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**TRIAL** *No. 1.*  
**OF**  
**MARY ANN TOCKER,**

**FOR AN**  
**ALLEGED LIBEL,**  
**ON**

***MR. R. GURNEY,***

*Vice-Warden of the Stannary-Court, Devon,*

**WITH**  
**THE DEFENCE**

**VERBATIM AS DELIVERED BY THE DEFENDANT ;**

**TO WHICH ARE PREFIXED,**  
**SOME INTRODUCTORY REMARKS ;**

**TOGETHER WITH**  
**AN ADDRESS TO THE JURY,**

**BY MISS TOCKER.**

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LONDON :—Printed and published at the request, and for the benefit of Miss  
Tocker, by HENRY WHITE, Sen. 287, Strand, and may be had of all  
Booksellers, in Town and Country.



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MARY ANNE TOCKER.







## INTRODUCTION.

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From the lively interest which the Public has taken in my late Trial and Acquittal, and the general satisfaction expressed at the memorable Verdict I was so fortunate as to obtain, I conclude that a verbatim Copy of my Defence will be received with approbation. Every report of this Defence, hitherto given, has been brief and imperfect, the limits of a Newspaper not allowing that scope which the variety of the matter required. I wish also, that the public should fully understand on what grounds those excellent and patriotic men who composed the Jury, made so unusual a decision. The Trial by Indictment for Libel, has always been considered as intolerably oppressive, arbitrary, and unjust, by every advocate of civil Liberty; but in this case, owing to the Defendant claiming compassion as a woman, and to the private injury, it appeared in its most execrable shape; it was also singular that this was the first case of Libel ever tried in the county of Cornwall. It must have created a strong and terrible impression in the minds of men who never before witnessed a similar proceeding, to see every thing that might criminate the accused allowed to be brought forward by the Prosecutor, whilst the helpless



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Defendant was debarred all means of justification. They had, on every other occasion, seen the most desperate malefactors—the midnight robber—the murderer, suffered to produce all that might tend to their exculpation, while in this case of Indictment for Libel, though they were empowered to give a general verdict, all evidence on the part of the Defendant was withdrawn from their view. These circumstances, and the strong appeal of oppressed and struggling innocence, carried with them all the force of witnesses and oaths. They were melted with compassion—they felt the force of natural equity—their bosoms glowed with honest indignation, and they obeyed the dictates of moral feeling, in preference to maxims, the offspring of the tortuous intellects of Lawyers, and which none but *Lawyers can understand*. It is hoped that a fatal blow is now given to this oppressive mode of prosecution, so offensive to a free people; and that the triumph of the public question may be permanent; but whatever be the result, the decision forms a valuable precedent. If this mode of trial should cease, it will be a striking instance of what important events Providence chooses to accomplish by weak instruments. The question, it is probable, will, from this moment, be considered as placed for ever on the basis of moral right and wrong. It is presumed that calumny only will be punished, and that Truth may be spoken with impunity.---



Those puerile cavillers, the friends of legal sophistry, may still amuse with their subtilties the favorers of Despotism, but the liberal Patriot will be satisfied that this decision of the Jury is conformable to the principles of a Locke, a Blackstone, a Montesquieu, a Beccaria: men whose writings will instruct and guide mankind, when laws and governments have experienced mutations, which human foresight could not anticipate, and human policy failed to prevent.



TO THE  
**HONEST, PATRIOTIC, AND INTREPID JURY,**  
 WHO  
**ACQUITTED ME, ON A CHARGE OF LIBEL,**  
 ON THE 7TH OF AUGUST, 1818.

**GENTLEMEN,**

The memorable verdict you lately pronounced, which rescued from a cruel persecution one accused of no other offence but the publication of useful truths, which she was forbidden to prove, makes your names conspicuous among your countrymen, as the patriotic and intrepid assertors of moral right and the liberty of the press. It is a decision which calls forth the gratitude of Englishmen, and will live for ever in their memory. There are some few who disapprove this verdict, whose hearts are depraved—are rendered callous by the influence of corruption, or whose understandings are perplexed by the unintelligible jargon of crafty lawyers. Men who would extinguish our moral feelings, and deprive us of the exercise of our ratiocinative powers, and who stupidly declaim against what they dare not discuss on fair grounds of argument,—a solitary few, whose voices are drowned amid the universal acclamations of their honest and enlightened countrymen:—neither their sarcasms, nor invectives can give a wound to



bosoms which have felt the proud triumph of freedom and of truth. The acquittal you pronounced was the reward of innocence self-evident, and fortitude, the offspring of innocence. When I appeared before you, I dimly beheld the danger of the cruel mode of trial to which I was subjected. Nor could I have believed, from the general tenor of our jurisprudence, that I was a victim ready bound for the sacrifice. But you refused to offer up that victim—you appealed to your consciences, and your consciences bade you pronounce me guiltless. Humanity pleaded with reason, and withstood the stern, remorseless voice of authority. In those anxious moments, even conscious innocence could scarce have given that vigour which bore me through the conflict; but I was animated by the strongest principle in human nature—resistance to oppression. What might have been my fate, if sent by your verdict to a higher tribunal? I should have gone from the judgment of my equals and my neighbours, by whom all my injuries were felt—injuries, which could reach their business and their bosoms; to one basking in the sunshine of prosperity—high in authority—far removed from those storms which shake our humble mansions: the *libeller*, (the fearless assertor of truth) the *pest of society*, worse than the worst of malefactors, would, perhaps, have been doomed for years to the dreary solitude of a prison; far from a beloved family,



denied almost the air and light of Heaven, and beholding only the wretched victims of guilt, and profligacy, and despair. Such might have been the abode of a female torn from a home of innocence and peace—a female possessing a delicate frame, and a mind strongly susceptible, to whom a sentence of imprisonment would, most probably, have been equivalent to a sentence of death. It is, therefore, Gentlemen, to your humanity, to your sense of natural justice, to your religious feelings, which dared to risk the censure of man, rather than violate the laws of your Maker—It is to these causes Englishmen owe this glorious triumph; and it is to these I feel, I owe my liberty and being. Accept, then, this tribute of gratitude, and may your countrymen long emulate your example and venerate your virtues.

M. A. TOCKER.

*London, Sept. 1, 1818.*



The first eight pages following  
the Roman numeral section  
(I-VIII)

are pages 9 through 16,  
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The pleadings were opened by Mr. Will.  
Mr. Sergeant Bell stated the case. He observed  
that the charge against the Defendant was that of  
committing a libel upon Richard Gurney, Esq.  
The character of a Gentleman in a high judicial  
situation, by imputing to him practices of the  
greatest criminality, in a letter published in a  
newspaper.

TUESDAY, AUGUST, 4.

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THE KING v. TOCKER.

The Defendant in this cause is a lady, sister of Mr. Henry Tocker, Solicitor, of Plymouth; and stood charged by an indictment found by the Grand Jury, at the last October Sessions, of writing and publishing a Libel upon Richard Gurney, Esq., late Vice-warden of Devon, in the *West Briton*, of the 6th of June, 1817; reflecting on his conduct as a Judge.

To this the Defendant pleaded *Not Guilty*.

On the cause being called—

The Defendant, accompanied by her sister, and her brother, Mr. Henry Tocker, came into Court.

The Judge said he expected it would not be defended.

Mr. Tocker, Solicitor for the Defendant, informed his Lordship it would be defended; and on being asked by whom, was informed by the Defendant herself.

The following Gentlemen were sworn as the Jury:—

THOMAS TRELOAR,  
JAMES MITCHELL,  
RICHARD ARTHUR,  
NABOTH RANDALL,  
BARNARD RUTHER,  
HENRY COLLIER,

JOHN WILTON,  
WILLIAM STEVENS,  
JOHN NINNIS,  
EDWARD BLAKE,  
HUDDY BRAY, AND  
JOHN THOMAS.



The pleadings were opened by Mr. Wild.

Mr. Serjeant Pell stated the case. He observed that the charge against the Defendant was that of committing a most serious offence, in slandering the character of a Gentleman in a high judicial situation, by imputing to him practices of the greatest criminality, in a letter published in a newspaper well known in this county. This letter he should read.

