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REPORT
OF THE
PROCEEDINGS,
UPON AN
Inquisition of Damages,
IN A CAUSE BETWEEN
The REV. GEORGE MARKHAM, Plaintiff,
AND
JOHN FAWCETT, Esq. Defendant;
FOR
CRIMINAL CONVERSATION
WITH THE PLAINTIFF'S WIFE:
TAKEN AT THE
KING'S-ARMS TAVERN, OLD PALACE YARD,
On TUESDAY, MAY 4, 1802,
BEFORE JOSEPH BURCHELL, Esq.
Deputy Sheriff of the County of Middlesex,
AND A SPECIAL JURY.



London:

PRINTED FOR AND SOLD BY

J. RIDGWAY, YORK STREET, ST. JAMES'S
SQUARE.

1802.

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540
T75
no. 20 (20)

Printed by J. Bonson,
Salisbury Square.

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THE REV. MR. MARKHAM,

AGAINST

J. FAWCETT, Esq.

REPORT, &c.

MR. HOLROYD opened the Pleadings, by stating that this was an Action brought by the Rev. GEORGE MARKHAM against JOHN FAWCETT, Esq. for Criminal Conversation with the Plaintiff's Wife; and the Damages were laid at £20,000:—the Defendant had suffered Judgment by default, the Jury were therefore called upon to assess Damages for the Injury the Plaintiff had sustained.

Mr. Erskine. Mr. Sheriff, and Gentlemen of the Jury—In representing the unfortunate Gentleman who has sustained the Injury which has been stated to you by my learned Friend,

B

I feel

I feel a considerable degree of satisfaction—a satisfaction which, I apprehend, to be founded on a sentiment perfectly constitutional,—that I am about to address myself to men whom I personally know;—to men, honourable in their lives, moral, sententious, and capable of correctly estimating those injuries they are called upon to judge of in their character of Jurors. This, Gentlemen, is the only Country in the world, where there is such a Tribunal as the one before which I am now speaking: for, however in other Countries such Institutions as our own may have been set up of late, it is only by that maturity which it requires ages to give to Governments—by that progressive Wisdom which has slowly ripened the Constitution of this Country, that it is possible there can exist such a body of men as you are. It is the great privilege of the subjects of England that they judge one another.—It is to be recollected that, although we are in this private Room, all the sanctions of Justice are present; and it makes no manner of difference, whether I address you in the presence of the Under-Sheriff, your respectable Chairman, or with the assistance of the highest Magistrate of the State.

The

The Defendant has, on this occasion, suffered Judgment by default:—other Adulterers have done so before him. Some have done so under the idea, that by suffering Judgment against them, they have retired from the public eye—from the awful presence of the Judge; and that they come into a corner, where there is not only not such an assembly of persons to witness their misconduct, but where it is to be canvassed before Persons, who may be less qualified to judge the case to be addressed to them.

It is not long, however, since such persons have had an opportunity of judging how much they were mistaken in this respect: the largest Damages, in cases of Adultery, have been given in this place.—By this place, I do not mean the particular Room in which we are now assembled, but under Inquisitions directed to the Sheriff; and those instances to which I allude, are of modern and recent date.

Gentlemen, I feel myself, I confess, considerably embarrassed, after all the experience I have had, in what manner to address you. There are some subjects that harass and overwhelm the mind of man.—There are some kind of distresses one knows not how to deal with. It is impos-

possible to contemplate the situation of the Plaintiff without being disqualified, in some degree, to represent it to others with effect. It is no less impossible for any man to receive on a sudden the impressions which have been long in my mind, without feeling overpowered with sensations, which, after all, had better be absent, when men are called upon, in the exercise of duty, to pronounce a legal Judgment.

The Plaintiff, Gentlemen, is the third Son of His Grace the Archbishop of York—a Churchman of the Church of England; presented in the year 1791, to the living of Stokeley, in Yorkshire; and now, by His Majesty's favor, Dean of the Cathedral of York. He married in the year 1789, Miss Sutton, the Daughter of Sir Richard Sutton, Bart. of Norwood, in Yorkshire, a Lady of great beauty and accomplishments, most virtuously educated, and who, but for the crime of the Defendant that assembles you here, would, as she has expressed it herself, have been the happiest of womankind. This Gentleman having been presented in 1791, by his Father, to this living, where I understand there had been no resident Rector for forty years, set an example to the Church and to the Public, which was peculiarly

culiarly virtuous in a man circumstanced as he was; for, if there can be any person more likely than another to protect himself securely with Privileges and Indulgences, it might be supposed to be the Son of the Metropolitan of the Province. This Gentleman, however, did not avail himself of the advantage of his Birth and Station: for, although he was a very young man, he devoted himself entirely to the sacred Duties of his Profession;—at a large Expence he repaired the Rectory-house for the reception of his Family, as if it had been his own Patrimony, whilst, in his expensive Improvements, he adopted only those arrangements which were calculated to lay the foundation of an innocent and peaceful life. He had married this Lady, and entertained no other thought than that of chearfully devoting himself to all the Duties, public and private, which his situation called upon him to perform.

About this time, or soon afterwards, the Defendant became the purchaser of an Estate, in the neighbourhood of Stokeley, and, by such purchase, an inhabitant of that part of the country, and the neighbour of this unfortunate gentleman. It is a most affecting circumstance that the Plaintiff and Defendant had been bred together

gether at Westminster School, and in my mind it is still more affecting, when I reflect what it is which has given to that school so much rank, respect, and illustration. It has derived its earliest advantages from the reverend Father of the unfortunate gentleman whom I represent. It was the School of Westminster which gave birth to that learning which afterwards presided over it, and advanced its character. However some men may be disposed to speak or write concerning public Schools, I take upon me to say, they are among the wisest of our Institutions, and whoever looks at the national character of the English people, and compares it with that of all the other nations upon the earth, will be driven to impute it to that reciprocation of ideas and sentiments which fill and fructify the mind in the early period of youth, and to the affectionate sympathys and friendships which rise up in the human heart before it is deadened or perverted by the interests and corruptions of the world. These youthful attachments are proverbial, and indeed few instances have occurred of any breaches of them, because a man, before he can depart from the obligations they impose, must have forsaken every principle of virtue and every sentiment of
manly

manly honor. When, therefore, the Plaintiff found his old school-fellow and companion settled in his neighbourhood, he immediately considered him as his brother. Indeed, he might well consider him as a brother, since after having been at Westminster, they were again thrown together in the same College at Oxford, so that the friendship they had formed in their youth, became cemented and consolidated upon their first entrance into the world. It is no wonder, therefore, that when the Defendant came down to settle in the neighbourhood of the Plaintiff, he should be attracted towards him by the impulse of his former attachment: he recommended him to the Lord Lieutenant of the County, and being himself a Magistrate, he procured him a share in the Magistracy. He introduced him to the respectable circle of his acquaintances; he invited him to his house, and cherished him there as a friend. It is this which renders the business of to-day most affecting, as it regards the Plaintiff, and wicked in the extreme, as it relates to the Defendant, because the confidences of friendship conferred the opportunities of seduction. The Plaintiff had no pleasures or affections beyond the sphere of his domestic life: except

except on his occasional residences at York, which were but for short periods, and at a very inconsiderable distance from his home; he constantly reposed in the bosom of his family. I believe it will be impossible for my learned friend to invade his character; on the contrary, he will be found to have been a pattern of conjugal and parental affection.

Mr. Fawcett being thus settled in the neighbourhood, and thus received by Mr. Markham as his friend and companion, it is needless to say he could harbour no suspicion that the Defendant was meditating the seduction of his Wife, for there was nothing in his conduct, or in the conduct of the unfortunate Lady, that could administer any cause of jealousy to the most guarded or suspicious temper. Yet, dreadful to relate, and it is indeed the bitterest evil of which the Plaintiff has to complain, for nearly five years before the discovery of the connection, a criminal intercourse had most probably taken place.

