

manner described, and that the plaintiff seemed to have had sufficient notice of the appointment according to the practice of the Ecclesiastical Court. The Jury, however, found for the plaintiff forty shillings damages, observing that they did not mean to throw the slightest reflection upon the highly respectable character of Sir Wm. Scott.

Mr. Johnston pressed this case on the attention of the Jury as shewing that both the authority of the Ecclesiastical Court to act in any particular case, and also the regularity of its proceedings, could be inquired into in a Court of common law; that Sir Wm. Scott, whose abilities and legal knowledge were of the highest order, did not claim that immunity from investigation that Mr. Young claimed for Bishop Walsh, and that Lord Ellenborough had left the case with the Jury, although his own opinion appeared to lean with the defendant.

In answer to an observation of Mr. Young, Mr. Johnston also stated that the case of *Beaurain vs. Scott* went further than that under trial, because there the Judges were held answerable in damages for the mere consequences of his judgment, while here the Bishop had undertaken himself to give efficacy to his sentence, and in doing so to interfere with the personal liberty and rights of Mr. Carten.

Now,—gentlemen, I ask you if you can sanction such a proceeding? Will you give any man unrestricted power to damn on earth and to damn to all eternity;—with none to ask the reason why, no tribunal upon earth with power to say—wherefore was this done? Will you allow a man to be excommunicated with all its attendant horrors unless he consent to criminate himself—to acknowledge crimes of which he is confident he is innocent? You Alexander Wilson—you William Silver—place yourselves in Samuel Carten's position, question yourselves—let your own hearts say, how you would feel, were you placed in the plaintiff's situation? Neither of you would ask for your Church such a power,—legitimate authority—authority in consonance with reason and common sense is all you would ask.

This case comes before you under very peculiar circumstances—with you rests the interests of the plaintiff—I put his case fearlessly into your hands; the law has placed you in your present position and by the oaths which you have taken and which are recorded in heaven, I charge you to do my client that justice which he deserves. You have solemnly sworn before God, and in the presence of your Country to decide this case according to the evidence—and on your verdict hangs the fate of the plaintiff; fearful are the odds against which he has to contend; fearful the result if it terminate against him. There are certain

peculiarities in this case which I feel bound to advert to before closing—we have sometimes had in this Court the strange sight of a learned Counsel with his back to the judge and a cold shoulder to the jury addressing in a very pleading manner the audience outside; working upon the passions in a way which was sure to tell with a powerful effect upon excitable hearts—especially when the subject of declamation torched the deepest feelings of man's nature; and the effect has been witnessed in the loud plaudits which which have followed. The learned Counsel certainly did, with an unparing hand lay bare the system which he was advocating. It is true he wreathed it around with terms of adulation, but still its true nature and character was too plain to be misunderstood. We now well understand the extent of the power claimed—and the arbitrary and unjust exercise of it in the present instance. I can not imagine, gentlemen, how any man can desire that in one relation of life which he would trample upon in another. I can imagine the learned Counsel on some other occasion, before the same audience, giving them a lecture upon the rights and privileges which they enjoyed or in his opinion ought to enjoy, and pleading the cause of freedom with all the power of which he was master. What a contrast does his speech of the other day present to you. When the learned Counsel next attempts anything of that kind, let him remember the cause of Carten vs. Walsh—and the singular commentary which it will present upon the course he then may take or the sentiments he may give expression to, will certainly teach us to admire his consistency. This gentlemen is a question which touches the dearest interests of each one of you—it enters into the very vestibule of the heart;—I call upon you therefore not to swerve for one moment from the strictest line of duty; I feel that the power sought for by Bishop Walsh is utterly inconsistent with the liberties of the people; he may be a man to whom such power might be intrusted—but his successor may not. The strongest mind becomes blinded when wielding power—the heart is led astray—principles are forgotten and slumber, power, irresponsible power may, may must be, from man's very nature, abused. It was in the very worst taste, that the learned Counsel made the remarks he did touching the Jury who were to try this cause. Why, gentlemen, suppose for one moment it were a Catholic Jury who were called upon to decide it,—what a singular position would they be placed in—when we are told that their Bishop may excommunicate, and right or wrong they must submit. This case is before you—it is in your hands, you are competent to decide—