the jury return the bill with "*vera billa*" written on the back of it; but when the evidence is incompetent, the jury return "*ignoramus*" in the same manner. In the late state prosecutions in England, a British grand jury had the spirit to exclude the counsel for the prosecution, altogether from the jury-room. When the security of liberty is better understood in this country, the same practice will undoubtedly be adopted.

The evidence of all the preliminary circumstances follows, commencing with Mr. Welsh's statement,

MR. WELSH'S DEPOSITION.

On Tuesday the 29th July, *Tho. O. Selfridge*, Esq. requested me to deliver a letter, of which the following is a copy, to *Benjamin Austin*, Esq. which I did in the afternoon of that day.

" *Boston*, 29th July, 1806.

" Mr. BENJAMIN AUSTIN, SIR,

" My friend, Mr. Welsh, will deliver you this note, and receive any communications you may see fit to make.

" You have, to various persons, and at various times and places, alleged, " that I sought Mr. Eager, and solicited him to institute a suit against the committee (of which you were chairman) who provided the public dinner on Copp's Hill, on the fourth of July," or language of similar import. As the allegation is utterly false, and, if believed, highly derogatory to any gentleman in his professional pursuits, who conducts with fidelity to his clients, integrity to the courts, and with honor to the bar, you will have the goodness to do me the justice, forthwith, to enter your protest against the falsehood, and furnish me with the means of giving the same degree of publicity to its retraction, that you have probably given to its propagation. I had hoped the mention of this subject to you yesterday would have spared me the trouble of this demand; that twenty four hours would have enabled you, without difficulty, to have obtained correct information, as to the fact; and that a just sense of propriety would have led you to make voluntary reparation where you had been the instrument of injustice. The contrary, however, impresses me with the idea, that you intended a wanton injury from the beginning, which I never will receive from any man with impunity. I am, Sir, your humble servant,

(Signed)

" THO. O. SELFRIDGE."

Mr. Austin, after reading the letter, observed, that he could say nothing further concerning the thing, than he had done to Mr. Selfridge yesterday; that he had heard the thing from another gentleman, and had mentioned it merely as a report which he had heard; that he had not mentioned Mr. Selfridge's name; but had merely stated, in the presence of a number of persons, that he had been informed that Mr. Eager had not called upon the attorney who filled the writ, but that the attorney had called on him; and he at the same time expressed an opinion, that such conduct in an attorney was disgraceful. He then observed, and repeated it once, or twice afterwards, that he would call on the person from whom he had heard the story, and would advise with him, whether it was proper that he (Mr. Austin) should give up his name.

The next morning Mr. Austin meeting me in the street, observed that he had made inquiry concerning the truth of the report which he had circulated, concerning Mr. Selfridge's conduct in Eager's suit against himself, and the other gentle-

men of the committee : that he was now convinced that the report was false ; and that he had been to those persons to whom he had mentioned it, for the purpose of removing the unfavorable impression which such a report, if true, would naturally make upon their minds. He then observed that it was not true that he had used Mr. Selfridge's name : that at the time when this conversation took place, he did not know the name of the attorney, and that this was the only apology that he should make. He also said that he had convinced the person from whom he had received his information, concerning Selfridge's conduct in Eager's suit, that the information was incorrect ; but did not mention the name of the person from whom he had received it, although I requested him to do it, because he (Mr. Austin) would then be exculpated, and the controversy would be between Mr. Selfridge and Mr. Austin's informant.

The same day, July 30th, about 2 o'clock, I called Mr. Austin out of Russell's insurance office, and mentioned to him, that I had communicated to Mr. Selfridge the conversation of the morning. I then observed to him, that Mr. Selfridge was not satisfied with the result of it ; that he conceived that he had a right to demand of him the means of counteracting the effects of the falsehood, to which he acknowledged he had given currency. He answered, that he entertained a different opinion, and did not conceive that any thing more could reasonably be expected of him. I then observed, that as he acknowledged that he had circulated a report highly injurious to Mr. Selfridge's reputation as a lawyer, and that, as upon investigation he had convinced himself of its falsehood, Mr. Selfridge insisted upon an answer to his letter of yesterday, in which should be contained a retraction of the assertion. He said that he could not consent to do this ; and that he did not perceive Mr. Selfridge's object in requesting it of him, as he had never mentioned the name of that gentleman ; and as he had stated to Mr. Scott, the only person to whom he had related the thing, that he had made inquiry of the truth of the report, and was convinced of *its falsehood*. He then said, that it was impossible that he could have used Mr. Selfridge's name ; as he did not know, at the time when he had the conversation with Mr. Scott, that Mr. Selfridge was the attorney who commenced the suit. I then expressed to him my opinion, that Mr. Selfridge ought to be satisfied with the acknowledgment which he had made, were it true that Mr. Selfridge's name had never been used by him, when speaking of this affair ; and were it also true, that he had declared to the persons to whom he had spoken, concerning Mr. Selfridge's conduct in the management of the suit in question, that upon inquiry he found that he had been misinformed, and that Mr. Selfridge's conduct had been correct.

At this moment, Captain Daniel Scott passed out of Russell's office, and Mr. Austin requested him to step to the place where

we were talking, which Captain Scott did. Mr. Austin inquired of him, whether he had used Mr. Selfridge's name when he mentioned to him the conduct of the "*federal lawyer*," who commenced the suit against the gentlemen of the democratic committee? Mr. Scott answered, that he did not. Mr. Scott was then called away by a young man. Upon this I told Mr. Austin, I would communicate to Mr. Selfridge the result of our conversation, and left him.

On Thursday the 31st of July, I was prevented by business from calling on Mr. *Austin*, with a letter, of which the following is a copy; and it was not delivered to that gentleman until the next day.

" 30th July, 1806.

" MR. B. AUSTIN, SIR,

" The declarations you have made to Mr. Welsh, are jesuitically false, and your concession wholly unsatisfactory.

" You acknowledge to have spread a base falsehood against my professional reputation. Two alternatives, therefore, present themselves to you; either give me the author's name, or assume it yourself. You call the author a gentleman, and probably a friend. He is in grain a liar and a scoundrel. If you assume the falsehood yourself to screen your friend, you must acknowledge it under your own hand; and give me the means of vindicating myself against the effect of your aspersion.

" A man, who has been guilty of so gross a violation of truth and honor, as to fabricate the story you have propagated, I will not trust: he must give me some better pledge than his word, for present indemnity, and future security. The position I have taken, is too obviously just to admit of any illustration, and there is no ingenuous mind would revolt from a compliance with my requisitions.

" I am, Sir, your humble servant,

(Signed)

" THO. O. SELFRIDGE."

As soon as he had read the letter, he observed, that he did not expect to hear again from Mr. Selfridge upon this subject; that he had done all that could reasonably be expected from him in a case of this kind; that after being convinced of the falsehood of the report which he had circulated, and which he had merely mentioned again after hearing it from another person, he had been to that person, and satisfied him as to its falsehood; which he likewise had done to all the other persons to whom he had repeated it. He then observed, that Mr. Selfridge was pursuing him in an extraordinary manner; and asked what Mr. Selfridge meant by taking this high ground?

I then answered, that Mr. Selfridge would have been perfectly satisfied with the recantation which Mr. Austin had declared that he had made, were he convinced that it had been done in a proper manner; and were he not in possession of evidence that he (Mr. Austin) had not only used his name, (Selfridge's) connected with the report complained of, to other

persons, but had never seen those persons for the purpose of declaring to them its falsehood.

He then repeated, that he had never mentioned Mr. Selfridge's name, when speaking of this business; and that he had done every thing that any gentleman would consent to do under similar circumstances.

