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Trial of

Daniel Isaac Eaton

In the Press, and shortly will be published

THE SECOND TRIAL

OF

DANIEL ISAAC EATON,

On an Information, ex Officio, for selling a supposed

LIBEL.

“ Letter addressed to the Addressers.”

BEFORE

LORD LOYD KENYON,

IN THE COURT OF KING'S BENCH,

GUILDHALL.

On WEDNESDAY, 10th. JULY, 1793.

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THE
PROCEEDINGS,
ON THE
TRIAL OF
DANIEL ISAAC EATON,
UPON AN
INDICTMENT,
FOR SELLING A SUPPOSED LIBEL,

*"The second part of the Rights of Man, combining principle
and practice."*

By THOMAS PAINE.

—
AT
JUSTICE HALL,
IN THE OLD BAILEY.

BEFORE THE
RECORDER of LONDON.

On MONDAY, the third Day JUNE, 1793

—
The Second Edition.
—

L O N D O N.

PRINTED AND PUBLISHED BY THE DEFENDANT,

DANIEL ISAAC EATON,

No. 81, BISHOPSGATE STREET.

And sold by JAMES RIDGWAY, YORK STREET, ST. JAMES'S;

H. D. SYMONDS, PATERNOSTER ROW;

And all other Booksellers in Town and Country.

(PRICE ONE SHILLING AND SIXPENCE.)

Entered at Stationers' Hall.

Names of the Jury.

Mr. Joseph Scammel,	Noble Street.
Thomas Bond,	Crooked Lane.
Joseph Greening,	Ditto.
Thomas Swaine,	Lilipot Lane.
Jonathan Cope,	St. Martins le grand.
David Bligh,	Ditto.
Joshua Windfor,	Ditto.
John Morgan,	St. Anns Lane, Aldersgate Street.
Samuel Glover,	Aldersgate Street.
Edward Howell,	Miles's Lane Cannon Street.
Thomas Preston,	Ditto.
Joseph Cecil,	Ditto.

Counsel for the Prosecution.

Mr. GARROW,
Mr. FIELDING.

Attornies.

Messrs. CHAMBERLAYNE
and WHITE,

Solicitors to the Treasury.

Counsel for the Defendant.

Mr. FELIX VAUGHAN,
Mr. JOHN GURNEY.

Attorney.

Mr. I. A. BONNEY,
No. 4, Perry Street, Rathbone
Place.

T H E
K I N G,

versus

DANIEL ISAAC EATON.

I N D I C T M E N T.

London. At the general Session of Oyer and Terminer, of our Lord the King, holden for the City of London, at Justice Hall, in the Old Bailey, within the Parish of St. Sepulchre, in the Ward of Farringdon without, in London aforesaid, on Wednesday, the twentieth Day of February, in the thirty-third Year of the Reign of our Sovereign Lord, George the third, King of Great Britain, &c.

London
(to wit.) T H E Jurors for our Lord, the King, upon their oath present, *That Daniel Isaac Eaton, late of the Parish of St. Botolph, without Bishopsgate, in the Ward of Bishopsgate, in the City of London, aforesaid*

A

said, Bookseller. Being a wicked, malicious, seditious and ill disposed Person, and being greatly disaffected to our said sovereign Lord, the now King and to the Constitution and Government of this Kingdom, and, most unlawfully, wickedly, seditiously and maliciously, devising, contriving, and intending, to scandalize, traduce, and vilify our said Lord, the now King, and the hereditary succession to the Crown and regal Government of this Kingdom, as by Law established, and to alienate and withdraw from our said present Sovereign Lord the now King, the true and due obedience, fidelity and allegiance, of his Subjects, and wickedly and seditiously to disturb the Peace and Tranquility of this Kingdom: on the seventeenth Day of January, in the thirty-third Year of the Reign of our said present sovereign Lord the King, with force and arms at the Parish aforesaid, in the Ward aforesaid, in London aforesaid. He the said Daniel Isaac Eaton, unlawfully, wickedly, maliciously and seditiously did publish and cause to be published, a certain scandalous malicious and seditious Libel, intituled "Rights of Man, part second, combining
 " principle and practice, by Thomas Paine, Secretary
 " for Foreign Affairs to Congress, in the American
 " War, and Author of the Works entitled Common
 " Sense, and the first part of the Rights of Man." London, printed for H. D. Symonds, Paternoster-row, 1792. In which said Libel are contained (amongst other things) divers scandalous, malicious, and seditious Matters, of and concerning the Hereditary Succession to the Crown and regal Government of this Kingdom,

as by Law established, (that is to say) in one part thereof according to the tenor and effect following,
 Page 18 (that is to say) " It cannot be proved by what right
 " Hereditary Government (meaning amongst other things
 " the said Hereditary Government of this Kingdom.)
 " could begin, neither does there exist within the
 " compass of Mortal Power a right to establish it
 " (meaning such Hereditary Government.) Man has
 " no Authority over posterity in matters of personal
 " Right, and therefore, no man or body of men, had,
 " or can have a right to set up Hereditary Govern-
 " ment." (meaning amongst other things, the Heredi-
 tary Government of this Kingdom.) And in another
 part thereof, according to the tenor and effect following,

Page 19 " Hereditary Succession, (meaning amongst other things
 " the said Hereditary Succession to the Government of
 " this Kingdom.) is a burlesque upon Monarchy, it
 " puts it in the most ridiculous light, by presenting it
 " as an office, which any child or idiot may fill.
 " It requires some Talents to be a common Mechanic,
 " but to be a King requires only the Animal Figure
 " of Man, a sort of breathing Automaton, this sort
 " of superstition may last a few Years more, but it cannot
 " long resist the awaken'd reason and interest of Man."

And in another part thereof according to the tenor
 Page 20 and effect following, (that is to say,) " A govern-
 " ment calling itself free, with an Hereditary Office,
 " (meaning amongst other things, the Government of
 " this Kingdom, with an hereditary office of King,
 " thereof,) is like a Thorn in the Flesh, that produ-
 " ces a fermentation which endeavours to discharge it."

And

And in another part thereof, according to the tenor
 Page 21 and effect following (that is to say,) "Hereditary
 " System, (meaning amongst other things the Heredita-
 " ry System of succession to the Crown of this King-
 " dom) therefore is as repugnant to human wisdom,
 " as to human rights, and is as absurd, as it is unjust."

And in another part thereof, according to the tenor
 Page 25 and effect following, (that is to say) "Whether I have
 and 26 " too little sense to see, or too much to be imposed up-
 " on, whether I have too much or too little Pride or
 " of any thing else, I leave out of the Question, but
 " certain it is, that what is called Monarchy, (mean-
 " ing amongst other things the Monarchy of this
 " Kingdom) always appears to me a filly contemptible
 " thing, I compare it to something kept behind a
 " curtain, about which there is a great deal of bustle
 " and fuss, and a wonderful air of seeming solem-
 " nity, but when by any accident the curtain hap-
 " pens to be open, and the company see what it
 " is, they burst into Laughter." And in another part

thereof according to the tenor and effect following,
 Page 26 that is to say, "That Monarchy, (meaning amongst
 " other things the Monarchy of this Kingdom.) is all
 " a Bubble, a mere Court Artifice to procure Money,
 " is evident, (at least to me,) in every Character
 " in which it can be viewed." And in another part
 thereof according to the tenor and effect following,

Page 27 that is to say) "It can only be by blinding the
 " understanding of Man, and making him believe
 " that Government is some wonderful, mysterious
 " thing, that excessive Revenues are obtained.

" Monarchy (meaning amongst other things the Mo-
 " narchy of this Kingdom,) is well calculated to
 " ensure this end. It is the Popery of Govern-
 " ment, a thing kept up to amuse the Ignorant and
 " quiet them into Taxes." in contempt of our said Lord
 the now King, in open violation of the Laws of
 this Kingdom, and to the great Danger of our hap-
 py Constitution, to the evil example of all others in
 the like offending, and against the Peace of our said
 Lord the King, his Crown and Dignity.

Witness,

CHARLES HUMPHRIES.

Mr. Fielding opened the Indictment.

Mr. GARROW,

Gentlemen of the Jury,

I HAVE also the honour of attending you upon this occasion, charged with the duty of stating to you, on the part of the Crown, the circumstances which belong to this case, imputing to the Defendant, the guilt of being the Publisher of a seditious Libel.