*“ To the Editor of the West Briton.*

SIR,

The fact which I now communicate, and to which I am desirous of giving publicity, deserves notice, more, perhaps, from its singularity than its importance, although it must be allowed to have some local importance; and, in times less momentous and calamitous than the present, would probably attract no inconsiderable portion of public attention. Even now, as it tends to the exposition of the borough-mongering system, which is execrated by every man of common sense and common honesty, it possesses political interest which a person on a superficial view, and unacquainted with the circumstances connected with the fact, would scarcely be aware of.—First, then, I shall advert to the singularity of the case. In England, one of the most civilized countries of the world, there is, at this moment, an outlawed Judge! A man, by his office a dispenser of laws, out of the protection of the law. An instance, I may venture to affirm, unparalleled throughout Europe! In Vienna, we were lately told, a Judge was, in pursuance of his sentence, sweeping the streets; (“I confess,” said Mr. Serjt. Pell, “I should not much like to be a Judge in that country;”) but in this country, a man degraded by an outlawry still holds the office of a Judge, and whatever disabilities the individual otherwise labours under, none of these have been deemed sufficient to displace him from his official situation. Now, Sir, for the necessary explanatory circumstances. It must be still fresh in the recollection of the people of the county of Cornwall, that immediately subsequent to the last general Election, W. H. Tonkin, Esq. was displaced from his office of Vice-warden of Devon, to make room for Mr. R. Gurney, Solicitor, of Plymouth, son of the Rev. Mr. Gurney of electioneering notoriety. The merits of this veteran have already obtained for him two good benefices; but that he conceived these merits entitled him to expect his family should reap farther advantages, may be learned from the minutes of the Tregony Election Committee of 1812. The removal of W. H. Tonkin, Esq. for the appointment of Mr. R. Gurney, jun. became a matter of course. On this occasion it was promised, that the salary should be increased to four hundred pounds per annum; which is octuple the sum that had previously been paid! A promise which, to the honour of the patron, had never been fulfilled. At the close of of the year 1815, Mr. R. Gurney, the Vice-warden of Devon, was



compelled, by great pecuniary embarrassments, to leave this country for France. In May, 1819, he was twice outlawed; and the outlawry was proclaimed in the market places of Plymouth and Dock; the former for many years the place of his residence. This outlawry never having been reversed, and all business in the Stannary Court of Devon being suspended, about three months since a petition was sent up from the suitors to the Lord Warden, praying, that a new Vice-warden might be appointed; this petition was unattended to. Mr. R. Gurney has very recently returned to England, but is obliged to secrete himself. His late Secretary received a letter from him, dated from London, April 22d, 1817, saying, that he was obliged for the present to conceal himself, one of his creditors having sued out a process of outlawry against him; and desiring that copies of various papers might be transmitted to him immediately, in order to prove, that the business of the Court had not been neglected, owing to the absence of the Vice warden.—His Secretary transmitted the papers, but resigned his office, understanding that he himself would be required to allege, that the business of the court had been duly attended to, which would have been a gross misrepresentation. Now, Sir, after this statement, it must be very natural to ask, why is this man retained in a situation, the duties of which he is unable to discharge? I should imagine, that this removal ought to take place immediately, lest his continuance, as a Judge, should be attributed to political motives: for it is well known that, about four years since, the Lord-Warden purchased property in the borough of Tregony, to oppose the interest of the Earl of Darlington, and the Rev. R. Gurney supported him in that opposition. Many curious anecdotes, relative to this connection, are circulated, which serve greatly to illustrate the borough-mongering system.

The following circumstances will prove that his Honor, the Vice-warden of Devon, has made no mean proficiency in the school in which he has been educated. In the only two causes he ever decided, viz. *Lopez versus Doubtfire*, and *Whitehair versus Webb* and others, he demanded sums of money from the suitors, over and above the fees of the court, and delayed giving his decrees until his demands were complied with.

I am, Sir, &c.

AN ENEMY TO CORRUPTION."

*Plymouth, May 12, 1818.*

Mr. Sergeant Pell then said, in animadverting on these letters he had a difficult task to perform: anxious as he was to do his duty to his client, and at the same time to avoid wounding the feelings of the lady before them, who had placed herself in so novel a situation. He could assure her that it was his wish to avoid giving her pain; and that he regretted he had to conduct a cause against a Lady; though he had no doubt she would defend herself



with ability ; for it was evident that she possessed talents of no ordinary kind ; but he lamented she had not made a better use of them. She might however depend upon it, that whilst himself and his learned friend attended to their duty to their client, they would oppose no obstructions to her defence ; and that she should have to meet no merely technical objections, in the course of her arduous undertaking.—The charges made against Mr. Gurney were of the most criminal nature ; no less than that of perverting the administration of justice by the most odious extortion. If it were possible that he could be guilty of the crimes charged upon him, he merited the utmost severity which the law could inflict ; and the defendant should have known, as no doubt she did know, that if these charges were laid before the proper authorities, there would be no difficulty in obtaining legal redress. This was the proper mode of proceeding. The character of our Judges were above suspicion ; but if it were not so, thank God, the law could reach the highest judicial character in the country, if he should be proved guilty of practices such as those described in the libel in question. When this was the case, where was the necessity—where was the excuse for such a publication as that which was the subject of the present inquiry ?—The liberty of the press was an invaluable blessing ; upon it depended the preservation of that Constitution, and those rights and liberties which were so justly dear to us. He would, therefore, be no advocate for holding a nice hand ; or exercising a rigorous censure on newspaper publications. But he felt that the best security for the preservation of the liberty of the press was to guard it against abuse ; by keeping its strictures within just and proper bounds.—He should detain the Court and the Jury no longer ; but proceed



to lay before them evidence to substantiate the charge.

Edward Budd, sworn.—Is Editor of the *West Briton* newspaper, published in this county. That now shewn him is one of the numbers of that paper, and contains the alleged libel. The paper is not published by witness, who is not the printer. The letter containing the alleged libel was inserted by his direction. The two letters now shewn to witness were addressed to him; they were received by post. He never saw the defendant write; but she acknowledged that the letters were written by her, in a conversation she had with him at his house some months since. The second letter was a reply to one sent by the witness to the defendant, declining to insert the letter sent for publication, unless he was allowed to make some alterations in it. This letter contained the permission of Miss Tocker to make such alterations as he judged proper. In consequence of this permission, the alterations were made, and the letter inserted.—The letter which was published is according to the alterations made by him; these alterations were made on the original letter of Miss Tocker, as they now appear.

Here the learned Judge interposed and said, the letter published in the newspaper could not be regarded as the production of the defendant, as she had not seen or approved of the alterations made.—After some time reasoning on this point, which the Court appeared resolved to adhere to, Mr. Sergeant Pell resumed the examination.

The witness was here desired to read the letter as it stood previously to his making the alterations, which he did. He has seen Miss Tocker since the publication of the letter in the *West Briton*, when she then expressed herself satisfied with the letter



as it appeared in print. The letter was then read, which is as follows:—

*The original unpublished Letter to Mr. Budd.*

SIR,

The fact which I now communicate, and to which I am desirous of giving publicity, deserves notice; more perhaps for its singularity than its importance, although it must be allowed to have some local importance, and in times less momentous and calamitous than the present, would probably attract no inconsiderable portion of general attention. Even now, as it forms a part of the Boroughmongering System, which is execrated by every man of common sense and common honesty, it possesses a political interest, which a person on a superficial view, and unacquainted with the circumstances connected with the fact, would scarcely be aware of. First, then, I shall advert to the singularity of the case. In England, one of the most civilized countries in the world, there is at this moment an outlawed Judge! A man, by his office, a dispenser of laws, out of the protection of the law; an instance, we may venture to affirm, unparalleled throughout Europe. In Vienna, we were lately told, a corrupt Judge was, in pursuance of his sentence, sweeping the streets; but in this country, a man degraded by an outlawry, still holds the office of a Judge, and whatever disabilities the individual otherwise labours under, none of these have been deemed sufficient to displace him from his official situation. Now, Sir, for the necessary explanatory circumstances. It must be still fresh in the memory of the people of this county, that immediately subsequent to the last General Election, W. H. Tonkin, Esq. was displaced from his office of Vice-Warden of Devon, to make room for Mr. Rd. Gurney, Solicitor, Plymouth, a son of the Rev. Mr. Gurney, the *notorious electioneering Parson*, of *notorious Tregony*. The borough services of this veteran champion obtained two good benefices for his former exertions, and his sanguine expectations of further advantages to his posterity, may be estimated by a reference to the Minutes of the Tregony Election Committee, of 1812. The extraordinary zeal manifested on this occasion, it was again judged reasonable to reward, and the removal of W. H. Tonkin, Esq. for the appointment of Mr. R. Gurney, junior, was at that time the most obvious and feasible means of requital. It was then promised that the salary should be advanced to Four Hundred Pounds per annum, which is octuple the sum that had previously been paid; a promise which, to the honor of the patron, has never been fulfilled. At the close of the year 1815, Mr. Rd. Gurney, junior, was obliged, from great pecuniary embarrassments, to leave this country for France; in May, 1816, he was twice outlawed, and the outlawry was proclaimed in the market-places of Plymouth and Dock: the former for many years his place of residence. This outlawry never having been reversed, and all business in the Stannary Court of Devon, being suspended, about three months since a petition was sent up by the suitors to the Lord Warden, praying that a new Vice-Warden might be appointed. This petition was no further attended to than that a communication was made from — Holmes, M. P. for Tregony, to Mr. Rd. Gurney's father, requesting him to inform his son, that unless he re-