I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife, and such a wife, had conducted herself in a manner that not merely deprived him of her comfort and society, but
placed

placed him in a situation too horrible to be described. If a man without children is suddenly cut off from all the comforts and happiness of marriage by an adulterer, the discovery of his condition is happiness itself when compared with that to which the Plaintiff is reduced. When children by a woman lost for ever to the husband, by the arts of the adulterer, were begotten in the unsuspected days of virtue and happiness, there remains a consolation mixed indeed with the most painful reflections, but a consolation still. But what is the Plaintiff's situation?—he does not know at what time this heavy calamity fell upon him—he is tortured with the most afflicting of all human sensations. When he looks at the children, whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain sown in the bed of his honor and his delight. He starts back with horror, when instead of seeing his own image reflected from their infant features, he may fancy he sees the

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destroyer

destroyer of his happiness.—a midnight robber introduced into his house, under professions of friendship and brotherhood—a plunderer, not in the repositories of his treasure which may be supplied, or lived without, but there where he had garnered up his hopes, where either he must live or bear no life.

In this situation, the Plaintiff brings his Case before you, and the Defendant attempts no manner of defence: he admits his guilt,—he renders it unnecessary for me to go into any proof of it, and the only question therefore that remains, is for you to say what shall be the consequences of his crime, and what Verdict you will pronounce against him. You are placed, therefore, in a situation most momentous to the public: you have a duty to discharge this day, the result of which, not only deeply affects the present generation, but which remotest posterity will contemplate to your honor or dishonor: on your Verdict it depends whether persons of the description of the Defendant, who have cast off all respect for Religion—who laugh at Morality, when it is opposed to the gratification of their passions, and who are careless of the injuries they inflict upon others, shall continue their impious and destructive course

course with impunity.—On your Verdict it depends whether such men, looking to the proceedings of Courts of Justice, shall be able to say to themselves, that there are certain limits beyond which the Damages of Juries are not to pass—On your Verdict it depends whether men of large fortune shall be able to adopt this reasoning to spur them on in the career of their lusts:—There are many chances that I may not be discovered at all:—there are chances, that if I am discovered, I may not be the object of legal inquiry, and supposing I should, there are certain Damages, beyond which a Jury cannot go; they may be large, but still within a certain compass; if I cannot pay them myself, there may be persons belonging to my family who will pity my situation—somehow or other the money may be raised, and I may be delivered from the consequences of my crime. I trust the Verdict of this day will shew men who reason thus, that they are mistaken.

The Action for Adultery, like every other Action, is to be considered according to the extent of the Injury, which the person complaining to a Court of Justice has received. If he has received an Injury, or sustained a Loss that can be estimated directly in Money, there is then no

other medium of redress, but in Moneys numbered according to the extent of the proof: I apprehend it will not be even stated by the Counsel for the Defendant, that if a person has sustained a loss, and can shew it is to any given extent, that he is not entitled to the full measure of it in Damages. If a Man destroys my House or Furniture, or deprives me of a Chattel, I have a right, beyond all manner of doubt, to recover their corresponding values in Money, and it is no answer to me to say, that he who has deprived me of the advantage I before possessed, is in no situation to render me satisfaction. A Verdict pronounced upon such a principle, in any of the cases I have alluded to, would be set aside by the Court, and a new Trial awarded. It would be a direct breach of the oaths of Jurors, if, impressed with a firm Conviction that a Plaintiff had received damages to a given amount, they retired from their duty, because they felt commiseration for a Defendant, even in a case where he might be worthy of compassion from the injury being unpremeditated and inadvertent. But there are other wrongs which cannot be estimated in money—

“ You cannot minister to a mind diseased.”

You

You cannot redress a man who is wronged beyond the possibility of redress:—the law has no means of restoring to him what he has lost.—God himself, as he has constituted human nature, has no means of alleviating such an injury as the one I have brought before you. While the sensibilities, affections, and feelings he has given to man remain, it is impossible to heal a wound which strikes so deep into the soul. When you have given to a Plaintiff, in Damages, all that figures can number, it is as nothing;—he goes away hanging down his head in sorrow, accompanied by his wretched family, dejected and dispirited. Nevertheless, the law has given a Civil Action for Adultery, and strange to say, it has given nothing else. The law commands that the injury shall be compensated (as far as it is practicable) in money, because Courts of *Civil Justice*, have no other means of compensation; and the only question, therefore, and which you upon your oaths are to decide, is this—Has the Plaintiff sustained an injury up to the extent which he has complained of? Will Twenty Thousand Pounds place him in the same condition of comfort and happiness that he enjoyed before the Adultery, and which the Adul-

terer

terer has deprived him of? You know that it will not.—Ask your own hearts the question, and you will receive the same answer. I should be glad to know then upon what principle, as it regards the *private* justice, which the Plaintiff has a right to, or upon what principle, as the example of that justice affects the public and the remotest generations of mankind, you can reduce this demand even in a single farthing.

This is a doctrine which has been frequently countenanced by the learned and noble Lord who lately presided in the Court of King's Bench; but his Lordship's reasoning on the subject has been much misunderstood, and frequently misrepresented. The noble Lord is supposed to have said, that although a Plaintiff may not have sustained an injury by Adultery to a given amount, yet that large Damages, for the sake of public example, should be given.—He never said any such thing:—he said that which law and morals dictated to him, and which will support his reputation as long as law and morals have a footing in the world.—He said that every Plaintiff had a right to recover Damages *up to the extent of the injury he had received*, and that public example stood in the way

way of shewing *favor* to an adulterer, by reducing the Damages below the sum, which the Jury would otherwise consider as the lowest compensation for the wrong. If the Plaintiff shows you that he was a most affectionate husband, that his parental and conjugal affections were the solace of his life; that for nothing the world could bestow in the shape of riches or honors, would he have bartered one moment's comfort in the bosom of his family, he shews you a wrong that no money can compensate;—nevertheless, if the injury is only mensurable in money, and if you are sworn to make upon your oaths a pecuniary compensation, though I can conceive that the Damages when given to the extent of the declaration, and you can give no more, may fall short of what your consciences would have dictated, yet I am utterly at a loss to comprehend upon what principle they can be lessened. —But then comes the Defendant's counsel, and says, “It is true that the injury cannot be compensated by the sum which the Plaintiff has demanded; but you will consider the miseries my client must suffer, if you make him the object of a severe Verdict. You must therefore regard him with compassion; though I
“ am

“ am ready to admit the Plaintiff is to be compensated for the injury he has received.”

Here then Lord Kenyon's doctrine deserves consideration.—“ He who will mitigate Damages below the fair estimate of the wrong which he has committed, must do it upon some principle which the policy of the law will support.”

Let me then examine whether the Defendant is in a situation which entitles him to have the Damages against him mitigated, when private justice to the injured party calls upon you to give them to the utmost farthing. The question will be—on what principle of mitigation he can stand before you? I had occasion not a great while ago to remark to a Jury, that the wholesome institutions of the civilized world, came seasonably in aid of the dispositions of Providence for our well-being in the world. If I were to ask, what it is that prevents the prevalence of the crime of incest, by taking away those otherwise natural impulses, by the promiscuous gratification of which we should become like the beasts of the field, and lose all the intellectual endearments which are at once the pride and the happiness of man?—What is it that renders
our

our houses pure, and our families innocent?—It is that by the wise institutions of all civilized nations, there is placed a kind of guard against the human passions, in that sense of impropriety and dishonour, which the law has raised up, and impressed with almost the force of a second nature. This wise and politic restraint, beats down, by the habits of the mind, even a propensity to incestuous commerce, and opposes those inclinations, which nature, for wise purposes, has implanted in our breasts at the approach of the other sex. It holds the mind in chains against the seductions of beauty—It is a moral feeling in perpetual opposition to human infirmity—It is like an angel from heaven placed to guard us against propensities which are evil. It is that warning voice, Gentlemen, which enables you to embrace your daughter, however lovely, without feeling that you are of a different sex. It is that which enables you, in the same manner, to live familiarly with your nearest female relations, without those desires which are natural to man.