As this is an appeal between the Defendant and the Public, calling upon you, under the most solemn of all sanctions to decide. I should, after what has passed upon the subject of this Publication in other places, have contented myself, with very shortly desiring that the passages should be read to you, that the fact of publication should be proved, and should then have asked for your Verdict. The reason I take another course is this, it has happened somehow, or another, that persons standing in the situation of the Defendant, have had the good fortune, in every place in which they have been prosecuted, to be defended by very considerable talents and abilities, from the exercise of which it is to be expected, (as experience has shewn us it has been practised,) that all the ingenuity and learning of the profession can bring in aid of such Defendants, will be exerted for the purpose of standing as a shield between them and the Verdicts of Juries, in order to protect them from conviction.

Upon the present occasion, the Defendant has the advantage of the attendance of a learned friend of mine, if he will
 permit

permit me to call him so, for whose abilities I have very great respect, and therefore it will be my duty, (as in all probability this will be the only stage of the cause, in which I shall have an opportunity of addressing you) to anticipate the modes of defence, that my friend's ingenuity will find out, and appeal from that ingenuity to your plain sober common sense and discretion, to decide between my friend and me, upon the propriety of the Defendant's Conduct.

In the outset of the cause, I say this, representing the public, if you have any serious, sober, rational, doubts of the guilt of the Defendant, upon any of the fair topics, that may be adduced before you, in God's name pronounce him Not Guilty. If on the other hand, when the evidence shall be laid before you, when you shall have attended to this Publication, as men of sober reasoning must attend to it, you shall find it impossible to pronounce him not guilty without a breach of your Oaths, or a dereliction of your duty. Sure I am, you will not incur the imputation of having sacrificed the one, or infringed the other upon any topics of compassion, humanity, or any other that ingenuity may furnish.

It may occur to some persons who have but superficially attended to this subject, that these prosecutions have been multiplied too much. Judge of that, when it is stated to you, that after this publication, which I suppose you have collected, to be the second part of the "*rights of Man*, written by that Gentleman who states himself to be "*Secretary for foreign affairs to Congress in the American War, and Author of common Sense.*" that when that had run through several rapid editions at a high price, it was found that, in order to

accommodate it to readers of all classes and descriptions, to find its way into the most humble habitation of the most peaceful Subject of this Country, to make the poison spread and to gratify every palate, the press teemed with new editions at a cheap and easy rate, and notwithstanding all the admonitions of the prosecutions that were commenced, all the admonitions of the verdicts of Juries, and all the judgements of necessary severity. This Defendant continued still in this Metropolis, in the heart of those convictions, and those judgements, with all of them staring him in the face, still to sell and to distribute this Publication, until the notoriety of his conduct was such, that those, whose duty it is, to watch over the public tranquillity, thought themselves in duty bound to institute this prosecution.

Upon the libel itself, it will not be necessary to adduce many arguments, for you to pronounce that it is, what it is described to be, a most malignant, seditious, inflammatory, and mischevious Libel. I admit to my learned friend, that if taking this book, and reading the passages with its context and with its various parts, you should be of opinion, that upon the whole, it is an innocent fair discussion of a political subject, it will be your duty to acquit the Defendant.—If indeed that argument could be offered to men of common sense, without an outrage upon reason, the Author, instead of being as he is, suffering the judgement of the Law, an exile, I hope an eternal exile from this happy Country, ought to have been a man acquitted, not condemned.

Let it not be said that the press is endangered by this prosecution. That the freedom of the press is in danger, because Libels, flagitious and seditious as this is, find their way into
Courts

Courts of Justice. I state therefore, that if you should be of opinion that this book was written in the fair spirit of true political inquiry, I do not desire, (because those I represent have not desired any body else) you to find the Defendant guilty.

Gentlemen, I proceed to state some of these passages, and then you shall if you please, as you go along, judge for yourselves, in what spirit they were published in this Country. You will look, for certainly you are permitted to do it, at the relative situation of other Countries, at the time of the publication, that will assist you in discovering with what views, and with what spirit, this Author wrote.

He begins by talking of the Constitution of the Country, in that important part, the *executive part of the Government, the Kingly Office, and Hereditary Succession*.—Observe how he speaks upon that subject.—I will give you his own words.

He says, “ *It cannot be proved by what right hereditary Government could begin, neither does there exist, within the compass of mortal power, a right to establish it.*”

Observe the reasoning, and see if his reasoning be founded to what it extends. “ *Man has no authority over posterity in matters of personal right, and therefore, no Man, or body of Men, had, or can have, a right to set up Hereditary Government.*”

In plain english and common sense, what does this mean? You Englishmen, have, at least to carry it no further back than a century, have been submitting to the folly, to the absurdity, to the tyranny, and to the despotism of a form of Government, which has for its foundation and corner

stone, *Hereditary Succession*. You have been slaves therefore all that period, because, inasmuch as you have not given any consent to this form of Government, inasmuch as you have not been called upon to give your approbation or disapprobation, and, as no mortal power could establish it, as man has no right over posterity, and, as no Man or set of Men have a right to dictate to you, what Government you shall have—What is the argument? that you have been living the slaves of despotism, the shackles of which, were forged for you by your Ancestors. That it is, that this man, vain and absurd reasoner as he is, tells you, he tells you all your rights, all your interests, all your chances of happiness, all that is dear and estimable in society, have been trampled upon, because those who according to him, had no right to say how you should be governed, have said, you shall have an hereditary succession.

Does the argument end here. If no man, or set of men, have any right to enter into stipulations for posterity, how is it that we have any representatives in Parliament? How is it that any part of the Constitution stands? How is it that we have received from our Ancestors those three branches, the KING, the LORDS, and the COMMONS, of which our admirable Constitution is composed? They have have handed them down to us, but in the language of this Author, they had no right to do so, for no Man, or set of Men have a right to stipulate for posterity. It is folly, impudence and usurpation, that is the argument of this Gentleman.—But perhaps this will be said to be all fair reasoning, and political discussion, and only the writing of a man, who thinks the Constitution can be a little mended.

He goes on to say, “ *Hereditary succession is a burlesque upon Monarchy, it puts it in the most ridiculous light.*” Is this fair dispassionate reasoning. Is this the man who comes here as *Secretary for foreign affairs to America?* Is this Gentleman in the spirit of reforming our foolish Opinions? “ By presenting it as an office which any child or idiot may fill” Is it so? Why if it were, I admit, that it is fair and fit for any man, to sit down in his closet, and state that, by way of argument.—But is that true, or is it not an impudent assertion, within the knowledge of the Author false, made in order to impose upon weak minds. Is the Executive Government of this Country, passing in the illustrious house, in which it is to pass in succession, I hope till the end of time, to be treated in this manner? Is he not telling you, that you are submitting to be governed in an office, which you look to as essential to the Constitution you admire, but, which is, according to him, like a child’s rattle, or the idle nonsense of an idiot? Is it not a malicious and seditious intent, to rouse up the discontents of the Country? To alarm the people for every thing that is dear and valuable? To make them disgusted with the King and Kingly Office, and to recommend it to them to get rid of it as soon as they can.

Then he goes on, “ *It requires some talents to be a common Mechanic.*” still addressing himself with a meanness, which I protest, one is ashamed of, to any vulgar mind, under whose notice, this book may come. “ *But to be a King, requires only the animal figure of man.—A sort of breathing Automaton.*” Is this the language of fair political discussion? Is this the reasoning of a man, who thinks things may
be

be mended by political discussion? or is it not the language of a man, sneering at all that is dear and valuable to this Country?

He says, "*This sort.*" and if you wanted a commentary upon the rest of the text, this would furnish it. "*This sort of superstition.*" What superstition? the superstition in which we have been educated, as something we were to look up to as a blessing, and which, our maturer judgements have taught us to admire and adore.—Attachment to Royalty, the corner stone of this Country.

"*This sort of superstition may last a few years more, but it cannot long resist the awaken'd reason and interest of Man.*" What is to become of it? Why get rid of it, in consequence of this writing of mine. in consequence of my attempts, and those of others who are engaged in this pious labour, to illuminate mankind, to awaken their reason, and put them in the right track of inquiry and of *action* too, for I defy any man alive to say, that that is not the meaning of the Author of this book.

Is this, I ask again, calm, deliberate discussion? Is this what a man writes, desiring it to go forth into the World, saying thus, if my reasoning is good, adopt it, if it is futile reject it, if it is absurd, laugh at it? No it is an endeavour to undermine every thing that is estimable and useful, and to do it in a way that too often succeeds, for when you find you cannot attack a man to advantage by argument, you may do something by a sneer.

