A N

INTERESTING ADDRESS

TO THE

Independent Part of the People of England,

ON

L I B E L S,

AND THE

Unconſtitutional Mode of PROSECUTION by INFORMATION EX OFFICIO, practiſed by the

ATTORNEY GENERAL.

WITH A VIEW OF THE CASE OF

JOHN HORNE, ESQ.

And a Candid REFUTATION of the

DOCTRINE of INFORMATIONS,

AS LAID DOWN IN

BLACKSTONE's COMMENTARIES.

DEDICATED TO ALL

The GENTLEMEN of the LAW.

Very uſeful for thoſe worthy ENGLISHMEN who glory in TRIAL by JURY, and who may hereafter be impannelled in

CASES of PUBLIC LIBEL.

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M, DCC, LXXVII.

DEDICATION.

To all the GENTLEMEN of the LAW.

GENTLEMEN,

IF, in the perusal of the following Address to the Independent People of England, you shall find that your attention has not been misemploy'd, nor your senses insulted by the arguments of a man in no higher station than a law student, you will not regret that he has studied in reason and common sense, to explode a species of prosecution for an imaginary crime, which, on examination, appears to disgrace all our law books, and our highest court of criminal justice.

If, on the other hand you should, from superior ability, and a more accurate knowledge of the spirit and principles of our constitution, discover false conclusions, from mistaken premises, your

indulgence

indulgence and candour will be requeſted to excuſe, what you cannot approve.

I have a reſpect for the profeſſion of the law, and glory in the name of a true-born Engliſhman. In lamenting the violation of our conſtitution, and the abandoned corruption of political affairs, I have done no more than my ſuperiors, whoſe names and characters I revere; and though the preſent ſubject has been diſcuſſed by an artleſs and ſimple pen, if it does not rebel againſt the laws of decency, and conſtitutional liberty, I ſhall hope to find that my humble reaſoning will not be offenſive, and that a doctrine apparently reſerved for arbitrary purpoſes, will ſoon be aboliſhed; or at leaſt univerſally condemned.

I am,

With all proper Reſpect,

Your Humble Servant,

The Author.

A N

INTERESTING ADDRESS, &c.

EVER ſince his preſent Majeſty (whom God preſerve) came to the throne, his kingdom has ſuffered almoſt a continued concuſſion by the violation of our conſtitution, and the exorbitant power of his reſpective miniſters.—Throughout the preſent reign, we have obſerved (with pain is it recollected) that public affairs have been conducted with obſtinacy, and in contempt of that oppoſition which will, ſo long as the debates of both Houſes of Parliament ſhall be preſerved in print, be read with admiration and praiſe.—Our reſpective rulers, (ſome few only excepted) ſince the acceſſion of George the

Third, (a virtuous and benignant King) have vied with each other who ſhall wade deepeſt in the dirty channels of adminiſtration, and who ſhall ſacrifice their country's welfare moſt for private advantage.—Government has abounded the whole of this inglorious time in wilful error and general abuſe. Miniſters have ſtudied to withdraw themſelves from the intereſts of the people, (whoſe ſervants in truth they are) and to attach themſelves to the King and his court. — They have artfully caſt out the tub to the whale, the lure to the multitude, like unto the deluſive largeſſes of Julius Cæſar, the better to bring about their own purpoſes, and by ſerving themſelves to diſtreſs their country.—They have announced (having previouſly lulled the beſt of Princes on their ſide) that thoſe ſubjects are enemies to their King; who, from feelings of humanity, and a love of liberty, preſume to ſpeak the dictates of their hearts, or arraign what in miniſters appears notoriouſly deſtructive of Engliſh freedom.—To check their ſchemes, while ſporting with all that is dear to us, is criminal in their eſtimation, beyond compare; for which, no rancour or reſentment appears ſufficient in return.

While

While the enemies of our liberties are active and vigilant, to ſeize every occaſion to encreaſe their own power and profit, and while we are timid and thoughtleſs on our ſafety, our public complaints can never be relieved, but will rather be encreaſed; to prevent this, it is time to awake from that lethargy into which we have long been thrown, and examine in the hour of trial and neceſſity, our true condition; corruption and venality will otherwiſe ſpread wider and wider over this once proſperous country, until it will be impoſſible to root them out. They will not die away of courſe: they are the offspring of tyrants, and tyrants will (unleſs reſtrained) keep them alive.

If we look into our own hiſtory, no farback than 1688, we ſhall find that we have either not been able to keep up our conſtitution as then ſettled, becauſe it was imperfectly ſettled; or becauſe we have been until the preſent reign (which God prolong) in the hands of foreign kings, and of miniſters calculated and diſpoſed to try experiments at the price of liberty and virtue; miniſters who have inſulted our generoſity, and by introducing corruption, have, in a degree, undone what was done in the expulſion of the *Stewarts*. Endeavours are meditated to perſuade us that all is

ſafe;

ſafe; but a retroſpection on our complaints, made in the year 1769, will bring contempt and abhorrence on the cauſes of them. They were then carried to the foot of the throne by the livery of London, who repreſented, that the right of trial by jury, was invaded, as well as the force of the Habeas Corpus act: that an individual had been impriſoned without trial, conviction, or ſentence: that the military had been employed where peace officers would have been ſufficient; and that they had murdered thoſe ſubjects who they ought only to have apprehended—that the murderers had been concealed—that arbitrary taxes had been impoſed in the Colonies—that the Miniſtry had procured a rejection from a ſeat in parliament, of a member not diſqualified by law, and a reception of one not choſen by a majority of the electors—that the payment of pretended deficiencies in the civil liſt, had been procured without examination—that a defaulter of unaccounted millions had been rewarded inſtead of puniſhed; and that the blood-enveloped beings had been thanked for deſtroying the lives of the innocent and unarmed in St. George's fields, in order to quell the riot of an inconſiderate, yet exaſperated mob. Theſe were heavy complaints, and ſad to reflect upon, but a part of the many we have had reaſon to make within the preſent reign, the re-

ſult

fult and conſequence of our repreſentative body having loſt its efficiency, which, inſtead of being what it was intended to be, (our guard againſt the encroachments of King and court) is in the high road to be little more than a *baſtion* of the Miniſtry; or a *French* parliament, to regiſter *royal edicts in*; a Roman ſenate (in the Imperial times) to give the ſhadow of a free government, but in fact, to accompliſh the ſchemes of a profligate junto.

We are told from the throne of the *authority of law*, and the neceſſity of *ſubordination* in language, which among freemen perplexes the idea of either: the former is pronounced in contradiction to the fixt ſpirit of our conſtitution; the latter, as we might expect among ſlaves.