Next to the tie of blood, if not indeed before it, is the sacred and spontaneous relation of friendship. The man who comes under the roof of a married

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friend,

friend, ought to be under the dominion of the same moral restraint : and, thank God, generally is so, from the operation of the causes which I have described. Though not insensible to the charms of female beauty, he receives its impressions under an habitual reserve, which honour imposes. Hope is the parent of desire, and honour tells him he must not hope. Loose thoughts may arise, but they are rebuked and dissipated—

“ Evil into the mind of God or Man

“ May come and go, so unapprov'd, and leave

“ No spot or blame behind.”

Gentlemen, I trouble you with these reflections, that you may be able properly to appreciate the guilt of the Defendant ; and to shew you, that you are not in a case where large allowances are to be made for the ordinary infirmities of our imperfect natures. When a man does wrong in the heat of sudden passion—as for instance, when upon receiving an affront, he rushes into immediate violence, even to the deprivation of life, the humanity of the law classes his offence amongst the lower degrees of homicide ; it supposes the crime to have been committed before the mind had time to parley with itself. But is the criminal act of such a person, however disastrous may
be

be the consequence, to be compared with that of the Defendant? Invited into the house of a friend, received with the open arms of affection as if the same parents had given them birth and bred them. In THIS situation, this most monstrous and wicked Defendant deliberately perpetrated his crime; and, shocking to relate, not only continued the appearances of friendship, after he had violated its most sacred obligations, but continued them as a cloak to the barbarous repetition of his offence—writing letters of regard whilst, perhaps, he was the father of the last child, whom then his injured friend and companion was embracing and cherishing as his own. What protection can such conduct possibly receive from the humane consideration of the law for sudden and violent passions? A passion for a woman is progressive—it does not, like anger, gain an uncontrouled ascendancy in a moment, nor is a modest matron to be seduced in a day. Such a crime cannot therefore be committed under the resistless dominion of *sudden* infirmity; it must be deliberately, wilfully and wickedly committed.—The Defendant could not possibly have incurred the guilt of this Adultery, without often passing through his mind (for he had the

education and principles of a gentleman) the very topics I have been insisting upon before you for his condemnation. Instead of being suddenly impelled towards mischief, without leisure for such reflections, he had innumerable difficulties and obstacles to contend with—He could not but hear in the first refusals of this unhappy lady, every thing to awaken conscience, and even to excite horror. In the arguments he must have employed to seduce *her* from *her* duty, he could not but recollect, and wilfully trample upon *his own*. He was a year engaged in the pursuit—He resorted repeatedly to his shameful purpose, and advanced to it at such intervals of time and distance, as entitle me to say, that he determined in cold blood to enjoy a future and momentary gratification, at the expence of every principle of honour which is held sacred amongst gentlemen, even where no laws interpose their obligations or restraints.

I call upon you, therefore, Gentlemen of the Jury, to consider well this case, for it is your office to keep human life in tone—Your Verdict must decide whether such a case can be indulgently considered, without tearing asunder the bonds which unite society together.

Gentlemen,

Gentlemen, I am not preaching a Religion which men can scarcely practice.—I am not affecting a severity of morals beyond the standard of those whom I am accustomed to respect, and with whom I associate in common life.—I am not making a stalking-horse of Adultery, to excite exaggerated sentiment. This is not the case of a gentleman meeting a handsome woman in a public street, or in a place of public amusement; where, finding the coast clear for his addresses, without interruption from those who should interrupt, he finds himself engaged (probably the successor of another,) in a vain and transitory intrigue. It is not the case of him who, night after night, falls in with the wife of another to whom he is a stranger, in the boxes of a theatre, or other resorts of pleasure, inviting admirers by indecent dress and deportment, unattended by any thing which bespeaks the affectionate wife and mother of many children.

Such connections may be of evil example, but I am not here to reform public manners, but to demand private justice. It is impossible to assimilate the sort of cases I have alluded to, which ever will be occasionally occurring, with this atrocious invasion of household peace; this portentous

tentous disregard of every thing held sacred amongst men good or evil. Nothing indeed can be more affecting than even to be called upon to state the evidence I must bring before you ; I can scarcely pronounce to you that the victim of the Defendant's lust was the mother of nine children, seven of them females and infants, unconscious of their unhappy condition, deprived of their natural guardian, separated from her for ever, and entering the world with a dark cloud hanging over them. But it is not in the descending line alone that the happiness of this worthy family is invaded. It hurts me to call before you the venerable progenitor of both the father and the children, who has risen by extraordinary learning and piety to his eminent rank in the Church, and who, instead of receiving unmixed and undisturbed the best consolation of age, in counting up the number of his descendants carrying down the name and honor of his house to future times, may be forced to turn aside his face from some of them, that bring to his remembrance the wrongs which now oppress him, and which it is his duty to forget, because it is his, otherwise impossible, duty to forgive them.

Gentlemen,

Gentlemen, If I make out this case by evidence, and if I do not—forget every thing you have heard and reproach me for having abused your honest feelings, I have established a claim for Damages that has no parallel in the annals of fashionable Adultery; it is rather like the entrance of sin and death into this lower world. This undone pair were living like our first parents in Paradise, till this Demon saw and envied their happy condition.—Like them, they were in a moment cast down from the pinnacle of human happiness into the very lowest abyss of sorrow and despair. In one point, indeed, the resemblance does not hold, which, whilst it aggravates the crime, redoubles the sense of suffering. It was not an enemy, but a friend that this evil proceeded from. I have just had put into my hand, a quotation from the Psalms upon this subject, full of that unaffected simplicity which so strikingly characterizes the Sublime and Sacred Poet:—

“ It is not an open enemy that hath done me this dishonor, for
“ then I could have borne it.

“ Neither was it mine adversary that did magnify himself
“ against me, for then, peradventure, I would have hid myself
“ from him.

“ But it was even *thou* my companion, my guide, mine own
“ familiar friend.”

This

This is not the language of Counsel, but the inspired language of truth. I ask you solemnly upon your honors and your oaths, if you would exchange the Plaintiff's former situation for his present, for an hundred times the compensation he requires at your hands. I am addressing myself to affectionate Husbands and the Fathers of beloved children.—Suppose I were to say to you there is Twenty Thousand Pounds for you, embrace your Wife for the last time, and the child that leans upon her bosom and smiles upon you; retire from your house, and make way for the Adulterer.—Wander about an object for the hand of scorn to point its slow and moving finger at.—Think no more of the happiness and tranquillity of your former state—I have destroyed them for ever, but never mind—don't make yourself uneasy—here is a draft upon my banker, it will be paid at sight—there is no better man in the city.—I can see you think I am mocking you, Gentlemen, and well you may; but it is the very pith and marrow of this cause. It is impossible to put the argument in mitigation of Damages in plain English, without talking such a language, as appears little better than insult to your understandings, dress it up as you will.

But

But it may be asked,—If no money can be an adequate or indeed any compensation, why is Mr. Markham a Plaintiff in a Civil Action? why does he come here for money?—Thank God, Gentlemen, it is not my fault. I take honor to myself that I was one of those who endeavoured to put an end to this species of action, by the adoption of a more salutary course of proceeding.—I take honor to myself that I was one of those who supported in Parliament, the adoption of a law to pursue such outrages with the terrors of Criminal Justice. I thought then, and I shall always think that every act *malum in se* most directly injurious to an individual, and most pernicious in its consequences to society, should be considered to be a misdemeanor.—Indeed I know of no other definition of the term; the Legislature, however, thought otherwise, and I bow to its decision; but the business of this day may produce some changes of opinion on the subject. I never meant that *every* Adultery was to be similarly considered. Undoubtedly there are cases where it is comparatively venial, and Judges would not overlook the distinctions. I am not a pretender to any extraordinary purity.—My severity is confined to cases in which there can be

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but

but one sentiment amongst men of honor, as to the offence, though they may differ in the mode and measure of its correction.

It is this difference of sentiment, Gentlemen, that I am alone afraid of; I fear you may think there is a sort of limitation in Verdicts, and that you may look to precedents for the amount of Damages, though you can find no precedent for the magnitude of the crime. But you might as well abolish the action altogether as lay down a principle which limits the consequences of Adultery to what it may be convenient for the Adulterer to pay. By the adoption of such a principle, or by any mitigation of severity arising even from an insufficient reprobation of it, you unbar the sanctuary of domestic happiness, and establish a sort of licence for Debauchery, to be sued out like other licences, at its price. A man has only to put money into his pocket, according to his degree and fortune, and he may then debauch the Wife or Daughter of his best friend, at the expence he chuses to go to. He has only to say to himself what Iago says to Roderigo in the play—

“ Put money in thy purse—go to—put money in thy purse.”