"*A Government calling itself free, with an hereditary Office, is like a thorn in the flesh, that produces a fermentation, which endeavours to discharge it.*" A

A Government calling itself free.—Let us see what that means in plain english, for I invite my learned friend to this mode of reasoning upon the book, and let him convince you if he can, that this is plain sober reasoning, not calculated to do mischief. “*A Government calling itself free!*” You Englishmen call yourselves free.—You say you live under a free Government.—You say that in this Country every man’s liberty is protected, his property secure, that he can go about his business with safety, that there is equal law for the poor and for the rich, in one word that you have adopted the CANT of your Ancestors, and call yourselves a free people. But in this freedom you have hereditary Government, which is so utterly inconsistent with freedom, that it “*is like a thorn in the flesh, which produces a fermentation, which endeavours to discharge it.*” What does this mean but, that the hereditary Office of the King of this Country, is to be got rid of by a fermentation? What is the argument? You who boast that you are free, and wish to be free, and have set the world a madding after your freedom, if you would restore yourselves to that envied character, or assert it if you never had it before, get rid of your hereditary succession, it is a thorn that is stuck into your flesh, set about the fermentation. “FERMENTATION,” was not an accidental word; let this book engender the fermentation, and then you may throw out this thorn.

Gentlemen, Is this the art of an advocate? Is it not the plain common sense of this passage? I protest I never have tried what the sense of this book was in the way I do now, and I chose to trust to the impression which they would make upon my mind upon this occasion.

Then

Then he goes on, "*The Hereditary System therefore, is as repugnant to human wisdom as it is to human rights.*" What, is it repugnant to human wisdom? What is that but telling us that we are the most egregious fools that ever lived? that with all the lights that reason holds forth to us, and the instruction these Gentlemen are so good as to give us, we still go on preferring Folly to Wisdom, Slavery to Freedom.

You go on adopting an Hereditary System, which is as repugnant to human wisdom, as to something else I am coming to. But as if this was not enough, as because men if they are fools, will be likely to continue so, our Author is to address us upon another point, and influence us by other considerations.—It is repugnant too to human rights. What is this argument again? Your rights, as long as you have had this hereditary Succession, have been invaded, because hereditary succession is repugnant to human rights. You foolish Englishmen have believed you were happy and free, but I tell you, you are neither happy nor free, you are not acting consistent either with wisdom or with rights, because you are fools enough to submit to hereditary succession. How are you to mend that? get rid of it, become wise, become free, become valuable, but you can only do this by getting rid of it.

He proceeds, "*And is as absurd as it is unjust*" Is this the language of a Politician in his closet, writing in the spirit of a LOCKE or a SIDNEY for future days? Why it is telling you that it is not only absurd, and therefore to be got rid of, but it is unjust, what is the plain english of that? why, that the King who sits upon the throne is an Usurper.

Then he says, still I think in language which may teach you the spirit in which the author wrote. "*Whether I have*

“ too little sense to see, or too much to be imposed upon: whe-
 “ ther I have too much or too little pride, or of any thing else
 “ I leave out of the question: but certain it is, that what is
 “ called Monarchy, always appears to me a silly contemptible
 “ thing.”

Does it so indeed? that thing which you have fancied the
 moment it was destroyed, destroyed the Constitution under
 which you live.—That thing which having *lost* by usurpation
 during a small period of the history of your Country, you
 were eager to have restored to you, feeling that you could
 not do without it.—That thing always appeared to this Au-
 thor to be a silly, contemptible thing. Is this a cool, calm,
 political Writer? No, such a person would have spoke in
 this manner,——“ If you examine what Monarchy has been
 “ in any ages of the World, you will find perhaps that con-
 “ sidered by itself it has its objections, but, with a little at-
 “ tention employed to meliorate the state of the Parliamenta-
 “ ry Representation in this Country, perhaps, such a thing
 “ might be spared.” And then might have proceeded with
 a fair candid course of reasoning.—But he goes on to say,
 what sort of contemptible thing it is, and he tells you what
 he compares it to,

“ I compare it to something kept behind a curtain, about
 “ which there is a great deal of bustle and fuss and a wonder-
 “ ful air of seeming solemnity.

The Author has travelled into a very unfortunate Country
 to make this Observation. It is the amiable characteristic of
 of the Monarchy of England, that it is the reverse of that
 character. “ but when by any accident the curtain happens
 “ to be open, and the Company see what it is, they burst into
 “ Laughter,

What

What is this then, from which, accident is to remove the curtain, to expose to the view of the people of this Country and excite their laughter? it is nothing less than the Monarchy of England, that which this man invites you by accident.—I believe he would have liked it much better to have been done without accident. To draw the curtain that you might treat it as the pitiful, contemptible thing he always thought it.

This man does not leave a great deal for Counsel to do, to explain his text, he takes the Bull by the Horns, he goes on, “*That Monarchy is all a bubble, a mere court artifice.*”—setting up Monarchy as something, which, according to this man, might be indicted under the statute for false pretences, —“*A mere court artifice to procure money, is evident, (at least to me) in every character in which it can be viewed.*”

Wherever I look at Monarchy, whether I look at it as something grounded in the wisdom—no he would say the folly of our Ancestors, for preventing the numerous inconceivable, and devastating consequences of elective Monarchy.—Whether I look at it as something that is to attach to it the respect of surrounding Nations —In whatever character I view it, it looks like a trick to get money out of the pockets of the people.

Are the people of this Country disposed to go along with the Author in this observation? No, it is upon much better and nobler principles we contribute to the necessities of the State, It is because we know we cannot be safe nor free but at the expence which must necessarily attend all Government, in all Countries.

He says, “ *It can only be by blinding the understanding of man
 “ and making him believe that Government is some wonderful
 “ mysterious thing, that excessive revenues are obtained. Mo-
 “ narchy is well calculated to insure this end.*”—What end?
 picking the pockets of the people by blinding their under-
 standing, “ *It is the Popery of Government.*” Now mark the
 art of this, would any man sitting down in a spirit of fair
 dispassionate inquiry about Government, attack the mind of
 an Englishman, by likening his Hereditary Succession to a
 Popery, which he knows he detests. “ *A thing kept up to
 “ amuse the ignorant, and quiet them into Taxes.*” If it be so,
 undoubtedly it is high time there were an end of it. If any
 man could persuade us, that that limited, well balanced Mo-
 narchy, that we have had the pleasure to live under, merited
 this description, we should be Traitors to ourselves and all
 posterity, if we did not immediately set about getting rid
 of it.

My Friend shall have my free consent to read the whole of
 the book and you may judge by the context.

But I ought perhaps to apologise for having taken up so
 much time upon such a subject, because I have not only the
 opinion of learned Lawyers what this is, but I have, what
 speaking without intending any offence to the learned Judge
 who presides upon the present Occasion. I have what is of
 infinitely greater importance than the opinions of learned
 Lawyers. I have the concurring sentiment, (I believe I may
 venture to say) of every honest Man, in his Majesty's Domi-
 nions, upon the question you have to decide; I have the opi-
 nion of various Juries, concurring without any man's ha-
 ving for a single moment entertained a doubt that the spirit

the Author of this book was indeed to unite *practice with principle*, to unite a dangerous, a destructive, a King killing practice, with the pernicious principles of his book.

Shall I believe that you will disgrace yourselves and the place you are, by differing from all men of common sense and understanding upon this book? Shall I believe, any thing can for a moment divert honest and sensible Men, like you, from that course, which it is your duty to take.

The present Defendant having the examples of these Convictions, staring him in the face, and knowing that the guilty Author of this Book, was liable to punishment upon his Conviction, has taken the risque upon himself, he has chosen to make it the subject of Merchandize, and sold it publickly in his Shop. Shall we have any arguments addressed to you, to mark a distinction between the Author and the *Seller* of the Book, I can only suppose we may, because I protest it seems to me to be extremely difficult to defend the Defendant, and therefore, I am to expect, that all that ingenuity can suggest, will be suggested, when a case will not afford good arguments, he must put up with indifferent ones, and when they are but scarce, he must sometimes have recourse to bad. So that upon this occasion, you possibly may have all three, good, bad, and indifferent. In the class of bad, I think stands the argument I am about to state to you, all this may be true, as applicable to the Author, the book itself may be flagitious in the extreme, the greatest talents that ever stood up to address a Jury, have laboured in vain upon this, but it will be better to say at once, Traitor Paine is, he will not trouble us any more, and therefore turn your backs upon him, and consider the case of the poor Defendant, who is only a poor Bookseller, a man who sells this for his bread..

