

No. 4

112 **Crutchley, Wm.**, Attorney at Law, for having maliciously preferred seven indictments against his late clerk, who, on such trial, obtained £2,000 damages. 8vo, paper. London, 1813. 84 pp.

THE
TRIAL
OF
WILLIAM CRUCHLEY,
Of John-Street, Bedford-Row, Attorney-at-Law,
FOR HAVING
Maliciously preferred Seven Indictments,
For Felony,
AGAINST HIS LATE CLERK,
WHO, ON SUCH TRIAL, OBTAINED
2000 Pounds Damages :
ALSO, THE
PROCEEDINGS ON THOSE INDICTMENTS
At the Old Bailey.

“ Gentlemen ! I say, if I make out this case I am entitled to very large
“ damages against the defendant.—Recollect a little the situation in which a
“ man stands, under such circumstances :—which of us is there, however we
“ may feel armed with innocence, however we may feel protected by the cha-
“ racter we have earned in our different courses of life, and obtained the appro-
“ bation of our friends, which of us is there whose heart would not be wrung
“ and agonized at being placed at the bar of the Old Bailey, holding up our
“ hands, and being told we must put ourselves upon God and our country for
“ a safe deliverance.”

VIDE SPEECH OF MR. SERGEANT SHEPHERD, p. 9.

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1813.

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THE TRIAL

WILLIAM ORCHARD

OF THE CASE OF THE

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In the Court of Common Pleas,

SATURDAY, 17th JULY, 1813,

Before LORD CHIEF JUSTICE MANSFIELD, and a
Special Jury.

HEWLITT v. CRUCHLEY.

THE Declaration stated by Mr. READER.

MR. SERGEANT SHEPHERD.—May it please your Lordship, Gentlemen of the Jury,—This action is brought, by Mr. John Churcher Hewlitt, against the Defendant, Mr. William Cruchley, for *maliciously and without probable cause indicting him, upon seven indictments, for felony*. The charge which Mr. Cruchley made against Mr. Hewlitt was for embezzling money whilst he was in his service; and you probably know, that, within a few years, an act of parliament has been passed, in order to prevent servants and clerks from embezzling sums of money belonging to their employers, making that offence felony. If a clerk or servant receives money and purloins it, neither rendering any account nor paying it to his master, but keeps it in his own pocket, which manifests an intention to cheat his master, it is made a transportable offence; and certainly that law is a very wise one: but those who passed that law never intended that it should be made an instrument of spleen and malice by the person in whose employ the servant was.

Gentlemen, Mr. Cruchley, the Defendant, is not an ignorant man, he was bred to the law, he is an Attorney, and filled, for a considerable time, the office of Deputy-Prothonotary of the Marshalsea-Court. For many years Mr. Hewlitt had been in his employ; he was clerk to Mr. Cruchley, and was the person, therefore, who, in the office, was to receive the different fees of the Prothonotary, and was bound, in point of law and conscience, to keep an account of what he so received. In the month of February, 1812, I think it was, he received the several sums of money which were made the subject of these indictments. The fees of the Prothonotary consist of different small sums, (though in the aggregate they amount to a considerable sum annually,) as fees for making affidavits and for writs that are sued out, which are paid to the clerk; and the sums in question Mr. Hewlitt certainly received and the sums in question also Mr. Hewlitt put down in the regular office-books, which were kept from the time he originally became clerk to Mr. Cruchley, down to the last hour in which they stood in the relative situation of master and clerk, and which were as regularly kept as books ever were in that or any other office; for, I defy them to prove, in any one instance, that Mr. Hewlitt ever received a single farthing without, at the moment, or almost at the moment; aye, and in sight of the man who paid the money, putting it down as the fee he had received: and I will state more, that these books have been constantly open to the inspection of Mr. Cruchley and of any person he chose to employ to settle the accounts from time to time; and, therefore, Mr. Cruchley must have known that the very sums, which he had the audacity to charge this man with feloniously embezzling, appeared in those books as received, not (*for there was the trick*) from the very hand who brought them to him, but from the person upon whose account they were brought; and, here you will see, when that part of the case comes to be proved, how Mr. Cruchley has made an instrument of another person to induce that other person to take an oath, which oath, in the letter of it was true, but which, in the spirit of it, as applied by Mr. Cruchley, was infamously and wickedly false.—Gentlemen, I apply those

terms to this transaction ; and I beg you to attend to what I am stating ; I am stating it from my instructions and belief that they are facts, and, if so, there are no epithets which can be used in a court of justice too strong to be applied to them.

Gentlemen, It happened that the conduct of the prothonotary's office had fallen under the inspection of the judges of the Marshalsea-Court, and they thought, after long investigation, it was their duty, whether right or wrong I care not ; they thought it was their bounden duty to suspend Mr. Cruchley ; and, as the business of the office must be carried on, they thought it their duty also to continue Mr. Hewlitt in the office, who had been clerk to Mr. Cruchley. The office of prothonotary of that court, being a freehold, may be executed by deputy ; and when the acting officer is suspended, for the purpose of inquiry, for being supposed to have done wrong, it is necessary those who suspend him should appoint somebody else in his stead, or else the business of the office must necessarily stop ; and Mr. Hewlitt was continued. Here, then, is the evidence of the malice of Mr. Cruchley, who, in resentment at the judges having suspended him, thought fit to vent his spleen upon Mr. Hewlitt, by wickedly and abominably indicting him for felony, under the circumstances which I will state, in a way that no honest man, who had reason to suspect his servant was not correct, would venture to have done, without giving that servant an opportunity to explain himself, before he publicly proclaimed him as a felon, about to be tried at the Old Bailey.—Gentlemen, I will put this question to you. If you supposed a man, who had been in your employ many years, had defrauded you, who was forth-coming every hour of his life, and was to be found publicly every hour of the day at the office, in Clifford's Inn, or every Friday, from morning till evening, at the Palace-Court, in the Borough, with as much certainty as I am to be found here every day during the sittings in Westminster-Hall ; I ask how you would have acted, if such a man had received several small sums of money, and left them unaccounted for ? If he was about to run away, you would go to a magistrate and state your case to him ; and, if you conscien-

tiously believed the sums were embezzled, you would desire a warrant to be issued, or that he would send for him, so that, when he came before him, he might have an opportunity of accounting for or explaining the circumstance, as Mr. Hewlitt should have had in this case, (charged as he was with having embezzled various sums of money, received from a man of the name of Clarke;) and he would have said, look at the books and you will see, though not in the name of Clarke, you will see, in the name of Brooks, every sum credited: you know, Mr. Cruchley, that these seven sums received of Clarke were the sums I put down as received of Brooks; and you know it, for this reason, because they are for affidavits sworn; you know that you appointed Brooks, the stationer, as your deputy, to take affidavits; you know that Brooks was the person who was to pay those sums of money to me, and that you employed William Clarke as the man to bring them to me; and you now charge me with felony, because I have not put the name of the party who brought them, but the name of the party who sent them. That is to say, Gentlemen, if your servant had received a sum of money from a man in the Strand would you put the name of the porter who brought it or the name of the man who sent it? I think you would enter it in the name of him who sent it; much more would you expect to find it entered in the name of the man who sent it, if you had employed a person to receive it for you. If this had been stated, the magistrate would have said to Mr. Cruchley, good God, sir, for what do you mean to charge Mr. Hewlitt with felony; there is the book which has been open to your inspection, has been kept in your own house, and has been put into a desk, of which you have one key, and Hewlitt another, and there was not an hour in which, if you had chosen to use your eyes, you would not have seen those sums charged. Gentlemen, instead of taking this course, what does Mr. Cruchley do? he goes to the Middlesex Sessions, behind the back of Mr. Hewlitt; he gets this man Clarke to go and swear that he, (Clarke), on such a day, paid 3s. 6d. to him (Hewlitt), and Mr. Cruchley swears that Hewlitt has not accounted to him for that 3s. 6d., and, therefore, desires the Grand Jury to find a bill for felony: and the

Grand Jury, who can know nothing but that which is stated to them, find it; and, if this young man, Mr. Hewlitt, had been convicted, he was not only subject to the disgrace of the conviction, but to fourteen years transportation; and I will venture to say that, as a servant, unless there had been very extraordinary circumstances of mitigation, he would have received that sort of punishment.

Gentlemen, how came Mr. Hewlitt to know any thing about this? When those seven bills of indictment were found, how did he get notice of it? The first was for, on the 10th February, embezzling 3s. 6d.,—the next, on the 11th February, 4s. 1d.—and so on for seven days, making, in the whole, 22s. 2d. This young man, who had been clerk to Mr. Cruchley fourteen years, who had, as I will shew if it becomes material, by every man belonging to the Marshalsea-Court, conducted himself in the most prudent and exemplary way, had his name exposed on a paper, stuck up in the Press-Yard, at the Old Bailey; and I thank God, for Mr. Hewlitt's sake, that it was so held forth,—“John Churcher Hewlitt, Seven Indictments for Felony”—How did Mr. Hewlitt happen to find this out? I will tell you; by the most providential circumstance in the world, a gentleman, clerk to an attorney, happened to go into the Press-Yard, to look for some other name, and saw stuck up “John CHURCHER Hewlitt, Seven Indictments for Felony:”—it was very lucky he happened to have this singular name, for there may be twenty John Hewlitts and not one other with the name of CHURCHER:—Good God, said he, it is not likely there should be more Hewlitts than one who has the name of Churcher; what can this mean? (that was on a Friday,) he went and inquired into the subject, and found, to his astonishment, that the John Churcher Hewlitt was the young man whom he had known for years performing his public duty, and who was to be found at any time, stuck up, as a felon, to be tried upon seven indictments. Whether Mr. Cruchley would have had the warrant executed I don't know; but, immediately upon that circumstance being made known, Mr. Hewlitt's friends gave him, which was the best that could have been

given, their advice ; they said, if Mr. Cruchley has had the malignity to do this, he will get a Bench warrant to apprehend you ; and, as the sessions are likely to be long, you may lay three or four days in Newgate, therefore, give him notice that, on Wednesday next, you will surrender yourself to take your trial ; and, in the mean time, don't put yourself in the way to be taken hold of. Gentlemen, he went to the Old Bailey, and you may very easily judge what was the result : whilst the honourable men in whose hands the prosecution was placed were stating the case, they found it was crumbling to dust under them, and they had scarcely finished it before they told the judge that it was impossible to sustain the indictment.

Mr. ANDREWS. — We gave it up ourselves

Mr. SERGEANT SHEPHERD. — Yes, gentlemen, they gave it up themselves, because they knew it was impossible to be supported ; for, thank God, when counsel are engaged to conduct a prosecution, there are very few, I believe none, who have not too much sense of justice—not to state the case as they are desired—but such as it really is or appears to them to be ; and they will not lend themselves, for the purpose of gratifying the malignity of their clients, upon any occasion. — Gentlemen, I say, no man, who was not an idiot, much less a man of the law, could have preferred such indictments as these, without being sure he was preferring them without the slightest foundation to stand upon. — Mr. Cruchley knew that Clarke, the man who paid the money, was not the man whose name ought to be put into the account ; he knew that he was the man who was only the messenger from Brooks ; — he knew that every sum of money was regularly entered, from day to day, in that book, and he must, therefore, have known that this young man had actually accounted for them ; but, even if he had not known it, I beg leave to state, upon the act of parliament itself, that it would not be the mere omission of a small sum that would be the justification of any master to charge a servant with A FELONIOUS ACT without inquiry : — God forbid it should ; for, who is there amongst us all who does not forget, at times, to enter small sums in books of account : — don't suppose that I admit Mr.

Hewlitt did so; because he did *not*; — but who is there that is not liable to such an error. And shall we be told that without inquiry, without calling upon the person to explain, a master is allowed to say, sir, you have feloniously received so much money of mine, and that he is to be allowed to go on in that rash way to charge a man with a capital felony, which subjects him to 14 years transportation, which subjects him to take his trial at a criminal bar, to have his name stuck up in the list of felons, many of whom deserve death and more deserve transportation for their crimes, and to be handed down to infamy; is he to be allowed to make such a charge against a most respectable young man, performing his duty at that office, and ready to be seen there at any time; for Mr. Cruchley, above all men, knew that, from 10 in the morning till 4 in the afternoon, he was to be found there; and that every Friday he was publicly attending the Palace-Court, and sitting under the judge of that court, as prothonotary, whilst he was trying causes. — There is no man safe, if this is to be tolerated: that most respectable and worthy gentleman,* who now sits under his Lordship, executing the functions of his office, may, from the malignity of some man, have an indictment preferred against him, at this moment, at the Old Bailey, and I, while I am attending here, in my professional capacity, may, at this instant, be placarded upon the public walls, at the Old Bailey, “Samuel Shepherd to be tried upon seven indictments for embezzling 22s. 6d.” — Gentlemen, I say, if I make out this case I am entitled to very large damages against the Defendant. — Recollect a little the situation in which a man stands, under such circumstances: — which of us is there, however we may feel armed with innocence, however we may feel protected by the character we have earned in our different courses of life, and obtained the approbation of our friends; which of us is there whose heart would not be wrung and agonized at being placed at the Bar of the Old Bailey, holding up our hands, and being told we must put ourselves upon God and our country for a safe deliverance. — This sort of action is

* Mr. Cox, the associate

not to be measured by the pecuniary expense Mr. Hewlitt was at, though that was large enough, in defending himself; for, the more innocent and conscious he felt of not having committed a crime, the more requisite it was for him to put himself to the expense of getting a body of surrounding friends to assist him, in order that if, in the course of the trial, it became necessary, he might have an opportunity of calling those who had known him for years to give him the benefit of that character which, by his honest labour and good conduct, he had acquired, and which might protect him in the time of need, if he should be attacked; but, Gentlemen, if his own feelings were agonized upon the occasion, there were others who must have felt much more:—Mr. Cruchley, who has known him many years, knew that he had an affectionate wife and four infant children depending upon him for support, which children were to be ushered into the world either well or ill, according as their father should or should not pass through the world with character and reputation; for, let it be remembered, and it is a wise observation, because it is a divine one, that “the sins of the father are visited upon the children;” and, never are they more strongly so than when the conduct of the father draws down upon him the destruction of his character. Somebody has said, “a good man’s children never want bread;” and well may that be said, because, in proportion to the good conduct and character of the father, those who know him become the friends of the children; but, it frequently happens, though it certainly is hard, that, when the parent has lost his character, the child finds no friend, except in those institutions which are raised for the laudable and express purpose of securing from want the children of the infamous. Mr. Hewlitt, therefore, comes here to demand large damages, not because he has been put to large expense, for that I look upon as nothing; he demands them, because his reputation and character have been attacked; because Mr. Cruchley must have known he did not deserve it; and, because he has been held forth as a felon and put to the bar of a criminal court, and been subject to all the infamy of felony and to all the misery of 14 years transportation.

Gentlemen, his Lordship will tell you, in point of law, whether, in his opinion, there was probable cause or not; if there was not, then the question will be, was there not malice? If there was no probable cause, the law will infer malice; but here I say there is *MALICE EXPRESS*, and the cause of the malice is, that Mr. Cruchley, having been under a cloud, before those who were his superior officers, and having been suspended, he has thought fit to wreak his vengeance upon this young man, who has been honest in disclosing what has been the course of the office, which I am afraid has not been conducted as it ought to have been, and has been appointed to that situation which Mr. Cruchley was deprived of;—there can be no stronger malice than that:—you shall hear this case fully proved, and I have no doubt you will do justice between the parties. If I am mistaken in calling it infamous and wicked, those epithets will not apply to it; but I think there never was a more malicious, more wicked, or more infamous, charge made by one man against another than the charge Mr. Cruchley made against Mr. Hewlitt.

MR. GEORGE SILK *sworn : examined by*
Mr. SERGEANT VAUGHAN.

Q. Do you produce the examined copies of the records of the indictments against Mr. Hewlitt, at the Old Bailey?

A. Yes.

Q. Do you produce seven?

A. Yes.

Q. Did you examine them yourself with the indictments?

A. Yes; I did.

Q. I believe you also produce the minute of the order for the copies of the indictments?

A. Yes; that was examined also: I saw Mr. Shelton write it.

Q. Was you present when the Court granted it?

A. Yes; I was.

Q. And you was present when Mr. Shelton entered it?

A. Yes; I saw him write it.

MR. JAMES HARMER *sworn : examined by*
Mr. READER.

Q. You attended, at the Old Bailey, as attorney for the then prisoner, Mr. Hewlitt?

A. I did.

Q. Who appeared as prosecutor of the indictments?

A. Mr. William Cruchley, the Defendant.

Q. Had you, before the trial came on, any correspondence with Mr. Cruchley, as the prosecutor of the indictments?

A. I had : I wrote a letter to him, as the Prosecutor, and received an answer.

Mr. SERGEANT BEST. — We must see that.

Mr. READER. — We have given you notice to produce our letter. The witness has the answer in his hand.

