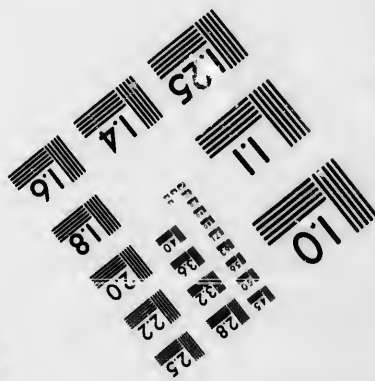
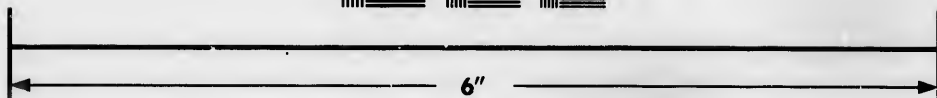
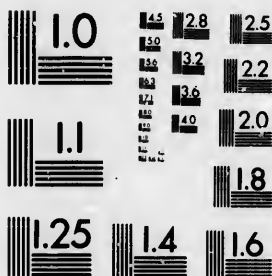


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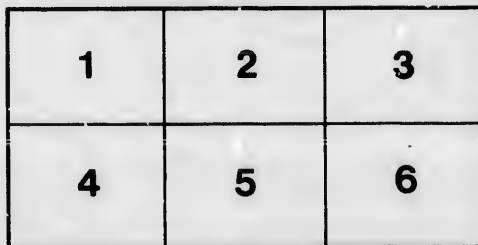
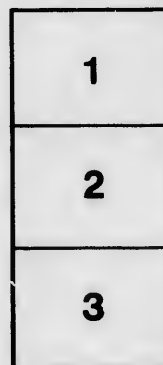
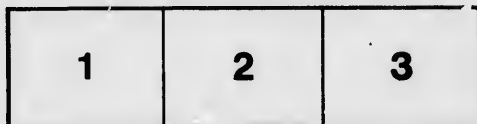
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TRIAL FOR LIBEL,

ON THE

Magistrates of Halifax,

THE KING vs. JOSEPH HOWE,

BEFORE THE

CHIEF JUSTICE AND A SPECIAL JURY.

*Supreme Court—Hilary Term.*



HALIFAX, N. S.

1835.

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## THE KING vs. JOSEPH HOWE.

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The Special Jury summoned to try this cause having been called, eleven only answered to their names. One gentleman who had been a Magistrate, was excused from serving by the Court, and the Attorney General having prayed a tales, the following persons were sworn :—

CHARLES J. HILL,	JOHN WELNER,
ROBERT STORY,	ROBERT LAWSON,
EDWARD PRYOR, Jun.	ARCHD. M'DONALD,
JAMES H. REYNOLDS,	SAMUEL MITCHELL
DAVID HALL,	THOMAS A. BAUER,
EDWARD GREENWOOD,	DUNCAN M'QUEEN.

Mr. Hill having been appointed Foreman,

JAMES F. GRAY, Esq. opened the case with the following Address :—

*My Lords, and Gentlemen of the Jury,*

It becomes my duty, as one of the retained Counsel in this case, under the direction of the Attorney General, to open the charge and explain the principal circumstances connected with it. Although this charge is not one of common occurrence here, it is well known to the Law, and is provided for by fixed legal principles. The indictment in this case, after setting forth the usual inducements, states the particulars on which the charge is founded. As it is not usual for the officer to read the indictment in libel cases, the opening Counsel may feel it his duty to explain its particulars, so as to enable the Jury to understand the nature of the charge.



The indictment states, that on the first of January, a certain Libel was published in The Novascotian newspaper, with a view to injure and degrade, and bring into disgrace, the Magistrates of the town of Halifax. The libel, which is described as false, infamous, defamatory, and malicious, was signed *One of the People*, and contained charges on which these counts were laid. (Here Mr. Gray read, and made brief remarks on the letter as contained in the indictment.) To this indictment Mr. Howe pleaded, and declared himself guilty. On this the usual steps occurred; and now, gentlemen of the Jury, you are impanelled to investigate the circumstances of the charge; to try whether the defendant has published the Letter charged, and whether it comes under the denomination of what is called in Law, a Libel. The Letter was contained in a newspaper of which Mr. Howe is the acknowledged Editor and Proprietor. When the publication was made, the Magistrates applied to the Governor, praying that such a course should be adopted as would bring the matter before a Court of Justice. His Excellency transmitted the application to the Attorney General, and placed the affair in his hands. That law officer, in virtue of his office, has more power than any other advocate, and of two courses he might make choice of either. He could have filed an ex officio information, on behalf of the Crown, which, without any preliminary enquiry, would place the defendant upon his trial. That course he did not adopt. I am glad that he did not, although the practice has been frequently resorted to in England. He adopted a course more consonant to the principles of public liberty; he laid the charge before the Grand Inquest of the County, a bill was found by them, and now Mr.

Howe takes his trial as he would for any other criminal offence. He is put upon his trial as the publisher of a letter which is designated a libel. It may be said by some, why prosecute the publisher? Why endeavour to punish him, instead of the author of the alledged Libel? The answer to this may be given by saying, that it is the publication which constitutes the offence.

In this case it will be shown, that the letter was published, and that Mr. Howe was the instrument of publication. The proprietor of a newspaper is liable for all which appears in that paper. Even if he were ignorant of a matter until it came before the public, still is he held responsible; when he undertakes to manage a paper, he is answerable for all that appears in its columns, and he should be so answerable. If in all cases the author should be resorted to, how is the author to be found? Or, if an author were given, might it not be in the following manner:—not intimating, however, that Mr. Howe would act in the supposed manner; from what I believe to be his spirit, I would conclude that, in any case, he would rather appear himself than give up an author;—but suppose that it was obligatory to proceed against an author rather than a printer, might not the publisher give the name of some person without property, from whom a fine could not be exacted, and to whom confinement in a Prison, would be provision of food and lodging? The publisher is the person guilty of the offence; between him and the public the question rests. He should be guarded as to what he publishes, and so guarded in doubtful cases as to be able to make amends for any difficulties which may ensue.

A libel in Law, is defined to be a malicious defamation, either by writing or pictures, tending to blacken the character of the dead, and thus to ex-

cite the living ; or reflecting on the living so as to injure reputation, and to endanger the peace of society. As regards public persons, official characters, Magistrates and other functionaries, the law considers a libel a higher offence than when committed against private individuals. When committed against persons in authority, the crime is looked upon as an attack on the government ; not only as a breach of the peace, but as a scandal against all authority. You, gentlemen, are to say whether this publication comes under this description ; whether it is directed against a body of magistrates, and is calculated to bring such a body into contempt, disrepute, and disgrace.

We will have to prove, not only the publication of this letter, but that Mr. Howe published it, and that its intention and design is as laid in the indictment, to injure and degrade the Magistrates. Having done this, as the law formerly was, we might stop ; you would have to pronounce on the fact of publication and the intent ; and if enough on these points were shown to you, our case would have been complete. But in consequence of great exertions of English lawyers, an alteration in these matters has been made ; cases of libel are now placed on the same footing as all other criminal cases ; the Jury are made judges, taking the law for their guidance from the Court. This enables a Jury to take a view of all the circumstances of a case ; formerly the Court had the sole consideration of the question of libel, now it is for you to say whether or not the matter charged is of a libellous nature, as well as to say who is the publisher, and what his intent. One ingredient in a libel is malice. Before the passing of the statute alluded to, the question of malice was virtually referred to the Court ; and if malice was to be inferred, the lega

inference was, that malice was contained. Now it is for the Jury to decide on this, as on the other features of the case. Malice has not the same meaning in legal, as in common language. By legal malice is meant, that the party charged did an injurious act which he was not justified in doing. If a libel be published calculated to do evil, to bring persons into contempt and disrepute, such a publication must be supposed malicious until the contrary be shown. But the contrary cannot be shown, except by proving the publication accidental, or accounting for it in some way which is impossible in this case, for the proprietor of a paper is responsible for all that appears in its columns. If so, then the present defendant is guilty of publishing a malicious libel : he has published that which has a tendency to produce disgrace and contempt towards certain persons; and the law infers that he did it maliciously.