Will that be said? I will tell you what I should be disposed to say in answer to it, if I were a Jury-Man, Why Mr. Bookseller,
you

you deal in a very dangerous commodity, if you will make a merchandize of poison to poison the dearest interests of the Public, you must answer for it. I will take the liberty of saying more. It happened to somebody to write, not as Mr. Paine has done, in the aggregate against every thing that is dear and valuable, but only to attack the sacred religion of the Country, but he had not quite brought himself up to the publishing, so he left it to his Executor with a Legacy to publish it after his death.-- It was said upon that occasion, that one Scoundrel had charged a musket to its muzzle against the interests of Society, but he was too great a coward to pull the trigger, and he left another Scoundrel Half a Crown to do it for him. It seems to me the condition of a Book-seller in this case is something like that of the Executor.

Mr. Paine shall have my consent to sit down and write 'till his eyes drop out and his heart aches: provided he cannot find any body to publish it, but it is by means of persons like the Defendant, giving vent to publications like the present, that injury has been done to Society.

Gentlemen, I shall prove that this Pamphlet was sold at his shop, for a price, no matter by whom. I know that if ever there is an argument that is likely to succeed, if ever there is a topic that is likely to be addressed to Gentlemen in your situation, it is that which is to find its way to the heart and to the compassionate feelings of those, to whom it is to be addressed, and therefore, I take it to be granted, my learned Friend will tell you, it would be hard to convict the Defendant, since this Book was sold not by him, but by his Wife. I should be the last person who would be supposed to visit upon the fair sex any of their offences, but, to speak gravely, does that furnish any argument at all, I admit not, and I give my Friend the opportunity if he will shew that the wife of the Defendant,

against remonstrances on his part, without his knowledge, or against his consent, procured and vended them, I shall risque none of the displeasure of any of those who are employed in guarding the interests of the Public, by saying I would abandon the Prosecution.

But if, on the other hand, a man is to be permitted to load his musket to the muzzle, against the interests of Society, and to go from home to leave a timid woman to pull the trigger, he must pay for the mischief he does to Society.

You are now in a newly ascertained situation, to persons of your description, charged to inquire not only upon the fact of the Publication, but upon the criminal intent with which it was published.

I could say, I never read Mr. Paine's two books through, would it be said as an excuse for me, if I had sent these by thousands in a package into all the Market Towns in this Kingdom, I never read the book, but I sent them down and they fell into the hands of a great many people who having less to do, I dare say, did read them. Still less would it be an excuse for me, if with all the warnings I have mentioned, staring me in the face, I had done this act.

I am obliged to my friend Mr. Fielding, for suggesting to me an observation, It may happen now and then, that a man does not know what has been passing in Courts of Justice, but the Author of this, when he had the goodness to furnish the world with a cheap Edition, had the goodness to tell all his Publishers that he was under Prosecution, but then in an appendix he ridicules the absurdity of Prosecutions like this.

EVIDENCE

EVIDENCE FOR THE CROWN.

*CHARLES HUMPHRIES, Sworn.**Examined by Mr. FIELDING.**Q.* Do you know the defendant, Daniel Isaac Eaton.*A.* I saw him at his house in Bishopsgate Street.*Q.* When was it.*A.* I think it was the latter end of January, or the beginning of February.—I bought some books at that time.*Q.* Did you buy the book in question.*A.* I did not buy this.*Mr. GURNEY.* Don't let us hear any thing respecting other books.*HUMPHRIES,* I bought this book there before that.*Mr. FIELDING,* What is it?*A.* It is the Rights of Man, part the second.*Q.* Had you ever seen him in the shop before you bought it.*A.* I had—The day I went into the shop when he was there, I asked him for some of Mr. Paines publications, he hesitated at selling it, but after some conversation, he sold me them.*Mr. GURNEY,* Confine yourself to the Rights of Man.*HUMPHRIES,* I told him I had bought the Rights of Man before, and his Wife I believe, a woman I conceived to be his Wife, said she had sold the Gentleman the Rights of Man, with some other of Mr. Paines works a little while ago.—I think he said, “Did she” and after that he let me have the other books.*Mr. GURNEY.* On what day did you purchase the Rights of Man.*A.* The 17th. of January.*Mr.*

Mr. VAUGHAN, Counsel for the Defendant

Gentlemen of the Jury,

I am of Counsel for Mr. Eaton, the defendant to this Indictment, and after the long, and skilful, and eloquent Address, which has been made to you on the part of the Prosecution, I own, that it is not without great embarrassment that I rise in discharge of that Duty. For it has pleased Mr. Eaton to commit the conduct of his defence to a person so different from that which has been represented to you, that I declare, without any affectation of modesty, you will hear nothing to day on behalf of this Defendant, but what has suggested itself to a man of very inconsiderable talents, and of absolutely no experience.

Gentlemen, It has been said, that you are to be spoken to by me, with eloquence, and ingenuity, and all possible contrivance, where *Mr. Garrow*, or any man could have collected this, I am at a loss to discover, and for this plain reason, that the present is the first occasion I ever had, of defending any man by addressing a Jury, in this, or any Court whatever, how then it should happen, that even in the outset of his speech, the learned Gentleman should load his adversary with such encomiums, I should be at a loss to find out, did I not know he must be aware of the defence we have to lay before you, and which, all his ingenuity, all his rhetoric, and all his experience should not so far cry down this Day, but what I shall find in you, a Jury such as he has described, *viz*, A Jury of Honesty and Independance who are therefore prepared to give an Independant Verdict.

Gen-

Gentlemen, I trust that such a Verdict will be, because, I hope to prove that it ought to be a Verdict of acquittal. I am persuaded that such a Verdict only can be just in the circumstances of this Case, and, that when given, it will be universally approved by every man of common sense, and generally applauded by the People of England.

Such are my hopes, and perhaps they are the sanguine hopes of inexperience, or inability. But if the merits of the respective advocates are to be the direction of your Judgement to day, what hope am I to entertain? for what am I to look? what is to become of us? what is to become of our Lives, of our Liberties, and our Possessions, should the understandings of Jury Men be carried away and overwhelmed by the torrents of rhetoric, brought down upon them, in every State Prosecution.

Gentlemen, I have too great a regard for that Constitution, which has been so much the subject of the learned Counsel's panegyric, to believe that the greatest and most important of its establishments, is become so defective.

Mr. Garrow, has discovered a great deal of ingenuity, in anticipating the modes of defence, which he imagined I might set up, on this Occasion, and if we were driven so hard, it is possible you might hear from me much unnecessary declamation respecting the manner in which this pamphlet was sold, and its having been purchased of the Defendant's Wife, who was by this means obtaining a livelihood for herself, her husband, and her family, But Gentlemen, we are not driven to any such Expedients, we know that these are no Justifications. By the English Law every man is accountable for the conduct of his Family, and others who shall be employed by him in way of Trade. Such a defence would be no sooner made, than refuted. Why then should we have recourse to it, when we have a

legal

legal and substantial Justification? When I can build my house upon a Rock, I will not consent to lay its foundation in the Sand.

Now *Gentlemen*, will you hear much from me in the way the learned Counsel has supposed, on a subject most important, I admit in itself, and in its effects, I mean the Liberty of the Press. You will not suspect me of contending for that License of the Press, which is neither more nor less than an abuse of this Liberty. But I do not forget that I am standing before twelve of my Country-men, who cannot be ignorant of the most valuable privilege of a free People. I should think it an insult to your understandings, were I to insist on the excellence of that, which has created and preserved to us the advantages we still enjoy, and, which I trust will be our protection against all who shall invade them. The Liberty of the Press, is that, without which, there is an end to our political Existence. It is like the air that we breathe, if we have it not we die.

Certain, however it is, that the liberty of Printing, has, in this Country suffered no small Opposition, and that, in quarters from whence it might least have been expected. It is not yet two years, since Jury-men were gravely told, in our Courts of Justice, that although they were, by their Verdict, to find Persons accused of Libel, either Guilty, or Not Guilty, still to enquire into the guilt of the Publication itself, or into the intention of the Publisher, was no part of their business. So that all the Jury had to do, was to find the innuendoes and the fact of publishing, which, if found, brought with it, a Verdict of Guilty, any thing farther being out of their Jurisdiction.

But *Gentlemen*, give me leave to draw your attention, to that Jurisdiction, which you are now acknowledged to possess in prosecutions for Libel. Fortunately for this Defendant, and for us all, you are at this day no longer in the absurd and contradictory situation,

in which you might have stood, according to the Doctrines of two years ago. You are now to judge of the whole guilt or innocence in the Publication, and of those connected with it, and for the Jurisdiction thus assured to you, we are indebted to one of the ablest, the most eloquent, and as this circumstance has proved, one of the most honest advocates, that ever distinguished themselves in this Country. We are indebted to the honourable *Mr. Erskine*, (and I do not use the epithet in its aristocratic sense) for the act of Parliament, which says, that doubts having arisen, as to the powers of Juries, in matters of Libel, it is enacted, “ That on every such Trial, “ the Jury sworn to try the issue, may give a general Verdict of “ Guilty, or not Guilty upon the whole matter put in issue, &c.