I then told him that Mr. Selfridge had procured from Mr. Abraham Babcock a certificate, that he (Mr. Austin) had told him, that Mr. Selfridge had instigated the suit in question; that Mr. Eager did not apply to Mr. Selfridge, but that Mr. Selfridge had sought Eager; had induced him to commence the suit; and that Mr. Austin had never made any recantation to Mr. Babcock. He then inquired who Mr. Babcock was? I told him he was a friend of Mr. Eager, and was the person who had settled the bill with himself, and the other gentlemen of the democratic committee. At first he said that he did not know Babcock, but afterwards he said he recollected him; but made no observations upon what I stated to him, as the contents of Babcock's certificate. He then adverted to the orders which he pretended were given by Mr. Selfridge to Mr. Hartshorne, the deputy sheriff, to arrest himself and the other gentlemen of the committee; and made use of this circumstance to justify his having spoken the words, at which Mr. Selfridge had taken exception. I observed to him, that this, if true, would be no justification; and that he had had time to convince himself that it was not true, by applying to Mr. Hartshorne, to whom I had applied, and who had informed me, that he had never received such orders from Mr. Selfridge: and that according to what he had repeatedly stated to me, it was impossible that he should have been induced, by any injury which he supposed Mr. Selfridge had done him in giving such orders, to circulate such a report concerning Mr. Selfridge; because, he had invariably stated *to me*, that at the time the suit was commenced, he was ignorant who the attorney was. I also stated to him, that Mr. Selfridge was not satisfied with the retraction, if it were true that he had made it; because each of those persons, who had heard Mr. Austin utter the obnoxious words, might have repeated them to many other persons, and that verbal recantations to the persons who heard them from Mr. Austin, were by no means commensurate with the injury. This conversation was extremely desultory, Mr. Austin being very much irritated by the contents of the last letter. After he became more calm, I requested him to take the letter into consideration, and give me an answer to it in the course of the day. He answered that he would have nothing more to do with it. I then told him that Mr. Selfridge was determined to have satisfaction, of some kind or other, for the injury which had been done him; and that if he (Mr. Austin) should alter his determination, I should be happy to be notified of it, and be the bearer of any communication satisfactory to Mr. Selfridge. He answered that he would give no further satisfaction whatever.

After I had communicated to Mr. Selfridge Mr. Austin's refusal to make any further concession, Mr. Selfridge said, his only motive in moving in the affair, was to rescue his professional conduct from the foul imputation which Mr. Austin had so unjustifiably thrown upon it ; and that he would not relinquish the pursuit, till the object was accomplished : but said, before he adopted other measures, he would leave Mr. Austin a day or two to reflect, which might induce him to comply with one of the alternatives proposed in his last note. The time elapsed, and no proposals were made. From the temper discovered by Mr. Austin in my several interviews with him, but more especially the last, Mr. Selfridge thought any further advances for accommodation were not advisable ; and remarked, that his means of redress were reduced to a *triple alternative*, a prosecution, chastisement, or posting. A prosecution, he said, was out of the question ; because a legal remedy, from its nature, were it certain in the event, could not be so promptly and efficaciously administered, as the degree and kind of injury imperiously required. It would take two or three years to have an action decided : but few persons, comparatively, would ever know the result, and those few, would be those only who were conversant with the reporter's volume, and not clients and men of business, from whom he derived his living : that the damage arising to him, would be unsusceptible of proof ; for it would be impossible to prove who had abstained from employing him, professionally, in consequence of the circulation of the report ; and while the process was pending, his business would dwindle away, the cause would be unknown or forgotten, and the permanency of the evil would remain unrelieved. From his imbecility, a personal contest, he said, was impracticable ; and to rely upon friends for protection, or to permit them to interfere, when he commenced the affray, would be an act of cowardice : that this mode of redress savoured too much of malice and revenge, to be compatible with an honorable desire of procuring reparation for an injury : that dogfighting in the streets, was what he had ever reprobated, and it could have no tendency to disprove, to those whose good opinion he was solicitous to retain, a falsehood, the effects of which, if not efficiently resisted, must annihilate his business, upon any other supposition, than that the calumny, of Mr. Austin could acquire no credit with the public. Posting, therefore, he said was the only remaining alternative. This preventive remedy could be promptly applied to the mischief, and in its operation would be coextensive with all its possible consequences. If one man injure another, no matter from what inducement, and, after notice of the injury, and a demand of indemnity commensurate with the injury, he refuses to make satisfaction, having the ability, he leaves the party injured a perfect right to protect himself against all the consequences of the injury, by the surest means in his power ; and the severest exercise of this right, absolves the party

exercising it, from the imputation of malice or revenge : for although the man who committed the original wrong, may suffer, his suffering is merely incidental, and follows from the exercise of a perfect right, which can never be adjudged an immoral invasion of the rights of another, though it may sensibly affect them. But no man has a right to complain of those consequential sufferings which may be reasonably expected to flow from his falsehoods or injustice. Mr. Selfridge said, by adopting this measure, the facts alleged by him, if denied, would come fairly before the public ; and the infamy of bartrously stirring up lawsuits would be justly laid at his door, or transferred to the villain, who engendered the lie, or who screens the liar from his merited deserts.

I did not see Mr. Selfridge on Saturday. On Sunday I was requested by Mr. Cutler, one of the editors of the Boston Gazette, to call at their office, with which I complied. When there, Mr. Selfridge's advertisement of the 4th August was shown to me, and I was informed, that Mr. Selfridge had directed it to be suppressed, in case I should have received any favourable communication from Mr. Austin. I told Mr. Cutler, that I had not seen Mr. Austin since Friday, and had not received any communication from him since that time. The following is Mr. Selfridge's note, of Aug. 4th.

" AUSTIN POSTED.

" Benjamin Austin, loan officer, having acknowledged that he has circulated an infamous falsehood concerning my professional conduct in a certain cause, and having refused to give the satisfaction due to a gentleman in similar cases, I hereby publish said Austin as A COWARD, A LIAR, and A SCOUNDREL ; and if said Austin has the effrontery to deny any part of the charge, he shall be silenced by the most irrefragable proof.

" THO. O. SELFRIDGE.

" Boston, 4th August.

" P. S. The various editors in the United States are requested to insert the above in their Journals, and their bills shall be paid to their respective agents in this town."

Mr. Austin obtained knowledge that he was posted, and published in the Independent Chronicle of the same morning, the following note, viz.

" Considering it derogatory to enter into a newspaper controversy with one T. O. Selfridge, in reply to his insolent and false publication in the Gazette of this day ; if any gentleman is desirous to know the facts, on which his impertinence is founded, any information will be given by me on the subject.

" BENJAMIN AUSTIN.

" Boston, August 4.

" P. S. Those who publish Selfridge's statement are requested to insert the above, and they shall be paid on presenting their bills."

About nine o'clock on Monday morning, the 4th day of August, Mr. Austin met me, and after some immaterial conversation, said, "he should not meddle with Selfridge himself, but some person, upon a footing with him, should take him in hand," or words to that effect.

After leaving Mr. Austin, I was met by Mr. Henry Cabot, to whom I mentioned the conversation which had just passed between Mr. Austin and myself.

The foregoing statement of facts contains every thing which occurred between Mr. Selfridge and Mr. Austin, previously to the 4th August.

THOMAS WELSH, jun.

Suffolk, ss. Boston, December 19, 1806. Personally appeared Thomas Welsh, jun. and, on oath declared, that the foregoing declaration, by him subscribed, is true. Before

JOHN GARDNER, Justice Peace.

MR. EAGER'S DEPOSITION.

THIS certifies, that I the subscriber was employed by a committee, of which Mr. *Benjamin Austin*, loan officer, was chairman, to provide a public dinner, on Copp's Hill, on the 4th July. That the committee furnished me a list of the articles which they wished provided, a schedule of which is hereto annexed, and marked A, and agreed to pay me therefor at the rate of a dollar a head, for not less than 280, nor more than 300 guests. Afterwards I was informed by Mr. Austin, that the Tunisian ambassador, and other guests, more than at first was expected, were to dine there; that I must provide plentifully, spare for nothing, and should be well paid for it. The committee directed me to procure roast pigs and green peas; and to have the dinner in the best style I could, as the ambassador was to dine there. Some days after the festival, the committee offered to pay me \$360, being at the rate of one dollar per head for the whole number that dined, as they said. This sum I refused to receive, because I verily believed many more dined; because the dinner was much more expensive than the one first proposed would have been, (pigs and peas being dearer than the other articles) as appears by the schedule hereto annexed, marked B; and because the breakage of the ware, &c. was very considerable; and because it put me to more trouble and expense, in proportion, to cook at so short notice the provision in the schedule B, than in the schedule A, which I could have done in my own house. House accommodations for cooking was to be obtained, and extra cooks and waiters were to be engaged, at a great price. Under these circumstances, I considered one dollar a head was not an adequate compensation; and for the whole dinner, including all expenses, I charged \$630. Rather than have difficulty, and being in great want of money, I offered a large discount upon my bill of \$630, which was not complied with. Mr. Austin