Q. Tell us the purport of the letter you wrote to Mr. Cruchley or read the copy?

Mr. SERGEANT BEST. — Q. Did you compare that with the original?

A. I don't believe I have a copy.

Mr. READER. — Q. Can you tell me, from memory, the purport of your letter?

A. I can.

Mr. SERGEANT BEST. — Q. Did you keep a copy

A. I have no copy : I looked for it and could not find it.

Q. How did you make it up for the brief?

A. It was made by the clerk who copied it; he is here.

(The following letter was then read :)

“ SIR,—As solicitor for Mr. Hewlitt, I request to be *immediately* furnished with the particulars of the sums you charge him to have received and embezzled ; that is to say, the dates of the receipts, the sums and the names, descriptions and residence of the persons from whom you allege them to have been received.—Yours,

J. HARMER.

Hatton-garden, April 10, 1813.

To Mr. W. Cruchley.”

Mr. READER. — Q. Did you receive that letter (*shewing one*) from Mr. Cruchley in answer to that which you have read?

A. I did.

Mr. SERGEANT BEST. — Q. Do you know Mr. Cruchley's hand-writing?

A. I do not.

Mr. RAILTON *sworn: examined by Mr. READER.*

Q. Are you acquainted with the hand-writing of Mr. Cruchley, the Defendant?

A. Yes.

Mr. SERGEANT BEST.—I will not trouble Mr. Railton now; but I shall want to ask him a few questions bye and bye. That is Mr. Cruchley's hand-writing unquestionably.

(*The following letter was then read:*)

“ The King v. John Churcher Hewlitt.

“ SIR,—In answer to your letter of the 10th instant, I send you hereunder the dates of the receipts, the sums, and the names and descriptions of the persons from whom the same were received, viz.

Feb. 10, 1812 . . 3s. 6d.

11, — . . 4s. 1d.

12, — . . 1s. 2d.

13, — . . 4s. 8d.

14, — . . 4s. 1d.

15, — . . 2s. 4d.

17, — . . 2s. 4d.

Witness, William Clarke,
Northumberland - street,
Mary-le-bone.

Ditto, Richard Day, clerk
to Brooks and Harper, Bell-yard,
Temple-bar, Law-stationers.

I am, Sir, your obedient servant,

W. CRUCHLEY.

“ To Mr. J. Harmer,
Hatton-garden.

April 12, 1813,
John-street, Bedford-row.”

Mr. READER.—Q. *to Mr. Harmer.*—You received that in consequence of your application?

A. I did.

Q. Was you present at the Old Bailey?

A. I was.

Q. How many indictments were there against Mr. Hewlitt?

A. Seven.

Q. Were any witnesses called on the part of the prosecution?

A. There were none. Mr. Gurney was the leading counsel and opened an acquittal. He said he certainly had no evidence to lay before the Jury.

LORD CHIEF JUSTICE.—Q. He did not state the case?

A. He stated it shortly, and, under the direction of his Lordship, submitted whether he should call any witnesses, and the judge said he need not.

Mr. READER.—Q. What was your bill for preparing and conducting the defence?

A. Upwards of £100

Cross-examined by Mr. ANDREWS.

Q. No witnesses were called upon these prosecutions?

A. None.

Q. Do you not remember Mr. Gurney stating that the indictment had been preferred without any communication with him and under a misapprehension of the facts, and that he thought it best to withdraw the prosecution?

A. Certainly.

Q. Was not that done without any interference from or any appeal to the bench?

A. He stated that he had not been consulted as to preferring the indictments, but that, since, he had conferred with his learned friends and should withdraw the prosecution.

Q. Do you not remember his stating that, up to the time Mr. Cruchley complained, he had the highest confidence in Mr. Hewlitt's integrity?

A. I think I do.

Mr. READER.—Q. Did he not also state that, up to the moment of the prosecution, he had borne a most irreproachable character for probity and honesty?

A. Yes; he did.

Mr. SERGEANT BEST. — Yes; and I say so now.

LORD CHIEF JUSTICE. — You cannot put it stronger.

Mr. ANDREWS.—Q. It has been said the bill for the defence amounted to upwards of £100; was not part of that expense incurred by bringing a gentleman specially to that Court, with a very large fee?

A. Certainly with a large fee.

LORD CHIEF JUSTICE. — What is that?

Mr. SERGEANT SHEPHERD. — It is said that a great

part of the expense was incurred by taking a gentleman of the first eminence to that Court to defend Mr. Hewlitt.

MR. RICHARD FERGUSON *sworn: examined by*
Mr. SERGEANT SHEPHERD.

Q. You are clerk to Mr. Willoughby, in Clifford's Inn?

A. Yes.

Q. Do you remember going to the Old Bailey, on the 9th of April?

A. I do.

Q. How did you happen to go there?

A. I dined in the Old Bailey.

Q. Did you see any paper stuck up containing a list of persons who were to be tried?

A. Yes.

Q. What name struck your eye?

A. John Churcher Hewlitt, at the bottom of the list.

Q. What else?

A. Either seven or eight indictments; I cannot tell which.

Q. Did you know Mr. Hewlitt?

A. O, yes.

Q. Did the singularity of the name of "CHURCHER" strike you?

A. Yes.

Q. Did you communicate that circumstance to any body?

A. To Mr. Willoughby first.

Q. What day of the week was it?

A. Friday.

Q. Did you see Mr. Hewlitt yourself on that occasion?

A. I did not see him till about eight o'clock the same evening.

Q. Did you then communicate to Mr. Hewlitt what you had seen?

A. Yes.

Cross-examined by Mr. SERGEANT BEST.

Q. Where did you see this paper?

A. On the back of a large door in the Press-yard.

Q. How came you to look there?

A. I went merely out of curiosity to see a list of the prisoners; my father and I were together.

Q. How did you know such a list was there?

A. I have seen a list of that kind often.

Mr. SERGEANT SHEPHERD.—Q. Had you any notion or suspicion that you should see the name of Mr. Hewlitt there?

A. None whatever.

Q. Were you struck with surprise when you did see it?

A. I had so little idea of seeing it that I could not believe it when I did see it.

JOHN HUTT *sworn : examined by*
Mr. SERGEANT VAUGHAN.

Q. You are a police-officer?

A. Yes.

Q. Do you produce the warrant that was granted for the apprehension of Mr. John Churcher Hewlitt?

A. Yes. (*Produces it.*)

Q. Who delivered you that warrant?

A. Mr. Buckland.

Q. Having received that warrant, did you see any thing of Mr. Cruchley?

A. Not till the evening.

Q. Of what day?

A. The 8th, I believe.

Q. That was the day you received the warrant?

A. Yes.

Q. Did you try to serve the warrant?

A. Yes.

Q. Did Mr. Cruchley assist you?

A. He went with me to Islington, in company with Mr. Buckland.

Q. How long did Mr. Cruchley remain with you?

A. I dare say a couple of hours.

Q. He walked till it was necessary to refresh?

A. Yes.

Q. Then you went to a public house and drank together?

A. Yes.

Q. Having refreshed, did you go out again?

A. Yes.

Q. Did Mr. Cruchley go with you?

A. He did.

Q. Was it on Saturday?

A. I don't exactly know the day.

Q. Was it not Thursday, the day before the paper was stuck up?

A. I did not see the paper.

Q. You was desired by Mr. Cruchley to execute this warrant?

A. By Mr. Buckland.

Q. But Mr. Cruchley was with you?

A. He was.

Q. You had not the good luck to find Mr. Hewlitt?

A. No.

Q. Where was you desired to take him to?

A. Mr. Cruchley gave me no orders at all.

Cross-examined by Mr. ANDREWS.

Q. When was it you received the warrant to apprehend Mr. Hewlitt?

A. I was going to apprehend him the next morning and I met Mr. Buckland, and then he desired me to desist from it.

Q. And he never was taken?

A. No.

Mr. SERGEANT VAUGHAN.—Q. On a subsequent day the execution of the warrant was countermanded; but on that day they all assisted to find him and to take him wherever he was to be found?

A. Yes.

Q. Where should you have taken him to if you had found him?

A. I should have taken him to Newgate.

Q. What were the orders given?

A. I met Mr. Buckland in the morning, about eleven o'clock; he said, have you executed that warrant. I told him no, I was going to do it. I was then going to Cur-sitor-street, where Mr. Hewlitt lived. He told me not to execute the warrant till further orders, and he was very glad it was not executed.

Q. You never had further orders?

A. No.

LORD CHIEF JUSTICE.—Q. Who is Buckland?

A. A solicitor, I understand.

Mr. ANDREWS.—He was then acting as agent for Mr. Cruchley.

LORD CHIEF JUSTICE.—Q. Is he an attorney?

A. I always understood so.

MR. EDWARD DOLMAN *sworn: examined by*
Mr. READER.

Q. You are one of the attorneys of the Marshalsea-Court?

A. I am.

Q. Was you present at the Marshalsea-Court when an order for the suspension of Mr. Cruchley from his office was made?

A. I was.

Q. When was that?

A. The 17th of February, 1812.

Mr. SERGEANT BEST.—We should see the order?

Mr. READER.—It is here.

Q. Is that the order of suspension? (*Shewing a book.*)

A. Yes.

Q. And for the Plaintiff, Mr. Hewlitt, to do the duties of the office?

A. Yes.

Q. Who was present at the time of pronouncing that order?

A. The late Earl of Aylesford, Charles Warren, Esq. as his assessor, Sir James Bland Burgess, and Burton Morice, Esq. steward.

Q. Did you deliver over that order to Mr. Hewlitt?

A. I did.

Q. Have you, as one of the attorneys of that court, been much in the habit of attending the office where the business is done?

A. I have.

Q. Where has that office of late been kept?

A. In Chancery-lane.

Q. Where was it before that time?

A. In John-street, Bedford-row.

Q. At whose house ?

A. At Mr. Cruchley's.

Q. Was Mr. Hewlitt acting as clerk, at his house ?

A. He was.

Q. Did that continue up to the time of the suspension ?

A. Yes.

Q. For how long before had it been ?

A. Between two and three years I believe.

Q. It had been at Clifford's Inn, and then was removed to John-street, Bedford-row, and there it continued up to the time of the suspension ?

A. Yes.

Q. Had you frequent occasion to see the manner in which Mr. Hewlitt did the business there, as Mr. Cruchley's clerk ?

A. Yes.

Q. Were those the books in which the business was entered ?

A. Yes ; writs and those kind of things.

Q. Were those books open for the inspection of every person that came into the office ?

A. Not of every person who came into the office : they were on the desk ; it was Mr. Hewlitt's book ; it was not considered as a public book.

Q. Did you frequently see Mr. Cruchley in the office ?

A. Yes.

Q. It was at the back of the house ?

A. No ; it was in the front of the house.

Q. That was the way in which the books were kept ?

A. Yes ; I have examined, from the 10th of February to the 17th, a number of writs, and I find them correct.

Q. As far as your transactions went it is a faithful record of business done by you ?

A. Yes ; up to the time I state, the 17th of February.

Q. When you paid him any sum of money, were you in the habit of seeing him make the entry ?

A. Yes.

Q. Upon all occasions did he make the entry in the book ?

A. As far as I observed he entered it ; sometimes he made a memorandum opposite it upon the blotting-paper if any change was owing.

Cross-examined by Mr. SERGEANT BEST.

Q. You are an attorney of the Palace-Court?

A. Yes.

Q. If it is not forbidden to tell the secrets of that Court, I believe neither you nor any of the attorneys of the Palace-Court are pleased with Mr. Cruchley, for having prevented an order being made for raising your fees?

A. I don't know whether he prevented it or not.

Q. Do you not know that he prevented the suitors being taxed with additional fees to you and also an increase of the fees of the Judges of the Court?

A. I heard he did oppose it.

Q. And that was previous to the suspension?

A. Yes.

Q. Before the suspension he opposed himself to the increase of your fees, and the increase of the fees of the judge?

A. I have heard it.

Q. Had he not the misfortune to quarrel with one of those judges?

A. I have heard so.

Q. Was you not present at the discussion, and when that order was made?

A. Yes.

Q. You have named three Judges, Lord Aylesford, Sir James Bland Burgess, and Mr. Morice?

A. Yes.

Q. Did not Sir James Bland Burgess protest against the injustice of that order?

A. He did.

LORD CHIEF JUSTICE.—What order?

MR. SERGEANT BEST.—The order for the suspension.

Q. You say before the order was pronounced you knew, from what passed, that there had been a quarrel between Mr. Morice and Mr. Cruchley, in consequence of Mr. Morice adding a shilling to the fee to himself upon the writ?

A. I don't know whether it was a quarrel; there was a disagreement; I don't know that Mr. Morice would condescend to quarrel.

Q. Yes, yes; we have heard a good deal of that:—Mr. Hewlitt was his clerk?

A. Yes.

Q. That is Mr. Cruchley's book, is it not?

A. I don't know.

Q. Was not that book in the office?

A. I suppose this was the book.

Q. Don't you know that whilst Hewlitt was the clerk of Mr. Cruchley, he took that book away from the office?

A. I don't know.

Q. Don't you know that he went and took away all the books:—Do you not know, from the Plaintiff himself, that, whilst he was the clerk of Mr. Cruchley, he having quarrelled with Mr. Morice, that Hewlitt went and took away all the books?

A. I don't know that.

Q. Do you not know it from the Plaintiff himself?

A. Yes; I have heard that he took away the books.

Q. Then you do know from Mr. Hewlitt, himself, that he and Mr. Morice's clerk went to Mr. Cruchley's, his master's apartment, and took away the books?

A. I don't know that he went with Mr. Morice's clerk.

Q. Then you know that he went by himself?

A. I have heard him say—

Q. That he went by himself?

A. Yes; that it was by order of the Court.

Q. Who was the judge?

A. There were two judges; I think the order mentions it.

LORD CHIEF JUSTICE.—The order was made by Mr. Morice to take the books away?

MR. SERGEANT SHEPHERD.—It was by an order of the majority of the Court.

LORD CHIEF JUSTICE.—It is of no moment if it was by the order of the Court.

MR. SERGEANT BEST.—Q. You know from the Plaintiff that he took the books away?

LORD CHIEF JUSTICE.—If he took them away by the order of the Court it is of no consequence.

MR. SERGEANT BEST.—My Lord, I think the Court might have found a better messenger.

Q. Was he not still the clerk of Mr. Cruchley?

A. I don't know the time when he took the books away. I don't know that he could be considered the clerk of Mr. Cruchley when he was ordered to take upon himself the office of Deputy-Prothonotary.

LORD CHIEF JUSTICE.—There is no doubt he was clerk to Mr. Cruchley up to that time.

Mr. SERGEANT BEST.—What was the fee that was to be added ; a shilling upon every writ, was it not ?

A. I don't recollect

Mr. READER.—Q. Was the order in writing ?

A. There was an order of Court in writing.

Mr. SERGEANT BEST.—Q. Was not the additional fee upon Mr. Cruchley's opposition given up ?

A. It was given up ; but I don't know whether it was by his opposition.

Q. Is not that one of the books which was taken away by the Plaintiff.

A. I believe it is one.

Q. Did you not understand from him that he took away all the books ?

A. I don't know that he took away *all* the books, but that he took away the books.

Q. If he took away the books, do you not understand that he took away all the books ; however, he took upon himself the office of Deputy-Prothonotary ?

A. He took upon himself that office, by order of the Court ?

Mr. READER.—Q. Could he have obeyed the order of the Court without having the books ?

A. I think not.

Q. He took the office upon himself by order of the majority of the Court ?

A. Yes.

Q. The late Earl of Aylesford being the lord-steward of that Court ?

A. Yes.

Mr. JOHN PASCAL *sworn : examined*
by Mr. SERGEANT VAUGHAN.

Q. You are clerk to Mr. Field, one of the attorneys of the Palace-Court ?

A. I am.

Q. You have been so for eight years ?

A. Between seven and eight years.

Q. Are you acquainted with the manner of doing business in that office?

A. I am with regard to the writs.

Q. I believe you, on the 11th and 15th of February, paid over to Mr. Hewlitt two sums?

A. I believe I did.

Q. Look whether they are in that book?

LORD CHIEF JUSTICE.—What sums are they?

MR. SERGEANT VAUGHAN.—Two of the sums which were the subject of indictment were paid by this gentleman to Mr. Hewlitt.

Q. Are they there?

A. They are.

Q. Tell us what days they appear to have been paid on?

A. Upon the 11th of February and on the 15th.

Q. When you paid over, on the 11th and 15th of February, those particular sums to Mr. Hewlitt, on account of Mr. Cruchley, did you observe whether he entered them in his book in the usual way?

A. Certainly he did.

Q. Tell us whether it corresponds:—is the fee six-pence or a shilling?

A. It is a shilling; on the 15th six-pence and on the 11th a shilling; the six-pence was on the renewal of a writ and the shilling for a writ, on different days.