As regards the mode of prosecution,—this libel is not aimed at any one individual ; no one is selected as a particular mark ; if a particular person or persons had been selected, you would not have found the indictment laid by the whole body. This difference exists between a proceeding by indictment, and one by civil action. Under an indictment, the proof of truth or falsehood cannot be allowed, the question is concerning the committal of an injurious act. I am instructed to say, that nothing would be more desirable to the magistrates than that such proof could be allowed ; but it cannot. In indictments, the king becomes a party in behalf of the public against a person who is charged with some act injurious to good government. If an individual had proceeded by indictment, you might say—although I do not intimate that you ought to say so, for true or false, a matter of inju-

rious tendency should not be published—but you might say, the person who comes forward in this sheltered manner does not deserve such a shelter. No such objection can be made in the present case; the magistrates have no right to hold a civil action; as a public body they cannot seek redress by private action. They had no remedy left except to proceed in the present mode; and, in this mode, the prosecution has been conducted in the most liberal manner. The Grand Jury have passed their opinion on the case, it appears in this Court, and here you are made the judges of it. But suppose justification could be given in any such case, is this such an one? Is a particular person injured here, or a particular number of persons? No, but a whole body. Is the present time only alluded to? No, but the long period of 30 years. This body, during that period, is charged with having dishonestly pocketed public money. Is such a charge capable of justification? How many of them have handled public money? Several of the body charged, now alive, and some now no more, have performed public duties, without any benefit to themselves; they have acted as guardians of public order without ever having been receivers of public money. Yet this charge affects all. I wish that justification could be allowed, for it would fall short; it would be in vain for the defendant to prove against one, two, or three; he should show that the whole body were guilty, or justification could not be sustained. Under this libel, which of the body charged can say that they are innocent? it allows that all are not guilty; but who can say, I am one of the innocent men alluded to? If no notice were taken of this matter, it might be said, such and such charges were made against the whole body, and no steps were taken to rebut them. This con-

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sideration induced the prosecution, but many of the Magistrates regretted that it could not be brought in another shape. It is impossible for the Jury to say that there is not sufficient defamatory, malicious, matter in this letter, to constitute a libel. The defendant stands charged with every passage taken together, and with each taken separately; one part does not alter the effect of another; the persons excepted are not designated; all are charged in general terms. Caution at least would have been expected from the defendant. It may be said, who does not know the persons more particularly alluded to? Who is there that cannot select those charged in the publication? But I ask, is this confined to the town of Halifax? Is it confined to the Province of Nova Scotia? The ability of the publisher of this generally well managed paper, has extended its circulation over the neighbouring Provinces and States, and this libel is disseminated wherever the paper goes. If in a foreign land, one of those charged were, very naturally, to take some credit for having served in an honorable office, it might be said, for that very reason you are subject to disgrace; the body to which you belonged were publicly charged with wrong-doing, and you stand as one of the implicated. None of the Magistrates, none of their connections, but might meet with such insults, and all owing to the publication of this libel. The talent and industry of the Editor which occasioned the wide circulation of his paper, instead of giving a license, ought to furnish additional reasons for caution and prudence. The liberty of the press is a theme with many; but if the liberty of the press is to justify every publication, then, no matter what was said, who was injured, none could get redress. The liberty of the press has been defined to be a

liberty to publish thoughts, subject to legal consequences. Is this such a candid discussion of public measures or men, as could be tolerated? far from it. If a belief were entertained that certain of the Magistrates were guilty, the supposed guilty persons should have been named in the charge; those acknowledged to be innocent would not then be implicated; although the letter would still contain a libel, because there were other modes of correcting the evils complained of. The Courts of Justice were open, in which complaints might be made, and would be attended to; by a petition to the Governor, the dismissal of a guilty party might be procured; so that if grievances existed, and the truth only were published, it would not be justifiable, for no necessity could exist for the publication. Discussion respecting public men should be confined to public measures, and to the manner in which public duties were performed; but this sweeping crimination could not be at all justified; if it were, worse effects would follow than would result from any restriction of the Press.

There is no doubt that the Counsel for the prosecution are contending against the popular side of the question; but Juries in Halifax have always done justice between parties, uninfluenced by such considerations. I am sure, gentlemen, that you will freely and properly decide as to the merits of the case; you will say whether the charges in this letter are such as should have been made, and whether their nature or their consequences call for consideration. Whatever your verdict may be I shall be satisfied, and will now leave the question in the hands of those, who, I am confident, will act justly in the matter.

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Hugh Blackadar was called on the part of the prosecution to establish the publication of the al-

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ledged libel. Mr. Blackadar did not answer, and Mr. Howe immediately admitted that he was the Proprietor of The Novascotian, and that the article had appeared in that paper, with his knowledge, on the 1st of January last. The Prothonotary then read the letter, which is as follows :

There is no truth at all i' the oracle ;  
The Sessions shall proceed—this is mere falsehood  
SHAKESPEARE.

MR. HOWE,

Sir.—Living as we do in a free and intelligent Country, and under the influence of a Constitution which attaches to our rulers the salutary restrictions of responsibility in all matters of government, is it not surprising that the inhabitants of Halifax, should have so long submitted to those shameful and barefaced impositions and exactions, which have from year to year been levied on them, in the shape of Town and Country Taxes. Repeated attempts have from time to time been made, by independent minded persons among us, to excite amongst their countrymen some spirit of resistance or opposition to those unwarrantable and unequal exactions, which have been drained from the pockets of the public. But it seems to me that the torpid indifference to public matters which has hitherto been the general characteristic of the people, has at length become quickened and aroused by a calm and deliberate reflection on what must be their future condition if they any longer neglect to look after the servants of the State. In a young and poor country, where the sons of rich and favoured families alone receive education at the public expence—where the many must toil to support the extortions and exactions of a few ; where the hard earnings of the people are lavished on an Aristocracy, who repay their ill timed generosity with contempt and insult ; it requires no ordinary nerve in men of moderate circumstances and humble pretensions, to stand forward and boldly protest against measures which are fast working the ruin of the Province. Does there, Mr. Editor, exist in any free



state, save Nova Scotia, a responsible Magistracy, who would for thirty years brave and brook the repeated censures of the Press, without even attempting a justification of their conduct, or giving to the public some explanations that might refute those *unjust and licentious libels*, which have repeatedly been a disgrace to them or to the press of the country. Are the journals of our land exclusive; do they admit only the wild and reckless portion of the people, and shut their columns against the sober and discreet supporters of the men in power? I cannot think this, Mr. Howe; and yet weeks have elapsed since charges too grave to be slighted and too plain to be misunderstood, have been placed through the medium of the press, before the eye of the public, and yet no champion of the sacred band has taken the field to deny or to explain. I candidly and willingly admit that there are in the ranks of the Magistracy, individuals justly entitled to the esteem and respect of their fellow townsmen, but they have mostly left the arena, disgusted with the scenes that were enacted by their more active and energetic brethren. I will venture to affirm, without the possibility of being contradicted by proof, that during the lapse of the last 30 years, the Magistracy and Police have, by one stratagem or other, taken from the pockets of the people, in over exactions, fines, &c. &c. a sum that would exceed in the gross amount £30,000; and I am prepared to prove my assertions whenever they are manly enough to come forward and justify their conduct to the people.— Can it not be proved, and is it not notorious, that one of the present active Magistrates has contrived for years, to filch from one establishment, and that dedicated to the comfort of the poor and destitute, at least £300 per annum? Can it not be proved, that the fines exacted in the name and on the behalf of our Sovereign Lord the King, have annually for the last 30 years exceeded £200; and of this sum His most Gracious Majesty has received about as much as would go into the Royal coffers, if the long dormant claim of the Quit Rents was revived imprudently. Is it not known to every reflecting and observant man,

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whose business or curiosity has led him to take a view of the municipal bustle of our Court of Sessions, that from the pockets of the poor and distressed at least £1000 is drawn annually, and pocketed by men whose services the Country might well spare. Those things, Mr Howe, cannot much longer be endured, even by the loyal and peaceable inhabitants of Nova-Scotia. One half of the most respectable of the middling orders have this year been sued or summoned for the amount of their last years' Poor and County Rates; and nearly the whole town have appealed or are murmuring at the extravagant amount of the assessment for the present year. I will venture to affirm, and have already affirmed in a former number, that £1500 ought to defray all ordinary expences for the County; and by the speech of His Excellency at the opening of the Session, we are informed that the people of England have, with their wonted generosity, relieved us of a large portion of the extraordinary expenses which the visitation of Providence rendered necessary. In fine, Mr. Howe, the affairs of the County have been for years conducted in a slovenly, extravagant and unpopular manner, and the people have been entirely in the dark, as regards the collection and appropriation of their monies; but they have now amongst them a Chief Magistrate, who has pledged himself to be candid, and I trust we will find him impartial also. I am neither a flatterer nor physiognomist, but I cannot help observing in the martial tread and manly mien of our present Governor, some of the outwards features of the late Sir John Sherbrooke, and if the inward man be corresponding, there is yet some hope for

THE PEOPLE.