turned to this country he would be superseded. He is lately returned, but secretes himself. His late Secretary received a letter from him dated April 22, 1817, saying he was in London, but could not appear, a tailor having sued out a process of outlawry against him, and desiring him to transmit copies of papers, &c. in order to prove that the business of the Court had not been neglected, owing to the absence of the Vice-Warden. His Secretary transmitted the papers, but declined having any thing further to do with the office, understanding that he himself would be required to allege that the business of the Court had been duly attended to, which would have been a gross misrepresentation. Now, Sir, after this statement, no one can be at a loss to conjecture what are the motives which operate in retaining this man in a situation the duties of which he is unable to discharge. About four years since, the Lord Warden purchased property in the borough of Tregony, to oppose the interest of the Earl of Darlington, and the Rev. Rd. Gurney supported him in that opposition. I could add many curious anecdotes relative to this connexion, which might serve greatly to illustrate the Boroughmongering System; but that I forbear presuming to take up so large a share of your excellent and patriotic Journal. I shall only give one, to prove how well the respectable Vice-Warden of Devon has profited in the School of Corruption. —He demanded sums of money from the suitors, over and above the Fees of Court, in the only two cases he ever decided, viz, Lopez against Doubtfire and others, and Whitehair against Webb and others, and delayed giving his decrees until the stipulated sums were paid.

I am, Sir, &c.

AN ENEMY TO CORRUPTION.

Miss Tocker was informed that she might now ask the witness any questions she judged necessary.—She proceeded to put a series of interrogations to Mr. Budd relative to a conversation which took place at an interview which she and her elder brother had with him at his house, on the 10th of October last. The import of these interrogations, and the replies made to them, not being clearly apprehended by his Lordship, the witness desired to be allowed to give a statement of what passed on the occasion alluded to, which request the Court acquiesced in.

At the interview in question he stated to Miss Tocker, that he had had a long correspondence with Mr. Gurney, the Vice-warden of Devon, relative to the alleged libel; that when Mr. Gurney applied to him, by letter, for the name of the writer of the publication of which he complained,



witness replied, he should forward the request to the writer; that soon after Mr. Gurney wrote to the witness, stating he (Mr. G.) had received a letter from Miss Tocker, in which she avowed herself to be the writer of the letter published in the *West Briton*; and as that was the case, calling on the witness to forward the manuscript from which the letter was printed;—witness replied he could not do this, unless Mr Gurney would give him a written pledge that Miss Tocker should not be prosecuted for any matter contained in her letter, except what had appeared in print; as witness had made alterations in the letter by Miss Tocker's permission, of which alterations he was bound in honour to see she had the benefit; and as the letter contained a private communication, he might, by sending it to Mr. Gurney, be giving publicity to an additional libel. That Mr. Gurney wrote to witness, pledging himself that Miss Tocker should not be prosecuted for any thing contained in her letter relative to his father, the Rev. Mr. Gurney, of Tregony; but that the manner in which the pledge required relative to the securing of Miss Tocker from prosecution for what had never appeared in print, being considered by witness as ambiguous, he applied to Captain Woolridge, Mr. Gurney's brother-in-law, who resides near Truro, and as Mr. Gurney's letter came through him, desired to know whether he considered Mr. Gurney as meaning to give the pledge required. That Captain Woolridge wrote to witness, and stated distinctly that such was Mr. Gurney's meaning. That on receiving this assurance witness sent to Mr. Gurney the letter containing the alleged libel, and that in which Miss Tocker gave authority to make the alterations noticed. That witness did this in consequence of the pressing desire of Mr. Gurney and Captain Woolridge.



that the letters should be forwarded without delay ; and that during the whole of this correspondence, witness never stipulated for any assurance that he should himself be secure from prosecution.—Witness repeated that the stipulation that he made was, that Miss Tocker should not be subjected to a prosecution for any thing contained in her letters given up, except what had been published in the Newspaper.\*

The Counsel for the prosecution having stated that this was their case, the defendant rose to address the Jury :---

*My Lord, and Gentlemen of the Jury,*

I stand in Court this day with reverence, but not with fear, for fear is the inseparable concomitant of guilt, and of moral guilt my conscience acquits me, and so I trust will you, when you have fully heard the oral and written evidence which I shall produce. Perhaps this may be insufficient to satisfy the Law, as it has on some occasions been enforced ; but if I am exonerated from moral guilt *only*, I shall gain the point dearest to my heart. My personal appearance, to defend myself from this indictment, arises neither from levity nor presumption, but is the consequence of a melancholy necessity, which, in order to remove all prejudices in the minds of my Judges, it is indispensably necessary that I should explain. It is my inability to pay Counsel which has forced me on my own defence, and that inability is owing to the very heavy debt due from the Prosecutor to my Brother ; to whom, in several letters, he has acknowledged that debt, with the most extraordinary professions of

\* During the examination of Mr. Budd, some of the Gentlemen of the Bar, who sat next the Defendant, suggested to her the utility of making notes on some parts of his evidence. His Lordship, on observing this, said, " Why do you keep teasing the lady so on all sides —she hardly knows what to do for you."



gratitude and friendship, but whom he has since peremptorily refused to pay, and whose Writs, by carefully secreting himself, he has hitherto constantly eluded.

The expenses also consequent on law proceedings have considerably injured my family, and whatever may be the result of this prosecution, I believe I do both what feeling and principle strongly dictate, in not encroaching on the comforts of a widowed parent, in defending myself in an action that possibly may have been indiscreet, but is in no degree criminal. Previous to my entering on the subject of the Indictment, I must earnestly solicit the indulgence of the Court, and request that my introduction of any irrelevant matter, or obnoxious expressions, may be considered as the effect of ignorance alone, and not of disrespect to the Court, or intentional violation of its rules; and let it be remembered, that until this moment I was never in a Court of Justice. even as an auditress. Although I am now summoned to answer a criminal information, I am deeply impressed with a sense of the blessings conferred upon mankind by an enlightened jurisprudence, feeling it is to that source we owe all the inestimable benefits of science, literature, social order, and domestic enjoyment.

Gentlemen of the Jury, my imperfect knowledge of the Law is to the great advantage of my Adversary, for my weakness and incapacity are opposed to the tried talents and professional skill of his Counsel, but I come unacquainted with the equivocations of law, unpractised in methodical arrangement of argument, destitute of the graces of oratory---I come to you as one of yourselves, possessing only the rude weapons of reason, and the untutored eloquence of nature. I am little qualified to discuss the matter at issue, but as a question of moral right or wrong, and on this



ground it has been contended, though a few eminent for learning and talent have entertained a contrary opinion, that every dispute on this subject must finally rest. The indictment charges me with publishing, from malicious motives, a false and injurious statement of the conduct of Mr. Richard Gurney, whilst Vice-Warden of Devon. Every part of this statement I am fully prepared to prove; I shall fully repel the charges of falsehood and malice. But first, I shall read a passage from the Charge of the present Lord Chief Justice, on the trial of William Cobbett for Libel, in the Weekly Register. "It has been observed," said his Lordship, "that it is the right of the British subject to exhibit the folly and imbecility of the Members of the Government, but we must confine ourselves within limits, if by so doing individual feelings are violated, there the line of interdiction begins, and this offence becomes the subject of penal visitation."

The Author of the Work on the Law of Libel, from which this passage is extracted, thus comments on this part of his Lordship's charge:—"It may be asked, how can Members of the Government be blamed without an injury to their feelings? Bad measures can be derived but from one or both of two sources—knavery, and folly. The plain and obvious answer seems to be, that as far as the prejudice to private character or feelings results simply from the exposure of an inefficient measure, the author of that measure must be content to bear with it; he has made himself, in some sort, *publici juris*, by undertaking to act in a public capacity, and therefore has no right to complain on account of any personal inconvenience, which may arise from a fair comment on the execution of his duty." Now on this passage in Lord Ellenborough's charge, in the trial of Cobbett, and the judicious explanation, that presents us with



a full draught where his Lordship had only given a sketch, depends every legal argument I shall advance in the course of this defence. The Prosecutor held a Public Office, though not a high one; and I expect that no one will question but that he was as responsible for the due performance of the duties of that office, and as accountable for the neglect of them, as either of the principal Members of his Majesty's Government. The letter for which I am indicted, treats only of the misconduct of the Prosecutor in his official capacity, and I shall prove in evidence that all the charges in that publication are incontrovertible.