The firmneſs ſhewn by our brethren in America againſt the ſame oppreſſion, as to us it would be to have taxes impoſed on us by an edict from the King, has by AUTHORITY been pronounced ſedition and rebellion; but with due ſubmiſſion to ſuch authority, and with more reſpect to truth and juſtice, we may aſk when the *illuſtrious* Hampden reſiſted the lawful Sovereign's demand of an *unlawful* tax, becauſe he

had no voice in laying it on, was he too guilty of ſedition and rebellion? if he was, we are all Rebels but the Jacobites; for the revolution was brought about with a deſign to prevent a man's property being ſeized without his conſent, which makes it the ſame to our Coloniſts to be taxed by the Parliament of Britain, as that of Paris; and yet it is become almoſt criminal to deny the *Sovereignty* of our Parliaments; or in more modern words, its *ſupremacy*, notwithſtanding the truth is, that ſovereignty can dwell no where but *among the people*, who have, in deſpite of the learned Blackſtone, a right to exert it without any "urgency of diſtreſs," without any provocation by government, if they think they can be happier under one mode than another, and can bring it about without greater inconveniencies than the future advantages are likely to ballance. They have an undoubted right to change or new model their government, when neceſſity, and their general ſafety, may require it. Government ariſes from them, and thoſe, into whoſe hands they truſt it, are but truſtees for their common welfare. The idea of government, is only an authority of the *many* over the *few*: whenever therefore it aſſumes a power of oppoſing the ſenſe of a *majority*, it is downright tyranny. Judge Blackſtone, by placing

ing the *ſovereignty* in the *parliament*, ſeems clearly wrong in his idea; becauſe, as may be expected, in the weakneſs of human nature, parliament is fallible, and has done many wrong things, which, if ſovereign or ſupreme, it would have been impoſſible to correct. Hence, next under God, ſovereignty is immediately in the people at large, who delegate to their governors all the power they have, which in the nature of a free ſtate, is (to make uſe of a Chancery expreſſion) no more than a reſulting truſt. It would be abſurd to ſay that governors give power to the people; for without people, there would be no governors. With the People then is all power; and when their truſtees abuſe it in the characters of governors, they *only* have the Sovereignty to withdraw it from them.

It is the exorbitant power or authority of government we have reaſon to condemn, as tending in time and from our own ſubmiſſion, to the artifice and poiſon of our governors, to rob us of our liberties, and leave us meer inſtruments for their uſe and abuſe.—If we are corrupt (which indeed we are) it is becauſe our ſuperiors have corrupted us.—We know we are unequally repreſented in parliament, and that our repreſentatives are chiefly *beggars*, which is

foundation of our public ills:—We ſend up thoſe men as our agents, who, for ſelfiſh purpo ſes, have laviſhed their property among us, to intoxicate us into an approbation of them as members of a part of our ſtate, and blinded by folly, temporary licentiouſneſs, and private pro- fit, we are ignorant that thoſe who repreſent us, have indulged us in a periodical libation to Bac- chus, for the ſake of having it in their pow- er to oblige the court when returned by us, and in order to have that obligation compenſated in *places* or *penſions*. So that whatever the Eng- liſh conſtitution is in theory, liberty now is lit- tle more than a name, and our parliament appears to be the ſtate of a monarchy, at a time we are ſcarcely a remove from paſſive ſlavery. Judge Blackſtone in his chapter "on the nature "of laws in general," has attempted to ſhew that our government is all perfection, and that the reſpective branches of it, are independent of the other; but the excellencies he attributes to each, are ſo imaginary, that they have been doubted as true or reaſonable; for in regard to the independence of any one branch of our le- giſlature on the other, it ſeems a paradox in terms, becauſe it is very well known to a com- mon obſerver, that the King, and moſt of his Lords, have great influence in the election of members

members of parliament: that the King can at a minute's warning put an end to the exiſtence of the houſe of commons, and that he has alſo great influence over both houſes, by offices of dignity and profit, given and taken away again at pleaſure; from whence, one may rather ſay, that this independence in the three branches of our ſtate, and the perfection of it when they are knit together, ſo ingeniouſly made out, or attempted to be made out, by the learned Blackſtone, is little more than dependence and imperfection.—Wherever there is influence, there can be no independence, and where independence is wanting, there can be no perfection; therefore, while we live under the ſhadow of a limited monarchy, that is, a monarchy limitted chiefly by the monarch himſelf, we are almoſt in a ſtate of paſſive ſlavery*.—Our parliaments are called to give a ſanction to what the miniſtry *pre-determine*.—A majority is purchaſed by the court, and we pay the purchaſe money.—Our property is ſacrificed by our repreſentatives, who having firſt deluded us to chuſe them, vote it away to the miniſtry, that they may be the better paid their wages of iniquity; and theſe beggars, to ſpeak of them in the general, are our legiſlators and framers of laws, which they break themſelves, while they hold them ſeverely over us.

* Vide fragment on government, page 101.

May God, and the undebauched ſpirit of freemen, however redeem us from ſuch mortals, who priding themſelves in the conqueſt they gain over us, by their vicious electioneering largeſſes, deſert our true intereſt, and inſtead of deeming themſelves, in a refin'd ſenſe, our ſervants, take upon them the imperious characters of our lords and maſters.—They corrupt us, that we may conſtitute them for corruption.—The court then attaches them to its ſchemes; taxes are multiplied, and our repreſentative body is but a name preſerved for the ſake of appearances, while King and Lords rule us under a kind of ariſtocracy.—We are expelled and divided from government, and as the ingenious Voltaire indignantly tells us, once in *ſeven* years we are only free.

If, as a people, *ſovereignty* is only *among us*, and not in our *parliaments*, which are of our own fabrication, it muſt be allowed that we are not to be reſtrained in our enquiries, into the conduct of thoſe who undertake our public affairs, becauſe (as in a private caſe between man and man) they are undoubtedly anſwerable for what they do; were it otherwiſe, and we are to be reſtrained in ſuch enquiries, it would be argued, that having once conſtituted a frame of government,

ment, we have no right to complain of its administrators, though their deeds be ever ſo atrocious: in ſuch a caſe, the ſtate would run to progreſſive ruin, and we be left in completeſt ſlavery, when no new revolution, no new ſtand, againſt the effects of abrogated truſt would reſtore us to our rights, unleſs founded on firmer principles than our *laſt*, which after all boaſt of glory on its occaſion, was not ſufficiently eſtabliſhed for the purpoſes intended to be anſwered by it, one among which was, the total deſtruction of the Court of Star Chamber.—Our ſtate veſſel before that time was in a crazy and rotten condition.—It had a many leak holes, and though a great number of them were ſtopt by our revolution botchers, the few that were left purpoſely unrepaired, have expoſed it to the perils it has ſince experienced; among thoſe unrepaired defects we may (ſpeaking metaphorically) claſs the practice of filing informations *ex officio*, which was left open for the benefit of the crown, whenever it ſhould be expedient for the miniſtry to make uſe of ſuch a practice, in revenge for being told their miſdeeds, or being diſcovered in their private iniquities.