Mr. Howe enquired of the Court whether he were not entitled to the names of the prosecutors. The Chief Justice answered that the Court knew nothing on that subject, they referred to the Attorney General, the cause was brought before them by the Grand Inquest of the county, and should be tried in the usual manner.

Mr. HOWE then entered upon his defence, and spoke to the following effect :

*My Lords and Gentlemen of the Jury,*

I entreat you to believe that no ostentatious desire for display has induced me to undertake the labour and responsibility of this defence. Unaccustomed as I am to the forms of Courts, and the rules of law, I would gladly have availed myself of professional aid ; but I have felt that this cause ought to turn on no mere technicality or nice doctrine of law, but on those broad and simple principles of truth and justice to which an unpractised speaker may readily appeal, and that an impartial Jury can as clearly comprehend. I have felt besides, that if the Press is to be subjected to a series of persecutions such as this, it is indispensable to the safety of those who conduct it, that they should learn to defend themselves.

Believe me also, that the notoriety and excitement of this proceeding, are foreign to my taste. Men of my profession, whose duty it is to mingle in public contests, and while watching over the general interest, to wrestle with those who menace or invade, are too often reproached with the invidious tasks they perform ; and suspected of a morbid fondness for contests, into which they are impelled, by a sense of the obligations that public faith, and common honesty, call on them to discharge. Those who know me best, well know, that I would rather give the little leisure that a laborious life affords, to my books and my fire-side—to the Literature that ennobles, and the social intercourse that renders society dear, rather than to those bickerings and disputes by which it is divided ; and by which man is too often, without sufficient cause, set in array against his fellow man.

But, My Lords and Gentlemen, while this is my disposition, and these my favourite pursuits, I have too strong a sense of what I owe to my profession,

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and to the well being of the community in which I reside, to shrink from any peril—from any responsibility or toil, that the vital interests of these impose. I have never done so—and though often sorely beset, and mentally and physically, if not legally tried, I have endeavoured at all hazards, and sometimes against fearful odds, to keep on a course of consistent public duty, from the even line of which no consideration could sway me to the right or to the left. In obedience to that sense of duty I now stand before you, to answer to the charge contained in the Indictment which has been read and explained to you by Mr. Gray. To that Indictment I have pleaded *Not Guilty*, and I am now to explain to you why I conceive I have been harshly and yet innocently arraigned.

And here I may be permitted to thank Heaven and our ancestors, that I do not stand before a corrupt and venal Court, and a packed and predetermined Jury, to contend against those horrible perversions of the Constitution and the Law, by which justice and common sense were formerly outraged, and by which many an innocent and virtuous man has been cruelly condemned. Aided by the talent and the independent spirit of the English Bar, and the intelligence and determination of English Juries, the Press has long since achieved a triumph, which, without placing it above the law, or endowing it with any mischievous privilege, has been its chief security and defence. Formerly, in cases of libel, instead of the Jury being called on to give a general Verdict, founded on their own view of the law and the facts, they were directed to determine only whether the matter in question had been published by the party arraigned; and if it had, the Judge assumed his guilt, and a wicked minister often awarded the punish-

ment. But thank God those days are passed. Such a prostitution of judicial power can never occur again under the shadow of the British law, for no Jury within the wide circle of the empire, would submit to such an infraction of their privilege, even if a Judge could be found daring enough to attempt it. Men charged with libel are not now to be tried by the mere fact of publication, nor even by the tendency of what they print, though that may be most evil and injurious ; but as they are tried for all other crimes—by the intention, the motive, with which they committed the act. If, in resisting a burglar, I knock my friend upon the head, I cannot be convicted of crime ; and if in opposing a public robber, I utterly destroy his reputation by the exposure of his malpractices, the Jury try me by my motive, not by the severity of the infliction, unless the punishment be utterly disproportioned to the crime. Nay, if in performing this justifiable act, I without any bad design inflict some injury on the innocent, the Jury have the right, on a careful review of my conduct, to balance the object in view against the unintentional evil, and give me a discharge.

To fix and determine these principles, cost years of litigation and legislation, and although our hearts might be nerved, and our feelings sublimated, by turning back to the fiery ordeals through which they passed, I will not now occupy your time with references, that I know the clear and distinct direction of the bench will render unnecessary. Their Lordships will tell you, that you are the sole judges of the fact and of the law ; and that although every word of what I have published were false, and its tendency most injurious, that you are to try me solely by the motive and intention by which I was controlled. Nor, gentlemen, were

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such the case, would I be afraid to be so tried; even then I would rely on your firmness and sagacity, confident that you would vindicate your rights and do me justice. And if in a situation of so much greater peril, in a position ten thousand times more invidious, I could appeal to the Court, the Jury and the Law; with how much more security and confidence may I not rely upon your verdict, standing before you as I do, for publishing what, had I been afforded the opportunity, I would have convinced you was true, and the tendency of which has been and must be most salutary and beneficial.

And here may I not ask if it is not a most extraordinary thing, that men whose conduct has been publicly and fearlessly arraigned—that men who pretend that they have been injured, and that an ample investigation is indispensable in order that their characters may be cleared—should have brought their action in such a way as to defeat the very object they pretend to have in view. If they were serious, why did they not bring their action on the case, lay their damages, and submit their administration to the most ample enquiry? But they have chosen their course, they have made their election, and depend on it they shall have the full benefit of every advantage it affords. Shortly after the publication of the letter recited in this Indictment, a notice appeared in the Halifax Journal, requesting the public to suspend their opinions until the Magistrates could come forward and prove the falsity of the charges in a Court of Justice. The public have suspended their opinions; you gentlemen of the Jury have doubtless suspended yours, waiting the promised proof; and now you see the way in which it is to be given. Could you be convinced of their innocence, unless I were permitted to bring evidence—why then have they brought

their action in a way that renders that impossible? Why have they not afforded the means indispensable to a calm and enlightened review of their public conduct?

Gentlemen they dared not do it. Yes, my Lords, I tell them in your presence, and in the presence of the community whose confidence they have abused, that they dared not do it. They knew that "discretion was the better part of valour," and that it might be safer to attempt to punish me, than to justify themselves. There is a certain part of a ship through which when a seaman crawls, he subjects himself to the derision of the deck, because it is taken as an admission of cowardice and incompetence; and had not these jobbing Justices crawled in here through this legal lubber hole of Indictment, I would have sent them out of Court in a worse condition than Falstaff's ragged regiment—they would not have dared to march, even through Coventry, in a body. (Laughter and applause, which were suppressed by the Court and Officers.)

How different has been their conduct and mine. They have shrunk from enquiry, though they have strained after punishment. I have in every shape dared the one, that I might, so far as laid in my power, be able to secure the other. They have filled every street and company where they appeared with complaints of falsehood and injustice—they have crammed the newspapers with libel cases to mislead or overawe. They have taken six weeks to determine on this prosecution, leaving their adversary but a few days to prepare; and finally, they have brought their action by Indictment, well knowing that the Court could not admit evidence but on the side of the Crown. Does this look like innocence?—is it candid—is it fair? Can a body against whom grave charges have been pre-

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ferred, present this mockery of an investigation as a full and sufficient answer to the public? How different has my conduct been. From the moment that I heard of this prosecution, I refrained from all publications that might by any possibility influence the public mind. I have neither sought to deprecate the wrath of their worships—to excuse, to justify or explain. But I have taken every pains that the even course of justice should not be disturbed—and now, instead of seeking an escape by objections to the indictment, or cavilling at the insufficiency of proof, I fling myself fearlessly into the contest, and so far as I can, shall endeavour to make even this one sided prosecution of some public utility, by defending myself on the broadest possible grounds.

