

## FOX'S LIBEL ACT.

session for that length of time can hardly bring himself within the maxim as to the vigilant whom the law assists. There may be possible hardships in the operation of the law as to minors, yet if parents choose to die and leave their property uncared for, it should not be matter of surprise if the state is equally heedless. But, after all, the true remedy for the protection of infants is to provide for the appointment of a class of public functionaries who should have the supervision of intestate estates. It may be questioned (though perhaps we may be set down as heartless monsters for breathing such a thing) whether infants may not be classed as a "public nuisance," looking at the way their interests are protected to the detriment of public business.

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Though the act which declares the rule of law to be that on the trial of an indictment for libel, the jury may give a general verdict of guilty, or not guilty, upon the whole matter put in issue, and shall not be required by the judge to find the defendant guilty, merely on proof of the publication of the alleged libel, and of the sense ascribed to it by the indictment, was introduced by Mr. Fox, and is always known as "Fox's Libel Act," yet the merit of bringing about that measure is without doubt mainly due to two great lawyers, Lord Camden and Lord Erskine.

Lord Chancellor Camden was one of those admirable men in whose life, public or private, calumny itself could find no flaw. Although he was the son of a distinguished lawyer, Sir John Pratt, the successor of Lord Macclesfield as Chief Justice of the King's Bench, and was gifted with rare talents and industry, he passed so many years of his professional life in briefless obscurity, that at one time he seriously contemplated entering the Church. Hap-

pily for the profession, and for his own fame, he was dissuaded from this step, and induced once more to "ride the circuit" which he had travelled fruitlessly for eight or nine years. On this occasion a friendly stratagem procured him an opportunity for displaying his powers, which he used to such advantage that a respectable practice immediately flowed in upon him. He first attracted public attention in a prosecution for libel, *Rex v. Owen*, when he boldly asserted the then startling doctrine that, by the law of England, the judge had no right to direct the jury to confine their verdict to the question of publication, and to the correctness of the innuendos, leaving the bench to decide whether the matter itself was libellous.

This was in 1752, and for forty years, Pratt consistently and earnestly maintained the doctrine he had then, against the entire current of legal opinion, dared to assert. In 1792, after having enjoyed the highest honours of his profession, and gained for himself the reverence of the people as the guardian of their rights, and of the bar as a profound and upright judge, he had the satisfaction of conducting in its passage through the House of Lords, the bill which declared the law to be what he had always contended it was. This was the last public service he performed.

At this day the arguments so frequently used by Lord Camden seem to us unanswerable. "A man may kill another in his own defence, or under various circumstances, which render the killing no murder. How are these things to be explained?—by *the circumstances of the case*. What is the ruling principle?—the *intention* of the party. Who decides on the intention of the party? The judge? No! the jury. So the jury are allowed to judge of the intention upon an indictment for murder, and not upon an indictment for libel!! The jury might as well be deprived of the power of judging