*Judge.*—What, Madam, do you mean by incontrovertible?

*Defendant.*—I mean to say, my Lord, that what I allege is true.

*Judge.*—Do you mean to prove these charges?

*Defendant.*—Yes, my Lord.

*Judge.*—That the law of the land will not allow you to do.—You will not be allowed to prove any thing.

*Defendant.*—It would appear, from the opinion of Lord Ellenborough, that I have that right.

*Judge.*—Lord Ellenborough never could talk such nonsense. If you had a friend in the world, he would have advised you to adopt a different proceeding. What, Madam! do you come into a Court of Justice to talk of moral right and wrong? It is a legal question.\*

The Defendant proceeded—That I have spared the individual feelings of the Prosecutor, I can

\* “The law of nature being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.”—And again, “Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these.”—BLACKSTONE'S Commentaries, vol. 1, sec. 2.



also as satisfactorily prove; and thus I establish all that is essential to my justification, viz. the truth of the allegations and rectitude of intention. But the Prosecutor gives a far different explanation of the Law of Libel.—On one of my Witnesses observing, in a late conversation with him, that I could prove all my charges, he said, with exultation, that will avail her nothing;—the greater the truth, the greater the libel:—but I trust I have more correct information on this subject; and I am sanguine, Gentlemen of the Jury, that his Lordship will express a contrary opinion, in the charge he will give you previous to your returning your verdict. And here, my Lord and Gentlemen of the Jury, I entreat that you will not blame me for deficiency in modesty, if I offer my sentiments on the subject of indictment for Libel, and chiefly with a view of exposing the fallacy of the Prosecutor's opinion; which, although incorrect, is not singular. I have no technical knowledge of the law; yet I am not ignorant of its elementary principles: my reading has been extensive, and for many years my studies have been directed to history, jurisprudence, an adjunct of history, and moral philosophy. From such pursuits as these, my intellect must be more than commonly dull, if I were unqualified to form some rational conclusion on this important subject. In the course of these studies, I have observed, that laws generally beneficial have, in some solitary instances, borne hard on individuals; and that laws, excellent in themselves, are not unfrequently perverted: and I conceive the law is perverted, whenever the maxim, that truth is a libel, directs the decision in cases similar to this for which I am indicted; for such decisions shock natural equity, on which all law is founded. But it is a common assertion, that law and equity are often at variance. I can scarcely assent to the



position, or could only allow it to be correct as far as it relates to decisions respecting property, where the inconvenience is not great, and by no means injurious to the general interests of mankind: for does it at all concern the peace and happiness of society, whether real property descend equally to all the sons, or by primogeniture; or whether right of inheritance be inverted, and the youngest be the heir? These customs obtain variously among different nations, and even among the same people are often local and contradictory: yet, in this enlightened age, they are not complained of as a grievance.— But, in cases where life or personal liberty is at stake, the laws are neither variable nor incongruous. We shall find in all Christian and civilized countries that criminal jurisprudence is rational and uniform, and is only partially modified as freedom or despotism are predominant in their Governments. In this country, which has been distinguished as eminently free, that common and sophistical assertion that truth is a libel astonishes and confounds us; we find it irreconcilable with the spirit of our laws, and utterly subversive of the free disquisition necessary to the preservation of our rights. It is contradictory to the principles of the English Constitution, and equally repugnant to religion and reason. For religion and reason command the earnest and diligent enquiry after truth, and we may infer that not only moral and religious truth is to be sought and cherished, but the knowledge of all truths that are beneficial to society. Why then is truth reviled or punished? Is it possible that our barbarous but honest ancestors, could have contemplated the law as it is thus expounded? It must have been perverted—it must have been misconstrued. How otherwise should it be found in a body of laws, so lenient, so delicate in every



point which regards the personal liberty of the subject, and the free expression of his opinions. I will dare to say, that the decisions which favor such an interpretation are the offspring of blinking ignorance, or were pronounced by the cunning abettors of tyranny, ever watchful to enslave mankind. Is it possible that it should be the same thing to be accused and condemned? Not long ago there fell into my hands a series of plates representing the criminal punishments of China, in which was exhibited every species of cruelty which the barbarity of despotism could inflict. In the first plate was delineated a Court of Justice. The Judge stood, the accuser bent on one knee; the accused knelt on both, with hands uplifted and clasped together.—I threw down the picture with a sensation of horror; but, if forms were representative of realities, such at this moment, should be my suppliant posture—*such*, according to the *Prosecutor's* interpretation of the law, for he boasts that my punishment is the necessary, and the inevitable consequence of the indictment; and it is on the strength of this proposition, “the greater truth, the greater the libel,” that he rests his hope of vengeance—and what motive but desire of revenge, could have induced him to adopt this base and unmanly mode of proceeding?—So pitiful, that he has felt it expedient publicly to apologise for it, by asserting, that it was the only means left him for the vindication of his character. But every one knows there was another means, and that was bringing his action for damages; but as my justification would then depend solely on proving the truth of my charges; in the action for damages he knew that he must certainly fail. It is therefore that he has resorted to the cowardly, ridiculous expedient of indicting a female for a libel tending to a breach of the peace, as the



means alone which could gratify his vindictive soul. Could the Prosecutor for a moment have meditated inflicting the same castigation once so outrageously bestowed on the Solicitor-General. I can prove by and by, that it was the kind of punishment most agreeable to his inclinations. The Spanish proverb says, "The man that has injured you will never forgive you," and the truth of the apothegm is once more exemplified. How deep rooted must be the revenge of a man, who comes into a Court of Justice to punish an adversary, with the certainty of being proved to have committed an offence, which degrades him for ever as a man of integrity and a gentleman, places his infamy on record, and exposes him to a prosecution for corrupt practices. Gentlemen of the Jury, if my charges against the prosecutor were calumnious, I would rather have fled to the remotest corner of the earth, than have incurred the horrible disgrace of seeing their falsehood proved in the face of my countrymen and my neighbours ; but, there is a man sufficiently audacious to defy just censure, and to allow it to be proved to the world, that he deserves punishment for a misdemeanor, as odious as it is rare.—

Gentlemen of the Jury, I now call your attention to the contents of my letter, published in the *West Briton*, June 6th, 1817, and shall shew that all the charges are strictly true, and tend only to these points, misconduct in the prosecutor's official situation, and incapacity to discharge its duties. And on the outset I shall make it appear, that I had only the public benefit in view, and avoided all that might tend to irritate the individual feelings of the prosecutor. It begins, "In England, one of the most civilized countries in the world, there is at this moment an outlawed Judge." Now in a letter of the prosecutor's, dated April 22, 1817,



there is the following passage, "I'm rather in the clouds at this moment, as a rascal of a tailor has sued out a process of outlawry against me, but it will speedily be removed, and the snip already repents of his folly." Now, had I given this confession verbatim to the public, it would have made the prosecutor both ridiculous and contemptible; I only say, he was obliged to conceal himself, one of his creditors having sued out a process of outlawry against him. Nothing can be more ludicrous than his own manner of relating this circumstance, and had I any intention of provoking him, I should have given the passage as it stood in the original. The removal of W. H. Tonkin, Esq. is next adverted to.—This removal was much talked of at the time, and disapproved; and I cannot suppose that there was any thing improper in glancing at the very unhandsome treatment this gentleman experienced; much more was said as to the removal of Mr. Thomas from the vice-wardenship of Cornwall, and though many severe reflections were made, no one was ever called to an account for them. What was said on this business was in consequence of a paragraph which appeared in the *West Briton*, immediately after Mr. Gurney's appointment to the Vice-wardenship. The passage was as follows, "W. H. Tonkin, Esq. the respectable Vice-warden of Devon, has been displaced from his office, to make room for Mr. Gurney, a young Solicitor of Plymouth, son to the well known Parson Dick." Now I can prove that Mr. R. Gurney had the Vice-wardenship through the interest of Mr. Holmes, a retainer of Lord Yar-mouth's, who had just been returned as one of the Representatives for the Borough of Tregony; and it was this gentleman who recommended Mr. R. Gurney as a fit person to fill the office of Vice-warden, with a promise of augmenting his salary