then told me, when I would not receive \$360, that I might sue, and that I could not be too quick about it. Finding a settlement could not be made, I went to Mr. Selfridge for advice. I had no acquaintance whatever with him; and no knowledge of him, except what I derived from being in court one day, when he examined witnesses, and argued a cause. Mr. Selfridge advised me, that the after directions did away the special contract; and that I could recover for the whole of the last schedule B, at the same rate that the first schedule A bore to \$280 or \$300; and that if I had been at any extra trouble and expense in providing the schedule B, beyond the proportion of the trouble and expense I had been at in providing the schedule A, that it was a fair subject of charge, as well as the broken ware, over and above the rate before stated: but said, that a suit of that nature, between men united by politics, would be unpleasant, and advised me to settle if I could; and, as a matter of delicacy, he thought it would be best to wait a few days for that purpose. No settlement could be made; and I then informed him of another objection made by the committee to the payment, which was, that the dinner was not well provided; but assured him, at the same time, that I could prove, that some of the committee was frequently at my house, tasting, while the cookery was going on; that a meat pie was prepared on purpose for tasting, to see if it was relished, and it was approved by the tasters; and that in all things my cooks obeyed the orders of the committee. Mr. Selfridge said, this evidence would be sufficient to obviate the objection; but there was one other circumstance, which was, that the entertainment had been represented, in the Chronicle, as very splendid, and sumptuous; and the committee not having denied the truth of that publication, had tacitly given it their sanction: beside, it was more than probable, that the committee, or some one of them, had prepared that account for the printers, as was generally the case on similar occasions; and the court would never permit a party, in a suit, to make such a scoundrel of himself, if the party was willing to do it, as to say, that an article which he had voluntarily received, and consumed, was not provided according to contract, and that he was not bound to pay for it; when that same party had in the most public manner declared, (or permitted it to be declared, without contradiction,) that he had received the article, and consumed it; and that it was excellent and superior in its kind. The next morning I went to Mr. Selfridge's house, in Medford, and asked him to advance me money upon a note, with a good indorser, and at a great discount, and to pay himself when he collected my money. He replied, that he would not, if it were convenient; but it was not convenient; but that it might be raised in Boston, through a broker, from a note jobber, upon a good name offered; and it was improper for lawyers to do it. I replied, that I did not mean to propose any thing improper, but I knew the practice was frequent with lawyers.

He said it might be, but he never did it ; and every honest man set his face against it. I then asked him what his charge would be for carrying on the suit ? He said, that depended entirely upon the trouble he might be put to : he did not profess to work cheap. I assured him he should be well paid, and directed him to commence the suit, which he did. Mr. Austin came to my house immediately after the service of the writ, and said, the lawyer only wanted to pick my pockets, and he would refer the demand. I consulted Mr. Selfridge upon this offer, and he advised me, by all means, to accept it ; but remarked, that I ought to refer to gentlemen of independent minds, without reference to their politics, who would award impartially ; and named three gentlemen of different politics ; and said, this would be a touchstone to test the committee's opinion of their own case : if they felt it would bear examining, they would submit it to gentlemen who had some responsibility attached to their characters ; and if not, they would evade the reference, and the same reason would deter them from going to a jury ; so that I might calculate upon my money before court. At the time appointed, I went to Mr. Austin, and told him I would refer to any gentlemen who was above sideing with a rich man against a poor one. He signified to me, that he wished me to name a man, by asking, to whom I would refer ? and I named Gen. Knox. Mr. Austin said, he did not wish to trouble such men with so small a matter ; neither would such men attend to it. I replied that I would refer to no others. I informed Mr. Selfridge, that the reference had turned out exactly as he told me it would ; for after he saw some of the witnesses, he said, they never would permit any man or men to decide the cause, whose opinion would be respected by the public. In a day or two, a friend of mine, and one of the committee, settled the matter. Mr. Selfridge never knew from me on what terms the settlement took place. I informed him of the fact, paid him twenty five dollars for his writ and advice, and thanked him into the bargain. Mr. Selfridge never, directly nor indirectly, nor no one for him, made any application to me to sue the committee. After two or three days, Mr. Austin called at my house ; and after remaining a little time in the barroom, said he wished to speak to me, and asked me what Selfridge's conduct was in that cause, and how he came to be employed in it ? I answered according to the facts, as above stated. He then asked me again, whether it was not in a different way ; and whether he did not seek the action ? saying, "*it could do no hurt for me to tell him.*" I answered as before. He said, "*Poh ! he was sorry he had been wrongly informed,*" and went away.

EBER EAGER.

Jefferson Tavern, Prince Street.

Suffolk, ss. Boston, September 26, 1806. Personally appeared, Eber Eager, and made solemn oath, that he foregoing deposition contains the truth, and nothing but the truth. Before

WILLIAM STEVENSON, Justice Peace.

SCHEDULE A.

Bill of fare for July 4th, 1806, by Col. Gardner's written order.

- 4 Hams, 16lb. each 64
- 8 Tongues, 7 do. 56
- 6 Rumps of Beef, roasted . . . 96
- 12 Meat pies of lamb.
- 20 Plumb puddings.
- 4 Rounds, 16lb. each, alamode 64
- Radishes, 3 dolls. Sallad, 2 dolls.
- Mustard, salt, butter, cheese, bread.
- Crackers and good cyder.
- Crockery, glasses, knives and forks, for 280 to 300 persons, and table cloths to cover tables for that number.
- Six good servants to attend table.

The above is schedule A, referred to in the annexed deposition.
WILLIAM STEVENSON, *Justice Peace.*

SCHEDULE B.

Bill of fare provided for 4th July, 1806.

- 12 Hams, weight more than double.
- 8 Tongues, do. about the same.
- 6 Rumps, do. 150.
- 24 Meat pies.
- 40 Plumb puddings.
- 4 Rounds, weight 156.
- Radishes and Sallad about the same.
- Mustard, salt, butter, cheese, bread.
- Crackers and good cyder.
- Crockery, glasses, knives and forks, for about 500 persons.
- Table cloths to cover tables for that number.
- Twelve servants to attend table.

Extra. Seven roast pigs.
Ten bushels green peas.
Two bushels potatoes.

The above is schedule B. referred to in the annexed deposition.
WILLIAM STEVENSON, *Justice Peace.*

MR. SCOTT'S DEPOSITION.

ON the twenty eighth day of July last, at the insurance office of Mr. Nathaniel P. Russell, some gentlemen questioned Benjamin Austin, Esq. who was chairman of a committee, which furnished a public dinner on Copp's Hill, on the fourth of July, relative to a suit commenced against the committee by the taverner who provided the dinner. He observed, that "the federal lawyer who filled the writ, went several times to the tavernkeeper, who provided the dinner, and persuaded him

to institute a suit against the committee : that they knew it, and that the whole business would come out by and by." He repeated the above observation, (in such a manner, as, I presume, every gentleman in the office understood, that *Thomas O. Selfridge*, Esq. was meant) and, as I conceived, at me. I then asked him, if he personally knew that the lawyer who filled the writ, solicited the tavernkeeper, who provided the dinner, to institute the suit against the committee? To which he answered, "*Yes, I do.—And that is not all.—You will see.—It will all come out by and by.*" Fearing Mr. Selfridge had been guilty of some impropriety, as the charge was repeated with confidence, in a public manner, and without any qualification, I was induced, from motives of private friendship, and from a duty one citizen owes to another, to inform him what declarations had been made in the office, and what reports were in circulation; and questioned him as to what he had done in the suit. He said, a Mr. Eager had applied to him to sue the committee of arrangements, for the dinner on Copp's Hill, as he could not obtain a settlement; that his advice to him was, to attempt a compromise with them, or to submit the demand to referees; urging that the fourth of July was a *gala* day, and that it would be better to settle, than to bring such a suit before a court: that the man called several times, and not being able to effect a settlement, at length insisted on a writ; which was accordingly made out, and given to an officer, with directions to serve it. DANIEL SCOTT.

Question by Mr. Welsh, in behalf of Mr. Selfridge. Did Mr. Austin ever take back, or deny, the words he had uttered, as you have related, or inform you he was mistaken?

Answer. No. He never did. D. SCOTT.

Suffolk, ss. Boston, December 20, 1806. Then the aforementioned Daniel Scott, personally appeared, and made oath to the truth of the foregoing declaration, by him subscribed. Before
JOHN GARDNER, Justice Peace.

MR. RUSSELL'S DEPOSITION.

ON a day, soon after the fourth of July last, Mr. *Benjamin Austin*, in conversation with some gentlemen, in the office kept by me, stated, that the suit brought against the committee of arrangements for the Copp's Hill dinner, so called, was done by the instigation, or solicitation, (or words to that effect) of a federal lawyer; and that I was fully persuaded that the said suit was instituted or commenced by *Thomas O. Selfridge*, Esq. although his name was not mentioned by Mr. *Austin*, to my knowledge; and that the conversation made an impression on my mind unfavourable to the federal lawyer who did

commence the suit: and that no subsequent conversation passed in my hearing to remove the said impression.

NATH. P. RUSSELL.

Suffolk, ss. Boston, December 20th, 1806. Personally appeared, Nathaniel P. Russell, and made oath to the truth of the foregoing declaration, by him subscribed. Before

JOHN GARDNER, Justice Peace.