It is now an offence to remark on the proceedings of parliament and adminiſtration, tho'

we

we are all concerned in them; and ſo formidable are miniſters become, that no puniſhments have been, or are ſevere enough againſt thoſe who dare to ſpeak the truth, and find fault when faults are flagrant, becauſe we are told, that no private writer or ſpeaker, ſhould have liberty to attack the *ſacred* men who take upon them the care of our ſtate:—this is deſpotic, and hiſtory ſhews clearly the neceſſity, the virtue of every ſubject's having a watchful eye on the conduct of miniſters and parliament, and of their not only being ſecured, but encouraged in alarming their fellow ſubjects on occaſion of every attempt againſt public liberty, becauſe private independent ſubjects are more likely to give faithful warning of ſuch attempts than their betters, who, from their rank and fortune, and perhaps courtly connections, would rather conceal than detect the abuſes of thoſe in power: if private ſubjects are to be intimidated, in ſhewing their fidelity to their country, the principal ſecurity to liberty is taken away, and that ſuch attempts have been made to this diabolical end, we have ſeen too plainly, in the caſes of the King againſt Wilkes, Almon, Woodfall, and Bingley, but praiſe and thanks to thoſe defendants we have found. Sir William De Grey's words, when Attorney General, verified, that

that the power (wicked as it is) of that officer in profecuting *ex officio* for libels, has never anfwered its purpofe, which is to ftop the pen and mouths, and ftifle the complaints of an injured people (of which more hereafter).—Our minds and pens ought to be free, but not mifchievous: to curb either is to abufe that liberty, which gives to our governors all their confequence; and to be cheated of a power, which transferred to worthlefs hands, is exerted to our misfortune and not our good.—It is like one man's building a houfe for another to occupy, while he is only permitted filently to look at the outfide of it, or marrying a woman, for his enemy to enjoy.—The Miniftry, and their friends the judges, pretend that in all crown profecutions, for what *they* call a libel, which is any thing that upbraids the conduct of our government, whether *truly* or *falfely*, it is the dignity of the *public peace* they are meant to preferve, and puniſh the violation of.—They talk largely of libels raifing fedition, inſurrection, and breaking the peace; but where, in any one cafe in our time, do we find that thefe things have been proved?—They are pretended, but not given in evidence, and though, under thofe great and good men, Holt, Powell, and fome other former judges, menti-

oned with reverence in the law books, it was held indiſpenſably neceſſary to prove ſome *overt act* in the defendant, whereby the *public peace*, and the dignity of the King, as the chief conſervator of it, was endangered, or *actually* broke, by what was charged as a libel; we have now Judges who diſpenſe with ſuch teſtimony as immaterial! but are Judges infallible? are they to ſupply the defects of ſuch evidence? if they are, any thing diſpleaſing to them, or to our governors, may be deemed a libel, and we be kept in the dark about a definition of what it is. The public peace is the peace of the *people*, and a breach of it is properly puniſhable; but it is folly to conclude, that becauſe a King, or his Miniſtry, ſhall ſay that ſome one among the people has wrote a letter which *tends* to break ſuch peace, without there be an act, proving beyond a doubt, and out of the reach of an inuendo, ſuch *tendency*, that the thing complained of as a libel is really any more than *harmleſs* and *inoffenſive*—If there be any one bold enough to ſay otherwiſe, he is a tyrant.

It is far from being the intent of theſe humble pages to raiſe ſedition.—They contend not for an overthrow of our frame of government, but for a reformation in the conduct of its adminiſtrators.

miniſtrators.—Our conſtitution is an excellent one, if ſupported, but it has received many injuries from our legiſlators; notwithſtanding we have a ſtatute which ſays, no law ſhall be good which affects it, as eſtabliſhed by Magna Charta.—Judge Blackſtone amuſes us by ſaying " wherever the law expreſſeth a diſtruſt of an " abuſe of power, it always reſts a ſuperior pow- " er in ſome other hands to correct it, the very " notion of which deſtroys the idea of ſover- " eignty; and if the two houſes of parliament, " or one of them, had a right to animadvert on " the King, or the King had a right to ani- " madvert on either of them, the legiſlature, " ſo ſubject to animadverſion, would ceaſe to " be a part of the *ſupreme* power; the ſuppoſi- " tion of law he therefore ſays, is that neither " the King, nor either houſe of parliament, " (collectively taken) is capable of doing any " wrong, ſince in ſuch caſe, the law feels itſelf " incapable of furniſhing any adequate reme- " dy; for which reaſons, all oppreſſions which " may happen to ſpring from any one branch " of the ſovereign power, muſt neceſſarily " be out of the reach of any ſtated rule."— This may ſound very well in civil matters, but never in public or political ones. But then he ſays, " if ever they happen, the pru-

" dence of future times muſt find new remedies " on new emergencies, as was the caſe at the " revolution;"—inſinuating, if we had not ſuch a remedy, we ſhould not know how to proceed in ſuch a caſe. Strange heſitation! ſince the remedy is inevitably to be found in the people, who would bring about any revolution when neceſſity obliged it. But would the people, after what they have ſeen in the clandeſtine reſerve of the doctrine of Informations *ex officio*, which has been employed in the moſt arbitrary manner ſince 1688, neglect to blot that doctrine away from the crown? It is a doctrine as ſcandalous to our conſtitution, as it is inimical to Magna Charta, which ordains that none ſhall be impriſoned, condemned, or puniſhed, but by his Peers.

When Sir William De Grey, that able man, was Attorney General, he confeſſed in the Houſe of Commons, A. D. 1770, that his power of filing Informations *ex officio* was an odious one, and that it did not anſwer the purpoſe intended, for that he had not been able to bring any libeller to juſtice; why? becauſe there was no injuſtice done; or if there were, Informations *ex officio* were not the proper proceſſes to purſue.

The

The lawyers and law books have differed in opinion about what is and what is not a libel; yet the prevailing doctrine is, that *truth* is a libel, when it *tends* in its provocation or aggravation to a breach of the peace; and that falſehood for the ſame reaſon is alſo a libel. We are taught too, that the perſon libelled, has no right to damage in a private caſe, if the charge laid againſt him be true, whereby it ſhould ſeem that the truth of the thing would take away its criminality; for if a man has no right to damage, he has no right to ſeek revenge; therefore to libel a perſon for what he cannot affirm himſelf innocent of, is *no breach of the peace*. It may *tend* to provoke a breach of the peace; but will that make truth a crime? If it will, it is wonderful that proſecutions for libels are not much more common, as any thing that tends to provoke anger, or to excite ſhame or reformation, may, under theſe rules, be puniſhed as libellous.