Q. Did he do, as he had been accustomed to do, make an entry?

A. I can only say that I particularly remarked the correctness of Mr. Hewlitt in keeping the accounts.—The books lay on the desk, and when the writs were delivered he would enter and sign them. Sometimes I have not had money to pay him and he has entered it in the book as paid; and if I had forgot it or had not honour to pay him he must have lost every farthing.

Q. Did you always remark that such was his conduct?

A. At least generally so; I used to take particular notice of it?

Q. Have you seen Mr. Cruchley himself frequently looking at that book?

A. Frequently.

Q. Was it always there?

A. Yes; it lay on the left hand.

Q. And Mr. Cruchley, living in the house, frequently looked at it?

A. I have frequently seen him come out of his office behind and look at it.

Mr. SERGEANT BEST.—Q. At what time?

A. On different days.

Q. Had he any means of doing that after the 11th or 15th of February?

A. Not after that time?

Q. After what time?

A. The books were carried away on Monday, the 17th.

Mr. SERGEANT VAUGHAN.—Q. So late as the 15th you saw him making his entries in the same accurate way as before?

A. Yes.

Mr. SERGEANT BEST.—Q. You never after that saw Mr. Cruchley looking at them?

A. No.

Mr. SERGEANT VAUGHAN.—Q. He had the opportunity of looking at the book up to the time it was taken away?

A. Exactly so.

Mr. SERGEANT SHEPHERD.—Q. What is the date of the order?

A. The 17th of February.

(The following Order of Suspension was then read:)

“The Court of the Lord the King, of the Palace of the King, at Westminster, holden on Monday, the 17th day of February, 1812:

“Whereas, it appears to this Court, upon examination of several witnesses upon oath and upon affidavits exhibited in this Court, as well as upon the examination and affidavits of William Cruchley, Deputy-Prothonotary of the Court, that the said William Cruchley has been guilty of divers misdemeanors in his office aforesaid, *videlizet*, the erasing a certain entry in a book, called the plaint-book, being one of the books containing the proceedings of this Court and in the custody of the said William Cruchley, and of neglecting to make certain entries in the rule-book, being another book containing the proceedings of this Court and in custody of the said William Cruchley, according to the orders of this Court, and of exacting, under the name of fees

belonging to his office, divers sums of money, which the said William Cruchley is not authorised by law to receive, and of withholding divers fees of certain officers of this Court, which by law they are authorised to receive: The Court, having considered the premises, are of opinion that the said William Cruchley should be suspended from his office aforesaid till further order from this Court, and that John Churcher Hewlitt, clerk in the Prothonotary's office in this Court, be appointed, during such suspension, to act in the room and stead of the said William Cruchley, this Court do therefore suspend the said William Cruchley from his office aforesaid, and appoint the said John Churcher Hewlitt to act during such suspension, in his stead, till further orders; and the Court do further order and direct, that the said John Churcher Hewlitt, during the time that he shall act as aforesaid, shall receive and be accountable for all the fees, in the same manner as the Deputy-Prothonotaries heretofore have been.

By the Court."

WILLIAM CLARKE *sworn: examined by*
Mr. SERGEANT SHEPHERD.

Q. You know Mr. Cruchley?

A. Yes.

Q. Do you know Mr. Brooks, the stationer?

A. Yes.

Q. Did he take affidavits for the prothonotary?

A. Yes.

Q. Did you take from him money, at different times, that he received for affidavits and give it to Mr. Hewlitt?

A. I did.

Q. That was the money Brooks received as the taker of the affidavits?

A. Yes.

Q. Do you recollect, on the 10th of February, 1812, whether you took 3s. 6d.?

A. I really cannot recollect at this time.

Q. When did you go before the Grand Jury?

A. The 7th of April, 1813.

Q. That is not a great while ago: did you take any money from Brooks to Hewlitt?

A. I did.

Q. On different days?

A. On different days.

Q. Do you know that book? (*Shewing an accompt-book.*)

A. Yes.

Q. Were the different sums paid to Hewlitt by you as coming from Brooks?

A. They were.

Q. Did that book used to be open in the office?

A. Yes; it lay on the desk.

Q. Did Mr. Hewlitt used to enter in that book the moneys as he received them?

A. Whenever he received money from me he ALWAYS entered it in the book.

Q. And you brought money from Brooks?

A. I did.

Q. I desire you will recollect as well as you can; did you or did you not pay him several sums in the month of February, 1812, on the 10th, 11th, 12th, 13th, 14th, 15th, and 17th?

A. Yes, I did; but not on the 17th: I had a memorandum, but I really have not got it with me now.

Q. And those were all from Brooks?

A. Yes; as coming from Brooks.

Q. How came you to be the person that used to go and fetch the money from Brooks?

A. By desire of Mr. Hewlitt.

Q. Did Mr. Cruchley know that you fetched money from Brooks?

A. That I don't know.

Q. Are not those sums, which you have been speaking to, the sums that you spoke to before the Grand Jury?

A. They are.

Q. When was you first applied to to go before the Grand Jury?

A. I believe the 7th of April last.

Q. By whom?

A. By Mr. Cruchley.

Q. Did you go before the Grand Jury?

A. I did.

Q. Were you desired to explain who you had received the money from?

A. By whom?

Q. By any body?

A. No.

Q. What was the nature of your employment?

A. I was employed in Mr. Cruchley's office as a clerk and I acted as deputy-crier of the Court.

Q. Was the office at Mr. Cruchley's own house?

A. Yes.

Q. Up to what time were those books in Mr. Cruchley's office, at Bedford-row?

A. To the best of my knowledge I left them there on the Saturday.

Q. What day of the month was that?

A. The 15th of February.

Q. Were those books open upon the desk?

A. No; they generally used to lay open upon the counter, for the attorneys.

Q. How used those books to be kept; where were they put at night, before Mr. Cruchley was suspended?

A. In a small closet the keys were generally put in a little box, where were put the seals for issuing out the writs.

Q. At Mr. Cruchley's house?

A. Yes.

Q. Who had the keys of the box?

A. They were left in the drawer of the box where the instruments were for the signing and sealing the writs.

Q. Was there any external key to the drawer?

A. Not that I know of.

Q. Therefore the keys of the closet where the box was kept were in a drawer in Mr. Cruchley's house?

A. The drawers were locked, but the keys were left in a drawer not locked.

Q. After you had been before the Grand Jury, did you receive any directions about saying or not saying any thing about what you had been doing?

A. I was told not to say any thing about what had transpired.

Q. By whom was you told that?

A. By Mr. Cruchley.

LORD CHIEF JUSTICE.—Q. What was you told?

A. Not to say any thing about what had transpired to any body.

Mr. SERGEANT SHEPHERD.—Q. What was the day on which you went before the Grand Jury?

A. I think it was on Wednesday, the 7th of April last.

Q. I don't know whether you continued in the employ of the Prothonotary's office?

A. No.

Q. Do you know whether Mr. Hewlitt, during the office hours, was attending the office in Clifford's Inn?

A. No; I cannot say.

Q. You did not go there?

A. No.

Q. Of course, as you received this direction, you did not say any thing to any body?

A. No, I did not; I considered myself bound not to say any thing.

Q. Was you at the Marshalsea-Court, on the Friday afterwards?

A. I was.

Q. Was Mr. Hewlitt there?

A. Yes; he was.

Q. During the whole day?

A. During the time of the Court sitting he was.

Q. The Prothonotary sits under the judge of that Court just as Mr. Cox sits under his Lordship here?

A. Yes.

Q. Did you attend on the Wednesday afterwards, when the trial came on at the Old Bailey?

A. I was there.

Q. You was not examined I know, for good reasons:—who desired you to attend?

A. Nobody.

Q. Was you bound over?

A. No; I was not.

Cross-examined by Mr. SERGEANT BEST.

Q. You was clerk to Mr. Cruchley at the time of this transaction in April?

A. With regard to the indictments?

Q. Yes.

A. No; I ceased to be his clerk on the 7th of January preceding.

Q. The books were there on the 15th February, 1812.

A. Yes.

Q. Was you there on the Sunday ?

A. I was.

Q. Did you see Mr. Hewlitt there ?

A. I did.

Q. Was he there attending as Mr. Cruchley's clerk ?

A. I don't know ; he told me he was going there for the purpose of making up the cause-paper for the Monday following.

Q. He vanished in a great hurry ?

A. I don't know that he did.

Q. Did you not miss him all at once ?

A. I don't know ; I was employed out of doors.

Q. Don't you know that he took the books away ?

A. I don't know that.

Q. Did you ever see Mr. Cruchley's books after that Sunday.

A. Yes ; I did.

Q. DID YOU SEE THEM ON MONDAY ?

A. YES.

Q. Do you know who took them away ?

A. No.

Q. Did he attend in the office, as Mr. Cruchley's clerk, on the Monday ?

A. Yes ; he did.

Q. Down to what time did he attend as Mr. Cruchley's clerk ?

A. I think I left him as late as ten o'clock in the forenoon, on Monday ; I left him there then.

Q. Do you know whether the books were gone then ?

A. I think not.

Q. Did you ever apply for the books, after he had got them away, for Mr. Cruchley ?

A. Not individually. I went down with Mr. Cruchley to request the accompt-books.

Q. Is that the accompt-book ?

A. I rather think it is.

Q. Would he give his master the accompt-books ?

A. He said the books were in the hands of his solicitors, and as soon as the accompts were made out he should have them.

Q. Is not that Mr. Cruchley's own book ?

A. I suppose so.

Q. Bought at his expense ?

A. That I cannot tell.

Q. This clerk was so good as to tell him he should have them as soon as the accompts were made out?

A. Yes.

Q. Do you know whether they were ever delivered?

A. I do not.

Q. Don't you know they were absolutely refused?

A. The books had been refused, certainly.

Mr. SERGEANT SHEPHERD.—Q. Saturday was the 15th of February?

A. It was.

Q. On Sunday you saw Mr. Hewlitt at Mr. Cruchley's?

A. No: not at Mr. Cruchley's: I saw him going there: he said he was going there.

Q. You did not see him at Mr. Cruchley's at all on the Sunday?

A. No.

Q. You think you saw him on the Monday?

A. I am sure of it.

Q. It was on that day the order of suspension was made?

A. It was.

Q. After that you never saw him acting as Mr. Cruchley's clerk?

A. Certainly not.

Q. Was it after the suspension that Cruchley went to Hewlitt and wanted him to give him up the books?

A. Yes.

Q. Before the suspension did you ever hear Mr. Hewlitt refuse Mr. Cruchley the inspection of the books?

A. No; I cannot say I did.

Q. Were not the books constantly open in the office for Mr. Cruchley to see them?

A. They were always in the drawer, as I told you before, where the seals were kept.

Q. At a subsequent time you say Mr. Cruchley asked after the books of accompt?

A. Yes; Mr. Hewlitt's answer was that his books of accompts were before his solicitors; and as soon as the accompts were made up Mr. Cruchley should be furnished with them.

LORD CHIEF JUSTICE.—Q. You were clerk to Cruchley?

A. I was.

Q. And you frequently carried money from Brooks for affidavits which he had taken, he being authorized to take affidavits for Mr. Cruchley?

A. Yes.

Q. Mr. Cruchley applied to you in April to go before the Grand Jury?

A. He did.

Q. Did he tell you what you was to go for?

A. For the purpose of swearing to the bills of indictment for having received the money from Brooks and Harper and paid it over to Mr Hewlitt.

Q. Did Mr. Cruchley understand that all the moneys you had so carried to Hewlitt were moneys you had so received from Mr. Brooks?

A. Yes; I conceive so.

Q. How are they entered in the book?

Mr. SERGEANT SHEPHERD.—As received of Brooks, every one.

Witness (reads) February 10th, Brooks, six oaths, 3s. 6d.—11th, Brooks, seven oaths, 4s. 1d.—12th, Brooks, two oaths, 1s. 2d.—13th, Brooks, eight oaths.

Mr. SERGEANT BEST.—I don't know how this is evidence.

LORD CHIEF JUSTICE.—Yes; it is very material evidence.

Mr. SERGEANT BEST.—If I understand right, those entries are in the hand writing of Mr. Hewlitt, and how he can make any hand writing of his evidence in the cause I am yet to learn.

LORD CHIEF JUSTICE.—This book is proved to have been constantly laying open in the office of Cruchley to which he had constant access; he might, therefore, see what entries were made in the book.

Mr. SERGEANT BEST.—My objection is this, that they are not proved to have been entered at the time. If any man will swear that, day by day, those entries were made by Hewlitt and that Cruchley ever saw them after they were made, then I admit they are evidence.

LORD CHIEF JUSTICE.—That must be left to the Jury:—this is a book which was perpetually opened for

the inspection of Cruchley and the persons who have been examined have sworn, that when this man received money it was his constant habit to enter it.

Mr. SERGEANT BEST.—I say any man in the world may be convicted if such evidence is admitted.

Mr. SERGEANT SHEPHERD.—No man would be safe if it was not.

Mr. SERGEANT VAUGHAN.—It is proved that he entered them.

Mr. SERGEANT BEST.—Why am I to be hunted down with prejudice; I shall be satisfied if his Lordship takes notice of the objection.

LORD CHIEF JUSTICE.—The man swore that on those days Hewlitt entered them in the book.

Mr. SERGEANT VAUGHAN.—Q. Did not you say so?

A. Yes.

Q. Did you see the entries made?

A. Yes; I never gave any affidavit till I saw the entry made; I said Mr. Hewlitt be so good as to enter the affidavit, and then I gave him the money.

LORD CHIEF JUSTICE.—You did right, certainly.

Mr. SERGEANT BEST.—Q. Do you mean to swear that on each day you saw entries made in those books of the sums that were paid?

A. I don't say in that book.

Q. Look at it and say whether you will swear you saw the entries made on the days on which the sums were paid?

A. No; I will not.

Mr. SERGEANT BEST.—Then I submit to your Lordship, it is not evidence.

Witness.—I will not swear to this identical book: they were entered in a book similar to that.

Q. Do you know whether there is any other book?

A. I do not.

Q. Have you any reason to believe there is any other?

A. I cannot have any reason to believe there is.

Mr. SERGEANT BEST.—I submit that a great deal of the evidence which has been received must be struck out. I thought I was correct before in stating that the man would not swear those entries were made at the time of making the payments; and, as they are entries

in Hewlitt's hand writing, I submit they cannot be received as evidence, unless the witness will swear he saw them made on the days they bear-date; because, otherwise, Mr. Hewlitt may yesterday have made every one of those.

Mr. ANDREWS.—This book is not proved by any witness to be the book that lay on Mr. Cruchley's table.

LORD CHIEF JUSTICE.—I thought two or three witnesses had proved it.

Mr. ANDREWS.—Not one;—it purports to begin in 1811; but, if it was the book which had been begun in 1811 and kept, day by day, it would appear in a very different condition, for the edges would be soiled; but this appears not to be so, the edges are almost new cut, and several of the pages are quite clean.

LORD CHIEF JUSTICE.—I understood the witness to say that that was the book that constantly lay open.

Mr. SERGEANT SHEPHERD.—And so there is evidence to that effect: I cannot shew that every entry was made at the time of receiving the money, unless I could call Mr. Hewlitt himself.

LORD CHIEF JUSTICE.—Let the witness look at it again. Are there any previous entries of payment from Brooks?

Mr. SERGEANT SHEPHERD.—Q. Examine it and see whether you have any doubt about it?

A. I certainly will not swear that this is the book.

Mr. SERGEANT VAUGHAN.—Q. Do you believe it to be the book?

One of the Jury.—Q. Have you any doubt upon your mind of that being the book?

A. I will not venture to swear that is the book.

Q. Have you any doubt upon your mind that it is the original book, or do you suppose it is a copy?

A. That is impossible for me to tell; I have left the office since 1812.

Mr. SERGEANT SHEPHERD.—Q. I don't ask you to swear positively:—look at the book and tell me whether you have any reason to doubt that being the book.

A. I have no reason to doubt, because it is Mr. Hewlitt's hand writing; it is exactly the way in which he kept the accompts.

Mr. SERGEANT SHEPHERD.—Your Lordship asked whether there were any previous entries of money received from Brooks. In every page there are.

LORD CHIEF JUSTICE.—Let the man look at those entries and tell us whether he recollects carrying money at those times.

Mr. SERGEANT BEST.—If your Lordship looks at the book you will see they could not have been entered from time to time.

Mr. SERGEANT SHEPHERD.—Q. Did he make an entry like that in the book of the money you paid him at the time you paid it?

A. Certainly ; always.

Q. Was the book in which the entry was made a book which lay on the desk ?

A. Always ; except at the time when he went to dinner ; then it was locked up in his own desk, the key of the desk he had, which is not at all connected with the keys of the office. A book similar to this used to be locked up in his desk when he went to dinner or left the office at night.

Q. It was always open when he was there ?

A. Generally.

Q. Can you doubt whether it is the book ?

A. No ; I cannot doubt it.

Mr. SERGEANT BEST.—You will doubt it in a very few minutes.