Had their Worships brought their action on the case, whether they or I were worsted, would have been of little consequence—the truth, the whole truth, and nothing but the truth would have been elicited in the course of the examinations, and the public mind would either have been satisfied of their guilt, or have been soothed and tranquillized by the most convincing proofs of their innocence. Were I to imitate their disingenuous example, no public good could possibly arise. But they have driven me to the wall—they have sought to punish rather than explain—to silence rather than satisfy. They have sought by fine and imprisonment to break the spirit of their accuser, rather than clear their characters by a fair and candid trial. They have placed me in the unpleasant and invidious position in which I stand, before me this august tribunal—behind me the County Jail, and the consequences be upon their heads. If this trial tortures them much more than it tortures me, they have themselves to blame. While they wince



under the lash, let them remember they knotted the cords for me—that they, a numerous and powerful body, leagued themselves against an humble Individual, because he merely performed a duty which they knew he could not honorably avoid.

In the trial of Indictment for libel, as their Worships the Magistrates very well know, the defendant is not allowed to prove the truth of his publication, and therefore is cut off from what, in an action on the case, is often his strong ground of defence. But he has the privilege of explaining to the Jury any thing which may illustrate the motives and intentions by which he was influenced, to satisfy them, that so far from wishing to provoke a breach of the peace—so far from incurring the guilt of which he stands accused, that his motive was praiseworthy, his intentions honorable, and his act demanded by the circumstances in which he was placed. This privilege I shall now proceed to exercise. It is one that the Court will not deny, as it is so essential to the safety of persons similarly accused.

The first question which occurs to a rational mind—the first that an impartial Juror will ask himself, is this—what motive could the accused have had for attacking a body, in the ranks of which were some of his own relatives and personal friends;—and which embraced some of the leading men of the principal families in the place, whose support and countenance might be of essential service—whose enmity it would be impolitic if not highly injurious to provoke. What interested or malicious motive could I have had? Gentlemen, I had none. With nearly all the individuals assailed, I had been on friendly terms for years—to some of them I was bound by nearer ties—with no one of them had I ever had altercation or dispute. I had,

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for those that are really estimable among them, and in spite of this persecution, I still have, the most unbounded respect. But this only extended to their private characters. As Magistrates, having the guardianship of morals and the public peace—as the Legislators of the County—the collectors and dispensers of its revenues—the Trustees of its Property—the Auditors of its Accounts—the Almoners of its Establishments, I knew them, as you know them—as almost every man in the community knows them, to be the most negligent and imbecile, if not the most reprehensible Body, that ever mismanaged a people's affairs. Had I not believed this to be the fact—had not the concurrent testimony of thousands in the community impressed it strongly on my mind—had not the just complaints of those who were daily injured by the gross neglect of duty on the part of some, and the still grosser malversations of others, continually resounded in my ears—had not my own experience and observation, and the reasoning and calculations of much shrewder minds, furnished abundant proofs; had not Grand Jury after Grand Jury arraigned the system which they upheld; nay, had not my own labors as a Grand Juror abundantly convinced me that these charges were true, I should not have been standing here to-day to speak in my own defence, for I would not have dared to publish the letter in which their conduct was censured and exposed. And can they be so blind and weak as to suppose, that by punishing a printer, even if that were possible in such a case, the public, for whose benefit their doings were unveiled, can be hoodwinked and deceived? Can their characters, like the religion of Mahomet, be propagated by persecution? They may expect much from the result of this trial—but before I have

done with them, I hope to convince them that they, and not I, are the real criminals here—and I shall be mistaken if it does not prove the downfall of their inbecility—the grave of their corruption.

You would have been amused, Gentlemen, had you been in Court on Tuesday last, when this grave Body marched in, with one of their number at its head, who, with amazing power of face, read a Resolution to their Lordships, that had been passed at a meeting of the Sessions, the purport of which was that they were most anxious that Mr. Joseph Howe should be allowed to bring evidence, in order, if he could, to substantiate the charges contained in the libel. The prosecution had been commenced at their instance by the Crown Officers—a Bill of Indictment had been found—and his Lordship dared not, for his head, vary the rules of law by which the issue was to be tried; when in marched this immaculate body, with the modest request that the rules of law should be broken, the principles established in reason and experience over-turned, in order that that might be done, which they had previously taken every pains to prevent. Did this look like conscious innocence? Were there not some legal minds connected with that body, who knew that such a mission must be fruitless; who could have explained the nature of the law, and prevented that extraordinary exhibition? If it proceeded from ignorance, what must we think of the sagacity of the body—if it did not, what else was it, but a most barefaced attempt to deceive? It appeared to me as if they had loaded a field piece, presented it at the breast of their foe, whom they had tied to a stake, and having lighted the fuse, gravely took off their hats, and making a very polite bow, begged that it would not go off, till he had got behind his wall. But before I have

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concluded, I hope to put them in the situation of the unfortunate Irishman, who, to prevent the explosion, crammed his wig into the muzzle, and gave them a "hoist with their own petard." (Laughter.)

I must again express my regret that they have not taken another mode of trying this question. I wish that he who read the Resolution on Tuesday before their Lordships, had brought his action for damages. If he had—he would never have come here again to torment their Lordships with resolutions—or, at all events, when their worships took the field again against the Press, they would fight under another leader. If they really had no legal advisers in this matter, they might themselves have learned from Blackstone "that Law is a rule, not a sudden order from a superior to or concerning a particular person; but something permanent, uniform and universal." But, I believe, that they have been so much in the habit of departing from all law in their own Brick Temple, that they thought there was not a Court in the country, where it might not be dispensed with to suit their particular views. I am happy that there is not only a Court above their power, but that a Jury also comes between them and their intended victim. Holt, and some of the older authorities, hold that the Sessions may take cognizance of libel; if so, I rejoice that their Worships were not aware of it, for had they got me within their power, to be dealt with by their law, they would not have allowed me the privilege of addressing you.

In conducting this defence, I do not mean to say, and if I read the law aright, their Lordships cannot permit me to say, that the charges in the paper published are true. The truth would be no defence in a criminal action, as the Magistrates very well know

or they would not have brought it—but I shall be permitted, and it is my duty, to shew you the state of my own mind at the time I published the letter, in order that you may judge of my guilt or innocence—ascertain my real motive and intention, and decide whether I deliberately did that which would tempt to a breach of the peace, or was labouring to restore and preserve it. This is my duty to you ; your duty to me is to try me as our Heavenly Father tries us, not only by the acts we do, but by the purity of our hearts.

Although upon the issue of this trial, the declaration can have no bearing (as the law makes me responsible for what I publish) it is perhaps due to myself to state, that I did not write one line of the letter mentioned in the Indictment—I never advised the preparation of it, and made no alteration of, or addition to it, so far as my memory serves, and this I state upon my honor, as I would declare upon my oath. But when the letter was sent to me, I did not hesitate to insert it ; because although many might be startled by the broad and general assertion, that so large a sum as £1000 a year had been taken from the pockets of those who ought never to have paid it, I had satisfied myself, and if the opportunity were afforded, I would satisfy you, that by the neglect, incompetence and corruption, of the parties charged, we have been annually despoiled of a much larger amount. And strong in that belief, I published the letter, and should have betrayed the trust I hold, had I caused it to be suppressed.

Though I shall not seek to discover any flaws in the indictment, permit me to turn your attention for one moment to its language. I am aware that words that sound awkwardly in common use, often creep into legal papers ; still I cannot

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but think, that though the preface to this might be very appropriate, if I were found raising an armed insurrection against His Majesty's Government, it is greatly strained, inasmuch as I have only rebelled against the Majesty of the Sessions. "The Jurors of our Lord the King upon their oath present, that Joseph Howe, late of Halifax in the County of Halifax, Printer, being a wicked, seditious and ill disposed person, and being a person of a most wicked and malicious temper and disposition"—now of all this I do not complain—though it sounds harshly, it is I believe the usual form; and were there nothing more, I would leave you, Gentlemen, many of whom have known me from my childhood, to judge of the maliciousness of my disposition—but there is another passage, which seems to have been introduced to stigmatize and defame; and which though it may be believed by a few persons about the Sessions, will find no echo from your box or from this country. It is further set out that being such person as aforesaid, and "greatly disaffected to the Administration of His Majesty's Government in this Province, and wickedly, maliciously and seditiously, contriving, devising and intending, to stir up and excite discontent and sedition among His Majesty's subjects, &c." If this were true, I should consider it hopeless to trouble you with any defence; but for a full and sufficient answer to the charge. I may safely refer to what I have written, and you gentlemen have read. If I have preached sedition, you have encouraged me by your favor and support; the country by which I am to be tried has rebelliously responded to my opinions. I might, therefore, leave this language to pass for what it is worth, but I will just turn to one of my sermons on sedition, and

contrast it with the character drawn of me here. In the file of *The Novascotian* for 1830, there is one of them, under the head of 'England and her Colonies,' which commences thus :

"When we hear the cry of disloyalty and disaffection raised in this Colony, as a more full development of the powers of public bodies calls for a salutary reform ; or when the people are roused by encroachments, to drive local rulers within the circle of public safety ; we cannot but smile at the cunning of those, who, as they fail to satisfy the reason, seek to operate upon our fears."