MR. PARK'S DEPOSITION.

I, *John Park*, declare, that on the day of July, last, Mr. *Selfridge* spoke to me, and said he had been informed that I had a communication in type upon the subject of the Copp's Hill dinner, which he wished me to suppress; as he had that day commenced a suit to recover the sum in dispute, and he thought it highly improper to agitate a question of any kind in a public paper, which was afterwards to be tried by a jury; and accordingly I did suppress the communication. A few mornings after, I called at Mr. *Selfridge's* office, and he informed me the action abovementioned was settled. I replied, I knew it was; and that it was said, there never would have been any difficulty between the committee and the taverner, if he had not, improperly, interfered, and excited the suit to make mischief. Mr. *Selfridge* asked me, "*who had said it?*" I answered, that several had told me that this was said by the party, who had refused the payment, and that they imputed to him the whole blame. He said, he was apprised of the report, had found the author, and called on him for satisfaction, which he would compel him to give.

J. PARK.

Suffolk, ss. Boston, December 19, 1806. Personally appeared John Park, and, on oath, declared, that the foregoing declaration, by him subscribed, is true. Before

JOHN GARDNER, Justice Peace.

MR. BABCOCK'S EVIDENCE.

ON the twenty eighth of July, 1806, in behalf of Mr. *Eager*, I settled with one of the members of the committee who provided the dinner on Copp's Hill, the 4th July; after which Mr. *Benjamin Austin* asked me, "*How came Selfridge with this business?*" meaning the suit against the committee. I answered, "*I did not know.*" Mr. *Austin* then answered his own question, by saying "*he*" (meaning *Selfridge*) "*sought it,*" or "*went after it.*" And Mr. *Austin* did not mention the matter as mere report, or give any author for the fact; but his declaration was as explicit as I have stated it above.*

This is a copy of an original paper in the hands of Mr. *Abraham Babcock*.

THOMAS WELSH, jun.

* This corresponds with Mr. Babcock's evidence upon the trial.

The preceding body of evidence, I submit to the public, in its simplest form, and without the least degree of colouring; and previous to any comments upon its nature and tendency, I will offer a few legal extracts, from good authorities, which will, at one view, shew the criminal, as well as base nature, of the allegation, so repeatedly made against me; will satisfactorily explain the solicitude which I manifested upon that occasion; and, as I hope, will go far, very far, in the minds of candid men, in justifying the "*high ground*" which I assumed relative to Mr. Austin; who, from his loose and incorrect manner, both of writing and speaking, may not so distinctly have charged me with the commission of one crime, as he has hinted at the perpetration of three, viz. Barretry, Champerty, and Maintenance.

"A Barretor is a common mover of suits and quarrels, either in courts, or elsewhere in the country." J. L. D.

"A common Barretor is said to be the most dangerous oppressor in the law; for he oppresseth the innocent, by colour of law, which was made to protect them from oppression." 8 Rep. 37.

"A common Solicitor, who solicits suits, is a common Barretor, and may be indicted therefor; because it is no profession in the law." 1 Danv. abr. 725.

"The punishment of this offence, in a common person, is by fine and imprisonment; but if the offender belongs to the profession of the law, a Barretor, who is thus able, as well as willing to do mischief, ought also to be disabled from practising for the future." 4 Comm. 134.

"A Champertor, by statute, is one who moves pleas and suits, or causes them to be moved, either by his own procurement, or by others, and sue them at their

proper costs, to have part of the land in variance, or part of the gain." 33 Ed. I. Stat. 2.

"This offence is punishable by common law and statute. The Stat. 33. Ed. I. Stat. 3. makes the offenders liable to three years' imprisonment, and a fine at the king's pleasure."

"Every Champerty implies Maintenance; but every Maintenance is not Champerty." Crom. Jur. 39. 2 Inst. 208.

"Maintenance is the unlawful taking in hand, or upholding a cause or person." Stat. 32. H. 8. c. 9.

"Maintenance is an offence that bears a near relation to Barretry, being an officious intermeddling in a suit that no way belongs to one; by maintaining or assisting either party with money, or otherwise, to prosecute or defend it." 4. Comm. c. 10. p. 134.

"By the common law, persons guilty of Maintenance may be prosecuted by indictment, and be fined and imprisoned, or be compelled to make satisfaction by action," &c. Helt. 79. 1. Inst. 318.

A statute of this Commonwealth, enacted November fourth, 1785, intitled, "An act regulating the admission of attornies," enumerates the qualifications required in order to be admitted to practise in our courts; and also a detail of the duties and obligations imposed upon the practitioner, by the oath, solemnly administered to him in open court, at the time of his admission.

"An act regulating the admission of attornies.

"Sect. 1. Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, that no person shall be admitted an attorney of any court, in this commonwealth, unless he is a person of good moral character, and well affected to the constitution and government

of this commonwealth, and hath had opportunity to qualify himself for the office, and hath made such proficiency as will render him useful therein; and no person shall be admitted to practise as an attorney in any court of justice within this state, until he shall, in open court, have taken and subscribed the declaration prescribed in the constitution of this commonwealth, and an oath, in tenor following:

“ You solemnly swear, you will do no falsehood, nor consent to the doing of any, in court; and if you know of an intention to commit any, you will give knowledge thereof to the justices of the court, or some of them, that it may be prevented: You will not *wittingly, or willingly, promote or sue any false, or groundless, or unlawful suit, nor give aid or consent to the same*: You will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney, within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts as to your clients. So help you God.”

The voluntary affidavits, of Messrs. Eager and Park, (confirmed by my declaration to Mr. Scott) clearly demonstrate, that my professional conduct towards the democratic committee, was strictly correct, and decorous; that so far from seizing occasion to prejudice or disgrace them, I was disposed to conduct the business with propriety, and to treat them like gentlemen. When I disclosed to Mr. Austin my subject of complaint, I had a right to expect that he would promptly set on foot an investigation, which would have exonerated me from reproach. I was disappointed in this just expectation, for he adopted no measure, tending to that end, till after Mr. Welsh had delivered to him my first note. The whole document, containing Mr. Welsh's relation, merits very particular attention; as

it exhibits several palpable contradictions and gross equivocations, on the part of Mr. A.* I might very justly use harsher appellations; but my object is not to give vent to resentment, but merely to disclose truth, in the most cool and dispassionate manner.

Mr. Scott's testimony, in conjunction with Mr. Russell's, Mr. Babcock's, and major Park's, evince the extensive circulation of the calumny, under which I laboured. Mr. Welsh's statement points out the motives by which I was actuated, and explains the object of my demand.

Mr. A. in my interview with him, did not deny having circulated the report, and its application to me. In the interviews with Mr. Welsh, he alleged that he had not used my name. If Mr. Babcock be accredited, he did; but this, surely, is altogether immaterial, if I were so designated as to be known, without being named; and this was the case, or Mr. Scott could not have known to whom to have made his communication. Mr. A. informed Mr. Welsh, prior to the receipt of my second note, that he had been to every person in whose presence he had uttered the offensive words; and had declared to them, severally, that the charge, which he preferred against me, was groundless. This could have been merely intended, under the semblance of a gentlemanly and honorable accommodation, to deceive me into the acknowledgment of satisfaction, while the injury was not only unremoved, but would have been increased, in its effects, by an apparent acquiescence, on my part, in the truth of the calumny. The evidence places this point beyond controversy. Had the concession been true, it was unsatisfactory. The report might have been propagated in the hearing

* See note, No. 1. postscript.

of two, or of twenty gentlemen, each of whom might have propagated it to as many others ; in such a case, a retraction before the former, would be a reparation, by no means adequate to the injury. Neither would it have been the most ample reparation, which Mr. A. had in his power to have given. Short of this, I should not have been satisfied.

The next object was to devise the most suitable method to repel the slander. That which was adopted, seemed the most speedy and efficacious remedy. The ordinary means of redress had failed ; slander was abroad, deeply affecting me ; and I felt it my right to dispatch the fleetest couriers to hunt it down.