Persons

Persons of immense fortunes might, in this way, deprive the best men in the country of their domestic satisfaction, with what to them might be considered as impunity. The most abandoned profligate might say to himself, or to other profligates, “ I have suffered judgment “ by default—let them send down their Deputy “ Sheriff to the King’s-Arms Tavern, I shall be “ concealed from the eye of the public—I have “ drawn upon my banker for the utmost Damages, and I have as much more to spare to-morrow, if I can find another woman whom I “ would chuse to enjoy at such a price.” In this manner I have seen a rich delinquent, too lightly fined by Courts of Criminal Justice, throw down his bank notes to the officers, and retire with a deportment, not of contrition, but contempt.

For these reasons, Gentlemen, I expect from you to-day the full measure of Damages demanded by the Plaintiff. Having given such a Verdict you will retire with a monitor within, confirming that you have done right—You will retire in sight of an approving public, and an approving heaven. Depend upon it, the world cannot be held together without morals and vir-

tue ; nor can they maintain their stations in the human heart without religion, which is the corner stone of the fabric of human virtue. We have lately had a most striking proof of this sublime and consoling truth, in the result of the Revolution which has astonished and shaken the earth. Though a false philosophy was permitted for a season to raise up her vain fantastic front, and to trample down the Christian establishments and institutions, yet, on a sudden, God said, “ Let there be light, and there was light.”—The altars of religion were restored ; not purged indeed of human errors and superstitions, not reformed in the just sense of reformation, yet the Christian religion still leading on the safer to further reformation, because not violent or severe, until the doctrines and practice of Christianity shall overspread the face of the earth.

Gentlemen, as to us, we have nothing to wait for, we have long been in the centre of light—we have a true religion and a free government, and you are the pillars and supporters of both.

I have nothing further to add, except, that since the Defendant committed the injury complained of, he has sold his estate, and is preparing to remove into some other country.—Be it so.

Let

Let him remove; but you will have to pronounce the penalty of his return. It is for you to declare whether such a person is worthy to be a member of our community. But if the feebleness of your jurisdiction, or a commiseration which destroys the exercise of it, is to shelter such a criminal from the consequences of his crimes, individual security is gone, and the rights of the public are unprotected. Whether this be our condition or not, I shall know by your Verdict.

EVIDENCE FOR THE PLAINTIFF.

His Grace the ARCHBISHOP of YORK Sworn.—

Examined by Mr. GARROW.

Q. Was the marriage of the Plaintiff and his Wife, with your approbation, and with the approbation of her Father?

A. Entirely so.

Q. Was you present at the celebration of the Marriage?

A. My recollection is not perfect as to that point.

Q. Had you opportunities of seeing them together?

A. Constantly.

Q. Could

Q. Could any thing be more affectionate than their conduct towards each other, as far as it came under your observation?

A. I do not believe there ever was a man who had a purer affection for his wife than the Plaintiff.

CHARLES EDMONSTONE, Esq. *Sworn.—Examined by Mr. HOLROYD.*

Q. You are the Son of Sir Archibald Edmonstone?

A. Yes.

Q. Was your Father intimate with Sir Richard Sutton?

A. Yes, for many years.

Q. Do you know Mrs. George Markham, the Plaintiff?

A. I knew her better before her marriage than since.

Q. Were you in habits of intimacy with his family?

A. Yes.

Q. Had she an education suitable to her rank and situation in life?

A. She had.

Q. Is

Q. Is she an accomplished lady ?

A. Very much so.

Q. What are her manners ?

A. Remarkably reserved ; modest to a great degree.—I speak of her before her marriage.

Q. Was she handsome ?

A. Remarkably pleasing.

Q. Do you know whether it was with the consent of their mutual friends the marriage took place ?

A. Not of my own knowledge—I know it was spoken of with great satisfaction.

Q. After their marriage did you see any thing of them ?

A. I cannot say I did.

Cross-Examined by Mr. SERJEANT BEST.

Q. You say she was very modest and reserved ?

A. Certainly.

Q. About what age is she ?

A. She was about twenty when she married—
She was married in 1789.

Q. Do you know how many children she has had ?

A. She has had nine children.

CAPTAIN

CAPTAIN MARKHAM *Sworn.—Examined by*
Mr. ERSKINE.

Q. You are one of the Lords of Admiralty, and brother to the Plaintiff?

A. Yes?

Q. State to the Jury whether you remember the marriage of your brother with this lady?

A. I think they were married at Lambeth, by the Archbishop of Canterbury?

Q. Have you been in the habit of seeing them since?

A. Yes.

Q. In what manner did they live?

A. In the most affectionate manner;—they seemed to have the most cordial attachment to each other.

Q. Was she a woman of a forward disposition, or the contrary?

A. The most modest and reserved woman in her behaviour I ever saw.

Q. In what manner did your brother conduct himself towards her?—Was he a domestic man?

A. The most domestic man in the kingdom.

Q. Was he affectionate?

A. Extremely so in every particular.

The

*The BISHOP of NORWICH Sworn.—Examined
by Mr. GARROW.*

Q. Was you acquainted with Mr. Markham, the Plaintiff, and his lady ?

A. Yes—During the three first years of their marriage, I had frequent opportunities of observing their conduct to each other ; I was in habits of intimacy with him and his wife.

Q. State what your observations upon their conduct were, particularly with respect to Mr. Markham ?

A. They appeared to me the happiest couple I had ever seen, with every prospect of continuing so, because he was the most domestic man I ever saw.

Q. Was she a lady accomplished in her manners ?

A. Very much so.

Q. (*By the Jury*) Have you had opportunities of seeing them since the three first years of their marriage.

A. The only answer I can give is, that for the latter period, after the three first years of their marriage, my intercourse with them has been very small.—He has been fixed at his residence

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in Yorkshire; and my duties have carried me into Norfolk, or confined me to Town.

Cross-Examined by Mr. SERJEANT BEST.

Q. At what distance was your Residence from their's, during the first three years of their marriage, when you was in the habit of visiting them?

A. I resided about three miles distance from Sir Richard Sutton's.

Q. You was an occasional visitor?

A. Yes.

Q. You did not stay any time with them?

A. No.

Q. (*By Mr. Erskine*) Had you frequent opportunities of knowing his domestic course of life?—Had you the same means of judging of their conduct towards each other as any other person not domiciled in the family?

A. I certainly had.

SIR WILLIAM FOULIS *Sworn.—Examined by*
Mr. HOLROYD.

Q. You are High Sheriff for the County of York?

A. Yes.

Q. And

Q. And a neighbour of Mr. George Markham, the Plaintiff?

A. Yes, I live within five miles of him.

Q. How long has he been Rector of Stokeley?

A. Eight or nine years.

Q. Did the former Rector reside there?

A. Very little.

Q. When Mr. Markham came, did he put the Parsonage-house into complete repair?

A. Yes.

Q. How many children has Mr. Markham?

A. Nine.

Q. How many girls?

A. Seven.

Q. Did you visit them frequently?

A. Three, four, or half a dozen times a week.

Q. Mr. Markham is a Magistrate of the County as well as yourself?

A. Yes.

Q. And you act together?

A. Yes, always.

Q. Had you opportunities of observing the manner in which he lived with his wife?

A. Frequent opportunities.

Q. Did they appear to be an affectionate couple?

A. Very much so.

Q. Had you any doubt of their living happily together?

A. Not the least.

Q. Did he appear attentive to her?

A. Extremely so.

Q. Was he a domestic man?

A. Perfectly.

Q. What are his manners?

A. Very good.

Q. How did he behave towards his children?

A. Very affectionately.

Q. Do you remember Mr. Fawcett, the Defendant, coming to reside in his neighbourhood?

A. Yes.

Q. Do you know whether Mr. Markham introduced him to the Gentlemen and Magistrates of the County?

A. Yes, he introduced him to me and others, as knowing him, from having been at the same School with him; and afterwards Fellow-Collegians and particular friends.