Now *Gentlemen*, what is the matter put in issue? why it is that the Defendant is the Publisher of this Book, that the Book contains “ scandalous, seditious, and malicious matters, of and concerning, “ *the hereditary Succession to the Crown and regal Government* “ *of this Kingdom.*” and that all this was done by the Defendant, “ unlawfully, wickedly, maliciously and seditiously.”

The Witness has proved the Defendant’s Wife selling it to him on the seventeenth of January last, so that the Questions remaining for you to try, are

First, Whether the passages selected, contain in them, matter illegal, scandalous, and so forth.

Second, Whether the Defendant published them with a malicious intention, in order to produce an evil effect upon the Country.

And third, Whether they bear the innuendoes or meanings ascribed to them by this Indictment.

Gentlemen, There is not one of these points which I shall not dispute to day. I shall contend that not one of these passages, nor any

part of the chapter from which they are taken, is either scandalous or illegal. And I will say, that the whole of it is such, as may be published without any breach of the Law, without any malicious Intention, or evil effect upon the public mind.

I shall contend, that none of the passages of the chapter, from whence they are taken, are illegal; nor is the chapter itself any thing of the kind. If the passages were calculated to introduce Anarchy, if that was to be collected from them, undoubtedly it would not be for me to contend upon them *alone*, that the Defendant was innocent. But I assert, that there is not one which may not be defended, for I deny, that any one of them applies to the King, the Government, or the Constitution of this Country. Examine them by the only test which you ought to Judge by, *viz.* by the context of the whole, comparing other parts of the chapter with those complained of, and I am perswaded, that it is impossible that this Indictment should stand as a criminal charge after such examination.

I contend, moreover, upon the Law, as laid down by the late EARL OF MANSFIELD, that supposing the passages were in themselves of this criminal character, so that no man could doubt of the design of the Author, inasmuch as they contained in themselves an overt act of sedition, &c. still in this case, there is sufficient evidence to resist that conclusion, by proving that the Defendant thought there was nothing illegal, nothing improper, nothing but what was innocent in this publication.

So that I shall defend this cause upon three grounds; *First*, upon the universally admitted right of general discussion, which would be invaded if this Prosecution were followed up by a Conviction.

Secondly, Upon the ground of the intention with which the Defendant published.

And lastly, That not one of these passages apply to the English Government or Constitution, according to the innuendoes of the Indictment.

Now *Gentlemen*, consider the structure and context of this Book, Consider also, that there are certain prejudices which have been most artfully and some most criminally raised against it, and against all ranks and descriptions of Men, who should dare to think, speak, or write upon the liberties of their Country, and the common interests of their speices. Remember by what means they have been extended through every town in England by those Associations or rather Inquisitions, which persons, interested in the support of public abuses, have thought it good to establish. What has been the consequence of this? why that numbers of unhappy Individuals have suffered the most injurious Prosecutions, that many have been ruined in their private Property: that others have suffered the severity of public Punishment, from their fears of provoking it, by a defence of themselves before a Jury of their Country. And thus it is, that two unhappy Printers have pleaded Guilty to the same Indictment with the present, and are now groaning in the Dungeon before you, in consequence of that submission.

And yet it has been said, that the defendant Eaton, published this book in the face of Prosecutions and Convictions on account of it.—Gentlemen, as an advocate, I am entitled to deny, and you as Jurymen are bound to disbelieve that there were any such Convictions. Are they in evidence before you? if there were—Do you know that the passages then in question were the same as those now in question? And supposing there had been such Convictions, have there been no acquittals upon the book? for instance, was there no acquittal at Warwick or elsewhere throughout the Kingdom. But taking all this as stated by the learned Gentleman, what does it prove more than this, that there are now so many miserable Men in his Majesty's Prisons, whose Families are deprived of their support, while themselves are consigned to wretchedness and ruin.

But *Gentlemen*, I beg your pardon. It is not my intention to trouble you with declamation, and therefore I restrain myself on this topic. I am not desirous of provoking your feelings of humanity, when I have arguments of justice to lay before you.

Let us now particularly examine the principles of the book, and the passages selected from it, by the Indictment, what is its professed object as expressed in the Title? it is a pretty general one, "*Rights of Man, combining Principle with Practice.*" The Rights of Man indeed, we have been told by a certain apostate Patriot, are very contemptible things. Philosophy Light and the Rights of Man are all in his estimation, of the same value, that is, are all of them fit Objects of our contempt. But You and I who have something to lose, when those rights are taken from us, will be apt to look at them more seriously.

But it is said the principles laid down in this book, tend to dissolve all order in Society, to destroy just obedience to the Laws, and that this was the design of the Author. Has the event been so? what Riots, what Confusion has taken place since it was published? There have indeed have been Riots at two places, *viz.* at Birmingham and at Manchester, but were they conducted on any principles like the Rights of Man, or upon any other than those of Bigotry and Persecution? Look to the Preface and let that speak for him. I will not read the passage; but it is in substance, "that however it might be good to detect the errors of a bad Law, and to expose its defects, still that it is proper and expedient to obey it, while it exists, for fear that resistance should weaken the force of good ones. Will it from this be contended, that Mr. Paine meant resistance and rebellion to Law and good Government? The whole scope of his book, is to give opinions, is speculation which may, or may not be adopted in practice, as shall be thought just and proper. Is there any Title

to any chapter in Mr. LOCKE's essay, or in any other book on Government, more abstract, more speculative than those of all these Chapters of this book on the Rights of Man? Look to them. What are they?

First, Of Society and Civilization.

Second, Of the origin of the present old Governments.

Third, Of the new and old Systems of Governments.

Fourth, Of Constitutions.

And fifth, Ways and means of reforming the political condition of Europe.

Out of these, the Indictment has taken certain extracts from chapter the third, which is a general discussion on the comparative advantages of Hereditary and Representative Government. When it is said, that the whole of this chapter consists of instigation to Anarchy and Confusion, it is but fair to state, all such passages as are relevant to the subject in question, and not singly those of the Indictment. As to the latter, I admit, that they contain Satyr and Invective, I care not what, on a certain form of Government, which this Man had, in his head, and which he conceived to be mischevious. I mean absolute Monarchy and indefeasible Hereditary Succession.

But *Gentlemen*, Mr. Garrow, has conceived and taken it for granted in all his observations, that the Author meant the English Government, and that alone, which is begging the whole question in issue. Now the fair way to judge of a Writer's meaning, is, by comparing the whole context, and seeing how the one part of his book conforms to the rest of it. If so, what is the definition given by Mr. Paine himself, both of a Republic, and of a Monarchy in this very chapter? It is as follows,

“ What

*“ What is called a REPUBLIC is not any particular form of
 “ Government. It is wholly characteristical of the purport,
 “ matter or object for which Government ought to be instituted,
 “ and on which it ought to be employed, RES PUBLICA, the
 “ public affairs, or the public good, or literally translated, the
 “ public thing.”*

Undoubtedly this man had not a learned Education, but he always contrives to know the meaning of the terms he uses, being well aware that the ideas depend materially on the language in which they are conveyed. But what is his definition of Monarchy? “ It
 “ is says he a word of base original signification. *It means an ar-*
 “ *bitary power in the hands of an individual person, in the exercise*
 “ *of which HIMSELF, and not the RES PUBLICA is the object.* Let me ask you, let me ask any Man, whether this is, or not, the nature of the English Constitution, Surely no! the Government of this Country is, I trust of a very opposite description. It is a Government of Liberty, a Government of Beneficence, very different (I hope) from that abominable System, here represented.

In the consideration of this chapter, I am not at all afraid of that thorny passage, about which we have heard to day, and thorny I am perswaded they will find it, when they attempt to turn it against the present Defendant.

But says Mr. Garrow, in great triumph, this is said of a Government calling itself free, and therefore, the Hereditary Office in such a Government, must mean England, and our Government. In common fairness, read the sentence preceeding this, and you will find that it applies entirely to the Stadtholdership of Holland, an Hereditary Office, which, as we all know caused so many disturbances in that Republic. As to us the subjects of England, it is above a cen-
 tury

tury since the thorn has been extracted from the frame of our Constitution. Previous to the Revolution, we lived under the pain and inflammation which it occasioned, thank Heaven, and the courage of our Ancestors, the fermentation which it produced has left us with provisions to prevent a recurrence of the same evils, or the same remedies.