In a civil ſenſe, a malicious defamation of any perſon may be properly libellous, as in a ſettled ſtate of government the defamer ought to complain of any injury done him in the ordinary courſe of law, and not to revenge himſelf by becoming Judge, Jury, and executioner, in his own

own cauſe; but in a *criminal* ſenſe, it is otherwiſe; and there can be no proſecution for a libel *criminally*, but for a breach of the peace, or a *tendency* proved towards it. Judges Holt, Hale, and Powel, knew this to be true. They had no corrupt attachments to adminiſtration, and they made it their duty honeſtly to expound, and not partially vitiate the law in caſes of libel. Let us here ſee what after Judges have done on this important (though ill underſtood) ſubject,

And firſt, after deſcribing imperfectly the ſignification of a libel, the learned and elegant Blackſtone proceeds to tell us, that the *tendency* of all libels is the breach of the peaee, by ſtirring up the objects of them to revenge, and, perhaps, bloodſhed. Theſe are his words: " For the ſame reaſon it is immaterial with re-
" ſpect to the eſſence of a libel, whether
" the matter of it be true or falſe, ſince
" the *provocation*, and not the *falſity*, is the
" thing to be puniſhed criminally, though
" doubtleſs the *falſehood* of it may aggravate
" its *guilt*, and inhance its puniſhment. In a
" civil action, a libel muſt appear to be *falſe*
" as well as *ſcandalous*; for if the charge be
" true, there can be no private injury, (nor of
courſe

courſe any public one, becauſe in civil actions no breach of the peace is ſuggeſted) " nor any ground to demand compenſation, " whatever offence it may be againſt the public " peace; and therefore, in a civil action, the " truth of the accuſation may be pleaded in bar " of the ſuit (and why not to a criminal charge where the peace does not appear to be broke)? " But in a criminal proſecution, the tendency " (curſe on this word) which all libels have to " create animoſity, and diſturb the public " peace, is the *ſole conſideration of the law*; and " therefore, in ſuch proſecution, the only " points to be conſidered are, firſt, the mak- " ing the book or writing; ſecond, whether " the matter be *criminal*; and if both theſe " points are againſt the defendant, the offence " againſt the public is complete."—True, if the matter be *criminal*; but the learned Judge ſays nothing how this *tendency*, in all libels, to diſturb the public peace, is to be made out or known; therefore he leaves us to ſuppoſe, that it is to be done by conſtruction only; very indeterminate indeed, as is the meaning of the word libel at all. In fact and reaſon, a libel is a *non entity*; that is to ſay, there is no ſuch offence as Scandal; for if the remorſe of ſcandal was removed; or in better words, if ſcandal

dal occaſioned no remorſe, it would be in no ſenſe an evil, becauſe no body would regard ſcandal that did not deſerve it. We believe every character what we know it to be; and if people lived, ſo that no body would believe their upbraiders, ſcandal would die away, and we ſhould forget the name; but we find that the moſt worthleſs are generally the moſt tenacious of what they do not deſerve, which is a good name and character. Satan corrected ſin, and quoted ſcripture. The devils of this world always perſonate ſaints, becauſe the wicked benefit by concealing their vices, and not by an open ſhew of them; therefore it is from the vileſt of people, that we behold rage and revenge againſt thoſe who, deſpiſing their conduct, and dreading the conſequences, candidly call them to account for it. The leading men at preſent, and for the principal part of this reign, ſeem in this predicament. They have been conſcious of their deſerts, while ſtriving to rule triumphant over the people, whom they have miſerably corrupted and deluded into miſchief; and when a lover of his country and fellow ſubjects has engaged to ſpeak loud truths which reflect deceit and perfidy on them, he is purſued with implacable fury. Even records, thoſe things, the alteration

teration of which by judges, is puniſhable by ſtatute, have been eraſed to gratify that fury previous to trial.—Juries have been deprived of their authority, and a corrupt court has puniſhed a man as a libeller without any proof that *he had broke the public peace*, except by *inuendo* and *implication*.

But to return to the worthy Blackſtone on libels: if we depend upon what he ſays, which, to a ſuperficial reader, ſeems reaſonable, it is very plain, that the *tendency* of all libels, being, as he ſays, the *ſole conſideration of the law*, the prevailing doctrine is right, and juriesare then only to try the making or publiſhing the thing charged as a libel by the Attorney General. If this be allowed, which in juſtice it never can, the *ſole conſideration of the law* becomes no conſideration whatever, for in law the ſuppoſed libel muſt be criminal.—If criminal, *i. e.* if it has broke the *public peace*, the law is to judge of it, and not the Jury; now what the law has to do *ſolely* with that, is difficult to comprehend.—*A breach of the peace* if committed, one would imagine was more properly the *conſideration of the Jury* than the law, and is a matter as much at iſſue to be tried by them as that the ſuppoſed libel was wrote or publiſhed.—The advantage

of a Jury is otherwiſe loſt, and by leaving the *tendency* of what the ſuppoſed libeller has done to break the peace, *ſolely to the law*, they ſeem not to diſcharge their duty according to their oaths, which are that they ſhall *well and truly try the iſſue, joined between our Sovereign Lord the King and the Defendant, and a true verdict give according to the evidence.* Suppoſe then, that any of us ſhould be brought to trial, for having wrote, that a proclamation had been made without the concurrence of Lords and Commons, and that what had been ſo wrote, was ſeditious and againſt the peace, to which Not Guilty was pleaded; would the Jury not be bound by oath to try the whole of ſuch charges? would they not be obliged to try, whether there were malice, falſehood, or a breach of the peace, or an *overt act* toward it?—If they would be, the law uſurps a power to be wantonly exerted in caſes of public libel, at the *diſcretion* of Judges, to the injury of innocence, and a man under ſuch circumſtances would be at their mercy for writing any paper whatever, if the ſame were offenſive to adminiſtration.—He would then be convicted of a *Guilt* by his *Judge*, which his *Jury* would be told they have nought *to do with.* According to this principle, an Attorney General has nothing to do but determine

that

that a particular man ſhall be puniſhed for what he thinks proper to deem libellous in him; and on bringing him before his judge and jury to ſay, " my Lord and Gentlemen, I " charge the defendant with having wrote and " publiſhed an impudent, wicked, and ſediti- " ous libel, in ſaying" ſuch and ſuch things as the nature of the caſe may be, and then, on proving what the defendant is ready to *confeſs*, that he wrote and publiſhed ſuch words, to entitle him to a verdict, which when he is poſſeſſed of, is not to be ſet aſide or judgment arreſted thereon; becauſe the *tendency*, (without any proof of the fact) of ſuch words, in the ſole conſideration of the law, was to break the public peace.—Would this be juſtice? moſt certainly not, for whatever a criminal is charged with, ought to be proved by *poſitive evidence*.—It is cruelty to puniſh any man for imaginary or conſtructive faults.—In a civilized, and particularly a free ſtate, all crimes are *poſitive*, and even murder is not murder, unleſs there be poſitive evidence of an *intention* to kill. Can that be law therefore that robs a man of his liberty, for having done nothing but in *conſtructive tendency* that is criminal, or morally reprehenſible? as well might he be puniſhed for a want of charity, or benevolence to his neigh-

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bour, which ſeems a greater *omiſſion* than the other a *commiſſion*, becauſe ſociety is a loſer in the one, but an Attorney General reaps no advantage in the other, except by gratifying his employers, in return for ſome ſecret ſting, their conſcience had ſeparately afforded.