Q. I believe Mr. Fawcett is also in the commission of the Peace—do you know whether he was introduced by the Plaintiff?

A. I do not know whether by Mr. Markham's procurement;

procurement ; I know they acted together, and were on the footing of great intimacy.

Mr. MAWWOOD *Sworn.—Examined by Mr. GARROW.*

Q. How long have you been acquainted with Mr. George Markham ?

A. About nine years.

Q. How far do you live from him ?

A. About three miles.

Q. From living in the same Parish with him do you know whether he was a domestic man ?

A. Very much so.

Q. Was he affectionate and attentive to his wife ?

A. Yes.

Q. Was she in return affectionate to him ?

A. Yes.

Q. Was she fond of her children ?

A. Very much so.

Q. Did they appear a contented and happy couple ?

A. I thought so.

Q. Do you know Mr. Fawcett ?

A. Very well.

Q. Was

Q. Was he in strict habits of friendship with the Plaintiff?

A. Yes.

Q. Was he treated with respect by him?

A. Yes, he introduced him to all the neighbourhood.

Q. Do you know whether they were at School together?

A. Yes, at Westminster, and afterwards at College.

Q. Have you ever heard the Defendant express his obligations to the Plaintiff?

A. I cannot say that.

Cross-Examined by Mr. BEST.

Q. Is not Mr. Markham much older than the Defendant?

A. I do not know that he is.

*The Rev. ROBERT AFFLECK Sworn.—Examined
by Mr. ERSKINE.*

Q. I believe you was at Westminster-School with the Plaintiff and Defendant?

A. I was.

Q. After

Q. After Mr. Markham's marriage, and his settling in Yorkshire, had you frequent opportunities of seeing him and his lady?

A. Not for some time;—in the year 1794 I made him a visit.

Q. After that time had you frequent opportunities of seeing him?

A. I visited him at Stokeley, in 1795, 1796, and 1797.

Q. Did you make any tour with him and his lady?

A. I made a small tour with them for a few days.

Q. From your observations during that tour, or at any other time, have you reason to believe the Plaintiff lived happily with his wife?

A. He might well do so, for she had every quality calculated to ensure the affection of her husband.

Q. Did you ever see a couple who were more happy?

A. I think I might have quoted them as an example of conjugal affection and happiness.

Q. When did you last see them?

A. I visited them last in 1797—I have seen them since at Sir Richard Sutton's.

Q. Did

Q. Did your opinion continue the same with respect to their happiness?

A. My opinion continued unaltered—I believe I saw them as late as last year.

Q. (*By the Jury*) Have you never remarked any alteration in their behaviour towards each other, during the latter years of your acquaintance with them?

A. I am not sure whether I did not observe more reserve than usual during my last visit; but it was so little, that if this affair had not occurred, I should never have thought of it—This was in 1797.

Q. Had Mr. Fawcett at that time come to reside in Yorkshire?

A. Yes, before that time—in 1794.

Cross-Examined by Mr. SERJEANT BEST.

Q. Was Mr. Fawcett at School with you?

A. Yes, he was of my standing—there was a difference of two years between us.

Q. Had not Mr. Markham taken a degree before Mr. Fawcett entered at College?

A. No.

Q. (*By*

Q. (*By Mr. Garrow*) Were they both King's Scholars at Westminster?

A. Yes.

Q. And afterwards went to Christ's Church?

A. Yes.

Q. Does two years difference in point of age between two young men in the foundation, constitute such a disparity that they are not upon an equal footing, as if they were in the same class?

A. There was the same disparity between the Defendant and the Plaintiff, as between me and the Defendant.

Q. Have you observed that friendship formed at school beget attachments through life?

A. Yes, particularly in the person favored by the older school-fellow.

Q. Did Mr. Fawcett profess to be the firm friend of Mr. Markham, and was he so received by him?

A. Certainly.

Cross-Examined by Mr. Best.

Q. Were these gentlemen much acquainted at Westminster-School?

A. I do not recollect whether he was the particular friend of the Plaintiff while there.

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Q. Was

Q. Was he so at College ?

A. I do not recollect.

Q. (*Mr. Garrow*) There is a Dormitory at Westminster-School—Does the system of fagging extend itself where the older scholar is kind to the younger classes ?

A. Certainly it does.

Q. Was Mr. Markham in a situation to favor the Defendant at School ?

A. I do not know.

Q. (*By the Jury*) You say you observed a reserve, which you should not have taken notice of, if this affair had not happened. Was it a reserve on the part of the Husband towards the Wife, or was it mutual ?

A. Mr. Fawcett was of the party, and a silence prevailed, which I thought rather unusual.

The Rev. JOHN EYRE Sworn.—Examined by
Mr. HOLROYD.

Q. Was you residentiary at York ?

A. Yes.

Q. Was you acquainted with Mr. George Markham before his marriage ?

A. I have been acquainted with him previous to his marriage, and ever since. In the year

1798

1798 I was with him at Stokeley. I have seen him at other times with his Wife and Children.

Q. During these times did he appear to be affectionate to his Wife ?

A. Very much so.

Q. How did they behave towards each other ?

A. With mutual affection.

Q. How did they behave to their Children ?

A. With great attention.

Q. Was he a domestic man ?

A. Very domestic—constantly engaged in pursuits of literature, and in attending to his family.

Q. As far as you can judge, were they a happy couple ?

A. I always thought so.

Q. What was the behaviour of the Lady ?

A. Very modest and reserved.—It was with the utmost astonishment I heard of this affair ;—I believed her to be one of the best Wives that ever lived. The last time I saw her was last year ; I thought there was not the same intimacy between her and her husband, but it made little or no impression on my mind : I hardly discovered, and should not have recollected it, if subsequent events had not brought it to my mind.

Mr. RUSSEL *Brother to* SIR JOHN RUSSEL
Sworn.—Examined by Mr. HOLROYD.

*This Witness said—*He had never seen any Couple living in greater domestic happiness than the Plaintiff and his Wife. He never was acquainted with a man who conducted himself more like a good Husband and a Father than Mr. Markham.—His Wife was a very modest woman, lived entirely with her family, and went very little out of it—She seemed very fond of her Children—He remembered Mr. Fawcett visiting the Plaintiff, his visits were upon the footing of an intimate friend—He never observed any thing in his conduct calculated to raise the least suspicion. He had no idea whatever of this unfortunate affair till he heard it with the rest of the world.

ROBERT GREENHILL, Esq. *said—*He was at Westminster and at Christ's Church at the same time the Plaintiff and Defendant were there: after he left College, he visited Mr. Markham in 1794—He never saw any man behave more kindly towards his Wife. When Mr. Fawcett came into the County, the Plaintiff took notice
of

of him as an old Westminster; the difference of two years in the age of Students did not preclude their forming a friendly attachment towards each other, and whatever distinction it might make was entirely done away after having been at College.—The Plaintiff and his Wife appeared to be a happy Couple—he never observed any thing like neglect on either side.—Down to the year 1799 they conducted themselves towards each other the same as they had done in 1794.

*The Rev. SAMUEL SMITH, Prebendary of York, and Domestic Chaplain to the Archbishop, said—*He had been acquainted with the Plaintiff twenty-five years, and with Mrs. Markham from her infancy; his father and Sir Richard Sutton had been intimate friends—Mrs. Markham had received a proper education—her manners were exceedingly good—she was modest and pleasant in her behaviour, but rather reserved.—He was at Westminster and at College with the Plaintiff—He had known Mr. Fawcett since he came into the neighbourhood of the Plaintiff—they lived on the footing of the most perfect intimacy—He always considered the Plaintiff and his Wife an affectionate and happy Couple—he
thought

thought Mrs. Markham a very amiable and agreeable woman.—Mr. Markham was a man who spoke bluntly, but was no ways irritable.

Mrs. ELIZABETH BOYS *Sworn.*—*Examined by*
Mr. ERSKINE.