It is true, indeed that since that time, two attacks have been made on the settlement of Executive Government, as by Law established. In 1715 and 1745, The Pretender aided by a Foreign Power, invaded this Country, with this same chapter of Hereditary Succession in his hand, which is almost word for word, like the innuendoes of this Indictment. They were in both instances, repulsed and driven out with shame and contempt for their their portions. Yet after this Defeat, what was the conduct of the People of England. The Chiefs alone of that Rebellion were punished. They made an example of the Rats, who would have undermined the House, and they left the Mice to go where they would. There were not I believe, such numerous, nor vexatious persecutions as have taken place about this little book, called the Rights of Man. The mildness and generosity of that Day suffered but few sacrifices at the Altar of vindictive Justice. And yet it should seem, that those who invaded the promulgated will of a free People and the Rights of Man, as established in England, did deserve, for the benefit of the Nation and Posterity, very signal Punishments indeed.

Gentlemen, If these considerations are not together with those contained in the rest of the Indictment of the most speculative kind, I should be glad to know whether Mr. LOCKE's Essay is to have that or what other Character. In fact, this whole chapter is professedly written, as you may observe in the beginning of it, in reply to the ABBEY SIEYES, a French Author, with whom, Mr. PAINE had a

Literary contest on these subjects. I shall therefore trouble you with no farther commentary on this head, but request your attention to the Authority I have already alluded to.

Gentlemen, In Sir JAMES BURROUGH'S Reports, in the case of the KING v WOODFALL, for printing the celebrated *Letter of Junius*, LORD MANSFIELD lays down this Doctrine, which I will give you in his own words. " There may be cases, where the fact proved as a publication may be justified or excused, as lawful or innocent. For, no fact which is not criminal, in case the paper be a Libel, can amount to a Publication of which a Defendant ought to be found Guilty."

In pursuance of this opinion, it is clear, that if the Printers and Publishers of this book have done any act, which may prove satisfactorily to you, the innocence of their intentions, then you are bound to consider this charge as groundless, for there can exist no crime in our Law, where there is no criminality of intention.

You will observe, Gentlemen, that the Book in evidence purports to be a second edition of the work intitled "*Rights of Man*." At the time of its being published, Mr. Paine was under Prosecution, but for what? for any thing contained in the book before you? not at all. The Booksellers contracting with him for the reprinting his work, knowing it was prosecuted by the Attorney General, refused to print it, unless the passages contained in Mr. Attorney's Information, were struck out from the book. They reasoned thus; this is a matter of great public expectation; the Attorney General has undoubtedly inserted in his charge, all that is criminal, for in such circumstances, nothing surely would be omitted. We will bow to so high an Authority, we will print nothing but what is innocent, which we conceive the remainder of this Book to be. Examine this book Gentlemen

tllemen, and you will find that there is no reflection on the House of Orange, or the House of Hanover, or the Revolution, for which Mr. Paine was prosecuted. On the contrary, you will perceive in the Notes of it, where these Paragraphs are omitted: Why then I put it fairly to you, do you in your consciences believe, that these Men, or any of them, could do this *unlawfully, seditiously*, and so forth, in the manner as charged by the Indictment, and as you are bound to find by your Verdict, if not, I contend, that you are bound to find the Defendant, Not Guilty.

One word more, Gentlemen, and I have done. The innuendoes of this Indictment alledge, that these passages are of and concerning the *Monarchy* of this Kingdom. Gentlemen, exclusive of the definition of this term, as given by the Author, I insist that it has no legal application in this case. However, it must be owned, that there are prejudices in men's minds which favour an opinion, that Monarchy is an essential part of the English Constitution. These arise from the reading of certain popular Treatises, which are very pretty, and very amusing, but which contain in them very incorrect and ill digested notions. It is not in the Essays of Foreigners nor in the light easy Lectures read before the Students of our Universities, that we are to look for the Constitution of the Country, but in the Laws and in the History of the country.

But, Gentlemen, people have thought proper, for the sake of writing books, to sit down to the study of the Constitution. Finding it composed, as it undoubtedly is, of King, Lords, and Commons, they being men of learning, and intimately acquainted with the Greek language, have concluded that this is a mixture of Monarchy, Aristocracy, and Democracy, according to the Greek accounts of those Governments: With these materials they begin to compose an English Constitution, much in the same way as a good English house-

wife would compose a good English pudding — but these Writers are not to be the rulers of our judgements. The Indictment states, that these observations are written and published seditiously and *unlawfully*. Now I ask in what *Law* it is, whether in the *Common Law* or the *Statute Law* that you find the term Monarchy? Where do you find, in substance, any thing like the Monarchy described in this book, which is the true and literal signification of the word?

Gentlemen, there is, in the English Law, no such thing. The English Constitution knows no such thing as an arbitrary power in the hands of any one individual, as distinguished from the interest of the community.

Gentlemen, let us not confound the title of a Sovereign, governing by the free consent of a free people, with that of a mere Monarchy. The one is the noblest title our gracious Sovereign can wear; the other is directly the reverse. There is but one thing in which arbitrary power is observable, and that is in the *Law*. The Law is the only Monarch of this country. And I have the highest authority, that of its great Oracle and Luminary, LORD COKE, for saying, that the KING is the subject of that Law, while he is the first and principal Magistrate of the nation.

Is this a title gained by fraud, or by force, or by intrigue, or by conquest, like that of almost all the Monarchies in Europe? — Neither. It is the result of an Act of Parliament, under which, about a century since, this Nation did elect a King, and said this, with respect to the future succession — First, it shall be limited to King William and her gracious Majesty Queen Mary, and their Issue; then to the Lady Anne (afterwards Queen Anne) and her Issue; and there was a further provision, that in case Queen Anne should die before King William, without issue, then, that the heirs of King William, by any other woman that he might marry, should

should become the lawful successors. But it did not end here. In 1700, the Duke of Gloucester, son to Queen Anne, died; upon which the then Parliament provided further for the exclusion of the House of Stuart, and introduced the succession of the Family of Hanover, the whole being *conditional*? any person whatsoever, being a Papist, or marrying a Papist, being himself and his heirs for ever excluded.

But again, this latter act determines, that should any man call in question the power, which the Parliament has, to alter the Succession, he shall be guilty of High Treason, if that opinion is in writing; and shall incur the penalties of a Præmunire, if by advised speaking.

Now I ask, in what part of all this do you find absolute Monarchy or absolute Hereditary Succession, according to the Innuendoes of this Indictment, for the Constitution and Government of England? Do we not see directly the contrary? Did not the Parliament say, “ We will not be governed by the House of Stuart; we
 “ will drive them out, and choose a new race in their stead, by
 “ whom we will be governed; but to whom we will give certain
 “ conditions and limitations for the rule of their conduct, And
 “ should any one come, and dispute our authority to alter the Succession, and to make it conditional, let him stand by the consequences. He shall incur the penalties we have provided? ”

Put all these circumstances together, and let them tell us how these Innuendoes make out the Monarchy and Hereditary Succession to the Crown of these Kingdoms (*when they put those words absolutely and alone, without qualification or condition,*) as being things so sacred. I say, that neither the Author's definition, nor the Law of England, warrants their being so used and referred to the English Constitution; which I say any Writer is protecting,

when he shall philipicize or fatyrize this species of Hereditary Right and of Hereditary Monarchy. He is, in effect, making a defence of its principles, by destroying those of an opposite kind, and conferring the greatest benefit on his country.

Gentlemen, I have now concluded my argument on this case. Let me intreat you to make some little allowance for the length of it, on account of the fate which may attend this Defendant, and the thousands of people, who may be subject to the same charge with that now brought against him, for the publication of the Rights of Man. Let me intreat of you to dismiss from your minds any prejudices you may have imbibed against its Author, of whom I am led to acquaint you with an anecdote, disproving much that has been said against him; for I am credibly informed, that it is now several years that he has maintained an old and decrepid relation, at Thetford, the place of his birth. This relation, hearing the severe things reported against him, said, he was the best man in the world, and would have been thought so universally, if he had never been able, to write. And it may in the same manner be said of many persons that it would have been well if they had been unable to read, as they may afterwards be prosecuted for lending, or otherwise publishing, this book; for I know of no Benefit of Clergy extending to them in cases of Libel.

The present cause is to bring with it very serious consequences. — consider how many thousand copies of this book have been in circulation; consider how slight a proof is requisite to convict a man of being a Publisher; for the Law differs, as to evidence in libel, from that of other subjects, being entirely the offspring of that Monster the Star Chamber. Every man, who lends, or carries, or leaves a book upon his table, so as another may read it, is, by able prosecutors made out to be a publisher. I do not know whether you
have

have read the Rights of Man, or have it in your possession ; but are you sure you never lent a political pamphlet that might subject you to a prosecution ? I know at least of one person in this Court who cannot so say ; but I know my Neighbourhood much too well to mention his name. And I should think it somewhat hard, for a man to suffer a heavy Fine and Two Years Imprisonment for having left this book upon his table.