When my note, of the fourth of August, appeared in the Boston Gazette, Mr. A. gave notice in the Chronicle, of the same morning, that he thought it derogatory to enter into a newspaper controversy with me. Indeed it would have been derogatory to him, in the extreme ; for I should have wielded the weapons of truth, weapons to which he is quite unaccustomed, to his evident discomfiture. Upon what grounds Mr. Austin's imaginary irresponsibility reposes, I will neither discuss, nor decide. Yet there is one point to which I would seriously call the attention of the industrious and less opulent classes of the community. Will they permit a man, merely because he possesses an overgrown fortune, to trample them to the earth with impunity ; to rob them of their reputation, upon which their bread depends ; and when politely called upon to do an act of justice, answer the demand, by saying, "*It is derogatory for me to enter into a controversy with you*" ? There are men, who pretend to be the exclusive friends of the people ; who, under hollow professions, fawning manners, and hypocritical zeal, obtain power ; and who obtain power, for the undivided purpose of

debasing the people, and aggrandizing themselves : men, who act as if they believed, that the goods of fortune, and a little temporary popularity, gave them an indefeasible right to injure and oppress an industrious citizen, less wealthy than themselves, exempt from any accountability to the injured. Upon this ground, and upon this alone, could Mr. Austin establish any superiority over me. This conduct is an excellent comment upon his notions of *liberty, equality, and the rights of man*. I am so much of a republican, as to feel, that no man is elevated above, nor depressed below me, upon a question of right. The loftiest spirit in the nation shall not insult me ; the humblest I would neither insult nor injure, without making it the utmost reparation in my power.

Mr. Austin's menace to Mr. Welsh, that "*some person on a footing with*" me, should "*take me in hand,*" was equally deceptive as his other declarations. In what sense was his son my equal ? Had he a profession ? Had he numerous obligations of business ? Had he creditors ? Had he a family dependant upon him ? Was he sickly and infirm, or was he active and athletic ? He chose his time, his place, his weapon, and his mode of attack ; yet the Chronicle has the effrontery to complain of unfairness, and finds a few, bale enough to abet the complaint.

The means which have been practised to preoccupy the public mind respecting my trial, by repeated, and inflammatory publications, are as unprecedented, as they are oppressive and unjust. During my confinement I made no statements ; neither did I authorize any to be made. This course I pursued from a profound respect for the tribunals of public justice ; and from a sacred regard to the rights of my fellowcitizens, whose legal liberty is inseparably connected with my own.

On the subject of my guilt or innocence, I never made a declaration till I was arraigned, and no just opinion could have been formed before all the testimony was unfolded upon the trial.

The man, who prematurely condemns another, exhibits an extreme want either of judgment, or candor, or both. He who insults another in confinement by promulgating unfounded rumors, betrays not only a disregard to truth, but the most abject spirit of a coward : He who endeavours to preclude another from a fair trial, when his life is in jeopardy, discovers a murderous disposition, and a treasonable intent ; for he at once would take the life of a fellowbeing, and subvert the laws and constitution of his country, which secure to each individual an impartial trial, and without which, there is an end to liberty and social security. To the ostensible editors of the paper, in which these communications appeared, the blame does not principally belong. They are, indeed, *poor beings*, so far as intellect is concerned : their ignorance exceeds, and almost excuses their perversity. Whether JAMES SULLIVAN, or BENJAMIN AUSTIN, furnished the infamous publications of which I complain, I do not certainly know ; but I have strong suspicions against them both. If, however, they did not furnish, but had the power to suppress them, and did not exercise it, they, at least, are accessory to whatever criminality attaches to those publications. As the latter is the reputed editor of the paper ; and as the paper itself, is almost exclusively devoted to the political views of the former, it is presumed, that among reasonable men, there can be but one opinion, with respect to the origin of those flagitious outrages, which have, at once, assailed the rules of decency, the security of individuals, the dignity of the laws, and the spirit of the constitution.

There is one circumstance in the deposition of Mr. Eager upon which I shall briefly comment. Why did not Mr. Austin send a note, or some third person, to Mr. Eager to inquire, what my conduct was? Why was he not satisfied with a plain answer to a plain question? Why did he ask, whether I was not employed "in a different way;" and whether I did not "seek the action"? saying to Eager, that "it could do him no hurt to tell;" that is, that it could do Eager no hurt to say that I solicited the suit? Mr. Austin published a report of me, which he acknowledged was "disgraceful," and which he knew was untrue; and then endeavored to seduce Eager into the conspiracy against my reputation, to preserve the remnants of his own. The anterior circumstances, conjoined with Mr. Austin's disconcerted and abrupt manner, when he found Eager not ready to his purpose, will clearly prove the correctness of my construction of this conduct, to all those who believe that "actions speak louder than words."

Many persons have suggested, that I ought to have disregarded the aspersions of a man, so lost to honor, and dead to shame, as Mr. A. of a man, who has been spit upon, whipt, or kicked upon the public exchange; of a man, who, after having the meanness to sue for it, had his feelings, his honor, and his injury, estimated by a righteous jury of his country, consisting of men of all parties, at the moderate sum of *twenty shillings*!* My invariable answer has been, that Mr. A.'s, was no ordinary accusation. With his party, he is a man of consequence, notwithstanding his disgrace. His evasive and shuffling conduct, as the chairman of the committee, was reprobated by independent men, as meanly dishonest; had been the subject of severe newspaper animadversion; and was creating a serious disaffec-

* See note No. 2, postscript.

tion among many members of his own party. After paying the money, it was necessary to set on foot some device to forefend the impending infamy. No man better knew the success of experiments, of a certain kind, than Mr. A. Nothing was more easy than to fabricate a story, and give it a currency among his credulous subalterns. By this notable manœuvre the odium was to be transferred from his shoulders to mine. Now, it by no means follows, that because a man possesses an intrinsic baseness of spirit, and a radical defection of character, both confirmed by inveterate habit, that he is incapable of external annoyance; or that he is not amenable to the injured, for acts of injustice. Upon this hypothesis, every felon in society might range with impunity. Although a man debase himself to a reptile, yet, unresisted, he may be formidable as an enemy; for a reptile has the capacity to inflict a mortal sting. “*A lion may perish by the puncture of an asp.*”

Wide as the calumny was spreading, and circumstanced as I was, I owed the vindication of myself, in fidelity to my clients, and in duty to my creditors; I owed it, in gratitude to my parents, and in love to my children; I owed it, in honor to the bar, and in integrity to the court; but, above all, I owed it to the public justice of the country, upon whose altar I have sworn; and in whose temple, I am a humble ministerial officer.

While stretched upon a bed of sickness, and in an hour of extreme peril, I entered upon a careful review of my motives and actions in this affair; and found no cause for selfcondemnation: yet I sincerely lament, and deeply deplore the unhappy consequences which resulted. That I was reduced to the painful and awful alternative, (almost equally perplexing and distressing to a man of correct feelings, and a due sense of honor)

either of sustaining irreparable disgrace ; of falling a victim to superior strength ; or of escaping both these, by the last resort, I shall ever consider as the most calamitous circumstance of my life.

The charges which I made against Mr. Austin, in my note of the 4th of August, I felt myself bound to prove ; but the unhappy occurrence of that day induced me to abstain from laying the facts before the public until this period. I now consider that I have performed that task to the satisfaction of every honest man. Through the whole, I have viewed Mr. Austin as one party, and myself as the other ; therefore no declarations of mine, which are not corroborated by the testimony of others, whose veracity no man will question, are introduced. In an *ex parte* statement, I think their introduction would be unfair, without collateral support.

Possibly some doubts may arise as to the conclusiveness of the proof. But to quiet all doubts, I am authorized, by a friend, to state, that he will hazard twenty thousand dollars to ten thousand ; or any smaller sum, in the proportion of two to one, (the losing party paying all costs of submission) that, upon a full hearing, any three, well informed, independent foreigners, uncontaminated with American politics, shall decide, that all the allegations, contained in my note, are thoroughly substantiated. This is a species of betting, which is not prohibited by any statute ; and contravenes no law, human or divine.

The melancholy event, which occurred in State street on the 4th of August, has been unjustly denominated "a federal murder." To the federal party, I am under no obligations. The other side of the political scale, is the depository of all the acknowledgments of patronage which I have to make. But in justice to the federalists, I solemnly declare, that no material, per-

sonal act of my life, since the age of manhood, was undertaken, or pursued, by the advice, or under the direction of any human being. For my whole conduct, in this unfortunate transaction, I hold myself solely responsible. It is injustice, in the last degree, to attribute any part, or portion of it, to any man ; or to any body of men.

The extreme anxiety to learn the facts which led to the disastrous event, and the interest which the event itself excited, precludes the propriety of any apology for laying before the public the antecedent circumstances. The remarks, I hope, have been dictated by a spirit of candor and truth. I have endeavored to refrain from all severity, which was not strictly warranted by the evidence in the statement. The feelings of myself and family have been wantonly and incessantly lacerated by the vindictive malice of remorseless persecutors : yet retaliation, in a degree beyond what is necessary for selfdefence, is unjustifiable. A good man's sorrows should be sacred, and his feelings respected : but when personal and political rancor overpowers parental grief, and even seems to induce a malignant joy over a departed son,* in the miserable hope, that his untimely end will promote political purposes, he renders himself the alternate object of sorrow and of scorn, of derision and detestation.

