

FOX'S LIBEL ACT.

of the facts of *publication*, for that likewise depends upon the *intention*. What is the oath of the jury? Well and truly to try the *issue joined*—which is the plea of *not guilty* to the whole charge." And yet Lord Mansfield never swerved from his opinion that the judge alone was concerned with the question, whether the writing complained of was libellous. He maintained this to be the law in every case, in his long career, where the question arose before him, and when Erskine united all his eloquence and logic in one impetuous stream against this dangerous doctrine, he put him aside, to use the advocate's own words, "as you do a child when it is lisping its prattle out of season." Lord Eldon too, stoutly maintained the same opinion, and begged the House of Commons, in the debate on Fox's Act, not to act with precipitation in unsettling a rule which had been regarded as law for a century. Thurlow, Kenyon, Buller, in truth all the lawyers of that day, great or little, concurred in holding obstinately that the jury had no business to meddle with the circumstances which make the publication criminal or innocent, and looked upon the Libel Act as a dangerous innovation, prophesying the usual doleful consequences to the constitution if it should become law. Amongst the whole profession Camden and Erskine were alone found to raise their voices against the prevailing opinion.

History furnishes us with an impressive scene in the debate in the House of Lords which decided the fate of Fox's Act. It was the last public question in which the venerable Camden was to take part. He was approaching four score years, and he rose to address the House slowly and painfully, leaning upon a staff for support. "I thought," he said, "I thought never to have troubled your Lordships more. The hand of age is upon me, and I have for some time felt myself unable to take an active part in your deliberations. On

the present occasion, however, I consider myself as particularly, or rather as personally, bound to address you—and probably for the last time. My opinion on the subject has long been known; it is upon record: it lies upon your lordship's table: I shall retain it, and I trust I have yet strength to demonstrate that it is consonant to law and the constitution." We are told that his voice, which had been at first low and tremulous, grew firm and loud, and all his physical as well as his mental powers seemed animated and revived. He then stated, with his wonted precision, what the true question was, and he argued it with greater spirit than ever. Lord Thurlow, disappointed in his hope that the bill would be defeated, did his best to damage it in committee by a nullifying amendment. But Camden refused to allow any qualifications, whereupon the following dialogue ensued:

Lord Chancellor: "I trust the noble and learned Lord will agree to a clause being added to the bill, which he will see is indispensably necessary to do equal justice between the public and those prosecuted for libels. This clause will authorize the granting of a new trial, if the Court should be dissatisfied with a verdict given for the defendant."

Earl Camden: "What! after a verdict of acquittal?"

Lord Chancellor: "Yes!"

Earl Camden: "*No, I thank you!*"

These were the last words Lord Camden ever uttered in public.

But great as was the influence of Camden's character and labours in securing the establishment of the law of libel on a rational basis, it is doubtful whether he would have lived to see the triumph of his opinions, had he not found a powerful ally in Erskine. Erskine's efforts were more splendid and striking, and being enacted on a more public stage, forced upon the mind of the people and of parliament the necessity for legislative