A criminal proſecution can only be had for a *crime*, and therefore the publiſhing of what is either *true* or *falſe*, which does not *actually break the peace* is no *crime* at all. It is the publication of what is *falſe*, *ſcandalous*, and *ſeditious* that is a *crime*, and ſolely gives juriſdiction to the criminal court, and theſe things muſt of neceſſity be left to a Jury, who by their oaths, are obliged to try whether the ſuppoſed libel is *true* or *falſe*, *malicious* or *ſeditious*, which they are to collect from circumſtances, as much ſo, as whether a treſpaſs is wilful or not, or the killing a man with malice prepenſe, or whether any act was done or words ſpoken, with a *criminal* or *injurious* intent.—The truth of a thing may not defend it from being a libel, which *actually* cauſes a breach of the peace.—It may be otherwiſe by an *inflammatory falſehood*, for as falſehood is a *crime*, it may, in particular caſes, *tend* to a breach of the peace, where the King is *ſolely* concerned; but in thoſe crown proſecuti-

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ons, where *no breach of the peace is proved*, nor enquiry made into the *truth* or *falſity* of the ſuppoſed libel, it muſt be conſidered harmleſs and conſtitutionally inoffenſive; nor can it be otherwiſe, except in the opinion of thoſe our maladminiſtrators, who break looſe on the liberty of the ſubject, when their bad conduct is expoſed. It is in that the *crime* of libel is to be found.—It is not the *public peace*, but the *private peace*, of the Miniſtry that libels *tend* to break.—It is the ſecurity of the ſubject in publiſhing, who, and what are enemies to his welfare, and not ſetting one ſubject on another, that conſtitutes the crime of libels, in the opinion of the law, and a time-ſerving Attorney General, who, ſtriving to obtain a ſhare in the publie plunder, is ripe to oblige thoſe who are at the head of it, by filing his information *ex officio*, againſt any man that offends them, right or wrong. The Miniſtry know the uſe of ſuch a character well. His power, by theſe informations, are as ſerviceable to them, as *Lettres de catchet* to a French court, as is very evident from a motion made in the Houſe of Commons in 1766, but in vain for aboliſhing informations *ex officio*, as oppreſſive to the ſubject, becauſe the Attorney General who files them, cannot be called to account

account for the damages ſuffered by innocent people informed againſt by them.

We are told in the law books, that there are two kinds of informations: firſt, for offences immediately againſt the King, filed *ex officio*, by the Attorney General —Second, for enormous miſdemeanours, between ſubject and ſubject, in the name of the King, filed by his coroner, or maſter of the crown office, in both which, ſays Sir William Blackſtone,—" there " can be no doubt but this mode of proſecu- " tion by information, filed by the Attorney " General, or the King's coroner, is as antient " as the common law itſelf, (by what authori- ty does he ſo boldly ſay this?) for as the King " was bound to proſecute, or at leaſt lend his " name to a proſecutor, whenever a grand " Jury informed him, upon their oaths, that " there was ſufficient ground for inſtituting a " criminal ſuit, ſo when theſe his immediate " officers, (meaning the Attorney General and " King's coroner) were otherwiſe *ſufficiently* " *aſſured* (how was that to be done?) that a " man had committed a groſs miſdemeanour, ei- " ther perſonally againſt the King, or his go- " vernment, or againſt the *public* peace and " good order, (pray obſerve this) they were " at

" at liberty, without waiting for any *further*
" *intelligence* (what further intelligence can be
" neceſſary after *ſufficient aſſurance?*) to convey
" that information to the court of King's bench
" by ſuggeſtion upon the roll."—So that in the firſt caſe, the Attorney General is of himſelf a *grand Jury*, and in the ſecond, the King's coroner is *another*, in all matters not capital, wherein it is agreed they are not a grand Jury. What ſurpriſing reaſoning is this?—

Upon the diſſolution of the Star Chamber Court, wherein the doctrine of information at large was practiſed, with infamy and diſgrace to the crown, and to the oppreſſion of its ſubjects, the Court of King's Bench revived the ſame doctrine, or rather aſſumed it, as the pretended *cuſtos morum* of the nation, for the ſake of peace and good order of government; but Sir Mathew Hale, who preſided in that court, is ſaid to have been no friend to this mode of proſecution, becauſe he knew the ill uſe that had been made of it, " by permitting the
" ſubject to be harraſſed, by vexatious infor-
" mations, whenever applied for by revengeful
" proſecutors;" yet this ſame mode prevailed even after that glorious act of Ch. I. ſ. 10. which entirely deſtroyed the Star Chamber Court,

Court, and until the 4th & 5th W. & M. f. 18. when to ſoften the public complaints of its oppreſſion, it was enacted that the King's coroner (who we have before ſeen acted as *grand Jury*) ſhould not file any information, without expreſs direction from the Court of King's Bench, and that every proſecutor permitted to inform, ſhould enter into a recognizance of 20 *l.* to proſecute his ſuit with effect, and pay coſts to the defendant, in caſe he be acquitted, unleſs the Judge who ſhall try the information ſhall certify there was ſufficient cauſe for filing it; but notwithſtanding this inſufficient act, occaſioned and procured (by a ſtruggle againſt the ill uſe of *all informations*, before the revolution) ſoon after the acceſſion of King William, the Attorney General was left ſtill with his power, as a *grand Jury*, in all caſes at the King's ſuit *ſingly*, which has been ſubject matter of complaint ever ſince, becauſe it has no other authority than long practice, and is contrary to the ſpirit of our conſtitution and Magna Charta.

It is no honour to Judge Blackſtone, that he ſo ingeniouſly defends this power, by ſaying, that an Attorney General is at liberty, when *ſufficiently*

ſufficiently aſſured of a groſs miſdemeanor, to ſuggeſt it on record in the *King's* name, without waiting for further information (meaning the information of a grand Jury) becauſe a *ſufficient aſſurance* is poſitive, but with due ſubmiſſion to the Judge, *ſufficient aſſurance* when determined by *one man without oath or evidence*, is no aſſurance in the leaſt; and Sir Mathew Hale was rather of this way of thinking than what the Judge attributes to him.—In his pleas of the crown, Vol. 2. ſ. 8. he obſerves, that the moſt regular and ſafe way, and conſonant with Magna Charta, is to proſecute criminal caſes by indictment, or the preſentment of twelve men *ſworn*; and though he ſays crimes below capital *may* be proſecuted by information, he gives no other authority than *long* practice for it.—Judge Blackſtone goes ſomething further, and refers to 2 Haw. P. C. 260—This is what he ſays in juſtification of informations *ex officio*—"As to thoſe offences in which infor-" mations were allowed as well as indictments, " ſo long as they were confined to this high " and reſpectable juriſdiction, were and carried " on in a *legal* and *regular* courſe in his Majeſty's " Court of King's Bench, the ſubject had no " reaſon to complain." We are here much embarraſſed with the words *legal and regular*