The object of this article appears to be to prove, "That there does not exist, within the wide range of the British Empire, a people more proud of the name, and more attached to the Government of England, than the people of Nova Scotia." This seems to be a strange text for a sermon on sedition. But observe, I further declare that I have "a well grounded conviction, that the foundations of loyalty to Britain, in the only sense in which that term ought to be used, are laid deep in the hearts of our countrymen ; and are not to be overturned by those petty contentions which may attend the improvement of our local Government, or which are inseparable from the very resistance that a free people will, on all occasions, offer to the folly or encroachments of their rulers."

After shewing of what elements our population is formed—that a part of it springs directly from the loins of the loyalists, and a larger part is made up of emigrants from the British Islands, and their descendants, who find here "no circle of citizenship, into which it is necessary to force an entrance by a renegade abuse of England and her institutions ;" it proceeds :—

"But there are other grounds of attachment to England, besides a direct descent from those who have been born upon her soil, or those who have suffered expatriation in her cause. Though the blood of Britons flows in our veins—that would be of little consequence, if every thing else did not conspire to keep their spirit alive in our bosoms. The language which we speak, like a noble stream, has come rolling on-

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wards, from the days of the Saxon Heptarchy, down to the present time—becoming in every age more pure and more expressive—bearing along the treasures of mighty minds, and sparkling with the corruscations of genius. Of that stream we are taught to drink from our childhood upwards; and in every draught there is a magic influence, turning our thoughts and our affections to the hallowed fountain from which it sprung. For enlarged and cultivated views—for the truths of natural, moral and political science, we are indebted, in an eminent degree, to the Statesmen and Philosophers of Britain. Our souls are stirred by the impassioned eloquence of her Orators, and our feelings and taste are refined by the high inspiration of her Poets. Nor does any servile feeling mix with our participation of those treasures. They are a free gift from the founders of the British empire—and the fathers of British Literature, Science and Song, to the children of that empire, and the inheritors of that language, wherever their lot may be cast. They are as much the property of a Briton by the banks of the Avon, the Hillsborough, or the St. John, as by the Liffey, the Tweed or the Thames."

Having stated the reasons why these strong impressions, many of which were cherished by the Old Colonies, can never be effaced by any such train of circumstances as attended their unfortunate struggle, the disseminator of sedition goes on; and although the extract may be tedious, I must trouble you with it, because it gives to this part of the indictment an answer as complete, as I shall by and by give to the others:

Those whose dreams are disturbed by what they are pleased to call disaffected and republican tendencies; who affect to fear that this colony will, at no distant day, throw itself into the circle of the American Union, may gather from these facts, and many others, ample sources of consolation. What is there in our circumstances or our feelings to justify such a slander? What is there so advantageous or so fascinating in such a connexion, as to induce a violation of the strongest and most honorable sympathies that distinguish our population—which have grown with our growth, and are strengthening with our strength? If there



were such advantages—which we do not by any means admit—our very pride would forbid us meanly to seek a participation, when we had borne no part in the heat and burthen of those days of trial by which they were obtained. Could we join in the celebration of American Festivals, every one of which was a disgrace to the arms that have protected, and not oppressed us, ever since we had a hut or a foot of land to defend? Could we throw up our caps on the fourth of July, and hail with triumph a day, that made our fathers outcasts and wanderers on the earth? Could we join heart and hand with a Republic which fell upon the rear of Britain, when her front was presented to hostile Europe, in a struggle for the liberties of the world? Were we to permit the American banner to float upon our soil—if the bodies of our fathers did not leap from their honored graves, their spirits would walk abroad over the land, and blast us for such an unnatural violation.

“Yet it may be said, that we have nothing to set against these national gratulations and glorifyings,—and that it is natural for us to sigh for Washingtons and Franklins of our own; and for endless anniversaries, to remind us of the deeds and the glories of our ancestors. We do not wish to disparage the names to whom Republican America accords a high standing in her annals—nor to speak lightly of the services which they have rendered to their country; but is it possible that any subject of the British Empire—that any member of that mighty whole, can be at a loss for matter of gratification and of pride? Can sigh for days to remind him of past glory, or names to make the blood stir about his heart? Every page of our history is redolent of fame; and there is not a second of the year unhal- lowed by some gloriouſ remiuiſcence. The nation of which we make a part, and of which we are neither ſerfs nor bondmen—but free, equal, and unfettered members, has no parallel either in ancient or modern times. It extends to every quarter of the globe; the ſun never ſets upon its ſurface—and by whom ſhall its boundaries be defined? The ſeas are but high roads for its commerce; the winds but the heralds of its greatneſs and its glory! Nor are its mighty ener-

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gies wielded to oppress or destroy—but to protect, to enlighten, and benefit mankind. While Russia sends forth her armies to seize some tract of territory, and to transfer millions of slaves from one species of bondage to another; the children of Briton go forth to distant regions—obtain a triumph over uncultivated nature—carry with them her language and institutions, and lay the foundations of an empire. While the rulers of Austria, Portugal, and Spain, are employed in forging new fetters for the mind—in retarding the progress of knowledge and improvement, the statesmen of Britain are engaged in working out those reformations which the active intelligence of a free people are continually suggesting. For ages has she stood like a beacon light upon the borders of the old world, luring the nations to wealth, intelligence and freedom. From countries the most despotic and debased, the eyes of the slave have wandered towards the unquenched and unquenchable fire of British liberty; and his spirit has rejoiced in the assurance, that sooner or later some spark would fall upon the smothered energies of his land. Advancing onwards by the guidance of her example—one after another—the nations are breaking their yokes upon the heads of their task masters, and asserting those rights, the knowledge and advantages of which have been taught them by the example of England. Then is it from the fellowship of such a nation as this that we are to go in search of a more honorable Union? Are we to fly to the United States for food for our pride, or for objects and associations, around which our feelings and sympathies can cling? Must we needs turn Republicans, because our forefathers have left us no valuable inheritance—no imperishable monuments of glory?

And it concludes with the following sentence—

“Here are the true grounds of Colonial fealty to England; here are the real foundations of loyalty in Nova Scotia. Here are the securities of the present—here are the assurances of the future.” And let those who now imagine that their characters and their influence are the only connecting links which bind this country to its ‘father land,’ be assured, that long after they have gone to their accounts, and faded from this transitory scene—nay, after hundreds of similar sages

have disturbed its counsels, and stood in the way of its advancement—Nova Scotia will be still holding on her course, by the side of her illustrious parent, with a purer spirit of loyalty animating the hearts of her population, than is now ‘dreamt of in the philosophy’ of the men by whom her (I might almost have said *my*) character is slandered.”

By a fiction of law, we are bound to believe that his Majesty is present in all his Courts. I wish to Heaven that in this case that were no fiction. I wish that His Majesty really sat beside their Lordships, and could hear those sentiments contrasted with the language of that Indictment—I doubt not he would do me the justice to wish that he had many more such preachers of sedition in his dominions. While I sat in my office penning these passages, which were to excite disaffection and rebellion, some of their Worships were plundering the poor—and others by their neglect, were tacitly sanctioning petty frauds and grinding exactions—and if his Majesty sat upon that bench, while I could appear before him with my files, and show him that I never published a sentiment that might not have been written within his palace walls, and defended in any Court in his realm, these prosecutors would shrink before the indignant glance of the Sovereign, whose trust they had abused. His Majesty would tell them that he who robs the subject, makes war upon the king; that he who delays or withholds justice, excites discontent and sedition—and although they might put on as bold a front as they assumed last Tuesday, he would drive them from his presence; he would tell them that they were the rebels—and that against them, and not against me, this Bill of Indictment should have been filed.