Q. The fees were not always paid at the time the business was done ?

A. You mean the sealing and signing the writs I suppose : generally they were.

Q. Did it not frequently happen that they were not ?

A. Yes ; it did.

Q. In the books, at the office, was there not an I. O. U. ?

A. Mr. Hewlitt used to do it in that way ; I never took it upon myself to give I. O. U. I took a small piece of paper and stamped it and then wrote on it.

Q. Was not there a memorandum made in the book ?

A. No ; Mr. Hewlitt used to enter it as money paid, and, when the clerks came, he used to demand the money of them.

Q. What means were taken by which he was to know those that were paid and those that were not?

A. I believe he used to make memorandums on the blotting part of the paper.

Q. Turn to those blotting parts and find whether there are any?

A. Here is one, the 29th, 1812, 6*d*.

Q. Find another on the blotting paper?

A. Here is another "February 7th, paid the printer's bill for the weekly account, 11*s*. 6*d*."

Q. That is not of the sort you were alluding to.—Look at the hand writing, and tell me whether it does not appear to have been written all at the same time, with the same pen and ink?

A. That is impossible for me to say.

Q. Are you used to writing?

A. Yes.

Q. Look at that and tell me whether it does not appear to have been written at the same time?

A. I cannot say.

Mr. SERGEANT BEST.—Then I will leave it to the Jury to say.

Witness.—A man may write twenty pages on the same day.

LORD CHIEF JUSTICE.—Q. Has this book been continued as the office-book since Hewlitt has acted in the office after the suspension of Cruchley.—Do you know that?

A. I do not.

LORD CHIEF JUSTICE.—Are there any entries in the book since the time Cruchley was suspended?

Mr. SERGEANT VAUGHAN.—No; I believe not.

LORD CHIEF JUSTICE.—Were the entries continued after the suspension?

Mr. SERGEANT VAUGHAN.—No, my Lord; he had new books.—Pascal has spoken to the entries on the 11th and 15th.

Mr. PASCAL *called again*.

Mr. SERGEANT VAUGHAN.—Q. You spoke of having paid two sums on the 11th and 15th of February?

A. I did.

Q. You told us there was an entry made by Mr. Hewlitt in his book in your presence?

A. I did.

Q. Was you in the habit of seeing a book of that sort on the table?

A. I have no doubt that this is the original book.

Q. Have you seen it frequently?—

A. Yes; I have seen a book similar to this. I believe, if the jury look at it, they will see it is not a new book, for the cover is very much worn.

Q. Have you any doubt that that is the book in which those entries were made, which you have spoken of on the 11th and 15th of February?

A. Swear positively I will not, but to the best of my belief it is.

Q. As far as you have any means of forming a judgment have you any doubt about it?

A. I have not.

Q. Though you are cautious of swearing positively?

A. Yes.

One of the jury. — I will thank you for the book.

(The book was handed to the jury.)

Mr. SERGEANT SHEPHERD. — That is my case.

Mr. SERGEANT BEST. — May it please your Lordship, Gentlemen of the Jury. It now becomes my duty to address you on behalf of the Defendant, Mr. Cruchley; and, after the very eloquent speech which you have heard from my learned brother, who had the advantage of topics to address you upon, which I have not, and who certainly managed them much better than I could have done, if I had possessed them, I confess I rise with embarrassment; but, notwithstanding that, I think I shall be able to satisfy you, upon the evidence as it now stands, and if not upon that, upon such evidence which I shall offer to you, if my learned coadjutor should, upon consideration, think it fit to add other evidence to that which now appears in the cause, that the Defendant is entitled to your verdict; but, in addressing myself to you I will do that which other people do not always do, I will confine myself, I will most strictly confine myself, to the evidence which has already been given, and if

I at all understand cases of this description, upon the evidence already given in the cause, I am entitled to your verdict. Gentlemen, I don't know whether any of you sat yesterday in that box, for the purpose of trying a cause of the same sort with this,—if you did, you heard from me, not that what I say has any weight with it except it is confirmed by the authority of his Lordship; but, as it was confirmed by the authority of his Lordship afterwards, you heard what was the law upon that subject; that law being stated by me and afterwards sanctioned by the authority of the Learned Judge who now presides,—it was this,—that, in order to support an action of this sort, two things must concur,—there must be a total absence of probable cause, for preferring the indictment, and the man who prefers it must be influenced by motives of malice in doing that which he does. Gentlemen, if you could find, upon this case, that the conduct of Mr. Cruchley, the Defendant, has been most malicious, not but what I think I shall shew you there was no malice whatever in the conduct of Mr. Cruchley, but if it were possible to find that the conduct of Mr. Cruchley was ever so malicious, yet, if there existed a probable cause for the prosecution of the indictment, this action cannot be maintained.—Those which I state to be principles of law have been established as law in all times, and were first so determined for the wisest and best of purposes. Gentlemen, it is fit, in order that offenders should be brought to justice for their offences, that men should not be put in hazard, when they institute prosecutions; it is not, therefore, necessary, in order to defend themselves where an acquittal takes place in a prosecution of this kind, that they should shew a felony has been committed, it is enough, if they can shew there was a probable cause for instituting it.—If that were not so, see the situation in which his majesty's subject would be placed;—they are not lawyers, they are entirely ignorant of the rules of law upon felony and all other legal matters; if, therefore, a man were liable to an action for a malicious prosecution, because he takes a man up for felony, and causes a bill to be found, when, in point of law, no felony was commit-

ted, and because he failed in the establishment of his facts, who is there, — who would have the courage, — to do that necessary and most important duty to the public, — that duty upon which all the security of our lives, liberty, and property, depends? — Who is there, who would undertake that, if because, from a defect of proof or ignorance of the law, a man was liable to be ruined by an action for a malicious prosecution. Gentlemen, in order to protect men from being intimidated the law has thrown this security round them, unless it can be shewn there is no probable cause, though there was no felony in point of law committed, or though the prosecutor failed in his proof, no action of this sort can be maintained. — Gentlemen, I do not mean to contend before you to day, that, with all the explanations which have since been given, there was any chance of the conviction of Mr. Hewlitt for felony; I am far from meaning to state that, but in deciding upon this cause you are not to judge upon the materials which have been furnished to day, when Mr. Hewlitt has thought proper to let in all the light upon the transaction which it is capable of, but you are to judge of it in the state in which it was when Mr. Cruchley preferred the indictments, at the time when I say the Plaintiff in this action most blameably kept back a great part of that light which he has thought proper you should have to-day; you are to decide whether there was probable cause, not from the evidence produced now, but from the state Mr. Cruchley was in with regard to information upon this important circumstance, at the moment when he went before the Grand Jury; and, carrying your mind back to that point, considering the situation in which he stood then, I submit that he had probable cause to indict this Gentleman for felony; and, if he was indicted for felony, it was his own fault: — understand me, I don't mean to say he had committed a felony, I am as little inclined to put felony upon him as any man; but, from his own error, he put Mr. Cruchley in a situation from which I think Mr. Cruchley had reason to think felony had been committed; and Mr. Cruchley, being influenced in his mind that a felony had been committed, instituted a prosecution; that his mind had

been corrected is evident, from the time he preferred the indictment to the time of the trial, and you will judge of that from the conduct of Mr. Cruchley on those different occasions ; for, when Mr. Cruchley went before the Grand Jury, he had no doubt in his own mind that this Gentleman had pocketed this money, intended to keep it and not to account for it: if he did so intend, it was a felony, for the statute has declared, that a man, who in the employment of another receives money and does not account for it, but conceals it from him, commits a felony. — Gentlemen, had not Mr. Cruchley reason to suppose ;—I am not putting it that the fact was so,—but had he not reason to suppose that the Plaintiff, in this action, had kept money from him which was Mr. Cruchley's property. How stands the case,—had he, in the first place, received any?—The very book on which the whole case rests proves he had received money ; — had Mr. Hewlitt accounted for it? — had he done something more, had he paid it over?—No, Gentlemen ; at this very moment, when the action is trying, it is not pretended, it is not stated, by my learned brother, either in his speech or in the irregular observations of another learned brother of mine, it is not suggested, that, at this moment, one farthing has been paid to Mr. Cruchley. — How do they put the case ; they don't pretend it is paid, but they say you might have known it was received. Don't tell me we might have known that ; in whose pocket should it be? — In the pocket of Mr. Cruchley ; — but, at this moment, you have not an atom of evidence that it has found its way into the pocket of Mr. Cruchley ; on the contrary, at this moment, the money I am speaking about is improperly, not feloniously,—I don't put it so,—in the pocket of the Plaintiff : — that is probable cause ; but, at the time of the trial, how were we to know that he had accounted for it : the proper way of accounting, by a servant to his master for money received, is to hand it over ; but they say that he had charged himself with it ; — say they, there were entries in the book, and therefore he did not mean to keep it a secret from you. — Gentlemen, much might have been said upon that subject, if Mr. Hewlitt had not conducted himself in the way he has

to his master; and, whatever belongs to the conduct of Mr. Cruchley, upon this occasion, I don't think Mr. Cruchley alone to blame in the Marshalsea-Court. I must say, it will be extremely fit that the proceedings of that court shall be subject to a more extensive inquiry than they can receive before the jurisdiction I have now the honour to address, and that it is fit not only to remove Mr. Cruchley, but that the conduct of the removers should be inquired into; for, whatever may have been the conduct of Mr. Cruchley, I don't think the clerk has conducted himself properly in going immediately, upon the suspension of his master, and seizing the books; the suspension being carried by a majority, I confess, but by a majority of one only of the Judges; and one of those Judges being the last person that should have given judgement against Mr. Cruchley. I know it is the practice amongst Judges never to pronounce judgment where they can be considered as having a bias in the cause, or an affection or regard to any person concerned. One of the judges, a most honourable man, protested against the suspension, but another, who had quarrelled with Mr. Cruchley, in consequence of the introduction of some fees, the legality of which Mr. Cruchley resisted, and being so resisted were given up by that Judge who voted for it; and, I say, you will not commend, nor will you sanction, by your verdict, the clerk of Mr. Cruchley immediately upon the suspension, under such circumstances, making himself the instrument of that court, to get possession of the books of his former master, which he had bought with his own money, and telling him he should not have them till his solicitor had made out the accompts from them.

I submit there was probable cause; but, it is said, this man had entered it on his own account.—Yes, if he could have said, on the 17th of February, I left the book in your hands, where it has been from that time; it was in your hands when you went to the Grand Jury to institute the proceeding, you went with the book in your pocket; if you had thought proper to look at it, your eyes ought to have been drawn to the subject; you went to the Grand Jury with the book in your hands; and you

have sworn to that which is false. If he had left the book in his hands, he would have left his advocate that argument; but, how does it come out;—he says, there is a book which will give you an account, which book he condescends to be the instrument to take from his master's chest, and by that very act (I think a most improper act in him, however proper the order of the Court might be, for though it is proper to hang a man, let no clerk be the hangman,) he got the book, and afterwards becomes the master. Gentlemen, is that fair dealing with a man in a Court of Justice? Can it be said you have gone before a Grand Jury with a full knowledge you are swearing to that which cannot be true, whilst here is the very means which prevented you from knowing that which unquestionably would have prevented these indictments. But, gentlemen, I must beg your attention to this book. I don't believe it is the original book;—none of the witnesses will swear positively to it; and I will tell you why I don't believe it is. It will be for you to judge whether my poor conceptions are right or wrong. How do they describe it? *They describe it as a book in which entries were made from time to time, and from day to day.* The entries of the sums in question commence where the red mark is; I don't go to the beginning of the book, because, from the 10th of February down to the 17th, (seven days) are the material parts. Now, if that book had been in the office for seven days, where so many entries are made, does any man alive believe there would have been the same pen used the whole time? Let any man take that book in his hand, and say if every word is not written with the same pen and ink;—if it is, I say it is impossible this book can be the original; I say it must be a copy; it is all in the hand-writing of the Plaintiff, and he might have made it for the purpose of supporting the present case. I must entreat you to look at it, and see whether you don't go with me, that it carries demonstration upon the face of it; that the original book, for some purpose, is kept back; that this is brought forward and the genuine book in which the entries are, is not here. Gentlemen, I have another observation to make besides that as to the pen and ink, which will go back

for many days together,—for a fortnight or three weeks, the same observation applies; and, before you can be satisfied this is the original book, you must believe, though government supply pen, ink, and paper, to the public offices very liberally, that the poor prothonotary's clerk must have kept one poor stump of a pen all the time; he must have had the same pen and ink for a great number of weeks;—but, say the clerks, “you must know where there are so many entries as there are here that sometimes little sums are not paid; for instance, a shilling for a writ or a little sixpenny charge, and you will find that written on the blotting paper at the side.” Gentlemen, take the book in your hands, and if you find any one entry of that sort connected with this subject, I will give up the cause. There are large sums in other places, but not one coming near the time;—there is not, from the time in which the entries are made, a single entry of that description, and yet the witness tells you it is the original book. There is another observation, which is this; you will find the blotting paper in its place in every part of the book, except just opposite to those entries, those leaves have been torn from the book and are wanting. The entries begin from where these red marks commence and the sheets of blotting paper are torn out; it was for them to account how that circumstance happened, because the whole of this question turns upon it being a genuine book;—if it is a copy, it is no evidence at all, because it is the hand-writing of the Plaintiff himself, which he might have entered last night, for any thing I know to the contrary; and, if you have any the least doubt about it, your verdict must be for the Defendant. I submit from the hand-writing and the absence of the blotting leaf that it cannot be the genuine book, but is a book manufactured, at a subsequent period, for the purpose of this cause; but, gentlemen, suppose, for the sake of argument, I admit it to be a genuine book, I say it proves nothing against the Defendant, unless it had been left in his custody. Is it fair that he should answer for the contents of a book taken from him as this was; and, in ignorance of the contents, he goes and swears what he does swear, and it is said to-day you shall be answerable for the contents of

that book, though I took it away. It is said he was ordered to take it away. Gentlemen, he libels the Palace-Court to say he was ordered to do it; he states that which would be a disgrace to the Judges of that Court, if it was ordered to be done in the way it was done. What is the regular way in which it should have been done? An order should have been served upon him to deliver them up, and he would have been liable to an attachment if he had not done so. If any one of his Lordship's officers kept possession of any of the books of this Court, and were ordered by the Court to deliver them up, upon refusal to comply with that order, what would be the course taken; he would be attached, and sent to the prison of the Fleet. Can any court, which is called one of the King's Courts, so degrade itself as not to take that which is the ordinary and established course to order the man to give up the books, and if not to attach him; but, instead of that, to order the servant of that man to get them, to skulk into the house of that man, and to take the books of his master; I say, they insult the Court by such conduct. But nothing appears upon the face of the order respecting the books, and my observation is, you did not take them because you was ordered to take them, but for the sake of answering some purpose against a master, who has treated you with kindness for a great number of years. I say, the Plaintiff has only to complain of his own conduct, and that he shewed a want of feeling to his employer, and a want of feeling to what was due to his own character, by going in the way he did to his house and taking away the books.