from £50 to £400 per annum ; and this amazing increase of salary was a reward for borough services. The father of Mr. R. Gurney declared, that unless the salary were thus augmented, his son should not hold the office ; and this declaration was made at my brother's house, on the Rev. Gentleman's road through Plymouth to London, to give evidence on the Tregony Election Petition. The next charge is, his being obliged to leave this country to avoid his creditors ; it states, " at the close of the year 1815, Mr. R. Gurney, the Vice-warden of Devon, was obliged by great pecuniary embarrassments to leave this country for France. In May, 1816, he was twice outlawed," which I can prove by his admission. The expression pecuniary embarrassments, I expect, cannot be censured for its harshness, and his own letters and admissions will make it evident that those embarrassments were great. My next charge is, his neglect of the business of the court. In his letter of April 22d, 1817, he acknowledges that a petition was sent up by Mr. Amies, one of the suitors in the Stannary Court, to Lord Yarmouth, on the subject of delay in business. Mr. Gurney says, in the letter referred to, " Lord Yarmouth tells me that Mr. Amies has applied to him, saying he has business to lay before me ; why did not Amies file his bill, or petition, with you as my secretary? Had he done this, you would, as a matter of course, have apprized me of it, as all letters directed to me, under cover to Mr. Follett, duly reach me." Notwithstanding this pretended facility of communication, his secretary no more knew than his creditors where to find the Vice-warden of Devon, and had repeatedly told various suitors of the court who had applied to him on Stannary business, that he had not known for some months where the Vice-warden was ; for which concealment, even from



his secretary, there was an obvious reason, viz. the Vice-warden's debt to the secretary's brother, who had been for some time previous pressing the Vice-warden for payment.—“All business in the Vice-warden's Court,” it is stated in my letter, “was suspended.” This was the unavoidable consequence of the Vice-warden's residence in France, from the Autumn of 1815, to April, 1817. During all that time he was in England but once, and held a Court at Exeter (where he came under the protection of a subpoena) March, 1816. He was brought to that place by a trial at the Assizes, between Mr. Foote, the keeper of the Hotel, and Mr. May, in the issue of which, to my knowledge, he was interested. He left this county immediately after the trial, and ordered his secretary to direct all letters to him at Havre. He must have left Havre very shortly after he reached it, as neither of my brothers could get any intelligence from, or of him, although my eldest brother was desirous of writing him on the subject of the debt, having applied ineffectually to his father and his brother, who acknowledged the justness of the debt, but refused to make any advance on his account. From the latter my brother obtained Mr. Gurney's address, (which the *father declined giving,*) and found that he was at Paris in the latter end of July, 1816. I now come to the most serious part of the charge in the public letter:—his having extorted sums of money from the suitors of the Court. I say, in the publication for which I am indicted, “he demanded,” when in strictness I should have said, extorted; and thus, by a fastidious moderation in language, I used a term inadequate to the sense: “he demanded sums of money over and above the fees of Court.” In the case of *Whitehair v. Webb*, his own letter of March 26,



1816, proves him guilty of the offence here named, and in the case of *Lopes v. Doubtfire*, his own confession of the fact will be sworn to by a witness.

*Judge Burrows.*—I have told you before that you are not to prove any thing. Why this is worse and worse; you are aggravating your case. What! accuse a man in a high office of taking bribes? I am liable to be called to an account myself. Why did you not employ counsel?

*Defendant.*—I had not the means.

*Judge.*—There is not a gentleman in the circuit but would have assisted you, and would have advised a very different sort of defence.

Defendant then begged to read the Act of the 32d Geo. 3d.

*Judge.*—That Act was never construed to enable a defendant, upon an indictment, to justify by proving the truth of the libel.

*Defendant.*—But, my Lord, the Jury have a right to give a general verdict of guilty or not guilty.

*Judge.*—Yes, Madam, and I have a right to give my opinion. If I do wrong I am answerable in another place.

*Defendant.*—But, my Lord, in the case of the Dean of St. Asaph, it was allowed by the counsel on both sides that criminal intent, and malicious tendency, are essential to libel.

*Judge.*—That case is not in point.

*Defendant.*—There is, my Lord, no evidence of criminal intent; and the Act declares, that record itself is not evidence of criminal intent.

*Judge.*—All things are taken together, you do not understand the Act.

*Defendant.*—That, my Lord, is my misfortune. I am an unlearned person.

*Judge.*—People should well consider of these things before they send them out into the world.



The defendant was again proceeding in her defence, and was again interrupted by his Lordship.

*Judge.* What are you now going to say?

*Defendant.*—I am talking, my Lord, of the neglect of the business of the Court\*.

Now all these charges relate solely to the misconduct of the prosecutor in his official situation, not a single reflection is made on his private character, but as inseparably connected with that situation; and every circumstance adverted to tends only to prove, that he was unfit *for*, and incapable of, exercising the duties of his office. First his outlawry, unquestionably disgraceful, and more particularly to a man invested with the office of a Judge; for which office no man can be deemed qualified who has a tarnished reputation. That outlawry was consequent on the debts, which rendered it necessary for the Vice-warden of Devon to quit the country; he had no other alternative but remaining to rot in a prison. Now, is it possible that a man could discharge the duties of the Vice-wardenship of Devon, who resided in Paris, from the autumn of 1815, to the spring of 1817? He was at Plymouth in September, 1815, and held a Court, and from that time to the 23d of March, 1816, no court was held. The laws of the Stannaries require the Vice-warden to hold his Court every three weeks; this he never did, as the prosecutor left his residence in Plymouth soon after his appointment to the office and removed to London in October, 1812. One of the most important advantages of this local court is its summary decisions, a matter of great moment in mining concerns; but this advantage, by the misconduct of the prosecutor, was lost, and by his absence and neglect the business of the court was more protracted than the business of the King's courts; or



rather it was not attended to at all. For I again repeat, that no court was held for upwards of twelve months, during which period the Vice-warden of Devon was in a foreign country, and for the greatest part of that period his secretary did not even know where to address him; and after his return, in his letter dated April 22, 1817, he desires his secretary to direct any letter for him to Follett (his agent in London) with a cross in the corner; so to that moment his circumstances rendered concealment so necessary, that he durst not have a letter directed to him in his own name, but it was understood betwixt Mr. Follett and himself, that those letters directed to Mr. Follett, which had a cross in the corner, *were* for Mr. Gurney. Gentlemen of the Jury, I trust that this explanation has fully satisfied you that the prosecutor was culpable of neglecting the duties of his office. The charge of corruption, I have before said, I prove by his own hand-writing, and as well by verbal evidence. The Vice-warden's fees of court are very trifling, amounting only to a few shillings in a cause; the prosecutor, in speaking of them, said they were not worth his acceptance; and also, that he would not receive them, because he could more strongly urge Lord Yarmouth for an increase of salary. In the mean time he fell upon another expedient. He *demanded* and *obtained*, from one of the parties, in whose favor he had decided a suit, twenty-five guineas, and from another, twenty guineas; when he had allowed in conversation with myself and relatives, that as many shillings were not his due. It is almost superfluous to observe in this place, that the last passage in my letter inserted in the West Briton only affects the man in his public character, and, perhaps, as superfluous to quote the following passages from Blackstone's Commentaries: "Extortion is an abuse of public justice, which consists in



any officer's taking unlawfully, by colour of his office, from any man, any money or thing of value that is not due to him, or more than his due, or before it is due." Again, "Bribery is the next species of offence against public justice, which is when a judge or other person concerned in the administration of justice takes any undue reward to influence his behaviour in office." Now, I state that the prosecutor not only took this undue reward, but that "he delayed giving his decrees until his demands were complied with." He delayed giving his decrees until he had *received* the sum he demanded; and gave orders to his secretary to that purport.