Gentlemen, it is for you, by your Verdict, to lay this Question at rest ; for otherwise, when, and where, and with whom, is this storm of Informations and Indictments to cease ? Is it to finish with Mr. Eaton, the present Defendant ? I wish it was ; and although I have not an intimate acquaintance with him, I do believe he has spirit enough to wish so likewise, provided he were sure of saving the numberless victims who are intended to follow him ; who are to be taken from their homes and occupations ; who are to be torn from the bosoms of their wives and families, dependant upon them and their labour for support ; and to meet the severity of Fine and Imprisonment. And all this for what ! For having published a book which they believed to be innocent, and which they might fairly think beneficial to the public interest.

Gentlemen, let me ask of you to consider whether this foreign, this ancient language of Monarchy ; whether this Tory language, of absolute Hereditary Succession, is such, as being reviled in any book, should bring down upon its Authors and Publishers shame, disgrace, misery, and ruin. That is to be the fate of this man and his family, should you err in the Verdict you have to give. I trust that will not be the case. I am persuaded, that you will give to this important cause every attention and every additional argument that may occur to you, and which may probably have escaped me ; but above all, that you will not fail to remember the circumstance
of

of intention, tending so greatly to favour that acquittal, which I here solemnly claim from you on behalf of this Defendant, because I solemnly believe him intitled to it upon this Indictment.

Permit me, lastly, again to beg you will seriously reflect upon the consequences of your Verdict, should it be a Verdict of that harshness and vindictive character called for so loudly by the Prosecutors, it will be an apple of Discord that you shall have thrown amongst us, the seeds of which, spreading far and wide, across the land, shall cover it with Sorrow, Wretchedness, and Despair.

There may be parts of this book which are criminal, but I contend they are not the parts appearing on this Indictment. Beside, it is not quite so well that any persons, who have published, and, like Mr. Eaton, have done it innocently, should never lay down to rest without thorns upon their pillows.

Should you bring in a Verdict of Acquittal how different will it be! You will, by that means, put an end to all these speculative disputes and rancorous prosecutions. You will be laying the foundation and corner stone to a Temple of Peace and Concord, wherein we shall be protected, not only from the storms of Anarchy and Confusion, attributed to the Author, Admirers, and Publishers of this book, but also from the invasions of those petty Subalterns of Arbitrary Power, who are ever fawning upon their superiors, by persecuting men better than themselves.

SUMMING

S U M M I N G U P.

THE RECORDER SUMMED UP THE EVIDENCE, AND
THEN PROCEEDED AS FOLLOWS:

BEFORE I come to the Question of Publication, there are some previous other questions to be decided.

The Question of Libel — The sense of the Libel is always stated in the Indictment, by way of innuendo; and before the late Act of Parliament took place, it was always clear and settled Law, that it was matter of fact for the Jury to decide, whether that sense was to be applied to the language of the Libel.

You have heard an able address to you on the part of the Defendant, you will have to consider whether the Author never meant, and had no intention to apply himself to the Government of this Country, in the language which he used; and at the same time, that the readers of this book, whoever they were, not merely Philosophers and men of great information and learning, but the generality of mankind — whether the generality of mankind, reading this book, would apply this book, in the language in which it is written, to the King of this country, and the Hereditary Succession and Government of this country, because it has been contended, that the sense applied by the Indictment is not the good sense.

The Counsel, in taking that line of argument, has told you, that the force of this Libel is taken away, by stating to you, and therefore I must take it the fact is so, that there was a book published on the same subject, which book has been considered as a Libel; and his Client, in order to avoid the mischief of that publication, has
published

published this in the way it stands ; and that, by that means, not only the sense is materially altered, but all the mischiefs done by the former book are clearly done away, because no mention is made of the House of Hanover or the Government of this country.

You will be to consider upon this part of the case, whether the persons, who in general read this book, in the common sense they use the word *Monarchy*, the word *absolute* not being put one way, or *limited* the other, would not apply it to the Government of this country.

If upon reading the whole of this, you are satisfied that the person who wrote it, did not write it with an intention to weaken the hands of Government, to set every thing afloat, to put every thing into confusion, but with a good honest philosophical turn of mind, for the benefit and real advantage of mankind — if you are satisfied, that Paine published this book in this country, as a philosophical man, coolly applying to the sound discretion of those who were competent to judge upon the subject, to men of learning, to Philosophers, who could understand the terms in which he wrote, and that he meant to do no mischief, it is what all Authors in this country have a power to do ; for the distinction between the freedom of the Press and the abuse of it is precisely this — that every thing may be done by the Press which is done for the honour, advantage, and benefit of mankind ; but nothing can be done by the Freedom of the Press that tends positively and decidedly to the injury of mankind ; and, therefore, I should hope you would throw out of your decision that sort of captivating argument the learned Gentleman addressed to you upon the Freedom of the Press, because I think it is out of the question ; for if it is a criminal work, the Freedom of the Press will be protected by your Verdict against it ; if it is an innocent one, it will be protected by your Acquittal.

I shall

I shall leave it to you, whether this book is the work of a Philosopher, meant to instruct mankind, and written in such language as is calculated for persons of that description; or whether it is adapted to the lowest orders of the people — people who either cannot, from their education or situation in life, be supposed to understand the subject on which he writes; and whether, from those passages, which are selected here, and others, you will not find it rather adapted to the passions, than the good sense of mankind, to induce them to be dissatisfied with the Government under which they live, and look for something more satisfactory than they find.

I cannot help observing, that this, if a criminal attack, has certainly a degree of aggravation in it, because it is an attack upon a Government the most free that is now existing, a Government that seems to be established for the benefit of all persons concerned; the Crown is part of that Government, and is at the head of it. As a chief Magistrate must preside over it, there then becomes another question — Whether that shall be Hereditary, or whether it shall be Elective? Now, the best and most discreet Writers on that subject have found the most horrid inconveniences to arise from the repeated elections of Sovereigns; and I believe have, in general, agreed that Hereditary Succession is most for the comfort and benefit of mankind. It is upon that principle our Constitution is formed, and I hope will continue.

You will judge of the points I have thought it my duty to state. If the book was published, as the work of a Philosopher, for the benefit of mankind, then this man will not have to answer for the Publication. If published with a malicious view, then he will have to answer for it, if you are convinced of the fact of Publication.

AFTER THE JURY HAD BEEN OUT OF COURT, UPWARDS OF TWO HOURS, THEY RETURNED.

FOREMAN OF THE JURY,

"We find the Defendant Guilty of Publishing, but not with a Criminal Intention."

Mr. GURNEY. That is, NOT GUILTY.

Mr. VAUGHAN. My Lord, the Verdict must be entered, — NOT GUILTY.

RECORDER. No; the Verdict must be entered as the Jury have given it; but I shall tell the Jury what Verdict they have a right to find, in order that they may re-consider it, if they think proper.

Mr. VAUGHAN. My Lord, I submit that the Verdict of the Jury is given, and that the Court is bound to receive it, though in effect it is a Verdict of Acquittal, it is in form a Special Verdict — a Special Verdict is a solemn and a serious thing; it bears the mark of deliberation. In this case the Jury have deliberated maturely, and have found a Verdict, which I submit cannot be altered.

RECORDER. I shall inform the Jury of the powers vested in them by the Libel Bill, that they may not be taken by surprise.

Mr. VAUGHAN. I am very far from wishing the Jury to be taken by surprise, or to be precipitate. I am sure it is for the advantage of my Client that they should not be.

RECORDER. I do not think myself at liberty now to give the Jury my opinion upon, whether this is, or not, in point of Law a Libel.

Mr. WHITE,

Mr. WHITE. Your Lordship will pardon my speaking ; but my Counsel are not here. I submit, your Lordship is at liberty, and that you are called upon to do it.

Mr. VAUGHAN. Certainly not, Mr. White ; that time is past. His Lordship might have done it, in summing up, but his summing up is closed, and it is not competent to him to do it now.

Mr. GURNEY. I submit, if your Lordship should inform the Jury of the powers vested in them by the Libel Bill — which Bill directs, that they may give a Verdict upon the whole matter put in issue before them—that you will tell them this, that, in order to find the Defendant Guilty, they must affirm every allegation in the Indictment to be true ; and that if they disbelieve and negative any one allegation, they are bound to find the Defendant, *Not Guilty*.