Gentlemen, I come now to the subsequent periods of the cause, and must beg you to recollect it was under the influence of this darkness that the indictment was preferred; it was preferred, and how does the Plaintiff act. It is said that Mr. Cruchley wished to keep it from the Plaintiff that he was indicted, and it was by God's providence that a man wandering into the yard at the Old Bailey discovered it. People should be consistent and that is inconsistent with the other parts of the case; because the Defendant, who is represented by one learned brother as conducting himself improperly in keeping it

concealed, is the very minute afterwards represented, by another learned brother, as going about with a police-officer, for the purpose of finding the Plaintiff: so that, if he had been caught, it would have been no secret that he was indicted, for he must have found bail, or have gone to prison; it cannot, therefore, truly be said that Mr. Cruchley kept it a secret, when the Plaintiff is under the necessity of avowing that the instant the indictment was found the Defendant went with the officer, for the purpose of pointing out the person of the Plaintiff, that he might be taken into custody. Where there is truth there is consistency, where there is fraud and juggling there is inconsistency. I say the Defendant's subsequent conduct shews that, upon inquiry, he was not disposed to proceed with the same rigour he was at first, when he was in his conscience convinced of the embezzlement of his property. The first day he accompanied the officer, the next day the officer was going by himself, when he was met by a person who inquired whether he had executed the warrant; and, upon being told he had not, he said I am very glad to hear you have not; don't do it till further orders. Gentlemen, how can you account for that? I am talking to men of sense and men who are acquainted with the world; do you not think that, in the mean time, the Defendant had found out there was something irregular, or some error with regard to the account, and therefore he would not have the Plaintiff laid by the heels and put in prison: if not, what led to it; had he said the Lord's prayer that night and was his malice put an end to? No; he had discovered something erroneous, and he was desirous it should be attended with as little inconvenience as possible to the Plaintiff.—Gentlemen, let us travel on to what first took place at the Old Bailey. My learned friend, Mr. Gurney, knew nothing of the Plaintiff in this cause, whether he was respectable or otherwise; the only knowledge he could have of him was from his instructions, which instructions he received from the gentleman who sits by me, who is represented as a malicious prosecutor. How does that malicious prosecutor conduct himself; and, let us see whether he can be so considered: what language does he instruct Mr. Gurney to use? Mr. Gurney's lan-

guage is the language of Mr. Cruchley; he is responsible for the instructions, if there is any thing that has a tendency to shew malice in the mind of Mr. Cruchley; but, at the same time that he is responsible for what is bad he must have credit for that which is good: what are his instructions to Mr. Gurney? To state that this malignant prosecutor had no malice against the prisoner, that, so far from it, his character had been irreproachable, that he had no cause of complaint against him, that the charge of felony originated in error, and I will suppose that the counsel having an opportunity of seeing something which Mr. Cruchley had not, or bringing to the consideration of that case, which his great practice and experience has given him, a knowledge beyond most of the gentlemen of the bar, upon this particular subject, he discovered there was something that had not come to light: and, not knowing all the facts, he found he could not convict, and therefore did all that was possible for man to do, he got up and told the Jury he should offer no evidence. Was a case ever presented less like a case of malicious prosecution than that which is now brought under your consideration: an indictment is preferred; no imprisonment takes place, though originally intended; it is prevented by subsequent information that continued to operate even to the day of the trial; and, so far from doing that which my learned friend so emphatically described as visiting the sins of the father upon his wife and children, he is willing to do that which is more than money can do to protect his character,—money will not vindicate a character, any more than it will “minister to a mind diseased,”—and if he is not satisfied with what Mr. Gurney expressed, he shall have it stated to-day, though less fitly, expressed by me that he had committed no felony, so Mr. Gurney expressly stated, and that he shall have from me with this qualification, that he owes it to the irregularity, and I use the mildest term I can think of, or if he will suggest one that suits him better, I will apply it,—he owes it to the irregularity of his own act, that he has ever suffered a moment’s reflection or pain from any thing that has been done by Mr. Cruchley.

Gentlemen, I must beg you will consider the situation

in which the Defendant is placed ; he has had a great many witnesses examined against him, several of whom are attorneys of the Marshalsea-Court ; who is right or wrong in the dispute which has arisen in that Court must be decided another day ; it would, at this time, be improper to impute blame to any body, but I may say this, without offence to any body, that Mr. Cruchley has made himself unpopular in that Court, by resisting the introduction of what he considered improper fees ; and, to use a homely phrase, he has brought a hornet's nest about him. I say, whether those fees were regular or not have nothing to do with the consideration of the subject, but at present the public are saved the expense of paying them ; that is, additional fees to the judge and to the attorneys. If a man sets himself up as a corrector of abuses, he must recollect that he makes himself more enemies than friends ; the few people who save their shillings will not thank him for it, but the attorneys, to whom they are a considerable emolument, will take every means to revenge themselves, from which you will see that this is not the cause of Mr. Cruchley, but of the Marshalsea-Court, to revenge themselves for his keeping down the fees of that Court. This places me in a difficult situation. I am in the enemy's quarters ; I know they have no enmity against me, individually. I see one gentleman,* whom I have known many years, and am sure he has no enmity towards me ; but it places my client in a difficult situation ; the whole Court are against him, except one gentleman, one *splendid* exception certainly, Sir James Bland Burgess, one of the Judges of that Court, who, for the purpose of withstanding that which he considered a most improper proceeding, has attempted to protect Mr. Cruchley ; and he has endeavoured to protect Mr. Cruchley and been overpowered by numbers, (and numbers do great things in another place as we all know) because he has endeavoured to prevent abuses, as he conceived them to be, for which Mr. Cruchley is at this moment under suspension. I, therefore, cannot call the only witnesses who could show what has been the course of proceeding in that Court ; and, therefore, I

* Mr. Railton.

should not have had the means of vindicating his character if he had not stepped forward in the way he has, and I take it for granted is in attendance. I will call one witness at least. I will call Sir James Bland Burgess, who will tell you what has been the course of that Court. I trust his Lordship will hear from him what has been the subject which has been the cause of suspension; and if he will, he is attending here. I will prove that fact which will put out of all doubt the right of the Defendant to your verdict.

Gentlemen, I stated at the outset of my address that, leaving to my learned friend to decide whether I should call any evidence, the anxiety of Mr. Cruchley governing him *rather than his judgment*, I would confine myself in the observations I should make to the evidence that had been already offered, I believe I have religiously kept to that determination. I don't recollect that I have adverted to a single point that I had not a right to advert to upon the evidence as it at present stands before you—being now about to call Sir James Bland Burgess—

LORD CHIEF JUSTICE.—If you are going to call Sir James Bland Burgess as to the merits of Mr. Cruchley's suspension, I cannot hear that evidence, because it has nothing to do with the cause.

Mr. SERGEANT BEST.—I did suppose your Lordship would say so, but there is an anxiety in my client that induced me to ask it.

LORD CHIEF JUSTICE.—I must suppose, till it is reversed in some legal way, that the order of suspension is right; but I cannot go into that at all; nor has it any thing to do with the merits of the question, except that it shews, I don't know what to call it, a great deal of ill-humour between the parties; and *you see how that operates*.

Mr. SERGEANT BEST.—Gentlemen, I did suppose my Lord would tell me that Sir James Bland Burgess could not be examined to that point; but it was my duty to have his Lordship's opinion, as Mr. Cruchley is not to be ruled by my individual opinion. Mr. Cruchley having heard that Sir James Bland Burgess was here was more anxious to have his character cleared up than any other consideration under Heaven: hearing his Lordship's opinion he will trouble you WITH NO EVIDENCE; he

leaves his case upon the evidence which has been given on the part of the Plaintiff; and I have only to submit, begging you again to look back to the time the indictment was preferred, that there was probable cause.

LORD CHIEF JUSTICE.—That must be addressed to me.

MR. SERGEANT BEST.—I beg your Lordship's pardon; if your Lordship shall be of opinion that there was probable cause there will be a verdict for the Defendant. [*Mr. Sergeant Best then conferred with Mr. Andrews and the Defendant, and immediately afterwards added,*] Gentlemen, I shall lay evidence before you, and that particularly upon the point of probable cause.

My Lord, I take it to be quite clear that if Mr. Cruchley has, in this case, acted under the opinion of a gentleman at the bar, however erroneous that opinion may be, though I don't state it is so; for I have reason to think that opinion is most correct *upon the facts communicated to him at the time*, and that I should have given the same opinion had those facts been laid before me, that that is Mr. Cruchley's justification. I shall show that, previous to preferring this indictment, Mr. Cruchley consulted a gentleman of eminence at the bar, in the criminal line, with regard to the propriety of prosecuting his clerk. I will call Mr. Barry, who will tell you that the indictment was preferred under his advice and direction, under his own hand; he will tell you all the facts then known, which were communicated to him, and that, upon those facts, he was of opinion the case of Mr. Hewlitt came within the statute of the 39th of the King, chap. 85, that was his opinion; and I beg leave to state, in the hearing of his Lordship, who will either confirm or disaffirm what I state, that if Mr. Barry gave him that opinion, whether it was erroneous or correct, it is Mr. Cruchley's justification;—that his Lordship will tell you—it will be doing Mr. Barry injustice to explain his motives, because every gentleman can best explain his own opinion: he will tell you the facts which were laid before him, and that he advised and drew the indictment; and the moment I have established that, or that there was probable cause, I shall be entitled to your verdict; and, there being probable cause, though there might be malice apparent, the Plaintiff cannot succeed.

If there could be any failure in that, and if the verdict does pass for the Plaintiff, the damages must be small; but I will not say a word about that, because I think, upon the other grounds, the Defendant is entitled to succeed.

Sir James Bland Burgess was called BUT DID NOT APPEAR.

Mr. WILLIAM WATTS *sworn: examined by*
Mr. ANDREWS.

Q. Were you employed by Mr. Cruchley in February last year?

A. Yes; I was.

Q. Were you much in the office in which the Marshalsea-Court-business was done?

A. Yes; I was in the same office; not in the Marshalsea-Court.

Q. Do you remember the 17th of February in that year?

A. Yes; I do.

Q. Where were the Marshalsea-books, on the 15th of February; did you see them in the possession of Mr. Cruchley at that time?

A. Yes; I saw them.

LORD CHIEF JUSTICE. — Certainly they were in Hewlitt's possession in Cruchley's office.

Mr. ANDREWS. — Q. Do you know how they went away from Mr. Cruchley's?

A. No.

Q. Did you, after the 17th, go for the purpose of demanding them of Hewlitt?

A. Yes; several times, with Mr. Cruchley.

Q. What answers did Hewlitt give upon those occasions: did he give any answer?

A. He would not show them.

LORD CHIEF JUSTICE. — He did not produce them.

Mr. ANDREWS. — Q. What did he say?

A. Mr. Cruchley named particular books, which he wished to see, and Mr. Hewlitt refused.

Q. Did he assign any reason for his refusal?

A. I don't recollect.

Q. Do you remember his demanding any books in

particular that contained any entry in February that year?

A. I remember his demanding a particular book of his own.

Q. Was that particular book one in which entries were made weekly, or what particular book was it?

A. I supposed an accompt-book.

Q. Do you know what Hewlitt's mode of accounting was?

A. No; I do not: I never saw it.

Q. Did Mr. Cruchley describe the particular books which he demanded?

LORD CHIEF JUSTICE. — I suppose he demanded all the books.

Mr. ANDREWS. — Yes; my Lord, but he demanded particular books.

Witness. — He demanded his book of accompts and Mr. Hewlitt said it was before his solicitor; and that, as soon as ever it was made up, it should be sent.

Q. Was that all the answer he gave?

A. I think it was.

Q. Those demands were after the 17th of February, some time?

A. Yes.

Q. You have no reason to believe they were ever sent?

A. No; I know nothing about that.

Q. I believe Sir James Bland Burgess was with you at some of those visits?

A. He was.

Q. He was one of the Judges of the Marshalsea-Court?

A. He was.

Q. He went with Cruchley and you?

A. Yes.

Q. Was the same answer given?

A. They were produced to Sir James Bland Burgess and they were inspected up to a particular time; and then *Mr. Cruchley* said he should go no further.

Q. Do you recollect what the time was?

A. I think it was August.

Q. Do you think it was August?

A. I cannot be certain; I have no memorandum.

Mr. SERGEANT SHEPHERD. — He is right, it was in August; that was the accompt of the other action.

Mr. ANDREWS. — Q. Should you know the books?

A. There was a very large book called the *Plaint-Book*, and I think it was at the end of that they took minutes.

Q. Who took minutes?

A. I did, and Mr. Cruchley: I wrote down what Mr. Cruchley desired me.

Q. Did you deliver any notice at that time to Mr. Hewlitt?

A. Yes; I did.

Q. Was it printed or written?

A. Written.

Q. Is that the notice? (*Shewing a paper to the witness.*)

A. Yes; it is.

Q. Do you remember Mr. Cruchley demanding a particular book of his own?

A. Yes.

Q. How was that book described by Mr. Cruchley to Mr. Hewlitt?

A. I think he called it his own book.

Q. What said Hewlitt to that?

A. As I said before, that they were before his solicitor, and once I believe he promised it on a Monday when we went down.

Q. Did you repeat your demand on that Monday?

A. I did not.

Cross-examined by Mr. SERGEANT SHEPHERD.

Q. Mr. Cruchley went to demand the books?

A. Yes.

Q. Did he not insist that he was entitled to them still as being Prothonotary?

A. I don't recollect.

Q. Endeavour to recollect; I ask you that upon your oath, and whether Mr. Hewlitt did not say he would produce any books to Sir James Bland Burgess, who was the Judge, but that he should give up no books to Mr. Cruchley?

A. I think he did.

Q. And he did produce them to Sir James Bland Burgess?

A. Yes.

Q. You spoke of a notice?

A. Yes.

Q. Was the accompt-book produced to Sir James Bland Burgess?

A. I think it was.

(The following notice was then read :)

“ Mr. John Churcher Hewlitt,

“ I hereby demand of you the sum of £230 : 9 : 7 as the balance of your account due to me on the 25th March, 1811 ; and I hereby give you notice that unless the same is paid to me on or before Saturday, the 15th day of August instant, I shall proceed to take out bailable process against you, to compel the payment thereof ; and I hereby demand of you and insist upon your rendering me an account of all sum and sums of money received by you, from any person whomsoever on my account and for my use subsequent to the said 25th March, 1811 ; and I further demand of you payment of the balance due thereupon. Dated this 12th day of August, 1812.

WM. CRUCHLEY,

Deputy-Prothonotary, Marshalsea and
Palace Courts, John-street, Bedford-row.

Witness—W. Watts, clerk }
to Mr. Cruchley.” }

Q. Do you know whether that was the answer that was sent? *(Shewing the witness a paper.)*

A. I don't know ; I never saw it before.

Q. Did you see any answer?

A. I did not.

LORD CHIEF JUSTICE. — That is quite foreign to the question.

Mr. ANDREWS. — Q. Did you ever see the folio book referred to in this notice?

A. Yes ; what is called the plaint-book.

Q. Did you ever see the folio private book?

A. I don't know what the private book was, whether it was a folio or not.

Mr. SERGEANT SHEPHERD. — Q. Did you learn from

Mr. Cruchley whether he had received an answer from Mr. Few?

A. No; I did not.

ROBERT BARRY, Esq. *sworn: examined by*
Mr. SERGEANT BEST.

Q. You are at the bar?

A. I am.

Q. And practice at the Old Bailey and Middlesex Sessions?

A. I do; and have for twenty years.

Q. Did the present Defendant, Mr. Cruchley, consult you, as a barrister, before he preferred the indictment against Mr. Hewlitt?

A. First a Mr. Buckland, as his agent, laid the case before me.

Q. Perhaps that is the case he laid before you?
(*Shewing a paper to the witness.*)

A. I believe this is a PART of it; but I wrote my sentiments; I gave my opinion in writing. I don't perceive that here; but, however, I advised an indictment.

Q. Did you ever write any thing else but that which you have written in the margin? Is that your hand-writing?

A. It is.

Q. Did you ever write any thing else?

A. I wrote something else, but not as an indictment; I wrote an opinion; I think it was on a separate piece of paper; this is the indictment, I corrected this. I made an indictment against the individual, considering the relative situation between the two; that indictment was not preferred, it went to the Clerk of the Peace's Office, and they made it a general indictment for embezzlement.

Q. You had made it special, as between a master and his servant, and they made it general?

A. Yes.

Q. As you settled this indictment, can you recollect whether you had any other statement of facts?

A. I think there was *another* statement; I cannot be sure whether it was upon the other statement or whether it was upon another piece of paper, but I rather think the

other statement had so much writing upon it, I had not room for my opinion.

Q. Had you any parole interview with Mr. Cruchley?

A. Yes; I had, but I gave my opinion in writing.

Q. Recollect whether you ever saw any other paper?

A. There *were* MORE *papers* CERTAINLY; because I wrote my sentiments; all those alterations are here, that is my writing. (*Referring to a part of the paper.*) First there was a case; upon that case, which appeared to me a STRONG one, I was of opinion an indictment should be preferred: this is certainly a part of the case.

Mr. SERGEANT SHEPHERD.—We must see the whole of it; it is neither fair to Mr. Barry or any body else to be talking of part of the case.

Mr. SERGEANT VAUGHAN.—Q. You did not tear a sheet off and send part back?

A. I always send the whole back. I see upon this there are some remarks made by myself; but, then, this is not that on which I wrote my sentiments; there is no opinion given upon this, only observations: there certainly was a *strong case* sent to me, and I advised an indictment.

Mr. SERGEANT BEST.—Q. Read over that case and tell me whether there were any facts stated to you which are not in that paper.

LORD CHIEF JUSTICE.—That will not do.

(*Mr. Barry reads the paper.*)

A. There is this difference, according to my recollection and my judgement, the names of the parties who paid the money to Mr. Hewlitt were mentioned in the case I gave my opinion upon; because, to the best of my recollection, not finding that here I desired an amended case, and Mr. Buckland, the agent of Mr. Cruchley, brought the amended case, and upon that I wrote my opinion, recommending an indictment.

Mr. SERGEANT SHEPHERD.—I am now about to prove the answer to the notice for the books.

Mr. ANDREWS.—You have had notice to produce a folio private book;—do you produce it?

Mr. SERGEANT SHEPHERD.—No; we had no folio private books.

Mr. SERGEANT BEST. — If your Lordship looks at that paper, which is about to be read, you will see it is not evidence.

LORD CHIEF JUSTICE. — I will not look at it;—if it is an answer to that notice and they make that out they may read it.

Mr. SERGEANT BEST. — If that is the case when a notice is given to produce books, they may cram what they please into the answer.