I regret, Gentlemen, that from the nature of my defence, it will take up much time—the labours of the day will be exhausting to us all, but I feel the responsibility that rests upon me. I anticipate the effects of your decision both on the Press and on the Community, and must solicit a patient hearing. It may be recollected that the publication under review, was preceded by another written by the same person, and inserted in the *Novascotian* a few weeks before. In the first, popular complaints were alluded to, neglect was charged,

and some hints of corruption were given. The wish evidently was, to arouse the Body of Magistrates to a state of self defence—to cause an alteration in the system pursued, or to elicit some proof that the charges made by numerous writers and by Grand Jurors, were without foundation. By reference to that letter we shall see the impression which was on the writer's mind—the object he had in view—and it will be also seen that a part of the £1000 a year, which he says was “taken out of the pockets of those who ought never to have paid it,” was charged against the unequal system of Assessment, which it was partly his wish to expose.

My own experience as a Grand Juror had fully satisfied me, that the general views of this writer were correct; that these inequalities and abuses did exist, and were mainly attributable to the Sessions. I may be accused of seeking to overturn the Government, but at all events I am no friend to annual Parliaments, and for this sufficient reason. The Grand Jury on which I served, like all others, existed for a year. It took us nine months to find out that wretched abuses existed and after we had quarrelled for three with their worships, who are a permanent and despotic body, and have hitherto set their faces steadily against improvement, we went out of office—others came in who doubtless spent their nine months of preliminary preparation for fruitless contests, and thus matters have proceeded in a circle for many years.

Let me now turn your attention for a moment to the mode in which the Poor and County Rates have been levied in this District for many years. A few plain facts will be sufficient to convince you, that by the inequalities and injustice of this system alone, to say nothing at all of expenditures, a very large portion of this £1000 a year was “taken from the pockets of those who ought never to have paid it.” In 1828, when the last census was taken, the population of the Peninsula of Halifax was 14,439 souls; while in the other settlements within the District over which Poor and County Rates should be levied, there were 10,437. There were in Halifax at that time 1600 houses, and dividing the population outside the Peninsula by 7, there were pro-

bably 14 or 1500 in the rest of the District. Now it appears, that instead of the rates being laid, as they are in all the other Counties, fairly over the whole, they have in fact been almost exclusively paid by the Inhabitants of the Peninsula, and those living on the main road, this side of Sackville Bridge. Or if they have been paid by the out settlements, what has become of the money? The only sums which appear on the County Treasurer's Book to the credit of the out settlements, between 1820 and 25, is £136 12 10, while since that period nothing appears to have been paid. In 1820 Preston paid £9 0 6—since then we find no trace of Preston. If this Township ought by law to pay nothing, why was this £9 taken—if it should pay annually, why has it not? or if it has, what has become of the money? In 1821, Chizetcook paid £3 12 8, and since then we find no trace of Chizetcook. Margaret's Bay, which is a populous and thriving settlement, with a population of 783 in 1828, owning 600 head of horned cattle, appears to have made two payments only, £15 in 1821 and £7 10 in 1824. It may be said that the difficulty of collecting taxes from these remote places is so great, that it is best to let them escape. But are the difficulties greater than in Antigonish, St. Mary's, or any other country district where they are promptly paid? If the general impression is, that Halifax being so rich and populous, ought to bear all the taxes, and the Sessions have acted on that principle, why then we must only conclude that those who hold a contrary opinion, are under a mistake—they must then show us why they took the sums I have named, and if they took any more, why they were not paid to the County Treasurer. It is barely possible that all the taxes have been regularly raised and credited, but if we make mistakes, the Justices have themselves to blame. They keep their Accounts in such a manner, that no human being can unravel them—the Grand Jury of this year found it impossible—that on which I served, spent three weeks in a vain attempt, although we had the assistance of some of the Magistrates, who could not explain their own. And although in the neighbouring provinces regular exhibitions of receipts and expenditures are prepared and published at stated

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periods, the municipal accounts of Halifax are involved in mystery, and thrust as little as possible before the public eye.

The Township of Musquodoboit contained in 1828 a population of 1312, owning 3900 acres of cleared land, rich in cattle and produce, and having I believe but a single pauper from one end of it to the other; and yet Musquodoboit never paid one sixpence of the County rate—while Sewiacke, which it adjoins, and that resembles it in every respect, has I doubt not paid every year its proportion to the sessions of Colchester. Perhaps sums may have been paid, besides those I have named—they may have gone into the hands of those to whom the County was indebted, who gave credit accordingly, but no traces of such transactions appear. And let it not be said that the Magistrates are not to blame in these matters—was it not their duty to have enforced a system of regularity, simplicity and fairness, throughout the District—and have they done it? I believe about four years ago, when the Grand Jury refused to assess any more—and when they were goaded in the Newspapers, they did ask the Assembly for a new assessment Act, but they always had law enough if they had chosen to do their duty. Had they evinced the same ardent zeal for removing abuses, that they have shown for criminal prosecutions, there would have been no ground of complaint. Grand Jury after Grand Jury complained of these matters in vain, except to disturb the serenity of their worships; but the moment they found a letter that might be construed into a libel, then they said, Now we will attack the Printer of the Novascotian—we will bring the action by indictment—he cannot call a witness—the law will find him guilty—Grand Juries will thus be answered, and the community will say that we are immaculate, and that there is nothing wrong. But they will take another view of the matter, by and bye, when we get into the thiek of it.

Besides those I have mentioned, there are 30 or 40 other other settlements that ought to have paid—or, if they have, ought to have got credit. But since 1825, none is given on the books of the County Treasurer. Now you will perceive, that even supposing that upon

the Peninsula the rates were fairly laid, promptly collected, and equitably disposed of, inasmuch as all the rest of the district has been allowed to escape, or to pay small sums within a long series of years, an immense amount must, as this writer declares, have been "taken from the pockets of those who ought never to have paid it;" and that against the neglect and imbecility of the Magistracy, this sum must be charged by the people of Halifax, whose taxes have been increased to make up the deficiency. The last Grand Jury took this view of it, where they say "that they must bring before the notice of the worshipful Court, that the present mode of collecting taxes is partial and unjust, the whole burthen of the municipal expenses having to be borne by a part of the community, instead of being equally divided amongst the whole, and that this evil is entirely caused either by the inefficiency or neglect of the authority into whose hands the power of collection has been vested." You will bear in mind, that I have had to prepare this defence from such information as was public and notorious—I could not of course apply to their worships for any, as punishment not truth appeared to be their object—but if my own experience does not deceive me, free access to their books and accounts would not have helped me much, for the Grand Jury in deploring the utter impossibility of coming at facts, declare, "that the Treasurer will refer to the Collector, the Collector to the Magistrate, the Magistrate to the Clerk, and the Clerk back again to the Treasurer, and so on in a circle without end." I must not say that one part of the charge is now proved, but I may say that these impressions were on my mind, when I published the alleged libel. And how could I have refused its publication, having these impressions? The writer of the letter never dreamt of prosecution following it; it is evident from both his letters that he only desired enquiry and reformation; for he challenges any of the Magistrates to come forward and explain these matters, which were, in his view, operating unjustly, and exciting discontent in the community over which they were placed.

But allowing that the assessments ought to have been laid on the Peninsula alone, without any reference to

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the out settlements at all, it was and is evident to me, that corruption, mismanagement, and gross injustice existed to a considerable degree, even within this limited extent. For very many years there were in the Town of Halifax two classes, who were called upon for assessments—one which regularly paid, the other, far wiser, who never paid at all if they could possibly help it. Let us suppose, gentlemen, that six of you were of the former class, and thought when a rate was laid, it was as well to pay and have done with it. That the other six thought it would be as well not to pay until they were forced; that some of these were Magistrates and their functionaries—or the friends or creditors of the official folks about the brick building (who were always in debt) and who could not or would not be pressed until it was impossible to avoid it. Let us suppose that a rate was laid in 1820, and that within that year the first six paid, and the second did not; of course there was a deficiency, and the prompt payers had an additional sum laid on their shoulders the next year, to make it up. So it went on year after year. Those who did not pay, like shrewd calculators, knew that at all hazards they would save the interest, even if they were ultimately compelled to pay the principal—while their neighbours, in the mean time, were compelled to pay principal and interest.