On the Prosecutor's saying, in the presence of myself and family, that he had received twenty-five guineas from Mr. Hunt, on account of Sir Masseh Lopez, in whose favor he had decided a cause against Doubtfire --- I immediately remonstrated on the danger and illegality of taking a sum of money which he had arbitrarily named --- his only answer was, that his predecessor, Mr. Tonkin, had done the same; I said, I was sorry *he had* done so, as he might one day be called to an account for it. After this, I hoped the offence would not be repeated. It was *long* subsequent to this, that he had received twenty-guineas from Mr. Davie, who was Solicitor for Whitehair, in the cause Whitehair v. Webb. I have before observed that this offence is as odious as it is rare, for the purity of our Courts of Justice is unsullied, of which there cannot be a stronger proof, than the entire silence of the people on all occasions, as to corruption in their Judges. On the failure of a suit, we hear them accuse the witnesses of perjury, their attornies of knavery, their counsel of incapacity --- even the equity of the laws themselves in a moment of rage and disappointment, is



impugned; but the integrity of the Judge is as unassailed as the decrees of Omnipotence. Of this species of delinquency, now almost sunk into oblivion, I have brought a solitary instance before the public; and in so doing, have rendered a service to society; and to whatever invidious reflections my conduct in this particular may expose me, I shall always consider it as one of the most laudable actions of my life. Bribery in a Judge was once deemed so heinous that, in the reign of Edward III. one of the wisest, best, and most illustrious of our sovereigns, Chief Justice Thorp was hanged for the offence; and, though, in the present times, the law does not exact its last penalty; it is punished with severity, and named with detestation.

[During this statement the Judge frequently interrupted the Defendant, again repeating that she was proceeding in a course that aggravated her offence—but that she was determined to go on in her own way, and that he saw she was a tool in the hands of others.]

The Prosecutor says, as an extenuation, the sum received from Davie was little enough, as he came direct from Paris for the purpose of holding the Court. But what right has a Vice-warden to charge the suitors in his court with the expences of a journey from Paris? If his necessities or pleasures induced him to spend twelve months in a foreign country, was he qualified to hold a situation which, from its duties, infer a man to be resident in the county where the Court is held? Why is a Vice-warden (the Lord-warden's deputy) appointed at all, unless he is always at hand to hear, and transact the business of the Court? Now, from the evidence I produce, it appears that the Lord-Warden was easier to be found than his deputy. Again, could



no other man, but Mr. Gurney, be found to fill this office. Suppose his Honor, the Vice-warden of Devon, with the view of escaping from his embarrassments, or improving his mind by travel, had gone to Chili, Indostan, New South-Wales, or had even penetrated to the confines of China, to take a peep at the great wall—were the suitors in his Court to pay the expences of his retrograde movement? To drop all raillery, it would be as reasonable as their paying his expences from Paris. He had a salary of fifty pounds per annum as Vice-warden, and that is as completely a compensation for the duties of his office, as the three thousand a year paid to the Judges of his Majesty's Courts; and though comparatively small, is, perhaps, all things considered, as fair a remuneration. But this fair remuneration he thought very insufficient; and it is highly probable, if he had continued in office, and this matter had not been brought before the public, he would have proportioned his demands to the importance of the causes he should have to decide. What may we conjecture would have been the stipulated sum, for a decree in a cause of equal importance as that of the Crinnis Mine, where even delay might have been worth *purchasing* at an enormous rate? Heaven only knows---rapacity is limited *only* by possibility. Can we suppose that principle would have set bounds to his demands? He well knew that he did what was illegal, what was morally wrong,---that, in *one case, at least*, he took advantage of the necessitous circumstances of one of the parties concerned; and, as his profession is that of the law, he could not have been ignorant that his offence was a heinous one. It should also be kept in view that, in the Vice-warden's Court, there is no Jury, all is left to the decision of the Judge.



After this statement, and after hearing the evidence in its support, I am convinced it will appear to the Court, that I only did my duty to society in laying the facts, which have been made the ground of the indictment, before the public. I have next to take notice of the tendency of the publication; mischievous tendency, being allowed to be the essence of libel; this in a great measure turns on the arguments which have been before advanced, and compels me partly to retrace my steps. I shall shew that the tendency was good---not evil; inasmuch as it benefited the public, by bringing corrupt practices to light. I shall comment on the attributed malice, on which, together with the alleged falsehood of the facts, as I have before observed, the indictment is founded. Now, on this subject, I shall be more candid, even than may be required; but previously, I must beg to make one distinction, in which I expect all rational and reflective persons will concur; which is, that *resentment* may exist without *malice*. The Deity has endued the soul of man with various passions, to stimulate to action, or as preservatives of being; and he is under an obligation to moderate, not to extinguish them. Anger is one of the most ungovernable of these passions; but Mr. Locke, in his celebrated treatise on the human understanding, speaking of its utility, when under moral restraints, quotes the following passage from St. Paul, whom he calls the inspired philosopher, "Be ye angry, and sin not." Resentment, therefore, is allowed to exist without malice; and, *the law, I expect, will hardly go beyond the Gospel, in enforcing the doctrines of charity and peace.* The subject for deliberation is, whether our having a feeling of resentment, should be deemed a conclusive reason for suppressing, or concealing a crime, or misdemeanor,



of which the object of our resentment has been guilty, *when* its disclosure would promote the interests of Society : for I have shewn, from the unquestionable authority of Holy Writ, that resentment or anger may exist without malice ; and if the law should decide that resentment ought to deter us from the publication of useful truth, the decision must be thought a most unaccountable one ; and it will be necessary for the future guidance of the people of this realm, that *a new system of ethics* should be printed and prefixed to the Law of Libel, for neither our lawyers nor legislators can desire that the Law should be a snare for the People, although they should choose to enact one in *direct opposition to the law of nature and of revelation*. But the temperate language of the publication for which I have been indicted, my avoiding to quote the ludicrous passage in the Prosecutor's own letter, respecting the outlawry, and the ready permission I gave Edward Budd, the Editor of *The West Briton* to suppress every part of the letter he should consider personal ; prove, that there was on my part, no malicious feeling, no intentional provocation. I should not have dwelt so long on the distinction between malice and resentment, nor from the nature of my publication, which was only a comment on the Prosecutor's misconduct in his official situation, have even hinted at my private feelings, but for the false, slanderous, and cruel attack, made a few months since, on my conduct and character, in *The West Briton*, by Mr. Gurney, the prosecutor. And here I entreat the Court to allow me to give some explanation of an affair, which may have tended to prepossess against me, those on whom my condemnation or acquittal now depends. In this letter of which I complain, Mr. Gurney accuses me of secreting myself to avoid trial---of being implicated



in a conspiracy against him---of giving circulation to calumnies, which I can prove to be truths, by his own hand-writing; and couples my name with that of a woman notorious for profligacy of manners. He also gives an extract from a letter addressed by Edward Budd, to himself, from which conclusions, extremely unfavorable to my character, must be inferred; in its ambiguity lies the sting; He then gives an extract from one of his own tumid epistles in which he calls me an infuriated woman. This publication of the Prosecutor's gives me a right to complain of his calumnies, falsehoods and malice; for he well knew when he published it, that I had never secreted myself, nor avoided any process of law, and that nine days previous to the date of his letter, a Bond had been given to the Sheriff of Devon for my appearance; but this falsehood was framed as an excuse for an attack on me whilst the trial was *pending*, and as a pretence for inserting the slanders and misrepresentations which follow. The Prosecutor, with his *usual circumspection*, for the momentary gratification of revenge, risked the lie with the certainty of detection. The political principles adopted by the Editor of *The West Briton*, make it difficult to guess at the motives which induced him, on the bare testimony of a man who has long ceased to be respectable, to insert this outrageous attack on private character, particularly as he had objected to some passages in *my letter* on the Prosecutor's misconduct in his official capacity, as being too personal for insertion. The most charitable, if not the most probable conjecture is, that he was intimidated by threats. Threats were used by the Prosecutor to the Editor of *The Alfred*, to prevail on him to give up my name, (a similar letter to that for which I am indicted, having been published by him) but to his honor he despised those threats, he refused to give up



the name of the Author--and he did it with *impunity*. The West Briton newspaper is said to be the organ of the sentiments of the many respectable gentlemen in this county who advocate the cause of Reform; but now that the Editor has suffered it to be made the vehicle of calumnious attacks on female character, for which he himself furnished the inuendo; and of an attempt to ruin a professional man on the outset of life; and, after being convinced by undoubted proofs, that the charge of my having avoided the course of the law was unfounded, neglecting to contradict this part of the Prosecutor's statement, though he had engaged so to do, both to my eldest brother, and to my friend, Mr. M———. After this, it must appear that, he has neither the knowledge, feeling, rectitude, nor discretion requisite for the conductor of a public journal; and for the future, it is to be hoped, will only be employed to execute Mr. Gurney's own dirty work.\* I will notice, in as few words as possible, the subject of the correspondence between the Prosecutor and myself. I should not have hinted at it, but for the ambiguous manner in which the Prosecutor has introduced it in his letter to the Editor of The West Briton. The correspondence began in September, 1814, when the Prosecutor was suffering imprisonment in the King's Bench for horsewhipping Sir R. Gifford, the present Solicitor General, for words spoken in the discharge of his professional duty; an offence, by the way, something more flagrant than what forms the subject of my indictment. The