The trial being now finished, every circumstance is open to public inspection ; but it is feared that the size of the report and its consequent increased price, will deter many from purchasing, and still more from reading it. It is, therefore, thought advisable to give a short history of the occurrence in State street, for the benefit of those who may disincline to encounter a large volume, as well as for those into whose hands it may never fall.

* Mr. Austin's first exclamation was, "*Good God ! Is this the work of federalism ?*"

On the morning of the 4th of August, at the moment of my arrival in Boston, Mr. Henry Cabot* informed me, that Mr. A. had declared to Mr. Welsh, "*that he should not take me in hand himself, but that some person, on a footing with me, should handle me,*" Mr. Cabot said, he presumed this person would be some noted bully. This induced me, contrary to my usual practice, through the day, to keep my pistols in my pockets. I continued in my office, attending to my ordinary business, till a few minutes after one; when I went out, with a view of going on to the exchange, to meet a gentleman, upon an appointment of business. I passed from the northeast corner of the old statehouse, in which my office is situated, in a southeast direction, towards the Suffolk buildings, so called, leaving Mr. Townsend's shop, from twelve, to eighteen feet, upon my right hand.† When I was nearly opposite Townsend's shop, my hands being behind me, upon the outside of my coat, my attention was arrested, by the rapid and furious approach of the deceased, with a large cane uplifted. I instantly half wheeled, and faced him; and with a mere glance, observed, that his whole visage denoted the most desperate intentions. Instantaneously I seized, with my right hand, the pistol in my rightside pocket, which was guarded, and upon half cock; but before I had time to present it (as may easily be conceived from the rapid movement of the deceased, and from his proximity to me, which was not more than eight or ten feet, when I first halted) I was struck a heavy blow, which fell upon my forehead.‡ In the mean time, I prepared my pistol, stepped back one or two paces, presented, and discharged it, while the deceased was in the act of giving a second blow. The blow and the report were

* See trial, Cabot's evidence.

† See trial.

‡ See note, No. 3, postscript.

simultaneous. No witness, upon whom any reliance was placed upon the trial, (if any correct inference can be drawn from the positions assumed by the counsel for the government) denies that a blow was given before the discharge of the pistol ; but a great number of witnesses* saw the violent approach of the deceased, and saw his stick near my head, and know that a blow was given, and the pistol discharged, nearly at the same instant ; but do not know, from the celerity of the motion, whether the stick was ascending or descending. That it was ascending, is rendered certain, from the position of the wound upon the body, which was upon the left side, a little below the pap. Had the stick been descending, the right side of the deceased would, necessarily, have been presented to my front, (for the blow was across the forehead) and his left side would, consequently, have been withdrawn from it. On the supposition that the stick was ascending, the reverse of this is precisely what must have taken place. There were several subsequent blows, all of which were feeble, compared with the first;† their force, however, was much broken by the upraising of my hands and arms for that purpose. If the deceased was stricken, after the shot, either by the pistol, or with my hands, it was not by design. While he was rushing upon me, from the south to the north, I stepped suddenly to the west, and he passed by me, and stopped, at the distance of three or four paces. I immediately turned towards him, threw the discharged pistol from my hand, and seized the other to protect myself from further violence. As the deceased made an effort to approach me, I perceived that he reeled a little, which induced me to withdraw my hand from the pistol, upon the presumption that he was in some

* See note, No. 4, postscript. † See trial, Whitman's evidence.

degree disabled ; although I had no other evidence of it than what I have already mentioned. The deceased pressed upon me with great fury ; and when in the act of striking, I caught the stick, which he easily wrested from me. I stepped backwards towards Mr. Townsend's shop, warding off the blows as I retreated, till I saw the blood issue from his mouth and nose. I instantly turned, when I saw this.

The people upon the exchange began to inquire, "*Who has done this ?*" "*Where is the man ?*" "*What has he done ?*" To which I answered, "*I am the man ; I know what I have done.*" I was solicited by my friends to leave the exchange. In the first instance I refused to comply with their request, saying, that "*I was perfectly collected ; that I was not so much agitated as they were ; and that I was ready to answer for what I had done.*" Perhaps I have not repeated my own language with precision ; but I am sure of the import of the expressions. Reiterated declarations of violence, however, soon inclined me to alter my determination, and I walked from the exchange to the house of Mr. Wm. Ritchie, accompanied by him, and some other gentlemen. After we had proceeded a few rods, I desired one of the gentlemen to repair to the exchange, and inform the people where I was to be found ; and I requested another to go for Mr. Bell,* and Mr. Hartshorn, the sheriff's officers, and bring them to me. I remained at Mr. Ritchie's forty minutes, perhaps more, before the officers came to arrest me. On account of the popular phrenzy, my friends advised me to avoid process, which apparently I might have done, and remain concealed, till the time of trial. The adoption of this measure, I absolutely declined. Mr. Ritchie and myself were in hopes that the wound

* See note, No. 5, postscript.

would not prove mortal ; but our hopes were soon dissipated by the arrival of a messenger from the exchange. I then expressed, what I deeply felt, (though in terms which I do not now recollect) my unfeigned sorrow for the melancholy event ; yet I felt no compunction for the *act and the motives* which led to it, for I was impelled to *act* by *motives superior to any considerations upon this side the grave*. After the officers arrived, I consulted with a cool and judicious friend, of distinguished professional eminence, who thought it expedient to avoid the examination of witnesses before the magistrate, by consenting to a commitment. The court and the attorney general seemed not to comprehend, or were unwilling to understand, that the object of consenting to a commitment was, that a frantic mob might not be farther exasperated and inflamed by a recital of tragical circumstances, when the “many headed monster” had already shewn some symptoms of resorting to the extremes of violence. The court proceeded to examine two witnesses, Lane and Frost, upon whose testimony I was fully committed for trial. On the 4th of August, Anno Domini 1806, at five o’clock, P. M. in the town of Boston, “*the head quarters of good principles,*” after having surrendered myself into the custody of the civil authority, for safe keeping, I was literally obliged to *escape into prison* to elude the fury of democracy.

As soon as the turnkey had executed his office, I sent for several professional gentlemen to examine the state of the wound upon my forehead. I should have merely stated the facts here, and referred to the report for their authenticity ; but that an eminent surgeon, Dr. Warren, sen. was prevented from attending the trial by indisposition. His certificate, which follows, contains his opinion.

Boston, January 15, 1807.

Having been called, on the 4th of August last, to visit T. O. Selfridge, Esq. on account of a blow received upon his head; and my testimony being now desired (in consequence of my having been by sickness prevented attending at court at the time of trial), I do hereby declare, that I found a contusion on the left side of the said T. O. Selfridge's forehead, to the best of my judgment, about three inches long, and one and an half or two inches wide; the integuments swollen to the thickness of about three quarters of an inch; and that the force of the said blow appeared to have been such, as might have been followed by fatal consequences.

JOHN WARREN, M. D. A. A. S.

Professor of Anatomy at Harvard University.

It may be proper in this place to remark, and refer to evidence, that the deceased, on this very morning, selected a hickory stick,* weighing between eight and nine ounces, well balanced for striking: that he had, just before the meeting, visited a public house, and invigorated his spirits by drinking;† and that the violence of the blow was such, that it not only beat in, but broke through a stiff fur hat;‡ making, in the front part of it, a breach of nearly six inches in length. I will also quote two or three passages of law, from the fourth volume of Blackstone's commentaries; because, as the solicitor general said in the opening, this learned and elegant author had fully illustrated the subject matter in issue. The indictment was for manslaughter, which is defined: "*The unlawful killing another, without malice, either express, or implied: which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act.*" Comm. 4. p. 190.

* See trial, Fales' evidence. † See trial, Shaffer's evidence.

‡ See trial, Ritchie's evidence.