courſe.—Certainly a ſubject has no reaſon to complain of what is legal and regular; it is what is *illegal* and *oppreſſive* that is complained of in the mode of proſecuting by informations *ex officio*, ſuch as leaving the ſubject in the power of *one* man, (the Attorney General) who is conſidered as a *grand Jury* on a criminal act, (not capital) ſuggeſted againſt that ſubject, and leaving him alſo remedileſs and half ruined, by the expence of his traverſe, though he ſhould be acquitted of the charge, or prevented in a trial by a *nolle proſequi*.—The elegant Judge Blackſtone will not eaſily anſwer theſe things, neither is there any ſubſtantial anſwer, conſiſtent with the force of our laws, to be given in ſupport of filing informations *ex officio*.—We have ſeen that deſigning tyrannical lawyers have been very aſtute in their endeavours to juſtify them by long practice, and as neceſſary for the ſafety and very exiſtence of our executive magiſtrate, (the King); but whatever may be ſaid of their being reſerved in the *great plan of our conſtitution*, 'tis almoſt as clear as any demonſtration in Euclid, if we can depend on our eyes and ears, that their grand uſe and convenience is to haraſs the ſubject when he becomes troubleſome to the court, or when he upbraids a miniſtry for bad meaſures; notwithſtanding Judge Black-

Blackſtone ſays again, that there is the *ſame* notice, the *ſame* proceſs, the *ſame* pleas, the *ſame* trial, and the *ſame* judgment, by the *ſame* Judges, as if, inſtead of informations *ex officio*, the ſubjects of them had been proſecuted by indictments.—If we admit the major of this aſſertion and deny the minor of it, we do Sir William great juſtice; for as informations *ex officio*, are filed for libels *chiefly*, on King or government, the jury ſummoned to try them, by being told they are only to try the *fact*, and not the *crime*, charged in them, the trial is *not the ſame* as in other caſes, where a grand Jury fits depoſed on both, in the *firſt inſtance*, and a *petit Jury* determines on both at niſi prius, or *trial finally*; therefore, it being adjudged that the crime of libels is the *ſole conſideration of the law*, the Attorney General determines the law in his favour, before he files his information *ex officio*, and his diſcretionary determination is what Judge Blackſtone would perſuade us to be a *ſufficient aſſurance* of a groſs miſdemeanor; ſufficiently ſo, to render informations *ex officio* abſolutely neceſſary and right.—But ſuppoſe we indulge the worthy Blackſtone and give way to him, in his ſaying that there is the *ſame* notice, and the *ſame* proceeding, under informations *ex officio*, as indictments which he

mentions, purely with a deſign to prove them inoffenſive; will it then be pretended, that for the reaſons he has given, they are preferable or more conſtitutional than preſentments or indictments?—He muſt either prove they are ſo, which he has not ventured to do, or we muſt deſpiſe his inference; for if informations *ex officio* are no more or leſs than preſentments or indictments, and the proceedings are as he aſſerts, ſurely it is impolitic and abſurd, either in him; or the ſuperior criminal court, to give them the preference and retain their practice, particularly, as a deſtruction of them would, in this mode of reaſoning, do no harm to juſtice, but would abate all publicc lamour againſt them. It is unfortunate that Judge Blackſtone ſhould have plunged himſelf into ſuch kind of logic, which, while he intended to apply it in ſupport of informations *ex officio*, inevitably deſtroys his purpoſe, and expoſes the weakneſs of his argument, in favor of what, in ſpite of himſelf, is not to be juſtified; and however he may think informations *ex officio* neceſſary and right, either in his own opinion, which from *his* reaſons, is no opinion at all, or under the influence or ſuperintendence of a ſecond perſon, we ſee this ſubject in a very different point of view; and recollecting the pains taken by a Judge, in

concert

concert with an Attorney General to convict Mr. Wilkes of a libel, at the price of altering a record before trial, and by a peculiar direction from the bench to the Jury, on that occaſion, we cannot help thinking that Juries in ſuch caſes are only impannell'd to try what perhaps would not be denied, and which might not be criminal; and that the Judge and King's Attorney, having as *grand Jury pre*-determined the crime of what a defendant is charged with writing, without *oath*, on the *ſelf-ſufficient aſſurance* of its being a groſs miſdemeanor, the Jury are only by their *half verdict* (or rather no verdict) to give a ſanction (*true* authority it cannot) to the judgment of the Court of King's Bench, for what they never meant or intended, when they ſaid *guilty*.

If from theſe premiſes it appears reaſonable that *fact and crime* are inſeparable, before a Jury, which to all intents and purpoſes they ſeem to be, except where ſome point of law is neceſſarily left to the Judges for the ſatisfaction of the Jury, and the ſafety of the delinquent, they have an abſolute right to conſider them, otherwiſe they may leave the law to work in- juſtice in the *ſole conſideration of a conſtructive crime*, founded in nothing but *tendency*, which no man ever underſtood as a *crime*, except from

ſome

ſome *falſe* and *inflammatory* action not morally juſtified.

In the year 1681, many printers were *indicted* for ſcandalous and ſeditious libels.—The Jury returned the bills againſt them *ignoramus*, becauſe their writings did not appear to them malicious or ſeditious.—Happy and honourable would it be for us and our country, were an Attorney General obliged to ſubmit his charges to a grand Jury in the firſt inſtance, and that their *criminality* ſhould be on a tryal fairly and honeſtly conſidered, by a petit Jury.—We ſhould not then hear of verdicts, guilty of *printing and publiſhing only*, or guilty of what has no guilt in it, which has been done in the preſent reign by a ſpecial Jury.—Had that Jury who found the *printing and publiſhing only*, been in their ſenſes, or appriſed that their finding the printing and publiſhing the thing in queſtion was *no crime*, they would have pronounced the defendant *not guilty*.—A man muſt be guilty of ſomething before convicted; and printing and publiſhing a thing, unleſs that thing be *criminal*, is guilt-*leſs*.—It is plain that, that Jury found nothing criminal, otherwiſe they would not have given a verdict of printing and publiſhing *only*;

if

if they had ſeen any thing *criminal*, they certainly would have ſaid *guilty*.

Probably we may be told, in anſwer to theſe arguments, if they deſerve that name, that the criminal court is guardian to every criminal defendant, who, if he ſuppoſes himſelf aggrieved by a verdict againſt him, may apply to that court with his objections to arreſt judgment thereon.—He *may* do this, but what precedents have we to ſhew whereby a defendant has ſucceeded in ſuch application? We have experienced, that when an Attorney General is in poſſeſſion of a verdict, the *criminal court* will not ſet it aſide; it will rather prevent a cauſe of error, or objection to the proceedings, than aſſiſt a defendant to avail himſelf of either; and as to the law, there is no difficulty to make that conſtitute any verdict good for a *libel*, from the *tendency*, as we have ſeen before, there is in either *truth* or *falſhood* to break the peace. The verdict, when recorded, ſpeaks a very different language to what the jury thought of or could mean.—It does not ſay that the defendant, for example, printed and publiſhed ſuch a writing *only*, but that he wrote it *maliciouſly*, or with intent to raiſe *ſedition*, to *ſcandalize government*, and againſt the peace of the King, his crown and dignity; all

which

which the jury never had *evidence of*, and could not find or intend, therefore, by not conſidering what we hear, is only the *conſideration of the law*; they in reality conſidered nothing, but left the law to do an injury, in the diſtortion of it by miniſterial Judges.