\* It was the false assertion of Miss Tocker's having secreted herself to avoid trial, that prevailed on Mr. Budd to insert the Prosecutor's letter above alluded to.—Miss Tocker has a high respect for Mr. Budd, and is convinced that he is undeserving of those animadversions. — She believes he acts from the best motives, and is a true lover of his country.



subject of the correspondence was the debt he owed my brother, and I wrote, requesting, either payment or security, and intimating my resolution of applying to his father, in case one of these proposals was not acceded to. My interference arose from the reports, which almost daily reached me, of the bad habits and desperate circumstances of the Prosecutor, and from the observation of the blind confidence of my brother. What most alarmed me was the Prosecutor's rooted propensity to *gaming*. The Prosecutor in the course of this correspondence acknowledged, with abundance of professions, his eternal gratitude and attachment to my family, and declared that my brother had been such a kind and generous friend that he would rather suffer ten thousand deaths, than that the nonpayment of the sum he owed him should come within the scale of possibility. After this, one should have believed that, rather than "have ceased to be grateful he would have ceased to exist." In a letter of his, from Paris, about eighteen months afterwards, when out of the reach of writs of bailiffs; he declared, in answer to a letter of my brother's soliciting payment, "that he was under no moral obligation to discharge the debt, and that he could not compel for it, either by law or equity. This last letter completely developed his principles, and convinced me that he had neither honour, justice, humanity, nor gratitude. It was in a correspondence immediately subsequent to this, that I upbraided him with his dishonest and dishonourable conduct; but it was in a former correspondence that I scattered some of those reflections, which he has strung unconnectedly together in the extract of a letter of mine, printed in his letter to the Editor of the *West Briton*: on this he grounds his charge of malice; but he deserved my reproofs, and it would have been well for him if he had pro-



fited by my admonitions. But I believe and can prove, that the cause of his malevolence against me is my charging him with a confession to my brother, of his having laid a plan, with two other persons nearly connected with him, for obtaining by an action in a Court of Law the amount of a bill for ten thousand pounds, won at play from R. B. C. nephew of the Mr. B. who gave the living of Tregony to the Prosecutor's father; which bill was put into the hands of the Rev. Mr. G. for the purpose of suing R. B. C. the acceptor. This circumstance, and another still more disgraceful, in which the same parties were concerned, coming from undoubted authority, I mentioned without reserve, after the letter reached us from Paris, of July the 16th, 1816, in which he disclaims all debt and obligation. Immediately subsequent to this I recommenced my correspondence, and made, in my private letters to the Prosecutor, some severe observations on the conduct of himself and his relatives; and I shall prove by a witness that he expressed the most implacable hatred toward me on that account. I only wish that his Counsel would read all those letters in Court; they would make a stronger impression on the minds of the auditors, than any circumstances which I am at liberty to lay before them. If a man could thus break through the most sacred obligations in private life, what prognostic was there of public integrity? But why do I talk of prognostics? Previous to this he had given the infamous proof of corruption. Should it be objected to me, that I did not publish the facts detailed in my letter to the Editor of the West Briton, immediately on my knowing them, I trust I shall fully obviate the objection by the following explanation:—It will be recollected that I expostulated with Mr. Gurney on the unjustifiableness of his proceeding, when he spoke of having received twenty-five gui-



neas from Sir Massch Lopez's Attorney. I did not conceive at that time that he acted from want of principle, but from want of knowledge. I was acquainted with his habits of dissipation—his neglect of study; and I had remarked, that what he knew, he only gleaned up from men of pleasure like himself;—no very intelligent or improving companions. Notwithstanding, I believed him honest, generous, and sincere: when he mentioned his having pocketed the bribe, I did not think he was aware of the guilt; I blushed for his honor, as a friend, but did not shudder at the depravity of the man. When he mentioned his having received the money from Mr. Hunt, now, said he, Henry, (addressing himself to my brother, his secretary,) you may deliver my decree to Hunt, as he has paid my demand. The twenty guineas extorted from Whitehair, and paid by Mr. Davie, I did not hear of until some time after the occurrence took place. The prosecutor held a court at Exeter, March, 1816, he came there under cover of a subpoena, to give evidence on the trial above referred to, and in the issue of which he had an interest. Many gentlemen of the bar, now present, must recollect how severe the animadversions of the judge were at that time on the prosecutor's evidence; it was from my knowledge of this circumstance, which I heard from a gentleman who was in court during the trial, and of the prosecutor's hardened and unprincipled disregard of my brother's claim, and of other transactions equally discreditable, which the court, perhaps, will scarcely permit me to relate, arose my conviction that he was lost to honor and to shame, and was incurably dishonest and rapacious. By my publishing the corrupt practices of the prosecutor some advantage would probably accrue to society, but what injury could possibly be done to the character of the individual? There are men, Gen-



tllemen of the Jury, as much bankrupts in reputation as in fortune. There are men, whose means of subsistence depend not on an honest fame, but on the vicissitudes of the gaming table. There are men who, by infusing false hopes, and by false pretences, impose upon the generous credulity of their friends, until they draw them into the same vortex of destruction with themselves. But on the moral turpitude of *these* the law forbids us to expatiate. We are forbidden to give vent to our just indignation, and are silent. The law concludes that every exposure of private character proceeds from malignity.---Be it so.

But what was my violation of law—where was my malice, when I commented on the Prosecutor's conduct in his public office? Did I say that he was unworthy of that office, because he was hunted by bailiffs out of the country? Did I say that he was a gambler? No; even though I was justified in saying so, my brother having then a bill in his possession, drawn by the Prosecutor, and accepted by Charles Barwell Coles, for 750*l.* which on being presented for payment, was sent back noted:—this will not be paid, being a gambling transaction. Did I say, that the verdict of a Jury, at the Devon Assizes, in March, 1816, was declared to have proved Mr. Gurney unfit for society? And is this the man that the sword of the law is raised to protect and to avenge? If it be, grant, O God! that it never more may be drawn out of its scabbard. Gentlemen of the Jury, I express myself with vehemence, but the Prosecutor's unparalleled ill-usage provokes me to it. What I strongly feel, I strongly resent; I am a stranger to that phlegmatic dislike which some plume themselves on possessing, who having rendered no services to their friends, never feel the bitter disappointment of ill-requited kindness.—Were I to speak with the utmost virulence of the



Prosecutor, it would be but fair retaliation. In my letter on his misconduct in office, I spoke mildly, not tauntingly, of his disgraces. I used no such reproachful language as he has used, in speaking of my brother and myself; I asserted no falsehood, as he has done in his letter to the Editor of the *West Briton*, charging me with concealing myself to avoid the public trial.—He calls me a libeller. Is he not a libeller? Why did not this man, belonging to the profession of the Law, wait patiently for his vindication in a Court of Law? No measures were adopted by me to deprive him of his remedy. He complains of being the object of a variety of conspiracies—surrounded by conspiracies! This is probably the only complaint of the kind ever uttered by a man holding no high public office. What honest man in a private station ever complained of being surrounded by conspiracies? It resembles the ravings of a lunatic. The Ex-Vice-Warden of Devon then passes to the battle array of the tailors, bootmakers, &c.; (who, it may be presumed, are the real conspirators,) then touches on the antiquity of his family, and finishes with a happy transition to his marvellous talent of writing poems against time.