I submit, that the Intention of the party is the gist and essence of the crime ; and that, without a criminal intention, no crime can be committed ; consequently, the Jury negating the criminal intention of the Defendant, must acquit him of this Indictment.

RECORDER. I think I ought to tell the Jury, that, by the Libel Bill, they are intitled to give a Verdict upon the whole matter in issue before them.

Mr. GURNEY. If the Jury should go out to reconsider their Verdict, I beg they may take out with them a copy of the Indictment ; because I am sure it is impossible for any man to read the Indictment without seeing, that, if the Jury negative the criminality of the intention of the Defendant, they must necessarily find him — *Not Guilty*.

Mr. VAUGHAN. I contend, that the Verdict of the Jury is given, and that it is complete and irrevocable.

JURY. We have given our Verdict ; and we persist in it.

Mr. VAUGHAN. The Jury persist in their Verdict : I apprehend it is your Lordship's pleasure, that the Verdict should be recorded.

RECORDER. Certainly.

Mr. GURNEY. The Verdict must be recorded — however unwillingly.

The Deputy Clerk of the Arraignment recorded the Verdict, and read it to the Jury.

Mr. GURNEY. Now I submit to your Lordship, that the Delendant must be immediately discharged.

RECORDER. I certainly shall not discharge him.

Mr. GURNEY. Is this Man to be kept in custody, now he is acquitted ?

RECORDER. I suppose the Prosecutors do not mean to admit that he is acquitted.

Mr. WHITE. No.

Mr. GURNEY. But after a Jury of his Country have solemnly acquitted him of all Criminality of Intention, it would be an unheard-of cruelty to inflict a punishment upon him. If he is to be committed to prison, the Jury might as well have found him Guilty.

Mr. VAUGHAN. This man stands in a most singular situation ; he stands, *Convicted of Innocence*. I conceive he is intitled to his Discharge.

RECORDER.

RECORDER. The point of Law cannot be argued till next Sessions — He must be committed till then.

Mr. GURNEY. This man has hitherto been at large upon bail — he has shewn no wish to withdraw himself from the Justice of his Country ; and can it be imagined that, after having surrendered, taken his trial, and obtained a Verdict acquitting him of all Criminality of Intention, that he will now fly ? It would be flying from Deliverance.

Mr. BONNEY proposed Defendant's being admitted to bail.

Mr. WHITE. Without consulting those with whom I have the honour to act, I will consent to let him be at large upon the same bail as before.

Mr. GURNEY. Are they here.

Mr. EATON. They were just now ; but they are gone.

RECORDER. Then he must be committed to-night, and brought up to-morrow morning, to be bailed.

Mr. VAUGHAN. This is extremely cruel, that this man is to be committed to prison at all.

Mr. WHITE. I thought, without any authority for doing it, I had gone a great way, in consenting to what I did.

Mr. GURNEY. We are perfectly sensible of your politeness, Mr. White ; but we cannot help feeling the hardship of our Client's situation.

Mr. VAUGHAN. We will find bail in a minute. One of the Bail is returned ; and here is another Gentleman who offers himself.

Mr.

Mr. WHITE. I will not take any Bail, but the Persons who were Bail before. For this reason; I have made enquiry, and am satisfied with them.

Mr. WHITE then left the Court; directly after which the Defendant was committed to Newgate, to be brought up next Morning, in order to be admitted to Bail; which he accordingly was.

REMARKS

R E M A R K S.

THE following Sessions commencing, and neither my Attorney nor Counsel having received any Notice respecting the business, on Wednesday, the 26th of June, my Attorney gave Notice to the Attorney General of moving the Court to discharge my Recognizances on the Friday following; to evade which motion, Mr. Attorney General came on the Thursday, the day before, well knowing my Counsel were not in Court; and moved, that the Case might be left to the determination of the Twelve Judges, till the next Term, as appears by the following account, extracted from the Morning Chronicle.

JUNE 28.

“ Yesterday the Attorney General informed the Court, that he
 “ attended, in consequence of the extraordinary Verdict found by
 “ the Jury, upon the Trial of Mr. Eaton, who was indicted, last
 “ Sessions, for publishing the Second Part of Paine’s Rights of
 “ Man; when the Jury found the Defendant *Guilty of Publishing,*
 “ *but without any criminal Intention.*

“ Notice had been given him, that upon the foundation of this
 “ Verdict, the Bail of Mr. Eaton intended to make an application
 “ to be discharged from their Recognizances. The Attorney Ge-
 “ neral said, it was a Case of considerable importance, and he was
 “ ready to argue it, or receive such direction from the Judges as
 “ they might think fit to give. It would be a question for the
 “ Judges to decide, what the legal import of the Verdict was; the
 “ Case was distinguished by its novelty, and it was of great concern
 “ to the jurisprudence of the country, that the law should be settled
 “ upon this point.

The

“ The Judges, Buller and Wilson, was of opinion, that the
 “ Verdict called for the most serious deliberation — there was some
 “ difficulty in ascertaining what the Intention of the Jury was,
 “ when they pronounced the Verdict. It would be necessary to
 “ consider whether it amounted to any Verdict at all; and if it did,
 “ whether it was an acquittal in part, or as to the whole of the
 “ charge upon the Record.

“ Mr. Justice Wilson said, the Jury possibly might mean, that
 “ the sentiments contained in Paine’s pamphlet were not criminal.
 “ After some conversation between Judge Buller, Wilson, and the
 “ Recorder, it was agreed, that the Case should be laid before the
 “ Judges, in order that they might enter the proper Verdict, and
 “ settle the Law upon this point.”

The next day, being Friday, we had given notice for moving the Court. I attended with my Bail; when I was, for the first time, informed, “ that the Verdict was to be decided by the Judges next
 “ Term.” — I then addressed the Court; but was desired to wait the Recorder’s return, who had left the Court; which I accordingly did. And on his return began to read an Address, which I had drawn up just before going into Court, lest I might have expressed myself, without intending it, in offensive terms. But the Recorder prevented my reading the whole; and, with much reluctance, I submitted, telling the Recorder, however, and the Court, That, as an Englishman, I claimed the Right and Protection of the Laws; that I conceived the Verdict was a Verdict of Acquittal; and the more so, as I had heard one of the Jury say at the time, it was intended as an Acquittal. I therefore insisted upon having justice and demanded my discharge. To which the Recorder answered, Mr. Ea-
 “ ton, you may depend on having *strict* justice; but it is now
 “ left to the decision of the Twelve Judges.”

Thus foiled by the *ingenious management* of the Attorney General, and thus prevented from making a regular application to the Court, by the *irresistable interference* of the Recorder, I thought it incumbent on me to inform the Public of the nature of the Proceedings; which I did, in the Morning Chronicle of the next day as follows:

To the EDITOR *of the* MORNING CHRONICLE.

S I R,

I THINK it my duty to state to the public, that being yesterday brought up to the Sessions of the Old Bailey, it was my intention to address the Court in the words subjoined; being however prevented, I will beg of you to insert them, in order that my fellow-citizens may not suppose that I omitted claiming my acquittal under the verdict after mentioned. I was indeed stopped by the Court, by reason that the Attorney General had yesterday come down and moved that the verdict should be referred to the Twelve Judges. But as on this proceeding was without any notice to me, or my Attorney or Counsel; and notwithstanding I had given notice that the Court would be moved on this day, to discharge my recognizance; I did think it proper to object to their proceeding, in which I am sure no one can fairly think me to blame.

“ MY LORD,

“ If your Lordship will have the goodness to hear me for one word. My Counsel are not here, and therefore your Lordship will excuse my speaking for myself.

“ My

G.

“ My Lord, I am come here in discharge of my recognizances, by which I was bound over to receive the judgment of this Court, upon a verdict found the last Sessions, on an indictment for libel.

“ My Lord, that verdict was, “ That I was guilty of publishing, but without any criminal Intent—— I am told by my counsel, and I believe it is an almost universal opinion, that this is a verdict of acquittal, because the law of England knows no guilt in any action, where there is no criminal intent,

“ Now, my Lord, I demand my discharge of the Court, because no man can be imprisoned, unless by the judgment of his equals, or by the law of the land. A jury of my equals have found me without any criminal intentions, the law acquits me of all crime, and admits of no imprisonment,

“ My Lord, I am a poor but an honest man ; I can bear punishment, when I know it is good for the public example. But, I should think myself guilty of an heinous crime indeed, were I to neglect putting in my claim to my right under this verdict. And so my Lord I throw myself on the Justice of the Court; whether being acquitted by a Jury of my fellow subjects, I am not entitled by the law, to my liberty as an Englishman.”

DANIEL ISSAC EATON,

No. 81, Bishopsgate Street,

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