It may be ſaid, that by leaving the *crime* as well as *fact* to a Jury, a guilty defendant may eſcape puniſhment as a libeller, and he cannot be tried a ſecond time on the ſame charge:—Granted; and much better ſo than innocence ſhould be fettered, which ninety nine times in a hundred it now is.—Many capital criminals eſcape puniſhment, becauſe their Juries, who judge of their *crimes* in what they are charged with, which is the *fact*, have not ſufficient evidence to convict them upon.—Is a ſuppoſed libeller to be put on the ſame condition as a felon? what would any man think, if he heard a Judge tell a Jury at the Old Bailey Seſſions Houſe, that they were to judge of nothing but matter of fact, committed by a priſoner, and leave the crime contained in that fact to him? It is of the higheſt import to the ſubject, that Juries ſhould determine on *both*, becauſe public libels, and proſecutions for them, by informations *ex officio*, ariſe from diſputes between the miniſtry and the people, the former for forgetting

getting the power that made them, the latter, very naturally complaining that their truſtees either neglect their real intereſts, or make an impious uſe of their delegation.

Since parliaments have been corrupt, (which they have progreſſively been for a century and a half) and public affairs mal-adminiſtered, the ſeverities conſequential to the exertion of the Attorney General's power, have been uſeful, and it was no doubt foreſeen, when parliament paſſed the ſtatute 4th & 5th W. & M. ſ. 18. that ſuch inquiſitorial power would be ſerviceable, ſo long as an univerſal corruption and mal-adminiſtration ſhould prevail; for which reaſon it was reſerved, not in the *great plan of the Engliſh conſtitution*, according to Judge Blackſtone, but *concealed*, deſignedly, like the ſtiletto under the cloak of fraud and tyranny, to be uſed when a more honourable weapon would be *openly* ineffectual.—Were parliaments and miniſters to be incorrupt, thoſe who ſpeak and write freely of their conduct, would be ſelf-reſtrained, and the people left at large to remark as they pleaſed, on the procedure of thoſe who undertake the management of their affairs; but while miniſters have ſchemes of iniquity to carry on, it is not to be wondered at, that they ſtrive

by every ſeverity, to drive away thoſe who come with prying eyes, to enquire into, or condemn their behaviour, as calculated eventually, only for their own ſelfiſh and ambitious purpoſes, and not for that common utility, which is the cement of civil and political ſociety, under a free and well regulated ſtate.

Having thus taken a general ſurvey of the cauſe of our public abuſes, and looked into the nature and mode of libels, and proſecutions for them by information *ex officio*, and deſcanted upon their pernicious effects among a free people, we come now to the caſe of our fellow ſubject, Mr. Horne, who is in confinement for a public libel, in having advertiſed a ſubſcription, for the benefit of the widows and children of thoſe men, who preferring death to ſlavery in America, were ſlain by the King's troops.—This was deemed *criminal*, becauſe it *tended* to break the peace, and interrupt the quiet and *harmonious* courſe of government, which had determined to tax unconſtitutionally our brethren in America.—Our miniſters levelled their artillery (the Attorney General) at Mr. Horne, as the author of this maudit advertiſement.—He has been found guilty as a libeller for it, and is now in miſericordia.

But

But if after all our reaſoning on the ſubject of libels, *guilt implies a crime*, that *crime* muſt contain an *injury*, as there can be no injury without a crime.—To puniſh a man who has committed no injuty, is illegal and abuſive, of moral, natural, and revealed right, and the more ſo, when he is puniſhed without the original authority of his peers.—Has Mr. Horne broke the peace, raiſed ſedition, inſurrection, or promoted public animoſities by what he advertiſed?—Were there any *evidence of theſe things on his trial?* No. He had affronted a corrupt and obſtinate miniſtry, in ſaying publicly that the King's troops had ſlaughtered ſome Americans, which, thoſe who read Lieutenant Gould's atteſtation on the occaſion, will beſt determine the truth of; particularly when they come to that part of it, which ſays, the King's troops ruſhed on the Americans, (previous to any firing) ſhouting, huzzaing, and at laſt diſcharging their balls at them, (as if they gloried in what they were about.)—Had Mr. Horne ſaid thoſe *unhappy, deluded* men, who in contempt of *unconditional ſubmiſſion*, to a power that had deſpiſed and abuſed them, and who reſiſting like that *fellow* Hampden, the lawful ſovereign's demand, of an unlawful tax from them, unfortu-

nately fell in defence of *themſelves and property*, perhaps the miniſtry would not have regarded it, but in all probability they would have rewarded him rather for his ſilence on ſuch a black day's work, when juſtice and humanity were eclipſed, than have thought of puniſhing him by a proſecution on an information *ex officio*, and a tryal thereon, in which ſucceſs was inſured againſt him from the principles already deduced.

There is no act of parliament which deſcribes a libel, or ordains that in its nature it *tends* to break the peace, neither does Magna Charta take any notice of a libel; yet the learned Blackſtone ſays that informations *ex officio*, are as old as the common law, therefore, until Juries ſhall know their duty in the tryal of one, we muſt expect to ſee them impoſed upon, and the ſubject innocently ſuffer; for there is no neceſſity that a *tendency* to break the peace ſhould not be examined into by a Jury, becauſe from what we have obſerved and concluded, the law which ſeems to claim the *ſole conſideration of it*, is uncertain and indeciſive on the ſubject.—It is very extraordinary that the word *tendency* ſhould be ſo much abuſed as we find it to be by Judges and Attorneys General,—in itſelf

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it means *intention* or *inclination*; but by what means, or how is that intention or inclination, whether it be to do a good thing or a bad one, to be known? An intention may be ſurmiſed, as was the caſe with Cain, who after the ſlaughter of his brother Abel ſurmiſed from a conſcious deſert that whoſo found him would ſlay him; but his ſurmiſing thus, proceeded from conſcience, and from no intention that he ſhould be ſlain for what he had done; an intention or inclination to do a thing muſt be either poſitively known or not known at all; they have no medium but in conſtruction, which is nothing.—How then are they to be diſcovered? only by ſome *open deed* preparatory to the execution of what is *intended* to be done, or *inclined* towards, and not by ſurmiſe, which according to the ingenious invention of ſome men, would find intention or inclination to do a bad thing in any of us, as beſt ſuited their ſpleen or caprice.—Hence tendency has a poſitive meaning, and muſt be poſitively proved by ſome open deed towards committing a crime. But if tendancy thus proved is criminal, it is every way neceſſary we ſhould next enquire how far the puniſhment of that tendency to commit a crime, without a perpetration of it, is to be equal to the puniſhment for a crime really and truly *perpetrated.*

perpetrated.—If there be any difference between an actual breach of the peace and a tendency towards it, it ſhould ſeem, if both are puniſhable, after poſitive proof, that there ſhould be a different puniſhment for them, as both would otherwiſe be equally criminal and puniſhed alike.—We cannot reconcile ourſelves to this in any manner, notwithſtanding we have experienced that ſeveral puniſhments have been inflicted, not only in caſes where *no* breach of the peace has been proved, but where even a tendency towards it has only been *ſurmiſed*; therefore the word tendency is undoubtedly abuſed by the *law's ſole conſideration*; the very thing in all libels that gives juriſdiction to the criminal court, which is an *actual breach of the peace* is paid no regard to, and we are (as things now fallaciouſly and wickedly go) ſubject to puniſhment for crimes we do not commit either in fact or tendency.