Gentlemen of the Jury, if by any publication of mine, I had made this man half as ridiculous as he has made himself, I might well deserve the imputation of malice, and the maxim, “the greater the truth the greater the libel,” would be as applicable to me, as to those ingenious caricaturists who exasperate men to madness by their own hideous likenesses. But if I were culpable in this point, no one can think this indictment altogether decorous in the Prosecutor. He indicts me for a libel, tending to a breach of the peace; and in the year 1814, he was actually convicted of a breach of the peace, and imprisoned six months



for the offence. He then bitterly complained of the severity of his punishment. He now boasts that he shall get me imprisoned twelve months, and fined five hundred pounds. By this calculation he has the satisfaction of thinking that he shall deprive my family of one thousand pounds:—five hundred pounds debt (including law expences to recover that debt) due to my eldest brother from the prosecutor, and five hundred pounds fine, for my attempting to kindle his irascible spirit. He knows I have not a shilling, and must, if a much less fine were imposed, waste the remainder of my days in prison. Glorious law! Glorious revenge! Illustrious descendant of the ancient house of Gurney, how complete would be thy triumph over the contemptible plebeian who has dared to arraign the SPOTTLESS HONOR of thy name! But, Gentlemen of the Jury, although I am so inferior in dignity to the prosecutor, though I boast of no shield illumined with the blaze of heraldry, my reputation is dear to me. Now, mark me, Gentlemen of the Jury, I attacked him as a public character, and as a public character only; I brought against him a bold and unequivocal charge of corruption. He attacked my private character, and that in a manner scarcely tangible, and whilst a trial was pending, which might, if innocent, afford him means of justification. Now it was once said by Lord Ellenborough, on a motion for an information, that a man should come into court guiltless of the offence for which he sought redress. It was on the occasion of a rule being applied for against some persons for exhibiting a clergyman in effigy, in his clerical vestments, with the bible in his hand. Now affidavits were put in, charging the reverend gentleman and his wife with having encouraged, on former occasions, similar exhibitions of their neighbours; and that his wife, on one such occasion, stood



with the brandy bottle in her hand, distributing drams to the infuriated multitude.—Lord Ellenborough, after hearing the affidavits, refused the rule, observing, that the reverend gentleman had no reason to complain of what he himself had formerly encouraged, and that he came into court so *polluted* and so *contaminated*, that he could not be heard. This reverend gentleman was the prosecutor's father. Now by a parity of reasoning, I ought to be acquitted, the prosecutor having taken his revenge into his own hands; he has publicly given vent to the most bitter invectives; he has called me a conspirator, a *libeller*; anticipating the sentence of a court of justice in one case, and charging me with an indictable offence, which has never been brought before a court of justice in another. But I hear his attacks without shame or terror. Far different were his feelings, as he himself described them, on the reading my letter inserted in the *West Briton*. He said to my sister—"You know I am not a very soft body, but on reading *that* letter my knees shook under me; I thought I should have fainted; I thought I should have sunk into the earth." He then exclaimed, "she has *tried* to ruin me, indeed, I don't know but that she has *done it*."—Such, Gentlemen of the Jury, were the horrors of conscious guilt, he was alarmed at the disclosure of his mal-practices, because he dreaded the investigation which might follow. And he never would have ventured on this prosecution, but from the expectation that the pecuniary injury my family has sustained by his means, would incapacitate me from defending; the mode of proceeding which he has adopted being the most expensive he could devise. First he presented a bill at the Cornish sessions, then after my having found bail he removed it to the Court of King's Bench, by certiorari.—He then caused a venire to be sent



into Devon, at the time he knew I was in Cornwall, and in the same town in which his father resided. The object of *which* was for the purpose of founding a *capias*; this was issued, and I was again obliged to find bail and plead to the indictment. I pleaded not guilty by attorney, and Mr. Gurney sent *again* instructions to the sheriff to take me on the *capias*, insisting that I must come to London to plead personally; this, however, appeared not to be the practice, for my solicitor's agent sent down a *supersedeas* by the same post. Now it is evident by these proceedings, that the prosecutor *did* all he *could do* to harass, to intimidate, and to oppress.

I penetrated his intentions,—his aim was to draw from me a public recantation of the charges I had brought against him. It gave also a temporary gratification to his insatiable thirst of vengeance. He confessed that it was to be revenged on me, that he opposed my brother's admission as an attorney. It is probable also that he supposed whilst he held the rod over me, my brother would not venture to sue him for the debt. To men in desperate circumstances a *respite* is often equivalent to an escape. The prosecutor has made many attempts by his emissaries to terrify and to ensnare; but his threats and his artifices have failed to produce in me those terrors which he declared shook his very frame.—My mind is tranquil, because my conscience is clear.

But, Gentlemen of the Jury, what would be your feelings, if bewildered by legal sophistry, you were to return a verdict against me this day? I am convinced that there is not one in this Court but would pronounce, or hear it pronounced with regret. Such is my persuasion of the natural justice of man. For how contrary would be that verdict to those commonly given, in which law is conform-



able to the principles of equity. Gentlemen of the Jury, you were assembled here to punish the guilty, to make restitution to the injured, to guard and avenge the most important interests of society. In every instance you see punishment, guilt and obloquy, inseparably linked together; but in the supposition of your giving a verdict against me, the punishment would be *mine*, the guilt and obloquy *wholly* the prosecutor's. You would see the oppressor triumph, the oppressed overwhelmed with ruin—crushed by the base malignant foe, who has irreparably injured those she holds dearer than life. Pitiably is my condition, even if acquitted, for the expences of this iniquitous prosecution bear heavily on my family, though reduced by resorting to an unusual, and perhaps ineligible mode of defence. Alas! Gentlemen of the Jury, if you were to condemn me this day, I cannot but suppose you would date from it as a melancholy epoch in your existence. Perhaps at some future period, when seated by your blazing hearths, surrounded by your children, in recalling some event that the lapse of time had stolen from your memory, you would tell them that it happened in *that year* when you sent to the dreary solitude of a prison, one as innocent and as helpless as they. But Heaven forbid that you ever should be awakened to so sad a recollection. I look forward to a verdict as satisfactory to you as to myself. Feeling that there are on my part rectitude of intention, candour and truth; and on that of the Prosecutor, corruption, fraud, malice, falsehood, and *ingratitude*—I am sanguine of the result. But, if what I can scarcely anticipate, should ensue, if my remorseless adversary should obtain the utmost gratification of his revenge, I can meet the decision with fortitude. For religion, for patriotism, many have thought it glorious to suffer: even philosophy has had its martyrs; nei-



ther should I shrink from suffering, for divulging a truth beneficial to society. But I again repeat, I look forward with ardent hope to an acquittal, confident that my condemnation is as repugnant to law, as it is to reason and humanity, and that the publication for which I am indicted is not a libel; and I shall once more quote the high authority of the Lord Chief Justice, *viz.* “that we may lawfully comment on the conduct of men in public office, so that we forbear to violate their individual feelings.” I have already proved that there was neither *criminal* intent, nor mischievous tendency, both of which are deemed essential to libel, in my publication.

It is also acknowledged, that to be libellous, the charges must be general and indefinite; now my charges are of a contrary nature—they are particular and definite. If the prosecutor had not known those charges to be true, he would have proceeded against me by information, but in order to do this, he must have sworn that they were false. He has said so, Gentlemen of the Jury, in the public Papers, but he dares not swear it. Besides, as he contends that this prosecution is for vindication of character, why does not he appear personally and swear that my allegations are false? It being at the suit of the Crown, his evidence is admissible. But Gentlemen of the Jury, he would not hesitate to swear they were false, if there existed no possibility of detection. It is not *falsehood*, but *truth*, which is the real object of his terror. In publishing the truth, if we depend on the prosecutor's interpretation of the law, lies the guilt.—’Tis *that* which excites his malevolence—’tis for *that* he devotes me to punishment. But the law does not bear him out in his assertions, and I trust that it will be seen this day, that it is more hazardous to commit a crime, than to publish that crime when committed.



The Defendant now called for her witnesses, when her sister, Susan Tocker, was then sworn. The Judge then inquired whether this witness's examination went to prove the truth of the charges against the Prosecutor? on being answered in the affirmative, he would not allow the Defendant to proceed in the examination.

The Defendant then said, My Lord, will you allow me to examine the Prosecutor; he is now in Court, and as this prosecution is at the suit of the Crown, his evidence is admissible? To this request his Lordship replied---No, Madam, you will not be allowed to examine the Prosecutor.

His Lordship proceeded to charge the Jury. --- He went over the various allegations in the Publication, commenting on them as he proceeded, and pronouncing the whole an atrocious Libel. He informed the Jury that the law did not allow of the Defendant giving in evidence the truth of the alleged Libel in a criminal prosecution, because a Libel was considered as tending to a breach of the peace. The truth or falsehood would come before the Court of King's Bench by affidavit, where all due weight would be given to what the Defendant had to state, but with this the Jury had nothing to do. Formerly the opinion of the Court decided on the nature and tendency of the alleged Libel, but by a late act the Jury were to look at the paper and say whether it was a Libel or not. This Act required the Judge to give his opinion, and this he did most strongly that the Publication before them was libellous in the highest degree; as it charged in the strongest way possible, a gentleman filling a high judicial situation with the grossest corruption. This was his opinion, and he believed that of the Jury, for he could not conceive that any Jury could lay their hand on their heart and say the publication was not a libel.

The Jury retired for half an hour, and delivered a verdict of NOT GUILTY, at the Judge's lodgings.