My defence to the charge was, that the killing was an act of necessary selfdefence, which is thus defined under the head of *Homicide, se defendendo*. "*Homicide in self-defence, or se defendendo*, upon a sudden affray, is also excusable, rather than justifiable by the English law. This species of selfdefence must be distinguished from that just now mentioned, as calculated to hinder the perpetration of a capital crime, which is not only a matter of excuse, but of justification. But the selfdefence which we are now speaking of, is that whereby a man may protect himself from an assault, or the like, in the course of a sudden brawl or quarrel, by killing him who assaults him." Comm. 4. p. 182, 183. In pursuing this subject, the learned author goes on to say, that "the party assaulted must flee as far as he *conveniently can*, either by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault will permit him; *for it may be so fierce as not to allow him to yield a single step, without manifest danger of his life, or enormous bodily harm*; and then, *in his defence he may kill his assailant instantly*. And this is the doctrine of universal justice, as well as of the municipal law." Comm. 4. p. 184. Now there seems to be no better evidence that I was in "*manifest danger*" of "*enormous bodily harm*," in consequence of a blow from the deceased, than that I actually sustained it: that I could not have "*conveniently fled*," by reason of bodily debility, (which is surely an "*impediment*" within the contemplation of law) was fully manifested by various witnesses upon the trial. And that "*the fierceness of the assault*" was such, as not to allow me "*to yield a single step*" without increasing the danger, no one can doubt, who attentively examines the evidence contained in the report. That my life was imminently exposed, no one will question,

unless he disbelieves the preceding certificate of the surgeon.

The trial commenced on Tuesday, the 23d day of December, at nine A. M. and terminated on Friday, at two P. M. the 26th day of the same month. The jury retired, and immediately agreed upon a verdict of acquittal, and returned with it into court at 4 P. M. to which hour the court had adjourned.

It was hoped, by the friends of order and good government, that one of the most fair, solemn, and impartial trials ever witnessed in our country, would have quieted the public mind, and have given satisfaction to all classes of citizens; for it was sanguinely believed, that full confidence was reposed in the supreme judicial tribunal. But, in this hope, just expectation was disappointed. The fiends of anarchy, night after night, have prompted the perpetration of the most wanton outrages against liberty, security, and the legitimate rights of man! The integrity of jurors has been impeached; the wisdom of the court has been arraigned; and the protective arm of the law has been paralysed by the audacious efforts of democracy! If these enormities are not checked by the interposition of the remnants of civil authority; if the deliberate judgment, and the physical force, and the moral sentiments of the wise and valiant, do not unite to suppress these unprecedented atrocities, every man, who is a stakeholder in society, must surrender all that is dear and precious, to the reign of uproar, disorder, and misrule! Future judges will be overawed upon the judgment seat: future juries will be intimidated from the faithful discharge of their duties: honest witnesses will fear to depose; and all the moulds of social security will be prostrated to the earth by a licentious, profligate, unprincipled, demoralizing, and bloodthirsty democracy, stimulated to action by inflammatory

newspapers, and guided in its exertions by Catalinian demagogues.* The most estimable privileges will be infringed, and the most valuable rights will be violated: property will be rendered insecure, and massacre will be perpetrated by the hands of revolutionary executioners: our ancestral institutions, and all those salutary regulations, which preserve the *minor morals* and the social decencies of life, will fall under the despotism of that FELL SPIRIT, the harbinger of desolation, who is stalking through the land; and will vanish “*into air, into thin air.*”

Upon my trial, and upon that alone, I rest my justification with the public.

..... “ I wish no other herald,
 “ No other speaker of my living actions,
 “ To keep MINE HONOR from corruption.”

SHAKESPEARE,

During the prosecution I neither endeavored to make interest,† nor to excite sympathy. Since my acquittal, I have neither solicited favor, nor supplicated mercy. The whole weight of my accumulated sufferings, both personal and pecuniary, I have sustained, with some small degree of fortitude. My enemies did not enjoy the malicious satisfaction of hearing a single murmur, while I was struggling under the pressure of complicated inconveniences. But the dreadful gloom of that

* Soon after the acquittal, mobs and riots infested the town, burning effigies, libelling jurors and judges, and threatening to murder, &c.—These outrages were anticipated by judicious men, in consequence of the wanton publications in the Chronicle, and other democratic newspapers.

† When I was first confined, my personal friends very justly concluded, that a derangement of my business would be attended with pecuniary embarrassment, and offered me the necessary assistance. These offers I rejected, because I deemed it improper to do any act, which might create in the mind of a single individual, an undue interest for my preservation.

night has passed away, and the cheering light of the morning succeeded it.

Before I leave this subject, there is one point, upon which I would offer a few crude suggestions. Are the destinies of the weak to be suspended upon the volition of the strong? Does gigantic force authorize its possessor to doom to irreversible infamy, whomsoever it pleases? Most assuredly not. Under personal aggression, then, what measures are justifiable *to avoid disgrace*? What are permissible, *for the preservation of HONOR*? When the awful crisis arrives, which renders it necessary to resist, or to succumb with dishonor, is it not a solemn duty, which every man owes to his friends, his country, and his God, to summon all his energies, and employ all his faculties, to avoid the *former*, and preserve the *latter*? And when, with a weapon, he supplies the deficiency of corporal strength, does he do any thing more than use such means as Providence has placed within his reach for defence?

If the deceased had no intention to murder, or to maim, he certainly intended to disgrace; and no spectator seemed disposed, by his interference, to prevent it. This will ever be the case. Common consent tacitly declares, that a gentleman must vindicate his own honor with his own arm; and to the recreant wretch, who has not the spirit to do it, the world always awards all the ignominy which he merits. If a man has been once tamely insulted by his equal, the common opinion of mankind warrants a repetition of the offence. He who has fled once from a horsewhip, must flee again. *A man, in this condition, is a living monument of disgrace;*

“A fixed figure for the time of scorn

“To point his slow, unmoving finger at.”

SHAKESPEARE.

How far one man may ruin the peace, destroy the character, and degrade the standing of another, is a question of the most serious import. Were a gentleman quietly to submit to a beating, he would be instantly shunned by the friends of his youth, and the companions of his age. When the blasting reproaches and ireful contempt of his former associates had exiled him from his accustomed scenes of business, and of pleasure, whither could he repair? What occupation could he pursue? Should he fly to the army, the last refuge of the desperate, what government would invest him with a command? What soldier would follow him in the day of battle? Philosophy may surmount the ordinary evils of life, death may be met with magnanimity, but “*a wounded spirit, who can bear?*”

The IMMORTAL BEING, when he bestowed upon us life, commanded us to preserve it; and its continuance is an intimation from HIM, that we have duties to perform, which it would be criminal to abandon. The preservation of life, includes something vastly more comprehensive, than mere animal sustentation: for if this were the full import of the mandate, man, *who is formed in his MAKER's image*, would sink to a level with the brute, upon which he banquets. The high command includes in it, also, the preservation of those faculties, powers, and talents, with which we were endued by nature, and have acquired by education; and which enable us to subserve the Divine will, in a faithful discharge of the various duties of social life.

Both the unwritten and the written laws of God, sanction the taking of another's life for the preservation of our own. May we not then take life to preserve reputation, more valuable than life, and without which, life itself is neither desirable to its possessor, nor useful

to the community? The scriptures must be interpreted, so as to promote the purposes of practical humanity. All the positive commandments admit of many practical exceptions. We may instantly destroy him, who would forcibly take from us the least article of property, because it is a felony; But must we patiently submit to indignities, more grievous to be borne, than the loss of both life and property? The great and pious Mr. Locke,* holds a very different doctrine. He says, "that all manner of force, without right, upon a man's person, puts him in a state of war with the aggressor; and, of consequence, that being in such a state of war, he may lawfully kill him that puts him under this unnatural restraint."

The honor of a gentleman, should be as sacred as the virtue of a woman; but the female† is authorized to take his life, who would violate her honor. Why is a man not bound to maintain his honor at the same hazard? The loss of virtue to a woman, is irretrievable ruin; so is the loss of honor to a man; and for the same reason in both cases, because they both loose their rank in society, and their estimation in the world. I will conclude with a passage from one of the most luminous, and justly celebrated authors‡ of the last century. "Real honor, and real interest, are the same. I am not contending for a vain punctilio. A clear unblemished character, comprehends not only the integrity that will not offer, but the spirit that will not submit to an injury; and whether it belongs to an individual, or to a community, it is the foundation of peace, of independence, and of safety."

THO. O. SELFRIDGE.

JANUARY 7th, 1807.

* Ess. on Gov. p. 2. c. 5.

† Comm. 4. p. 180.

‡ Junius.

POSTSCRIPT.

“ IT may not be wholly amiss to submit, with great deference, a few observations upon the rights and duties of grand jurors ; for it is humbly presumed, that the jurors, in this case, have established a precedent tending to relieve the citizen from the thralldom of oppression, and to promote the general liberty.”—Page 9. It is generally understood, that the jury, in the case in question, acted upon the just principle of calling, as witnesses, all whom they believed had any knowledge of the matter before them. Pending the trial, the attorney general made many gross reflections upon the “ extraordinary conduct” of the grand jury, as he was pleased to term it. This must have been, because the jury called whom they pleased to testify ; or, because the jury would not find a bill for “ *murder*,” under his dictation, when the evidence before them did not authorize it. The condition of any people must be deplorable, when the officers of government use *the influence of one office to pander for another !*

“ In the late state prosecutions in England,” &c. p. 12. A gentleman, well acquainted with the practice in that country, has just informed me, that the prosecutor for the crown is never present with a grand jury during their deliberations, or while they are examining witnesses ; but that an attempt of that nature was made during the late state prosecutions, and that the jury resisted an innovation so dangerous to the liberty of the subject ; and that their conduct was approbated by the court.