LORD CHIEF JUSTICE. — It will avail nothing if it is not applicable to the case.

Mr. SERGEANT SHEPHERD. — If his Lordship will look at it and say it is not evidence I will not read it.

LORD CHIEF JUSTICE. — I don't like to have such a task imposed upon me.

Mr. SERGEANT SHEPHERD. — Brother Best, do you admit that we gave you notice to produce that notice.

Mr. SERGEANT BEST. — Intending, if that is read, to make a motion upon it, I shall not admit any thing.

Mr. SILK called again.

Mr. SERGEANT SHEPHERD. — Q. Were you employed to deliver that notice?

A. Yes; I was.

(The following was then read:)

“ You are hereby required to produce to the Court and Jury, on the trial of this cause, the affidavits made by you in opposition to the charges brought against you from time to time in the Palace-Court, the receipts or vouchers produced by you from time to time, on passing your accounts, on oath, at the treasury, or to Henry Charles Litchfield, Esq. The various papers and proceedings in the suit instituted by you in this Honourable Court against the above named Plaintiff,—all and every the receipt and receipts given to you at any time by the said Plaintiff for or on account of any salary by you paid to him, together with the book or books, in which you entered the payment of such salary. The housekeeping or other book or books kept by Mrs. Cruchley, your wife, in which entries are made of the moneys, from time to time, or at any time, by her received from the said

Plaintiff: Also the book or paper by which it appears as you allege that the said Plaintiff was indebted to you on the 25th March, 1811, in the sum of £230:9:7 upon an account that day stated and settled. The notices or demands of certain papers and proceedings of the Marshalsea and Palace Courts, or either of them, served on you, or left at your house, on or about the 19th and 26th days of February, and the 17th day of December, 1812. The letter or notice from us served on or left for you at your dwelling-house, on or about the 15th day of August, 1812; in consequence of your having threatened to hold the said Plaintiff to bail for the above mentioned sum, and the several letters or notices served on or left for you by the said Plaintiff, tendering an inspection of the books and papers in his possession; and a certain letter, written to you by Mr. James Harmer, on or about the 10th day of April, 1813, by which the said James Harmer requested to be informed of the particulars of certain sums which you charged the said Plaintiff with having received and embezzled, and of other matters then set forth; and generally all books, papers, and writings, containing entries of transactions and accounts between you and the said Plaintiff; and all letters, memorandums, or notices, written to you by the said Plaintiff and others employed on his behalf. Dated 6th of July, 1813.

Yours,

FEW, ASHMORE, and HAMILTON.

“To Wm Cruchley, Esq. Plaintiff’s Attorneys.”

• *Mr. HARMER called again. (Shewn a letter.)*

Q. Is that a copy of what was left at Mr. Cruchley’s house on the 15th of August, 1812?

A. It is.

(The letter was about to be read.)

Mr. SERGEANT BEST. — I have not done my case—will you produce a folio book?

Mr. SERGEANT SHEPHERD. — A folio plaint-book I have; but a folio accompt-book I have not.

Mr. SERGEANT BEST. — I will prove you have.

Mr. SERGEANT SHEPHERD. — Is this the book you mean? *(producing one.)*

Mr. SERGEANT BEST. — No; it is not.

MR. JOHN CRUCHLEY *sworn : examined by*
Mr. ANDREWS.

Q. Have you seen in your brother's possession a book which he kept of moneys received by Hewlitt for him?

A. I have seen it in Hewlitt's possession: a book given by my brother to him about that size.

Q. What had Hewlitt to do with that book?

A. To put down every week the particular account of the moneys he had received in the course of the week.

Q. On what day of the week did he usually render the account?

A. Every Friday was the day, but it was generally made up on Saturday.

Q. Was the 15th of February on a Friday?

A. I don't know.

Q. Did you demand that book?

A. I did not.

MR. SERGEANT SHEPHERD. — Q. You told us *before** that you had NOTHING to do with settling your brother's account after August?

A. I attended a great many times by Mr. Hewlitt's appointment and he always deceived me: it was a great while after August.

Q. Is that the book? (*Producing one*)

A. This certainly is the book; it is Mr. Cruchley's hand-writing.

MR. SERGEANT SHEPHERD. — If that is the book do you want to use it brother Best; if you do, here it is; but not to look at it for any private purpose.

MR. SERGEANT BEST. — I want it. I understand, if I call for a book, I must produce it and not merely look at it for a private purpose. I never did do that and never will for any body. I do use it certainly; but, not having had it before, *I was not aware of the contents*; and, probably, I shall not do justice to it. I use it for the purpose of shewing that this gentleman had kept back his accounts, for here are blanks—at the period of time when I say the entries should have been made; there are no entries but blanks.

* Mr. Sergeant Shepherd alluded to the action mentioned in the next note, page 58.

LORD CHIEF JUSTICE. — What time do they relate to?

Mr. SERGEANT SHEPHERD. — There are entries of ALL *the receipts*, but there happens not to be entries of the payments we have made.

LORD CHIEF JUSTICE. — Has it relation to any of the sums mentioned in the indictment?

Mr. SERGEANT SHEPHERD, — No, my Lord; on the contrary, they are long prior accounts; we have therein charged ourselves with a great many receipts, but have not discharged ourselves by the payments we have made; they are not the Defendant's items received, but the sums total of the receipts; they are the result of the diary.

Mr. SERGEANT BEST. — That is a mistake, our transactions end in 1812, this is 1811.

Mr. SERGEANT SHEPHERD. — Let that letter be read.

Mr. SERGEANT BEST. — I hope your Lordship will recollect that I object to its being read.

(The following letter was then read:)

“SIR,

Mr. Hewlitt has put into our hands your notice of the 12th instant, requiring payment of £230 : 9 : 7, and threatening to hold him to bail for that amount unless the same is discharged in the course of this day; and he desires us to express his surprise at your making a demand for which he states you well know there is not the least foundation.

“As his solicitors we, therefore, give you notice, that if you think proper to put your threats into execution an action will in due time be commenced against you for a malicious arrest; but, if you issue common process, we will give the usual undertaking, and afford you every facility in bringing on the cause to a speedy trial.*

* Mr. Cruchley afterwards held Mr. Hewlitt to bail for the £230 : 9 : 7 and tried the action immediately preceding the present one. On the evidence of his brother John (the last witness) and his brother-in-law only, and while Mr. Sergeant Shepherd was addressing the Jury on behalf of Mr. Hewlitt, Mr. Sergeant Best consented to be nonsuited. Mr. Cruchley's brother, who made the affidavit of debt, in which he positively negatived a tender of any part of the

"We are also directed, to prevent the expense attending legal proceedings, to propose a reference of your claim to some one gentleman at the bar, or to any other competent person. We are, Sir, your most obedient,

FEW, ASHMORE, and HAMILTON.

Covent-garden, Aug. 15, 1813.

To W. Cruchley, Esq."

Mr. SERGEANT BEST. — Gentlemen, I have a word or two to say upon this letter, which I suppose my learned brother has been obliged to produce.

Mr. SERGEANT SHEPHERD. — No; it is my own voluntary act.

Mr. SERGEANT BEST. — If it is my learned brother must have been pressed by what he has heard in the cause or he would not have put in that paper in opposition to that which it is supposed to be an answer to; and I beg his Lordship's attention to it, rather for the purpose of another day than the present. The paper I put in is this, "I hereby demand of you, &c." (*Reads the notice of the 12th of August, 1812.*) That is what I have produced;—the answer I don't see any date to.

Mr. SERGEANT VAUGHAN. — Yes; the 15th of August.

Mr. SERGEANT BEST. — They have read this letter, "Sir—Mr. Hewlitt has put into our hands, &c." (*Reads the letter of the 15th of August.*) Gentlemen, I am much surprised at my learned brother offering this in evidence, for no man knows evidence better, and I think he will be sorry he has put it in and made it evidence.

LORD CHIEF JUSTICE. — I don't see that your notice has any relation to this cause.

Mr. SERGEANT BEST.—Gentlemen, I will tell you the purpose for which this is put in; it is for the purpose of inducing you to do what you are prevented by your oaths from doing, in order that you should couple a civil with a criminal case, and in order that your verdict should be given upon prejudice and not facts; for all

demand by Mr. Hewlitt to Mr. Cruchley up to the time of his making such affidavit, was compelled to admit, on his cross-examination, that he had not had *any communication* WHATEVER with his brother, for the preceding twelve months, or with Mr. Hewlitt.

which that alludes to is the supposed cruelty of Mr. Cruchley in bringing the action of debt ; if the Plaintiff thinks he has a cause of action for being held to bail, let him bring it, I can tell him that I shall be most ready to meet it ; but let him not ask for damages twice.

LORD CHIEF JUSTICE.—I think you are wasting your time, brother, because nothing turns upon these papers ; your notice has no application to this cause ; I thought I could not resist this ; because, suppose you prove a demand upon a man, you would of course always let in the answer ; and the same, if it is in writing, of course the answer is admitted in evidence ; because you may give notice to raise a prejudice ; if a man does not produce books according to notice, he ought to be at liberty to give reasons for not producing them, just in the same way as in a demand for debt ; but I don't see that these papers alter the case at all.

Mr. SERGEANT BEST.—I thought my learned brother intended to advise an action for being held to bail. His attorney very frankly tells me he meant to do it, (*he nods his head and says "yes,"*) and this letter is produced for the purpose of raising a prejudice against my client.

Mr. SERGEANT SHEPHERD.—Gentlemen of the Jury, I take upon me to assert, that it is not done to excite a prejudice ; his Lordship has said that these two papers have nothing to do with the cause ; I think so too : and, for that reason, I did not, in my opening, allude to the paper I have now produced ; but, supposing they would be introducing their paper in their defence, with which it has nothing to do, I was determined, if there was any poison in it, that it should have its antidote ; if they had not produced theirs, this would not have been produced :—Who began it ?—ask Mr. Cruchley. What ! Does he mean to say that giving me notice to pay £230 in 1812, is any excuse for indicting me for felony in 1813 ;—but, as that was introduced, I brought forward this, not for the purpose of raising a prejudice, but to shew that this Defendant has a mind to endeavour to defend himself against a charge brought for instituting a malicious prosecution for felony, by introducing that paper so replied to, which has relation only to a civil claim ; and, with that observation, I have done with it.

Gentlemen, let us recollect that when men give too much way to their passions they do by that indulgence sometimes permit their malignant feelings to offend against the law ; and, when they are brought to answer in a Court of Justice, they would act most wisely in putting themselves under the advice of those who are able to advise them, and who have no passions or objects to gratify, which Mr. Cruchley, upon another occasion, did ; and has now endeavoured to make that which was the excellent advice and conduct of his counsel evidence of his own mercy upon that occasion. My learned brother,—and I don't wonder at it,—said he arose to address you under some embarrassment :—Gentlemen, he never feels embarrassment when he follows his own wise and excellent judgement ; but, when he has an obstinate client, who will not suffer that judgement to prevail, then he feels the embarrassment he mentioned. I will do my learned brother the justice to say, that he nor any other person could be more correct in keeping his word with you than he has been : we all now and then forget, and do not at all times confine ourselves to our promises ; but he did keep his word with you in addressing you only upon the case as it stood on the part of the Plaintiff ; and there was no observation which ingenuity could furnish that was not made by him.

Gentlemen, before I address you on the part of the Plaintiff in reply to those ingenious observations, made by my learned brother, let me address you upon that which the judgement of Mr. Cruchley has induced him to bring forward, as a defence to day :—He says I indicted this man for felony, in 1813, because I fairly and truly stated my case to a gentleman at the bar, and took his opinion upon the subject, whether he should be indicted for felony. Mr. Cruchley being a lawyer himself, I don't mean to say a *great lawyer*, but a lawyer, and, reading the act of parliament, says, he wanted advice whether it amounted to a felony, and whether the Plaintiff was indictable for it. I say, knowing the facts of the case, he wanted no advice, whether it fell within the statute or not :—If he wanted, by stating a *strong case*, as Mr. Barry expressed it, to get the sanction of a gentleman at the bar, then, by stating a *strong case*, he might get

it ; because there is no man who might not procure, by stating a *strong case*, the opinion of any of us, that a man might be indicted for felony ; but in such cases as this men don't want the opinion of counsel ; they have something here, (*the heart*,) which tells them whether they are acting right or wrong :—Counsel very often want the opinion of each other, for they sometimes have very great doubts ; but, in these plain straight-forward cases, no doubt could arise ;—the only question with Mr. Cruchley was, has this man fraudulently and feloniously secreted sums of money, with an intention to cheat me, or has he not ? If he has, the act tells me he is liable to an indictment for felony, and I want no lawyer to tell me that :—his attempt to do it, I say, shews that it was a part of his plan. He had been turned out of his office, I care not whether rightly or wrongly, (and pardon me for the supposition, because I know they are incapable of doing such an act,) but I will suppose that the Lord High Steward, Sir James Bland Burgess, and the other Judges, had corruptly dismissed Mr. Cruchley from his situation ;—what then ? Are the sins of my Lord Aylesford, Mr. Burton Morice, and the other gentlemen, in dismissing him, to be visited on the successor ;—it marks his malice, it shews that, full of spleen against the Judges of that Court, against whose judgment he could not lift up his voice, (if he can let him do it,) he would at least have one victim ; he thought he would vent his spleen and malice upon Mr. Hewlitt, by ruining his character, and I had almost said taking his life, but certainly doing that which is almost as bad, by destroying for ever the reputation and character of Mr. Hewlitt and his family, because he succeeded him in his office. Gentlemen, my learned brother has said, “ Is Mr. Cruchley to be visited with this sort of sin, because he has acted under a mistake ? ”—I say, is a man to be dragged to a criminal bar, and to be tried as a felon, before Mr. Cruchley will give himself the trouble to inquire a little.—God forbid he should be ;—when he had got this Mr. Clarke, who he has not dealt very fairly by, why did he not say, “ Sir, Clarke paid you, on such a day, 1s. 2d. ; on other days 4s. 1d.—3s. 8d. and so on, of which sums you have rendered no account,” then he

would have had an answer. "Sir, you will find them among the rest of the accompts:" but, instead of doing that, having squeezed himself into the act of parliament; now, says he, unless you can shew those sums have been paid over to me, I will prosecute you for felony, (and, gentlemen, they are at this moment disputing which is indebted to the other upon a balance of accounts,) without taking you before a magistrate, who would most probably dismiss you; I will go behind your back, and, at the Middlesex Sessions, I will, by stating that dry fact, and Clarke swearing he paid you the money, my swearing that you was my servant, and that you have not paid it, (and he must have added something more, for he must have added that he believed it was feloniously withholden,) I will get seven bills of indictment found against you;—but, says my learned friend, he had taken out a warrant, in order to take up Mr. Hewlitt, but which he stopped the execution of, and, therefore, that does not shew malice: I think it does; for I don't believe he ever intended to take him up under the warrant;—if he had, he might have gone to Clifford's Inn at any time, he might have gone to the Marshalsea-Court, on Friday, which was the day it is said the warrant was stopped; but he wanted to ruin the man's reputation, and, as he lived out of town, to let it be buzzed about that there was a warrant for felony out against him;—it was part of the farce, and part of the game, that Mr. Cruchley was playing:—if that was meant as mercy to Mr. Hewlitt, if it was meant that no farther proceeding should take place, after it was discovered to be a mistake, what course would you or I, or any man, have taken? Should I, without notice to that person, suffer him to be labouring under all the horrors and anxiety of being tried within four days for felony? Should I not say I have preferred an indictment against you, but I do not mean to prosecute it? Would it not have been my duty to have given notice, the first moment I could, to the man, in order that I might relieve him from all the horrors and anxieties which the most innocent man must labour under, and that I might at least smooth the pillow of his wife and children by their knowing, as early as possible, that that which had been

done was inadvertently done;—instead of which, till the moment Mr. Hewlitt was under the necessity of going to the bar, when he was asked by the clerk of arraigns, whether he was guilty or not guilty? did he know that any repentant pangs had come across the merciful mind of Mr. Cruchley?—No; when he walked up to that bar and made his bow to the Court, and was obliged to say guilty or not guilty, and to put himself upon God and his country for his deliverance, he had no doubt but he was about to undergo a severe trial, to hear witnesses called, and to experience the whole horrors of a trial upon a criminal charge.—When was it that Mr. Harmer, as solicitor for the Plaintiff, called upon Mr. Cruchley to give him notice of the particulars of the charge:—On the Saturday this Prosecutor, who wishes it now to be believed that he did not mean to go on, is called upon to state the specific sums with which he charged the then defendant with embezzling; and he answers, these are the sums with which I mean to charge him:—this was not on the Thursday or Friday, for this humane prosecutor, who means to let Mr. Hewlitt down gently, on the very Monday, previous to the trial on the Wednesday following, gives the specific charges on which he had indicted him. So much for that part of the case:—and, as to that which passed at the Old Bailey, I can easily understand how that happened.—When the brief was put into the hands of the learned counsel, who led the case, that learned counsel I will venture to say saw, from that which was stated, that it was impossible to convict; and he did that which, as a wise man, he was bound to do, to the public first and to Mr. Cruchley afterwards, finding he was in a situation in which every human mind must revolt at, to charge felony, under such circumstances!—he endeavoured first to let Mr. Hewlitt down as gently as possible, and next to induce the Court not to grant office copies of the indictments; in which attempt, however, he was unsuccessful.—Gentlemen, if I wanted to ruin a man, and to keep out of the scrape of responsibility, which the law makes every man liable to who maliciously indicts his neighbour; if I was wicked enough to attempt it, I don't think my ingenuity could do more than has