Q. You lived in the Plaintiff's family ?

A. I was Housekeeper and Lady's Maid, in August, 1795, and continued in their service three years and a half.—When I first came, and till Mr. Fawcett visited, Mr. Markham and his Lady always appeared very affectionate to each other : I always considered Mr. Markham as a very good husband, attentive and affectionate to his wife, kind to his children, and domestic in his habits.

Q. Did you ever suspect there was a Criminal Connection between Mrs. Markham and the Defendant ?

A. I did suspect it after a time.

Q. Did you ever see any thing in her conduct that gave you a suspicion ?

A. I never did.

Q. How long was it before you had reason to think Mr. Fawcett was engaged in the Seduction of this Lady ?

A. It

A. It was during the first residence at York.

Q. When you entertained this suspicion, why did you not communicate it to Mr. Markham?

A. I did not think it right to disturb the peace of the family, as I was not certain.—It was in consequence of the doubts I felt that I left the family;—I had no reason for leaving it, but because I had not sufficient grounds for communicating what I suspected.

Q. Did you ever make any attempt to discover whether your suspicions were well founded?

A. I tried to discover it by laying Stones at the Window which I thought he entered in at, but I always found them in the same situation.

Q. I ask you on your solemn Oath, whether Mr. Markham had any reason to believe his Wife was unfaithful to his bed?

A. No, I believe he had not.

Q. But for this Defendant, do you think they would have been a happy Couple?

A. He was a good Husband, and she was an amiable woman, I thought she was the most perfect woman I had ever seen.

Q. Though you had not proof of a Criminal Connection, which you could have stated to a Court of Justice, yet after what has happened,
have

have you now any doubt they were criminally connected in 1795 ?

A. I have no doubt of it.

Q. Did you ever observe any thing in the conduct of the Plaintiff's Wife that could alarm the most jealous husband ?

A. As far from it as possible.

Q. From what you have observed, was there any thing which, if you had been in the place of Mr. Markham, could have excited your suspicion ?

A. Nothing.

Q. Did Mrs. Markham solicit you to remain in her service ?

A. Yes.

Q. Did she appear to you to be a person naturally of virtuous habits, if they had not been broken in upon by the Defendant ?

A. I think as strictly so as any woman could be.

Q. Was the Plaintiff fond of his Children ?

A. As any man could be.

Q. Did he appear to enjoy a satisfaction in the company of his Wife and Children ?

A. His whole enjoyment seemed to center in his family.

Cross-

Cross-Examined by Mr. BEST.

Q. How long did you harbour this suspicion?

A. Near half a year.

Q. And you tried an experiment to discover whether it was well founded?

A. Yes, that of laying Stones.

Q. Who suggested it to you?

A. No one.

Q. Did you ever communicate your suspicions to any of the servants in the family?

A. I think I rather hinted it to the Nurse, (Phebe Robinson) but very slightly.

Q. Did any other servant hint it to you?

A. No one.

SIR WILLIAM FOULIS *Re-examined:* as to the Defendant's Property, he said—The Defendant had an Estate in Yorkshire, which he had sold when he quitted the County—he believed it might be about five or six hundred a year—he knew not what incumbrances were on it—the Defendant had a number of debts to pay, and he had satisfied them all before he went away, among others he had paid the Witness sixty pounds.—He said the Defendant lived in style,

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kept an elegant table, and frequently entertained his friends.

DEFENCE.

Mr. Serjeant Best. Gentlemen of the Jury, It now becomes my duty to address you on the part of the Defendant; and I confess, without any affectation, I address you under circumstances of peculiar embarrassment. I have had frequent opportunities of witnessing the splendid talents of my learned friend; but never, upon any occasion, have I seen them displayed to so much advantage as on this night.—I have therefore to entreat that you will guard against the effects of that eloquence, which has been employed in so eminent a degree in favor of the Plaintiff; and that you will decide this case, not on the abilities of the advocate—for then my client would indeed be in a dreadful situation—but on the facts as they have come out in evidence; and if you will attend to the few plain observations I shall offer to your consideration, you will, I am persuaded, think this by no means that aggravated species of case which it has been described to you. My learned friend has desired you, after you should have heard the evidence, to consider this as a
case

case which has no parallel ; and to give those Damages which no Jury has ever yet thought themselves authorized in giving : namely, to the utmost amount of the sum laid in the declaration. I think I am addressing myself to those who have tried many cases infinitely more aggravated than the present ; and who, in the most atrocious have not thought themselves warranted in giving Verdicts operating to the complete ruin of the Defendants. I know Juries are not to be governed by precedents, but are bound to decide upon the merits of the subject immediately before them ; and therefore I should not have conceived myself at liberty to have addressed this argument to you, had I not been called upon to do so, by the course adopted by the learned Counsel for the Plaintiff.

I will venture to say, there was a case, which far—infinately far, exceeded this in every one of the circumstances attending it ; and in which the Jury, under the direction of the noble Lord who has been alluded to by my learned friend, did not think themselves at liberty to go the length he has recommended to you in this.—The case to which I refer, was an action brought against a Gentleman, who was the brother-in-law of the

Plaintiff, having married the sister of the lady whom he seduced; and who was entrusted to his care by her husband, then absent in the service of his country in India. If you are to look for a parallel to the case before you, you will find many amongst those which have been subjects of enquiry at Westminster-Hall, and the one to which I have called your attention, abounds with circumstances of aggravation far beyond the present.

My learned friend is, I think, a little inconsistent in his observations, as to the principle on which you are to give Damages. He tells you, that you are not to consider yourselves as a Court exercising a criminal jurisdiction; yet, hurried away by that energy of mind which gives birth to his eloquence, he tells you, that you are to decide not with reference only to the extent of the injury the Plaintiff has sustained, but that you are bound to read a lesson to future ages.—This I maintain is not the task you are called upon to perform. It is the province of Criminal Courts to teach mankind the consequences of crimes; you are merely to look at the case as it stands with relation to the parties, and you are not to add one iota to the Damages you may award, for the purpose of making an impression on the public,
or

or upon Juries who may come after you. My learned friend also tells you, that you are not to measure your Verdict by the ability of the Defendant to pay Damages.—I deny that proposition. When Damages can be ascertained and liquidated, as in the case of a debt, due from one man to another, a Jury can have no other criterion to go by, than finding to the amount of the debt proved, whether the Defendant can satisfy it or not. But when Juries have no certain rate by which they can make their assessment, and proportion it to the Plaintiff's injury, they have been recommended by a learned Judge, who has written on that branch of the law, in the administration of which they are called upon to assist,* to regulate their Damages, not only according to the claims of the Plaintiff, but the ability of the Defendant. In a case like the present one, you are to consider, in making up your minds as to your Verdict, not only that which the Plaintiff is entitled to receive, but what the Defendant has the ability to pay. You are to consider the circumstances of the case on the one side and on the other; and if, in awarding compensation to the Plaintiff, you go beyond the ability of the Defendant, your Verdict will have
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* Buller's Nisi Prius—p. 27.

this operation—it will not remunerate the Plaintiff, but will ruin the Defendant. If the circumstances of the Defendant are such as will not enable him to pay the Damages you give, what will be the effect of your Verdict?—the effect of it will be, to do that which the law is anxious to prevent;—it will deliver the Defendant into the hands of the man whose vengeance is stirred up against him. The law does not allow you to punish him as a criminal; but if you are to give such a Verdict as is asked, you do him a greater wrong than by punishing yourselves—you deliver him into the hands of him whom he has injured, and allow him to satisfy his vengeance by the utmost rigour of punishment—by perpetual imprisonment; unless the Defendant can escape it at the expence of perpetual exile. If punishment is to be inflicted upon an individual, it cannot, neither ought it, to be by the party who is injured, but by a Tribunal unactuated by the influence of passion and prejudice, and which can apportion its judgment to the guilt of the offender. If your Verdict is not to be regulated by the circumstances and ability of the Defendant, the consequence will be, not of obliging him to make the best retribution in his power, but