NOTE, No. 1.

For the reader's relief I will bring the multiplied falsehoods of Mr. A. into one view. Falsehood No. 1. He said a "*federal lawyer*" had solicited Eager's suit. (Scott's evidence.) Falsehood No. 2. He said that he knew it "*personally*." (Scott's evidence.) Falsehood No. 3. He said he told the story as mere report. (Welsh's statement.) Falsehood No. 4. He said he would call on the person from whom he heard it. (Welsh's statement.) How is this, when he said he knew it "*personally*"? Falsehood No. 5. He said he had been to those persons to whom he had reported the story, and contradicted it. (Welsh's statement.) Disproved by Russell's evidence. Falsehood No. 6. He said he did not know the attorney's name. (Welsh's statement.) How could this be, when he mentioned my name to Babcock on the 28th, and his conversation with Scott was on the 29th? Falsehood No. 7. He said Mr. Scott was the only person to whom he had mentioned the report. (Welsh's statement.) Falsehood No. 8. He says he informed Mr. Scott that the report was untrue. (Welsh's statement.) Denied by Mr. Scott. Falsehood No. 9. He says he never used my name. (Welsh's statement.) Babcock says he did; and what is still more shocking, this HOARY HEADED MISCREANT has *confirmed* the foregoing falsehoods, by his oath upon the stand.

NOTE No. 2.

The record, which follows, proves this point.

"COMMONWEALTH OF MASSACHUSETTS.

"Suffolk, ss.

"To the Sheriff of our county of Suffolk, or his Deputy,
"Greeting.

"WE command you to attach the goods or estate of Benjamin Russell, of Boston, in our county of Suffolk,

printer, to the value of *one thousand pounds*, and for want thereof to take the body of the said Benjamin, (if he may be found in your precinct) and him safely keep, so that you have him before our Justices of our Court of Common Pleas, next to be holden at Boston, within and for our said County of Suffolk, on the third Tuesday of April next: Then and there in our said Court to answer unto Benjamin Austin, junior, of Boston, afore said, Esquire, *in a plea of trespass*, for that the said Benjamin Russell, at said Boston, on the twenty seventh day of January, instant, with force and arms, an outrageous assault did make on the body of the said *Benjamin Austin*, in the peace of the Commonwealth, being a Senator for said county of Suffolk, and attending the General Court, then in session; and the said Russell, him, the said *Benjamin Austin*, *did threaten and beat*, and did contemptuously spit at, and on the face of the said Austin, and him did reproach and revile in a most indecent and contemptuous manner; and other wrongs and enormities the said Russell to the said Austin did against our peace, and to the damage of the said Austin (as he saith) the sum of *one thousand pounds*, which shall then and there be made to appear, with other due damages. And have you there this Writ, with your doings therein. Witness, SAMUEL NILES, Esq. at Boston, the thirty first day of January, in the year of our Lord one thousand seven hundred and ninety two. EZEK. PRICE, Clerk.

“*A true copy. Attest, JOHN TUCKER, Clerk.*”

OFFICER'S RETURN ON THE WRIT.

“*Suffolk, ss. Boston, February 2, 1792.*

“I arrested the body of the within named Benjamin Russell, who gave bail, viz. Benjamin Lincoln and Stephen Higginson.

“JEREMIAH ALLEN, Sheriff.”

PLEAS.

“ And said Russell, by his attorney, H. G. Otis, comes and defends, &c. when, &c. and reserving liberty to plead anew at the Supreme Court, and to wave this plea, says, that he is not guilty in manner, &c. and thereof puts. **H. G. OTIS.**”

“ And said Austin consenting to said reservation, and also reserving liberty to wave this answer, and to join the issue above tendered, says, the plea aforesaid, and the matter therein contained, is bad, and insufficient in law, and thereof prays judgment, &c.

“ **S. DEXTER, jun.**”

“ And said Russell, consenting thereto, says, his plea is good, and thereof prays, &c. **H. G. OTIS.**”

“ *A true copy. Attest,* **EZEK. PRICE, Clerk.**”

“ And now said Austin waves his demurrer, aforesaid, and joins the issue above tendered.

“ **S. DEXTER, jun.**”

“ *A true copy. Attest,* **JOHN TUCKER, Clerk.**”

VERDICT.

“ Benjamin Austin, junior, appellant, v. Benjamin Russell. The jury find the appellee guilty, and assess damages for the appellant, in the sum of *twenty shillings*. **THO. HICHBORN, Foreman.**”

“ *A true copy. Attest,* **JOHN TUCKER, Clerk.**”

NOTE, No. 3.

Mr. Glover swore to a blow, and Mr. Wiggins' evidence raises a strong presumption that there was one given before the pistol was discharged. The declarations of Mr. Fales to this point, first on the ground to Messrs. Cabot, and Parkman, and afterwards, in the evening, at the house of Mr. Austin, in the presence of Messrs. Cleland, Prentiss, Nichols, and Osborne, all respectable merchants, coincide with Glover's evidence. Hamet Tamet, one of the Tu-

nifian ambaffador's fuit, and a German, fervant to a fouthern gentleman, faw the blow firft; and immediately after the affray the former mentioned it to Meflrs. Jacob Gourgaf and Benjamin F. Bourne; and the latter mentioned it in the prefence of feveral gentlemen at Mrs. Carter's. Mr. Thomas Cufhing, merchant, who was fo indisposed that he could not attend the trial, faw *cudgelling* at a diftance, before the pistol was fired.

NOTE, No. 4.

Meflrs. Bailey, French, Edwards, Bafs, Erving, and Fales.—If any assertions have been made which fhall appear to be incorrect, they fhall be cordially retracted. The allufions to the evidence are from memory; but they are made with great confidence of corre&tnefs.

NOTE, No. 5.

This certifies, that on the 4th day of Auguft, 1806, between the hours of one and two, Tho. O. Selfridge fent for me, to go to the houfe of Mr. Wm. Ritchie. He fent twice, before the magiftrate had iffued a warrant. When the warrant was iffued, although it was not delivered to me, I went to Mr. R.'s. Mr. R. was not in; but Mr. S. asked me to dine with him; which I did. In the mean time, he received the gentlemen, who called. While at Mr. R.'s, the people were noify, and demanded Mr. S. I went frequently to the door, and attempted to appeafe them. They demanded Selfridge; and faid they meant to have him, and prevent his efcape: making ufe of the expreffions, "*damn him, he is a murderer; he fhall be hanged.*" I informed them, that Mr. S. was in cuftody, and had no defire to efcape; and advifed them to retire, and leave him in the care of the officers: but the mob increafed, and was very infulting. We foon took a coach, and proceeded through the crowd, to the court houfe. As

we passed through the people, Mr. Selfridge occasionally looked out of the coach upon them, and discovered no timidity; although great symptoms of violence were shewn. From the court house, I went with him to prison. He sent for several professional gentlemen, who visited, and bled him, in consequence of the blow upon his head. After which, he seemed more free from pain, and appeared cheerful and perfectly tranquil, and conversed upon various subjects, till nearly twelve, and then slept for two hours, and awoke, and conversed nearly an hour, and then slept with much composure till morning.

S. BELL, Deputy Sheriff.

JANUARY 23d, 1807.

N. B. The term "DEMOCRACY," as used in the foregoing remarks, is not intended to include the sober minded men of any party; but those only, who strove to preclude me from a fair trial; instigated riots; assisted in mobs; and appealed from a court of justice, to the paramount jurisdiction of the rabble. I used this term in compliment to those who have assumed it. Had I felt at liberty, I could have given them a much more appropriate appellation, "THE FEROCIOUS, BLOODY MINDED JACOBINS OF THE FRENCH SCHOOL."

ERRATA. Preface, 14th line, for *illucidation*, read *elucidation*. Page 7, l. 6 fr. bot. for *would* r. *might*. P. 8, l. 10 fr b. read "or to exclude"—*counsel* for *council*. P. 10. l. 6 fr. b. r. *counsel* for *council*. P. 12, l. 5, for *rule* r. *remark*. P. 22, l. 8 fr. b. for *twenty eighth* r. *twenty ninth*. P. 48, l. 10 fr. bot. r. *confirmed several of the*, for *confirmed the*.