been done upon this occasion : I would go to a man and say, did you pay any sum of money to my clerk?—Yes, I did ; there is my friend Clarke to do that, and if I did not want any body to know it, I should desire him, as Mr. Cruchley did, not to let any one know any thing about it ; then I would go to a counsel, and, by stating a *strong case*, in order to get his opinion, that an indictment ought to be preferred, I would shelter myself under the authority of that opinion ; and the next thing I should do would be to take out a warrant, which I would not have executed, but would send about the neighbourhood where he lived, in order to ruin his reputation, (and indeed that was his object) ; and the last step I should take would be that of stating my case to an ingenious counsel, who, the instant he saw it, would say, sir, it is impossible to sustain this indictment, and then he would get up and say the whole originated in a mistake in judgement, and the Defendant would be acquitted, and my object of ruining his reputation obtained.—But, gentlemen, there is one fact extremely important,—we have the testimony of Mr. Cruchley, through the mouth of his counsel, who tells us that, till this dispute arose and till these sums were kept back, the Defendant stood a man of unimpeachable character and honour in all the transactions of his life ;—then, is it possible to suppose that, unless a man were wanton in wickedness, he would commit an act of this description at the very moment when he was claiming a balance of the account, and had a litigation depending for that purpose ? We should suppose that Mr. Cruchley would have reasoned thus :—here is a man who has served me for fourteen long years, who has conducted himself with honesty and integrity in all his other transactions, what am I going to charge him with?—It is this, that he has received 22s. and that he meant *feloniously* to embezzle it. Gentlemen, ask yourselves this ;—would not a man, under such circumstances, say it is impossible ? If it had been ten times the sum, can I suppose that a man, who has been in my service for fourteen years, with whom I have a dispute about an account, no matter who is right or who is wrong, it is impossible that this paltry sum can have been feloniously embezzled?—Is it to be supposed that Mr. Hewlitt, or

any man, who was in a situation where trust and integrity were the only pledges of keeping it, would sacrifice that and his reputation for ever for the dirty embezzlement of 22s. 6d. or ten times that sum.—No man of common sense, no man of common integrity, no man of common charity, no man *but he who has UNCOMMON MALIGNITY OF HEART*, I will venture to say, would ever come to such a conclusion.—Then we come to the case of a man angry with another for having been appointed to his office, and angry because he would not pay the balance which he thought was due to him, who, finding he cannot succeed in a different manner in which he was attempting to get him out of the situation he held, goes on from step to step till he works himself up to the pitch of malignity of bringing him to be tried as a felon, at the first bar of criminal justice in the country.—Gentlemen, do I state the case too strong? If not let me ask you for damages adequate to the offence;—let us recollect how dreadful it is to be stuck up among a list of felons, as Mr. Hewlitt is stated to have been by Mr. Ferguson:—Recollect what must be the feelings of every man on such an occasion, and what would be your own, if you were told, when you went out of Court, Sir, I saw your name stuck up as a felon in the Press-yard, at the Old Bailey. However conscious you might feel in your innocence, I ask whether it would not give a pang to your mind such as you could hardly bear?—When you went home, could you kiss your children with the same comfort you did in the morning?—Could you caress your wife with the same affection you used to do?—Such was the situation of Mr. Hewlitt; and as it has been said that Mr. Cruchley has got into a hornet's nest, I beg leave to say that he had borrowed *every hornet's sting* to plant into the heart of Mr. Hewlitt.

Gentlemen, at this late hour of the day I will not detain you any longer by observations upon this case; but, in the name of God, let me be protected by the law, let me not be subject to indictments for felony without the least foundation for them, at the will and pleasure of an angry man, who, like a wild beast, goes round the world saying, I have been wronged by somebody, and, though I cannot tear in pieces those who have done it, yet I will

tear to pieces some of those who are subordinate to the persons who have injured me. Gentlemen, if this is not a case that calls for considerable damages expunge this law from the statute-books ; and never let us again hear of damages for a malicious prosecution, if the circumstances proved do not entitle my client to considerable damages. When I asked the witness what was the amount of the expense incurred by the prosecution for felony, I was ashamed of the question, upon which one of my learned friends said, was not the expense incurred by having a special counsel ; certainly it was, and if it was a case in which they could tax the bill between party and party I should say strike it out ; but, I ask whether he would have done justice to himself and his family if he had not had the best counsel the bar afforded ; and I asked the question not for the sake of damages, but for the sake of shewing the attack made upon the reputation, character, and feelings, of Mr. Hewlitt ; and, give me leave to say, although we know nothing here of vindictive damages he has a right to demand reparation at your hands in the only way it is possible for him to obtain it, which is through the medium of his adversary's pocket, who has endeavoured to sport with the feelings, character, honour, and every thing dear that can belong to man. Gentlemen, if you don't feel this to be a serious injury you will say so ; but, if you do feel it to be so, you will shew, by your verdict, what your opinion is of the value of character ; you will see the necessity of protecting every man against attacks of this sort ; and give my client large damages, as a reparation for the abominable injury he has sustained at the hands of Mr. Cruchley.

SUMMING UP.

LORD CHIEF JUSTICE. — Gentlemen of the Jury. — This is an action brought by the Plaintiff, John Churcher Hewlitt, against the Defendant, William Cruchley, for a malicious prosecution, which prosecution charged the then Defendant, Hewlitt, with several felonies ; the sort of felony with which he was charged is one created by a modern act of parliament ; that is, an embezzlement of money which he, as clerk or servant of the Defendant,

Cruchley, was charged with having got possession of, that money belonging to his master; and that, having so got possession of it, he fraudulently embezzled, and secreted, and so stole, took, and carried it away. This act of parliament was made to remedy a great evil then prevailing, which was, that where servants were employed, as they are in many trades necessarily, to collect sums of money from the customers, have gone round to persons who have been debtors to their masters and received the money, concealed it, and employed it to their own purposes; that was not felony by the law before, because a felony includes a taking, but those persons being entrusted to receive it by their masters so far as they received it they acted lawfully; therefore there was nothing which was called taking unlawfully, there was nothing of larceny or theft; the consequence was, that those crimes became frequent, and the legislature thought it necessary to make such a receipt of money and the secreting of it felony. The master could never tell but from the account of his clerk or servant what money he had received, if he told him he called upon fifty debtors he would say he had received money of so many and so many had paid him nothing; that the master could not know till he went round to inquire whether they had or not paid him money, and the master was very often defrauded; because, not suspecting his clerk, he did not go round but was kept in the dark; and, when the clerk had misapplied so much money that he was in danger of being discovered, he would run away, and leave his master to sustain a great loss: to prevent such practices the law was made; it was made with a view to the persons I have stated, whose clerks or servants, by telling a lie, could conceal the receipt of money with great hopes for a considerable time of avoiding detection:—that was the object of the act, and in this case the Defendant has charged Mr. Hewlitt with being guilty of that offence.

Gentlemen, it becomes my duty to state to you, first, what my opinion is upon that which is made here, indeed, the sole ground of defence, that is, that in preferring this prosecution for felony against the Plaintiff, Hewlitt, Mr. Cruchley had *reasonable and probable cause*: I am of

opinion he had NOT, and I am clearly of opinion that if Mr. Cruchley, when he went before the Grand Jury, had told them what was his situation, what was Mr. Hewlitt's situation, what had been the conduct of Hewlitt, what quarrels had occurred between them and the Court, and that he had been suspended as Prothonotary of the Marshalsea, no Grand Jury would have found the bill; they would have said you have indicted him for embezzling these sums, 3s. 6d.—4s. 1d.—1s. 2d.—4s. 8d.—4s. 1d.—2s. 4d.—and 2s. 4d. Mr. Hewlitt is the Prothonotary of the Marshalsea-Court, there he is, acting openly every day, have you ever told him that you found out he received those sums and had not accounted for them; if that had been asked, or if they had been told it, they would have said, before you find the bill it is fit you should go and ask him about it. I am satisfied those circumstances could not have been disclosed, otherwise they would not have found the bill: beside that, all the sums charged as having been embezzled were received three or four days before the ground of quarrel happened, that is, before Hewlitt was put in Cruchley's place; and you have a list of items in this book in which Mr. Hewlitt very correctly entered the sums he received, and those sums, which is a very material circumstance, so received by Hewlitt were not sums received in the manner I have mentioned, as a servant sent out to different parts of the town which the master had no opportunity of seeing whether they were paid or not, because those sums are sums very frequently in the course of the business of the office carried by Clarke, as a porter, from Brooks, a man authorized to take affidavits and to receive the money upon which I suppose he had a profit, from Mr. Cruchley. To suppose Mr. Hewlitt guilty of an intention to secret and embezzle those sums is to suppose him to do that which must be immediately detected, for Brooks would tell what sums he had given to Clarke, and Clarke would tell what sums he had given to Hewlitt, so that, if he intended to commit the crime of embezzlement, it was an embezzlement of which he must be immediately convicted. Mr. Cruchley might know any day what money Brooks had sent by Clarke; it was therefore in the highest degree improbable, from the

situation of these persons, that such an idea could have entered into his mind; and, besides the smallness of the sums, Mr. Hewlitt, the Prothonotary of the Marshalsea-Court, who, according to all accounts, had acted with honour in the office for many many years, just at the close, to have an intention to embezzle those small sums no man living could believe; and I am persuaded, therefore, if the situation of Cruchley and Hewlitt had been explained it would have been impossible to find the bill; he must, I am satisfied, have concealed from the Grand Jury the state of the facts; and I am of opinion there was no ground to prefer an indictment against Hewlitt for felony. He is angry with Mr. Hewlitt for not delivering up the books. I cannot now say whether they were such as Hewlitt had a right to detain for the business of the office or not: I think he had a right to think so; and, if he could to avail himself of any thing brought by Clarke from Brooks, it was fortunate for him if he could do it, but nothing turns upon that, whether he did right or wrong in that: I am not satisfied he was culpable in keeping them back, but if they were books which Mr. Cruchley had a right to it does not follow from that that there was any ground for the prosecution for felony:—upon the whole, I am of opinion there was no probable ground for it, and, if not, then the only question is, whether it was maliciously preferred? and, as to that, if there is no reasonable or probable cause shewn, I having given that opinion, if you are of that opinion also, then, as to that alone, you will consider whether that is not a sufficient ground to impute malice, in preferring this indictment; but, indeed, what other motive could he have? Here had been a violent quarrel between those persons in the Marshalsea-Office, a quarrel it seems between the Judges and some of the practitioners of that Court; this prosecution arises out of that quarrel, it is the effect of resentment conceived by Mr. Cruchley against Mr. Hewlitt for some part he took, I suppose, when Mr. Cruchley's conduct in that Court was investigated; and I cannot, I own, find out any possible reason for his preferring these indictments, but that of vengeance for his taking some steps adverse to Mr. Cruchley. With regard to the amount of the damages

that is entirely for your consideration ; the expense of defending himself against the prosecution has been proved to be upwards of £100 ; whether a great part of that arose in consequence of retaining special counsel or not is immaterial in such a case as this : it was natural he should take the most effectual means the bar affords to protect himself against such a charge as this. Observations have been made upon the conduct of Mr. Cruchley of which you will judge : with regard to the ultimate decision upon the indictments I see nothing favourable in the conduct of Mr. Cruchley ; he carried it to the Old Bailey, the Defendant held up his hand at the bar, as a felon : you will judge yourselves what reparation a man ought to have for being put into such a situation, without any just or reasonable ground ; and, as to the issue of it finally, it amounts to no more than this, that the counsel Mr. Cruchley had employed, and who was not under the influence of any passions, saw there was no foundation for it, and would not venture to call a witness, because there was no witness who could prove any thing amounting to embezzlement ; and it would be a strange thing indeed, that a counsel for the prosecution not calling a witness should be taken as a circumstance in favour of the prosecutor.—With regard to his conduct before the trial he does not arrest this gentleman ; whether he went after him with an intention to arrest and put him into Newgate we cannot tell, or whether it was only to injure his character, in Islington, where I suppose he had lodgings, that we cannot tell ; if he meant to arrest him he might have gone to the place, at the Marshalsea-Court, where he acted as Prothonotary : — he desired, as the witness Clarke told you, that he would not suffer any thing to transpire after being before the Grand Jury ; what was the reason of that we cannot tell, it might be that he might wish it should not reach Hewlitt's ears till he had an opportunity of taking him ; it might be so, but the fact is he desired him to keep it to himself, that it might not transpire. I don't go through the whole of the evidence, because it is not necessary : the result is that this man, Hewlitt, had been upon good terms with Cruchley, he having employed him a great many years ; that is sufficient proof of what has been

stated that he had conducted himself with great regularity and correctness. It is a strange thing, that after so many years in which he had conducted himself with so much correctness that Mr. Cruchley could be prevailed upon to prefer indictments against this gentleman for embezzling seven sums, altogether amounting to but 22s. 6d. How could he suppose that this gentleman, who had so well conducted himself for years, when he was leaving his service; could be guilty of this crime, especially an embezzlement too, which, as I said before, could be immediately proved, because Mr. Cruchley had an opportunity of knowing what money Clarke had received of Brooks and carried to Hewlitt. You will exercise your judgement.—I think there was no reasonable or probable ground for the prosecution, and I can find no motive for it, but the revenge which Mr. Cruchley had conceived against Mr. Hewlitt; and you will consider what damages he ought to receive.

The Jury retired for about half an hour, when they returned with a verdict for the Plaintiff, Damages TWO THOUSAND POUNDS.

The following Trial is added, for the purpose of laying before the Public the grounds of the preceding Action.

THE KING ON THE PROSECUTION OF CRUCHLEY,
against
JOHN CHURCHER HEWLITT.

TRIED BEFORE MR. COMMON SERGEANT.

The Indictment was opened by Mr. ANDREWS, by which it appeared, that the Defendant stood charged with feloniously embezzling 4s. 2d. Fees received by him, belonging to the Prosecutor, on the 17th Feb. 1812.

MR. GURNEY,

May it please your Lordship, Gentlemen of the Jury.—It becomes my duty to introduce to you a case, founded upon the indictment which has just been stated

by my learned friend, and arises upon an Act of Parliament that passed a few years ago, for the protection of merchants and traders principally, but, in truth, for the protection of all persons who have clerks and servants whom they entrust to receive money upon their account; and the act has made it a felony in any person, being a clerk or a servant, who receives money on account of his master and embezzles it to his own use, instead of accounting to his master for it. Gentlemen, it may appear to you that the sum stated to be embezzled, in this instance, is very small, but you probably are not aware that, in all indictments for felony, the Prosecutor is confined to one single instance of charge; and if he has a clerk who has made 5000 different embezzlements, at different times, they must be the subjects of as many different charges: he cannot include in one and the same indictment two different acts of felony; and, therefore, it may often occur, that a case may be of serious importance to the party, although the sum charged is a very small one. You know very well that persons employed in manufactories commit enormous depredations, though, when they are detected, they may not have any thing of the value of more than 10*d.* in their pockets.

Gentlemen, in this case the Prosecutor is an attorney by profession, and has been, for a great number of years, the Deputy-Prothonotary of the Palace-Court. The Defendant had been, for some time before the period to which I shall have to call your attention, clerk to Mr. Cruchley, and, in that capacity, it was his duty to receive moneys on account of Mr. Cruchley. Fees were due to Mr. Cruchley in his Office, they were to be received by the Defendant, they were to be entered in a book, and they were to be accounted for to Mr. Cruchley. The charge laid in this indictment is, that the Defendant has received a small sum of money, on account of Mr. Cruchley, which he has embezzled and converted to his own use.

Gentlemen, in the month of February, in the last year, some disputes arose in that Court, in consequence of which Mr. Cruchley was suspended from his Office, and the date at which that took place was precisely the date of the receipt of the money in question. That the

Defendant received this money I can prove beyond all doubt; that he has not accounted for it to Mr. Cruchley I can prove just as clearly. The remaining question, therefore, would be, whether, having received this money and not accounted for it, he has converted it to his own use, in such a manner as would call upon him to shew that he had not embezzled it.