but of delivering him bound into the hands of a man who is enraged against him to the highest degree—who will wreak his revenge upon him by imprisoning him to the latest hour of his life. You will place him in a situation in which the law does not allow even a murderer to be placed. If a man, as my learned friend has truly said, in the heat of passion commits an offence, the law of this country looks at the case of such a man with compassion; and though he admits that compassion should be extended to the highest species of delinquency, he desires you by your Verdict to shut the Defendant out from all hope of its ever reaching him. You are called upon for one error in the life of this unfortunate Defendant, to sign his irrevocable doom, and to sink him to a depth of horror to which even murderers are not reduced—to which the mind's best hope, the cheering rays of forgiveness, can never penetrate. He has told you, that he knows of no compensation which can be made for such an injury: I agree with him—and I sincerely wish he had been more successful in his application to Parliament, in his capacity as a senator. I lament that his exertions were unsuccessful; for unquestionably cases of this kind are infinitely better

better adapted to the inquiry of Criminal Courts than Civil Tribunals. He has truly said, “ who can minister to a mind diseased.”—If so, why are Damages to be given? The man who is capable of deriving consolation for such an injury as the Plaintiff has sustained from Damages, is not entitled to one shilling. The man who is base enough to be capable of putting money, which is produced by his wife’s prostitution, into his pocket, is a man to whom a Jury ought not to give one farthing: for he can have no feelings to be wounded, no chaste comforts to lose, no affection to be disappointed, no honour to stain, who can content himself with money for that, for which money never can be a just equivalent. On what principle is it then that you are called upon to give large damages? I have listened to my learned friend with the utmost attention; but I have heard nothing from him which induces me to alter my opinion that large Damages in a case of this sort may do infinite mischief—they may be the means of putting money into the pocket of the party, who deserves nothing but shame and reproach; but they cannot administer consolation to the man who is justly the object of a Jury’s consideration. I do not mean to say,
that

that Mr. Markham is a base man, that would barter his wife's honour for money. I believe him to be a man such as he has been described by the witnesses, and if so, Damages will not administer to his satisfaction. It is on this ground that I complain of Verdicts, in which large Damages have been given; and insist that they are repugnant to the principles of law—are not calculated to redress an honourable Plaintiff—may be the means of putting money improperly into the pocket of one of another description—that they do not, (neither by law ought they, being given in a Civil Court) operate as a punishment to deter men from the crime of seducing their neighbour's wives; but are rather the occasion of seduction in another quarter. My learned friend tells you, that when application was made to Parliament, the Legislature, upon due reflection, did not think proper to alter the law; but deemed it prudent to leave the party injured to his remedy, by civil action. If then Parliament did not think it right to punish a Defendant criminally, why should you be called upon to do so? If Parliament thinks Adultery deserves only civil compensation to the injured party, what right have you to supply what you suppose to be an omission on the

part of the Legislature ; or to take upon you to perform that office towards the public, which Parliament has not thought necessary ? There are a vast number of things suffered to exist which are great offences ; but it would be dangerous to us all if, because the law has not done what some may think necessary for the prevention of an offence, that unauthorized individuals should inflict punishments which the law of the country does not justify.

This being the case, you will dismiss from your mind a vast deal of what has been said to you by my learned friend ; and I shall now beg leave to state to you, what I think is the principle on which you are bound to decide. I admit my client has acted wrong : though he certainly does not merit the imputation cast upon him by my learned friend, who would infer, that he has come skulking into a corner to avoid the eye of the public—he has done no such thing.—He has acted in conformity to that advice, which his Counsel thought it their duty to give him :—namely, that when he had injured a man, he was bound to make to a certain extent, an atonement, by confessing his guilt. This is the reason why the subject before you is canvassed in
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this place.—It cannot be for the reason my friend has given, to avoid investigation before men fitter for the task; for, I have no doubt, that if a plea had been put upon the record, the Counsel would have had to have addressed pretty nearly the same persons as compose the Jury now assembled. We could not, therefore, have come here with the motive attributed by my learned friend; we could only have done so upon this principle—that knowing we had done wrong, we were unwilling to add to our offence, by denying it in a Court of Justice.

I would now draw your attention to the case as it stands upon the evidence—observing, that you are to consider in the first place, that which the Plaintiff is entitled to receive; and next, that which the Defendant is able to pay: and if you do so, you cannot go beyond the latter consideration in your Verdict—his means. In considering the case as it regards the Plaintiff, I am sure you cannot follow my learned friend's doctrine; for, according to that, the Damages are infinite: and even when you have given the £20,000 demanded, you fall very short of justice.—This shews how wrong it is to estimate by money, that which money cannot be compared with—an absurdity

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which

which arises from leaving this species of case to a Civil Tribunal. But the Damages must have their bounds whilst Damages are allowed to be given; and I think I candidly state their proper extent, when I say, they should be a liberal allowance for the expence the Plaintiff sustains, and for the derangements which are necessarily made in his family.—I think this is all for which a pecuniary compensation can be made. But if you are to consider the state of affection in which this husband and wife lived before, I beg you will also consider the evidence: upon which I cannot forbear saying I think some has been adduced which might have been spared, and some omitted which should have been brought forward.—Indeed it appears to me, that evidence most material, with a view to laying this case before a Jury, in all its lights, has been omitted. If you take into your consideration, under what circumstances the Plaintiff and his wife lived together before the unhappy intimacy took place between his wife and the Defendant, you will expect the best evidence which the nature of the case will admit —Have you that? You have not. You have persons whose evidence might well have been spared. I wish the most reverend Prelate, who
has

has been examined, had not been introduced.— His evidence I think might, with the greatest propriety, have been spared. It was not likely that he should know any thing that was important, and it is not very usual to call such near relations ; but the same parties who thought fit to bring that reverend Prelate forward, might with as little of indelicacy have brought before you persons who were enabled to say, with certainty, whether any disagreement had taken place between the Plaintiff and his lady before her connection with Mr. Fawcett. I should have been precluded the observations I have to make, if I had not seen the reverend Prelate, and the brother of the Plaintiff, examined before you as witnesses—for I have never been disposed to think that relations should be brought into a Court of Justice. A man has no right to call upon his relations to come forward in a case so distressing to their feelings, for the purpose of increasing the Damages. If I had not seen the reverend Prelate, and the brother of the Plaintiff, I should not have said a word ; but now I cannot avoid remarking, that as they have chosen to bring forward those who were not likely to know any thing in the least material, so they have abstained
from

from calling those who were likely to have known every thing—afraid, doubtless, if they had called them, something would have fallen from them which would have injured the Plaintiff's case. The witnesses I allude to are the friends of the lady herself. I mean to cast no reflection upon Mr. Markham—I have not stated any charge against him ; but that there may be disagreements in families which, if disclosed, will operate in mitigation of Damages in an action of this kind, is what every one is acquainted with. Disagreements subsisting between a husband and wife previous to a criminal intercourse with a Defendant, have ever induced Juries to diminish Damages. I have a right to presume that some such disagreement existed in this family, to which the subsequent criminality of the parties is more to be attributed than to the seductive arts of the Defendant ; I assume this because, if the fact was not so, you would have seen Sir Richard Sutton and the brother of the Lady. To whom would she have gone to complain of the ill-treatment and indifference of her Husband—not to the reverend Prelate his father, not to his brother, or to his friends, but to her own family and connections. In their bosom she
would

would have poured out her complaints. If even the Plaintiff and his Lady were formed with dispositions towards each other, calculated to make them live happy together, it would have been as well to have spared the evidence of the reverend Prelate, and that of most of the other Witnesses who have been brought forward. You have had another prelate the Bishop of Norwich; I cannot conceive how his evidence could have been considered any way material. My learned friend will excuse me for saying that I do not think the persons they have called very proper Witnesses in such a Case: it appears from their own account that they have only been in the habit of visiting occasionally at the Plaintiff's house. I should have liked to have seen here, for the purpose of establishing a Case of complete union of sentiment, some female friend of the Plaintiff's Lady, to whom, if any ground of complaint existed, it would most likely have been communicated: no such evidence has been called, they have contented themselves with merely calling occasional visitors, who, if I may use the expression, never saw them but with their holiday faces on, and at times when no symptoms of discord are supposed to appear; permit me to say, I do
not

not think this is satisfactory evidence. It would certainly have been better if they had brought some female friend, who might have known the situation in which the Plaintiff and his Lady stood, with regard to their mutual affection, and who perhaps might have told you that there existed that discordance of temper, which prevented their deriving comfort from each others society.