Without the Books before me, and reference to figures it would be impossible to say what sums have been thus by this system, "taken from the pockets of those who ought never to have paid them,"—but I challenge my prosecutors to come forward with their books and accounts for the period mentioned in the letter, and if they do, I pledge myself to show them, without reference to expenditures at all, that in raising the taxes in the District, gross injustice has been done, to the full amount of £1000 a year. This system was continued by the Sessions until the Grand Jury made a stand—refused to assess—and insisted on the arrears being collected. But no attempt at reformation was made by the Sessions—none would have been made but for this resistance. I do not blame the corruption of this system upon all the Magistrates—but they left



it in the hands of those who made it suit their own ends, and therefore the losses of the community are fairly chargeable on their neglect. A member of Council, when asked why his taxes were not paid, explained that the officer in charge owed him interest monies, and ought to have paid them, as he was desired. I know a person who had a demand of £25 or £30 against the same party—and who, finding great difficulty in getting it, at last hit on the expedient of drawing orders upon him, for the amount of his taxes. Every year, as the Collector came round, an order was given and placed to the credit of the officer—but whether the officer ever paid the amount to the County or not, would, I believe, puzzle us all to discover. Charity would fain induce us to believe that he did—but oh! how I should like to see the books. My occupation is sedentary—I have not the same opportunities for discovering the delinquencies of these parties that others have—but here is one glaring fact, that I give from my own knowledge, as an illustration of the system. Many others are said to exist—and if they do—nay, if the state of things has been such as to arouse suspicion, was I wrong in inserting a letter which was intended, if not to produce reformation, at all events to elicit the truth.

What gives force to these suspicions, and encourages the belief that favouritism and fraud, have been more general than the public can conceive, is the extraordinary story they tell of some of the Assessment Books having been stolen. What would be thought of a Merchant who should tell such a tale to his Creditors? But it may stand them in stead in more ways than one, because they may now say we are prevented from answering these charges by the loss of our Books. Is it likely that any thief would be such a fool as to run off with these old volumes? They were indeed curious documents—but I doubt if any man but an antiquary would steal them. Though within two or three years the system has been somewhat improved, and many of the old arrears collected, a remnant of favouritism and corruption still clings around it—and a poor man informed me but a few days ago, that when he went before the Committee of Magistrates to ap-

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peal from his assessment of 1834, there was one of their Worships appealing for 1833. Surely these things are not fair, and if they are not, ought their worships, until they could show that nothing was wrong, have come into the Court to punish a man for merely doing his duty?

In his first letter, the writer of this supposed libel, shows that it has been ascertained by an actual and very low valuation of the Property on the Peninsula alone, that it is worth £1,200,590—and that at the rate of 70s. per £1000, which was the rule in 1834, this would yield £4500. And yet, with all this property, even within the narrow limits to which the Sessions appear to have confined their assessments, how does it happen, that when only £700 or £800 has been required, individuals have been called on for sums so large? My own rate last year was about £4, and I know one individual who paid the 250th part of the whole assessment. Indeed so unequal, arbitrary and oppressive, have these taxes been, that there is scarcely a man in the town who has not at some time or other had to appeal against them—and the time lost to the community by these appeals would defy all calculation. Only observe what is said of the system by one of the Justices, in a communication made by him, in answer to a circular issued by a Committee of His Majesty's Council. After laying the blame on the Grand Juries, for naming improper persons as Assessors, he says: "from thence comes Assessments of all things the most erroneous. One sett of Assessors will tax the owners of the whole property—another will put a part upon the tenants; one will value an estate at £3000, another at £500. One man one year will be taxed £3, and the next perhaps £30—from whence comes endless and everlasting appeals."

If this be true, it is in vain to charge it upon Grand Juries who are an annual body, whose complaints were laughed at, and to whom the information necessary to guide them was continually denied. And even allowing that no corruption existed, what a load of iniquities their neglect attaches to the men who tolerated and upheld such a system. Instead of going to the

Governor to ensure my prosecution, they ought to have gone to him ten years ago, and besieged his gate with clamour and remonstrance, until he lent his influence to the introduction and passage of laws for the reformation of these abuses; or until he strengthened their hands to enforce the law they had. But they suffered the poor to be ground, and the rich to be robbed, by those exactions—and considered it as nothing—they never impanelled a Jury to try if injustice had been done; they never even came forward to tell the community that a better system must be devised. In these charges of neglect, I include all the magistrates. The law makes a looker-on at a felony a participator in the crime. These men looked on for years—they did not advise the people or the government—nor take any step to produce a reform, till driven to it by the refusal of Grand Juries any longer to assess.

Last year I received a summons calling on me to pay my poor and county rates, amounting to about £4—I attended accordingly, where I saw a Magistrate, the Clerk, and the Collector, surrounded by several poor wretches who had been brought there on the same errand; and was accosted with, 'Oh! we suppose you have a check on the County, and that is the reason you have not paid.' I answered, No—thank heaven, I have no check on the county; but when on the Grand Jury I observed that there were two classes—one who did, and one who did not pay—and having been for six years among the former, I wanted if possible to get a berth among the latter.—(Laughter.)

We may smile at these matters, but they are melancholy. Poor wretches are dragged down to their Workshops for non payment, while they see their rich neighbours not paying at all—or not paying a fair proportion. If these men had done their duty, things would not be in the state in which they are—the Community would not be thus excited—time would not be wasted with "endless appeals"—the poor would not be taxed for summonses and suits—the Legislature would not have been tormented with investigations, or His Majesty's Council vainly employed in unravelling the maze—nor would the Governor, the moment he touched our shores, have been called to examine a system that might

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take its place in the Black Book, among the ' robberies of charitable foundations,' and informed that an Augean Stable here awaited his purifying exertions.

The same system of inequality and injustice, you will perceive, pervades all the taxes. If a new Building is to be raised, or if repairs are necessary, and more taxes are required—the more money wanted, the more grievous and oppressive it becomes. The Fire Taxes are raised after a similar fashion, but what becomes of them? Hitherto, you will bear in mind, that I have not said one word about expenditures—all the evils I have depicted attend the collection of the taxes. And in coming to the expenditures, I only regret that I am not permitted to put a single witness in the box, as I am satisfied that that one, were she to tell you how this system has ground into her soul, would be sufficient to secure me your verdict. Fire Taxes, for the remuneration of parties whose property is pulled down to stop a conflagration, are laid as you are aware, on real estate—which cannot escape. The owner may run away, but there the house stands, all sufficient for the amount; yet in numerous instances, after a rate has been laid on, and money awarded, years have elapsed before the sufferers received it, and there are a dozen persons having claims unsatisfied that have been standing from 5 to 15 years. A house belonging to Miss Hogg was pulled down at the fire which occurred about four years ago. She was awarded £200. At the end of 12 months she received about £20; she subsequently got three other payments, the whole amounting to £103—a year has elapsed since she received a sixpence; and in the mean time, the Town owing her £97, which she could not get, she was sued for £1 16, her Poor and County rates, and here is the Constable's receipt for the sum, with 7s. expenses.

These things exist, and yet a dozen men, whose names appear in the Almanack as Justices of the Peace, have come here to prove me a rebel, because

I gave utterance to the complaints which such grievances elicit. Would any of you Gentlemen so manage your private concerns? Would you, while you owed a woman £97 which you refused to pay, cause her to be arrested for a debt of £2? Other similar cases might be mentioned—Mrs. McDonald, who is known to most of you, has never been paid in full. Miss Graham's property was pulled down some 15 years ago, and of the sum awarded her, £50 remains due to this hour. Fortunately for her a respectable Mechanic engaged to repair her property for her share of the Assessment—he is therefore yet minus the £50—he has dunned their worships and their officers time after time to no purpose, and has repeatedly offered to collect the money himself—but they would not allow him to do even this. It is possible that the tax could not be collected—but it is most extraordinary that it should be so, when laid on real estate. Why not allow the man to collect his own money? Did they dislike that he should see the list of defaulters—or has the money been collected and not paid? Does the balance form an item in these inexplicable accounts? These questions are daily asked by the sufferers, and reiterated by the community, and the facts out of which they arise, justify the suspicion that there is “something rotten in the state of Denmark.” Their worships blame the Press for publishing strictures on their conduct, but as an excuse for it I may mention, that almost the only person I know who has got paid in full, was Mr. George Anderson—him they kept out of his money for three years, and he only got it after he had attacked them in the Newspapers; while I mention this instance of the power of the Press, I may congratulate him on his experience of its instrumentality.