Gentlemen,—My learned friends, whose assistance I have, as well as myself, have very anxiously considered this case; and we have done it the more on account of the connection which this transaction had with what took place in that Court, from which Mr. Cruchley was suspended from his office, and with the more anxiety because *I have to state to you, that, except not accounting to Mr. Cruchley, the Defendant, IN EVERY OTHER INSTANCE OF HIS LIFE, HAS BEEN DESERVING OF COMMENDATION, and that he has preserved a most respectable character.* Mr. Cruchley had persuaded himself that the fees, having been received on his account, that the withholding them from him, that the taking away the books in which they were entered, and refusing to account, would make a strong case against him; but, in the view we have taken of the case, we do not concur in the opinion of Mr. Cruchley, but thinking it to be a *prima facie* case only. It would be too much to say that the Defendant had withheld these fees with a felonious intent. Mr. Cruchley had brought an action upon another subject, connected with this, but, considering that *Mr. Cruchley was suspended, and the Defendant thought he was not to account,* my learned friends and myself think it is *too much to charge him with felony,* and, therefore, we shall call no evidence; *the Prosecutor is sorry to throw any stigma upon him, and is desirous that he should go from that bar, without any imputation attached to his character.* We would lay that evidence before you which I have stated, but we do not think it sufficiently strong.

Mr. COMMON SERGEANT.—This is a case which will not apply, as the subject of an indictment; and, therefore, you do perfectly right in abandoning the prosecution.

Gentlemen of the Jury.—There being no evidence

before you, the necessary consequence will be that you will acquit the prisoner.

*The Jury returned verdicts
of NOT GUILTY upon this
and six other indictments.*

Mr. DAUNCEY.—My Lord, this is a case in which the Prosecutor is stated to be a professional man; and here are seven indictments, calling upon a gentleman, whose character is admitted to be irreproachable and universally known to be so; in consequence of which he has been obliged to stand in the situation in which you have now seen him, and for which, the moment these charges had been submitted to the discretion of those who had the care and conduct of the Prosecution, it appeared to them that there was not the smallest shadow of foundation; that Mr. Cruchley himself, who is, I presume, in Court,* had not wherewithal to offer one single syllable in support of those accusations which he has made.—Disputes existed, as my learned friend has stated, in that Court of which Mr. Cruchley was once an officer, on account of which (and I will not *now* investigate the reason) he was suspended from his office, and the gentleman at the bar succeeded him, from which it is pretty clear what must have been the motives which led to the present prosecution; at least, it appears so to me; but, it is enough that here are seven indictments, which have been preferred without even a tittle of evidence; because, according to my learned friend's opening, (assuming for a moment that my learned friend had proved all he has opened,) it would have been, in one half moment, admitted that he had received the fees in question and that they had not been accounted for; and there are 500 others in the same situation, all contained in books regularly kept, which I hold in my hand; and to which Mr. Cruchley had constant access.

Mr. GURNEY.—My learned friend is now going into things that are not in evidence; these books have been very improperly taken from Mr. Cruchley, they being his private property.

Mr. DAUNCEY.—The question, then, will be, whether

* He was in Court.

indictments so preferred—with respect to which perhaps I may be permitted to say that, till the name of this gentleman was posted up in the way that names are posted up, he did not know that there was any charge against him,—whether it is to be permitted to any man, *much less a professional man*, to say, I have a right so to brand the name of a party, (for it is branding the name of this gentleman,) and, when he comes into Court, to abandon the prosecution and to shrink from farther investigation. My Lord, you cannot but have anticipated the object of my rising to address the Court: it is to ask of the Court that they will grant me copies of the indictments; and, unless the Court can shew me a rule laid down that in no instance they would grant it, this is a case in which they are peculiarly called upon to grant it. If, in the investigation of a cause, it turns out that there are fair grounds for the investigation, that is a case in which I could not successfully make the application I am now making; but I conceive it is not to be permitted to any man to sport with a character that is admitted to have been hitherto irreproachable, and to throw that stigma upon it; because more persons will know the fact of the stigma than those who know the circumstances under which the acquittal took place. My Lord, I do not know that I can be debarred from stating circumstances that appear to me to shew an improper motive: suppose, for instance, this was about to become the subject of parliamentary investigation;* suppose the party standing at the bar was a material witness against Mr. Cruchley; suppose this indictment had not been known to the prisoner till last Friday; suppose it had not been known at all in time for him to surrender and claim his trial; suppose, with these advantages, Mr. Cruchley, who is an attorney, should be enabled to say, at the bar of the House of Commons, why, that witness has had seven indictments found against him by a Grand Jury of his country. Nay, more, seven indictments, in reference to the very subject upon which this House is now about to deliberate.

MR. COMMON SERGEANT.—Is it February in this year or the last year?

* Mr. Cruchley's petition to parliament had been presented the week preceding.

Mr. DAUNCEY.—In the last year. All these circumstances might have led to an actual imprisonment till the time of trial, which, probably, was the intention of the party. If it had been merely intended to be an investigation as to the payment of this money, that might have been had without having recourse to a Grand Jury. The amount of the money could not have been the object; the whole amount is no more than *twenty-two shillings and two-pence*, and the transaction took place upon the very day of Mr. Cruchley's suspension from his office: on that day it was that Mr. Cruchley ceased to fill the situation he had antecedently filled; of course, the accounts were left unbalanced.

Mr. GURNEY.—My Lord, I take it that my learned friend is not entitled to state this; if any period should arrive in which my learned friend will be enabled to make such a statement, it must be when he is entitled to prove it, which he cannot be here.

Mr. DAUNCEY.—Then it reduces it to this point: assuming, for the moment, that my learned friend's argument is correct, it comes to the point with which I began, that a man may scatter firebrands at will; and he has only to say, when he comes into Court, I shall not offer any evidence. Now, my Lord, I may assume this, that there was that suspension, that this gentleman stood an unimpeached character, and that the party prosecuting is an attorney, and it appears to me to be a circumstance of infinite importance that this gentleman is an attorney: because, that which might be misapprehension, that which might be ignorance, in another, cannot be so in him; of his ingenuity I have no reason to doubt; of his sagacity I have no reason to doubt; the idea of his want of judgment is too glaring to stand in need of discussion; in that he is certainly most deficient: he either *did* know or *ought* to have known, that indictments were not *play-things*; he either *did* or *ought* to have known what constituted embezzlement. At present, it seems that this professional man has brought forward the dry case of the receipt of fees to be entered in a book; for that my learned friend has stated; and when I held the book in my hand, I was only holding that which had been opened; books to which Mr. Cruchley had access; those

books, it is stated, contain the fees regularly entered. The person near me may wink and shake his head ; I know not who it is, it may be Mr. Cruchley himself,* but it will not alter the course I am pursuing.

Mr. GURNEY.—I said it was fees entered, or to be entered.

Mr. DAUNCEY.—They are books in which they were regularly entered.

Mr. GURNEY.—My learned friend is stating that of which I could have proved the reverse in three minutes ; and my learned friend is now making an address not to your Lordship, but to the Jury.

Mr. DAUNCEY.—It is certainly an address to your Lordship ; if others have ears to hear let them hear ; but my object is not that those others should hear to-day, but that they should hear hereafter ; I am asking for a copy of the indictments, in order that the world may hear the circumstances under which this *professional man* has indicted, seven times over, a clerk of *unimpeached character and credit* ; and, in the case of a professional man, it does appear to me a great deal too much to suppose, by possibility, that he can be permitted to do that, I will not say without reprehension hereafter, but without our having the means of discussing, whether that reprehension was deserved or not. All that I ask in favour of a gentleman so accused, upon *accusations so abandoned*, made by a man who ought to have known better, and by a man so situated, is, that, though it is not every day's practice to grant copies of indictments, yet that, in such a case as this, I hope the Court will feel themselves called upon to do it. My Lord, subject to what I may hear from my learned friend, I do humbly hope the Court will think this a case which ought to be put into a course of investigation, which is all I ask, and without which I take the liberty of saying, a mere acquittal is not that justification which the unfortunate gentleman who stands there has a right to demand.

Mr. GURNEY.—My Lord, I will not follow my learned friend into all the circumstances that he has introduced :

* It was Mr. Cruchley.

he has talked of books, which books appear to be in his own possession, in which accounts ought to have been kept; and the Defendant is presenting himself here under the singular circumstances of his being the clerk, who ought to have accounted to his master, both by entries in his master's books, withholding the money, and being in possession of those books.—But my learned friend has introduced into the case many suppositions, against which I might introduce suppositions exactly counter; and between the suppositions on the one side and the suppositions on the other, your Lordship might decide if it was a legitimate ground of discussion; but the truth is, that all you are called upon to decide here is what has passed in Court.—With respect to what has been stated by my learned friend, I could have proved that it was not merely upon the day the master was suspended, but for two or three days before, fees were received, which have not been accounted for. Now, I cannot conceive how this can be a case which entitles the Defendant to call upon the Court to grant a copy of the indictment, because my learned friend is not without his remedy; for, if the Court should not see sufficient ground for the Defendant to have a copy of the indictment, another path is open to him; he may apply to the Attorney-General, upon affidavits of all the facts, and have his case presented in the most favourable way for him, where the utmost attention is always paid to applications of that sort. The only case in which prosecutors are so treated in Courts of Justice, is where the prosecutor appears to have fabricated and invented a case, for the purpose of prosecution; and, though I should be sorry to utter a syllable that should cast a slur upon the Defendant, (for the best construction ought to be put upon the actions of men,) yet, I submit to your Lordship, that this is not a case in which the Court is called upon to exercise the extraordinary power with which they are invested, in granting a copy of the indictment, but that they will refer this gentleman to another quarter, where he will be entitled to redress, upon a full investigation of the case.

Mr. DAUNCEY.—After the statement of my learned friend, I trust I shall be able to shew, *ex concessis*, that

I am entitled to what I ask. In the first place, I deny the assumption that these fees have been withheld; there is no proof of it, or any thing like it; the fees have been received, *but withheld they have not been*, nor have the Court any reason to suppose that that can apply to the present case; it is simply a case of fees received and not yet paid.—Very, very different from the word withheld, in the sense in which alone it could have been used by my learned friend. My Lord, it is now admitted to me that there are cases in which copies of indictments have been granted, not upon applications to the Attorney-General, but upon an application to the Court, before which the indictment had been preferred; and, whether or not, this is a case in which your Lordship will grant it is the sole question. The cases in which Courts of Justice have been in the habit of granting it are stated to be those where there was no probable cause for the indictment; and I assert that to be this case; and I assert it to be so from the admission of my learned friend, who has the conduct of this prosecution: he has not one tittle of evidence to bring forward upon the only part of the case that is material.—The indictment is for embezzling, it is not for the reception of the fee; that is no crime, the non-payment of these fees, with counter-demands on the other side, is no crime. You demand of me all your fees; I will pay you the fees when you pay me my set-off. The Act of Parliament could not apply to such a case; the word *withheld*, then, *I deny* to form any part of this case; and, striking out that word, is there the slightest probable cause to say that there has been a felonious embezzlement of the money in question. Can any man say that if a clerk, having received fees, does not that moment pay them to his master he is guilty of a crime, or even retains them for a longer period?—No, there must be specific evidence that the party meant to embezzle; but here there is neither proof nor attempt at proof. What is the case, as it has been opened, if they had gone into that miserable evidence? It would have afforded an opportunity to my client to have *established his innocence*; if *Mr. Cruchley* had dared to place himself under that canopy he would have given me an opportunity of shew-

ing all the circumstances under which these indictments have been preferred; but he had too much professional sagacity to do that; he withdraws from that which would have proved our innocence; and, it being admitted there was no probable cause, why are we to be put to the expense of affidavits, to be laid before the Attorney-General, to tell him what are the interior circumstances of the case as well as what has taken place before your Lordship. I ask your Lordship, then, with great confidence, whether I am not within the narrow rule Mr. Gurney has laid down, namely, a case in which the Court does not see the slightest probable cause for the accusation in question. The means of investigation were fully in their power. Mr. Cruchley himself was a witness; the means of investigation were in his power, in a more summary way if that had been his pleasure. If mere investigation had been his object, any magistrate in the neighbourhood would have investigated it; but he does not chuse to do that; he refuses the Defendant the means of justifying himself;—and I now have the honour, I will not retract the expression, I say I now have the HONOUR of vindicating the character of an HONEST MAN, and I will not shrink from the phrase. I feel myself honoured in being called upon to support the character of an honest man, who is accused without the slightest probable cause. In addition to this I must say, that, a professional man does know or ought to know the meaning of probable cause; he does or ought to know what should be the proof that should accompany an accusation like the present: nay, he knows or ought to know what he SWORE before the GRAND JURY, (for I presume he was there,) and he must upon his OATH have propagated this slander before them; he must have laid before them that which he conceived, and they believed, to be probable cause; but he has not dared to lay that before your Lordship. He knew, when he came here, that he had not one tittle of proof. It is impossible for human ingenuity to suggest a cause: if a cause could have been suggested, my learned friend would have found it: all he says is, that the moneys have been received and not paid, or, as he*

* He was examined before the Grand Jury.

describes, which I conceive a term improperly used, withheld. Then comes the true question; has the non-payment arisen from the felonious intention of embezzlement; and, with respect to that, it is admitted they have not a tittle of evidence to induce them to bring forward the matter even for investigation. My Lord, under such circumstances, I conceive I stand in an *unexampled situation* if your Lordship should refuse the application I am making: it is not an application that necessarily supposes Mr. Cruchley to be guilty, but it is to obtain an opportunity of investigation, and I trust your Lordship will not send the Defendant to a circuitous remedy when there is no occasion for it. If there had been conflicting facts, if there had been any thing that could possibly have left a doubt upon your Lordship's mind, you would have said, I will not grant a copy of the indictment; go before the Attorney-General; but, in a case like this, your Lordship's power cannot be doubted; there have been thousands of cases where it has been done. Is the case of a *prosecutor not daring to come forward* less strong than if it had been, after an investigation, especially when the person who brings forward those indictments has been suspended upon the very things upon which they arose; and this *supposed embezzlement* takes place upon the day of the suspension. Could more complete insanity occupy a man's mind; nothing but gross insanity could have induced the Defendant to commit an act of embezzlement on that day.

My Lord, it is only by an allusion to these circumstances that I can impress upon your Lordship's mind the *extreme hardship of the situation in which that gentleman is placed*. I do, therefore, humbly hope that, as *no probable cause is shewn*, the Court will not presume *probable cause*; and that, as probable cause is not proved or even glanced at, I have a right to copies of the indictments, which can only be refused me upon the ground that there was probable cause for the accusation. Upon what is your Lordship to found that presumption? The Prosecutor, being an attorney, ought to know what probable cause was necessary to be proved. He knew very well how far he could go; and, when he had got

that length, he should have said, here is probable cause. I have shewn my reasons, I have done enough to justify myself in bringing forward the accusations. If he had done that, he would have stood in a very different situation; but, as it is, he stands perfectly naked, unless he is assisted by the language of that indictment which has been found and of which I am now asking a copy. I trust, therefore, your Lordship will grant this application.

Mr. COMMON SERGEANT.--This is an indictment against the Defendant upon the statute for embezzling, and it must be founded certainly in dishonest practice on the part of the person accused. It is stated in the course of the opening, that the Defendant was a man of fair character, and is so at the present time; this is, therefore, *a very ill-advised mode of trying whether these fees are the property of the Prosecutor.* The *date* of the charge is certainly *very far back*, about fifteen months; and therefore, this case might have been referred to the more private determination of a Magistrate in the first instance, by calling the party before him, without a warrant. The first step is fifteen months after, to indict this person before a Grand Jury, and, of course, subject him to immediate apprehension and trial. He has stood at the bar upon his trial for felony; and having been acquitted, and, it being *admitted by the Prosecutor that he is a man of fair character*, he now applies for copies of the indictments; and I hope it will never be said, by any person, that it is to be inferred from the Court putting a question into a course of investigation, before another Jury, that, therefore, it is a malicious prosecution; that will be the subject of future investigation. This Court will not say it is, and the party has no right to say that the Court in granting copies of the indictments have declared it to be malicious. The Prosecutor has withdrawn his charge; and if the charge was improperly instituted, it is not because he has withdrawn it that the party is to be deprived of his right of action. Certainly the Defendant might apply to the Attorney-General, but, if the indictments cannot be sustained, indictments preferred fifteen months after, and when it is stated that the moneys were rightly received by the party, being perfectly well known to have been received by him in the course of

the administration of Justice, I do think it is a case in which the Defendant has a right to ask that he shall be enabled to institute a farther inquiry if he should be advised so to do ; and, therefore, whether this was malicious or not the Court do not determine ; but they will give him an opportunity, if he should be so advised, to have it investigated by another Jury, to ascertain whether this has taken place from mistake, and not from pure, but malicious, motives. The Court will decide nothing upon the merits ; but will give him an opportunity of inquiry, hereafter, if he should be so advised, whether this prosecution was instituted maliciously or not.

THEREUPON THE COURT GRANTED THE APPLICATION, AND ORDERED COPIES OF THE INDICTMENTS.

THE END.