It may here be aſked, whether we ſhould be more ſecure were Juries to determine *crime* and *fact* together? and whether Juries would not as often convict on *both* from the *ingenious* direction of a Judge, as they would do on *fact ſingly*? The queſtions are nice, but we anſwer, that were Juries to exert ſuch a right, they would do juſtice to themſelves, even though an Attorney General might ſuceed by means.

means of a Judge's lulling an intereſted or partial ſpecial Jury (compoſed of contractors or time-ſerving men) on his ſide, to pronounce that fallacious word guilty; yet it is to be hoped that the greater number of Juries would be independent, and not determine a fact criminal not *malum in ſe.*

It requires recollection to be conſiſtent.—Truth is uniform, but the learned Blackſtone (whether from deſign or otherwiſe we will not ſay) is a little perplexing, in explaining a Jury's duty in trying a public libel.—In book III. cap. xxiii, page 380, on trial by Jury, after ſpeaking in very high praiſe of the advantages of ſuch mode of trial, which he ſays, "ever will "be looked on as the glory of the Engliſh "law;" and again, that, "if the impartial "adminiſtration of juſtice be entruſted to the "magiſtracy, their deciſions, in ſpight of "their own natural integrity, will have fre-"quently an involuntary bias;" he proceeds to tell us, that "in ſettling and adjuſting a *mat-*"*ter of fact*, when entruſted to a ſingle magi-"ſtrate, partiality and injuſtice have an ample "field to range in, either by boldly aſſerting "that to be proved which is not ſo, or more "artfully, by ſuppreſſing ſome circumſtances,

"ſtretching

" ſtretching and warping others, and diſtin-
" guiſhing away the remainder."—The learned Judge is no where more reaſonable in all his view of the Engliſh laws, yet if he is ſincere in this part of his commentaries, when comment-ing at large on trial by Jury, why does he, in caſes of *public libel*, leave the crime to the judg-ment of this very *ſingle magiſtrate*, and leave a Jury to try nothing? If trial by Jury is that *glory* he ſays it is, why does he extol it on one hand, with all poſſible propriety, and on the other, explain it to be little more than mock-ery? Why is not trial by Jury the ſame in *all* criminal caſes as in civil? And why is a *ſingle magiſtrate* to riſk " his natural integrity," in a field of partiality and injuſtice, in the former caſes, and not the latter? The anſwers are clear; becauſe, in the former (keeping our minds parti-cularly on libels) the Crown having the apparent illegal power of proſecuting the authors of them by information *ex officio*; and becauſe they are offences againſt the delicacy of the court, Juries ſhall be called ultimately for form ſake only, while in the latter caſe, juſtice ſhall conſtitutionally take her courſe; and therefore, when ſpeaking of trial by Jury in civil caſes, the Judge very ſenſibly ſays, " Here then a competent number
" of ſenſible and upright Jurymen, choſen by
" lot

" lot, among thoſe of the middle rank, will be
" found the beſt inveſtigators of truth, and the
" ſureſt guardians of public juſtice."

If Juries are the beſt inveſtigators of truth, and the ſureſt guardians of public Juſtice, there can be no reaſon given why they are not ſo in all caſes whatever, except what we have by this time exploded, as nugatory and deſpotic, even under the definition of Sir William Blackſtone.

But let us ſee how the Jury acted in regard to Mr. Horne.—When he had expatiated in defence of the charge brought againſt him by the Attorney General, and had proved that what he had done, was not criminal in itſelf, and could only be ſo in the conſtruction of his proſecutor, a meer creature of the court and miniſtry; the noble Judge in his charge to the Jury, (prefac'd by telling them there never was a clearer caſe) ſaid, that the offence was compleatly made out, becauſe he had confeſſed himſelf the author of the ſuppoſed libel, and therefore that the Jury muſt convict him on the *cleareſt evidence*.—The Jury took the hint, ſwallowed the bait, and did as they were directed, in finding him guilty;—but of what? Not only of what he had confeſſed; but contrary,

perhaps, to what they thought, (unleſs they were ſlaves and friends to the miniſtry) of the *crime of ſedition* and *malice*, againſt the King and his government, *tending* to break the peace, and ſo was their verdict recorded; Mr. Horne moved in arreſt of judgment, not within the *quarto die poſt*, after the return of the *diſtringus juratores*, but on the day he was called up for judgment; his objections were to the charge, which his Jury had either ignorantly, or partially found him guilty of, becauſe that charge was vague and uncertain.—Remark the genius of the King's court to be as we have ſuggeſted.—After the court had taken time to adviſe, *curia adviſare vult*, his objections were found *immaterial*, becauſe they were *ſupplied in evidence*, which was deſpiſing the maxim that, *beau pleader is the very heart ſtring of the law*, and was as much as to ſay, that if he had been charged with a rape on a Judge's wife, who, inſtead of giving all the neceſſary evidence to convict him of it, proved that he had robbed her; and from which evidence of the latter, though no charge was made againſt him of it, he ſhould be puniſhed, and his objections to the indictment, for not *charging* him with what *evidence conſtituted*, ſhould be deemed immaterial.—Wonderfully caſuiſtical! judgment was pronounced, and Mr. Horne

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is in confinement for having affronted the miniſtry, and not for having either *broke the peace* or even *alarmed* it, or *injured any one*, and for *not having done this, ſecurity is demanded of him for his keeping it for three years.*—O law where is thy ſpitit? Oh, ye Judges where is your integrity?

Mr Horne informed the Court of King's Bench, that he was brought there for judgement, more in conſequence of his Judge's direction to his Jury than of their full deliberation of the fact and crime laid to his charge, the truth whereof we may now very eaſily diſcover, not only from our examination into the right of tryal by Jury, but from the deſultory diſcuſſions of Judge Blackſtone himſelf, againſt whoſe errors the author of the fragment on government properly warns the admiring ſtudent, by recommending him to place more confidence in his own ſtrength and leſs in the infallibility of great names; for whoſoever reads the celebrated commentaries with attention and without taking all to be found therein for granted, will in all probability conclude, that *all is not gold that gliſtens*. In regard to law and fact, the Judge ſeparates them in a criminal ſenſe, and conſolidates them in a civil one.—This he does when