There is another circumstance I cannot pass over, and that is from Mr. Markham's establishment in life, he must necessarily have kept many servants; amongst them all, my learned friends have only called one:—why have they not given you the testimony of the servants, who, living constantly under the same roof with their Master and Mistress, and observing their behaviour towards each other at all times, must have known, and could have stated better than all the friends that could have been produced on either side, what was the real situation of the family.—In the presence of company, it was not likely they should have complained or afforded the least ground of suspicion that they were not living happily together, but it is impossible for servants not to observe all that passes in a family, and I wonder the Plaintiff's Counsel have not thought
it

it right to confirm the testimony of the Witnesses by a few of the servants. They have however only selected one, who lived as Housekeeper and Lady's Maid, from 1795 to 1798, and have given no account whatever of the situation of the family from that time to this.

A circumstance was proposed by my learned friend, which I trust you will dismiss from your consideration — My learned friend said these parties lived not only intimately at the time this injury was inflicted, but that from their earliest youth they had lived in friendship; that they had been school-fellows at Westminster, and fellow students at College; that in both places they had lived in great intimacy, and that when the Defendant came to reside in the Plaintiff's neighbourhood he had been the means of getting the Defendant's name into the Commission of the Peace, as a Magistrate. The witnesses called, deny any intimacy either at School or College; yet my learned friend Mr. Garrow, not content with what the Witnesses said upon that subject, thought proper to keep up the idea, after it had been distinctly stated that no such intimacy existed; he thought it right to ask whether it was not possible such an intimacy should have existed.

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I could never have been so foolish as to have supposed that those firm and lasting friendships, which are the purest, because those interests and passions which actuate the mind at a more advanced period of life, do not mix in their formation, are not most likely to be begun and cemented at School or at College; but speculation is nothing against positive evidence, and from the evidence in this case, it is extremely clear that no such intimacy did exist at either of these places.—Though they were at school together, the Plaintiff, it must be recollected, was two years older than the Defendant, a difference which has a considerable effect upon the friendships formed at school, besides Westminster School contains a great number of youths, many of whom may be unknown to each other, and Christ Church College, Oxford, to which they afterwards removed, is one of the largest in the University. It is clear that no such friendship as has been suggested ever did exist, for one of the gentlemen who was examined tells you, if it had he must have known it; it is impossible if it had existed, but it must have been proved, for clearly the gentleman who has informed you he was intimate with the one, could not have been ignorant

ignorant of it if any intimacy or even acquaintance had existed between that one and the other.

—With respect to the Defendant's being made a Magistrate, at the instance of the Plaintiff that is not proved.

The opening of my learned friend is therefore not only unsupported by the evidence, but is negatived by it. The circumstance of the parties having been upon terms of friendship from their early youth, was pressed, in order to induce you to give more Damages than the real merits of the case demands.—When you find parties endeavouring to introduce in aggravation of damages, facts that are not warranted by evidence, such conduct ought to have the effect of exciting a considerable degree of suspicion, and of diminishing the amount of those Damages, which otherwise you might feel yourselves disposed to give. However a party may have conceived himself injured, he ought to conduct himself with liberality, and not to introduce into his Case, with a view to prejudice the minds of a Jury against a Defendant, circumstances which he must be convinced have not the least foundation in reality. I am, in your judgment, whether the fact of an equal friendship subsisting between

these parties, as it was urged by the learned Counsel for the Plaintiff, does not go infinitely beyond the evidence adduced to substantiate it, and I appeal to yourselves whether it could have been introduced with any other view than that of exciting a prejudice incompatible with the legitimate objects of Justice.

As the Case stands, it is one in which it appears that the wife of a man in a respectable situation in life, has fallen from her attachment to him, and formed an illicit connection with one of his acquaintances,—for this you must give Damages against the Defendant, proportioned, as I have already stated to you, to the circumstances of the Parties. With respect to the situation of the Defendant, no evidence, I will venture to say, has been given of his having any considerable property. I contend that the evidence of the honorable Baronet, who has been produced as a Witness to that point, will weigh but lightly in your estimation.—He says the Defendant is possessed of a fortune of four or five hundred pounds a year.—He cannot know whether the fact is so with any degree of certainty: he cannot know what incumbrances operated to the reduction of the annual amount of that property.

perty. It is possible there may have been incumbrances affecting it to a very considerable amount:—the truth is, there was a charge upon the Defendant's Estate of six thousand pounds. The Witness in estimating the Defendant's property, can only found his opinion upon that which was the general report of the County:—he admits, however, and it is a strong circumstance in favor of my argument, that at the time the Defendant sold his Estate, and left the County, there were debts owing by him, to a considerable amount, which he was obliged to pay off.

Permit me then to submit to you, that there has been no evidence offered of the Defendant's having any property of sufficient extent to justify your giving large Damages. If you suppose his Estate to have produced five hundred pounds a year, you must take into your consideration, the debts and incumbrances charged upon it. If this is so, the Defendant is clearly not in a situation to make large compensation to the Plaintiff; and therefore I humbly submit to you, that you are to take into your consideration, his circumstances, and are not to pronounce a Verdict which will operate to the exclusion of this unfortunate

tunate man from his native Country for ever ;
 you will not, I am persuaded, give large Dama-
 ges ; I have already submitted that you are not
 to look at the Case with the eye of a Criminal
 Court, but I beg leave to remind you, if you are
 disposed to view it in such a light, that where
 crimes proceed from the passions, great indul-
 gences ought to be shewn. It has been stated,
 that this Lady is possessed of a considerable share
 of beauty, and eminently endowed with quali-
 fications both of mind and person : if this is
 the case, so much the more indulgence is due
 from you to my Client. If his offence has been
 great, the temptation to commit it has been so
 too. Though he has been guilty of an action
 which has been productive of considerable injury
 to the Plaintiff, yet, if his offence is one which
 is the result of these passions, the God of Nature
 has for the most beneficial purposes implanted in
 our constitutions, it rather deserves to be contem-
 plated with an eye of compassion, than visited with
 severity of punishment. When my learned and
 eloquent friend admits that mercy is to be ex-
 tended to the most heinous offenders, even to
 the man who destroys the life of another, if the
 act proceeds from the sudden violence of pas-
 sion,

sion, surely I may be allowed to ask you whether, after consulting your own hearts, and recollecting that you are men like the Defendant, cloathed with the infirmities of human nature, you can feel yourselves warranted in deciding that the same principle of mercy which Heaven has commanded you to apply to all offences, shall not be extended to the case of an Adulterer, actuated by the most irresistible of all human passions. I have already stated, and repeat it, that Adultery is an offence affecting the morals of society, and the peace of individuals; but although it is so, you are not placed by the Law in the situation of persons whose duty it is to punish Crimes; you are only called upon to give a reasonable compensation to the injured Party. But even if this was a question of punishment, you would do well to consider that it is the corner stone of that which constitutes the foundation of English Law, of Religion, and of Morals, to execute Justice in mercy.—I expect Justice from you,—and I am persuaded it will be administered in mercy.

CHARGE

CHARGE TO THE JURY.

JOSEPH BURCHELL, Esq. the Under-Sheriff, prefaced his Address to the Jury, by a recapitulation of the whole of the Evidence.—Having done so, he said the sole question for the Jury was, what should be the amount of the Damages. “I do not,” he observed, “think myself at liberty to say a word to you upon that subject, because it is totally unnecessary to direct so intelligent a Jury with regard to that which falls so immediately within their Province. I may, however, take the liberty of expressing my opinion, as it is founded upon those first principles, which ought uniformly to be applied to cases of this description. Your Verdict is not to be guided by what has been done by former Juries; but weighing all the circumstances in your mind, you are to administer what you conceive to be justice between the parties.

The Jury retired for near an hour, and returned a Verdict, awarding Damages to the Plaintiff to the Amount of SEVEN THOUSAND POUNDS.

The Inquisition commenced at Six in the Evening, and the Verdict was delivered at Twelve at Night.

FINIS.