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These charges affect the whole body of my persecutors—they must share the blame among them. But as they are attributable rather to gross neglect and culpable imbecility, than to individual corruption, I utter them with less regret than I shall some others, which must deeply affect the reputation of certain parties. This is to me a painful task, but I shall not shrink from it. I have been dragged from my home, and arraigned before you as a criminal—and I must enter into these matters in order to convince you that I am not quite as guilty as some would wish you to believe. So far as we have gone, I think I have shown that the whole municipal system is so bad, that it can hardly be worse—and that we need scarcely go further to satisfy ourselves that the figures this writer has used are innocent enough.

But there is one of the establishments under the controul of their worships, which has long been and still is a disgrace to the Province. If you find me guilty to day, send me to jail if you will—put me in the safe keeping of the Sheriff, but do not send me to this establishment ; save me, above all things, from Bridewell. During the last year, the Grand Jury sent a committee to examine it, and their report was handed into Court in the form of a presentment, and is as follows :—

“The Committee found the Building leaky, and the Bedding insufficient. The Building usually occupied as a Wood House, in the yard of the Bridewell, used by Mr. W. H. Roach the Acting Commissioner, as a stable for his horse, and the wood piled out in the yard. The Matron of the establishment, Mrs. O'Brien, and the Keeper, Mr. O'Brien, stated to the Committee, that barrels of flour, marked superfine, sent for the use of the Bridewell, were in many cases composed of flour of different

grades, sometimes mixed up with corn meal. The only case in which a barrel of flour was weighed, it was found 16lbs. short. That a man by name of P. Walsh, employed as an under keeper, pays no respect to the keeper, and goes and comes when he pleases. Was absent on Wednesday nearly the whole day, and when he returned in the evening, informed the keeper that he had inspected 196 barrels of flour on Black's wharf. That John Cain, a Prisoner, was often employed by Mr. Roach. That John Gilmore, a Shoemaker, was frequently employed by Mr. Roach, in making boots and shoes for his family, and in one case, for Captain Coffin, out of Mr. Roach's Leather. That D. Hefernan was frequently employed exclusively by Mr. Roach, and that out of four wine pipes, which were charged in Mr. Roach's account, a bathing machine and buckets were made for Mr. Roach's family."

It may appear strange to you, gentlemen, that when I found that five Magistrates had been drawn upon the panel, I did not strike them off—but I recollected that some of these men had formed a Committee of enquiry to investigate these charges against Mr. Roach; and as they had acquitted him upon the evidence which I shall presently place before you, I naturally concluded, that if they were so easily satisfied, and so ready to acquit persons charged, that even if I made, like the Commissioner, no defence at all, I should be certain of their verdict. I trust, however, that I shall be able to make out a stronger case than Mr. Roach. The Committee of Magistrates appointed to try him, had, as I am informed, the Keeper of Bridewell and his mother for some hours in the brick building, undergoing a long examination, which did not seem directed so much to elicit the truth, as to whitewash Mr. Roach. Among the other affidavits taken was

that of Mr. R. himself, who swears "that he did use the wood house temporarily for his horse—that the Coal was kept in the wood house—and that there was also room for the wood, without interfering with the horse in the wood house." Although the keeper, on his oath, declares "that the wood house would not hold the coal, wood and horse." Mr. R. kindly informs us "that he found the provender at his own expense." Generous man ! so he did, but it is a pity he had not found a place to put it in—for I understand that the watch house was so crammed with hay and straw, that the poor watchman had scarcely room to move.

The keeper admits that *he* did not see any mixed flour—but his mother positively swears that 'her attention was called to a barrel of flour which had Indian meal in it. The baker and her weighed one barrel which was 16 lbs. short, and was composed of different kinds of flour. The two barrels now on hand were sour.' I have been assured by gentlemen present that the charges of the committee were not founded on statements volunteered by these people, but wrung out in answer to questions put to them by members of the Grand Jury ; and here the woman has proved the truth of every word she told them, by her affidavit made before their Worships. There is a curious admission, however, which in answer to some leading question, ingeniously worded, Mrs. O'Brien is got to make—that the 'flour and meal might have got mixed, because they stood in the same room'—and she is also made to say that she 'had seen mixed flour' before she went into Bridewell. But in the face of this woman's affidavit, see what Mr. Roach himself swears to. In the teeth of this testimony he positively denies that any of the flour furnished was 'mixed,' or 'short of weight,' although the woman who used



it, and who weighed it, declares that it was. How could he know any thing about it unless he packed it himself? This may be a matter of little consequence, but it shows that an oath was lightly regarded. Mr. Roach admits that 'he did employ Cain, but he was fed at his house. He did employ Gilmore to make some boots and shoes for himself and family; and also a pair of boots for his friend Captain Coffin; and for the time he was so occupied, it was his intention to have compensated the County on his retiring from the charge of Bridewell.' He acknowledges also, that Heffernan made a small oval tub, and some bird cages for his family, but then 'he found the materials.'

Mr. David Roach, the Deputy Inspector of flour, deposes that 'he recollects Mr. R. supplying Bridewell with superfine and rye flour—that witness delivered all the flour—that it was always good and of full weight—that it was unmixed, and inspected and weighed by deponent.' Now, which do you believe, this Deputy or Mrs. O'Brien? who tells us that it was mixed—that it had meal in it—that the baker and her found the only barrel they weighed 16lbs. short—and that 'the two barrels now on hand are sour.' Then follows a little piece of apparently superfluous information, as no charge on that head had been made, 'that it was flour purchased and kept for sale—that the flour Mr. Roach got by his inspection was never repacked and sent to Bridewell, but was used in the family.' Now I could put a witness in the Box, who would tell you, that in one forenoon that he attended Mr. Roach, he drew out two kegs full of flour from the barrels he was inspecting, which the man carried home, so that if the family eat it all, as the Deputy swears, why then—they must have very good appetites. In reference to the charge of employing Walsh, the

Deputy further swears, that on the 16th, being in search of a person to help him weigh, &c. he "met Walsh by accident," and got him to go with him to Black's wharf, where he was only two hours; that he "never inspected any," and "never was employed at any other time." I can easily understand why they did not wish it to go abroad, that this man, who acquired his taste for flour in the Bridewell, where it was all sour, and his knowledge of weighing where the barrels were 16lbs. short, was ever employed to inspect and weigh for the merchants. But passing this by, you will perceive, that the worthy Commissioner of Bridewell has shaken himself clear of no material charge made in that Presentment; the most of them are admitted, the others only denied on the oaths of himself and Deputy, under circumstances that render it impossible that they should be believed.

But there was another charge against this man of so serious a nature, that if I had been a member of the Magisterial Committee, I would have sat in Sessions till I died, unless he fully cleared up the point, or was driven from the Commission. In the account sent in to the Grand Jury \$9 per barrel was charged for flour furnished to the Bridewell; as this was a higher price than would probably be paid by his Lordship for the best he could set on his table, the Grand Jury thought it was rather too expensive for the house of correction, and made some enquiries of the keeper, in whose name the whole account of £53 19 was made out. He said he knew nothing about the prices, that he had only supplied 3 or £4 of the whole amount, but that Mr. Roach supplied the rest, and handed him an account to copy and render in his own name. The Grand Jury therefore returned the account into Court, and insisted on its being rendered in the

name of the party who furnished the supplies. It was accordingly recopied and returned by Mr. Roach—but fearing that he had charged the flour too high, and thinking the alteration would not be discovered, he struck off 2s. 6d. a barrel, retaining O'Brien's account. The Jury detected the trick, enquired for the copy made by O'Brien—it was nowhere to be found. Mr. Stewart Clarke, who hears me, handed it to Mr. Roach, but he denied any knowledge of it, and it was not forthcoming. Fortunately, however, the Jury had retained the original account handed to O'Brien to copy, and in that the flour was charged at nine dollars, although in the one he returned he had reduced it to eight and a half. Thus did they trap the worthy Commissioner. Will I be told that the trifling nature of the amount makes any difference in the transaction? If any one of the body who laid this Indictment were guilty of such acts, how could they come into Court to prosecute me? I make no attempt to deceive you, gentlemen—I would rather lie in jail for years by your verdict, than forfeit your good opinion. I state nothing to you as a fact which I have not evidence to prove—I draw no inference from facts that does not appear to my own mind rational and fair. This story of the accounts may not be true, but I can bring three members of the last Grand Jury, as respectable men as any in the town, who will swear to every word.

I dare say you will now wish to hear nothing more about the Bridewell; but only group the evidence which the affidavits furnish. There was Commissioner Roach's Horse stabled in the wood-house, and the wood piled out in the yard—the provender which he so kindly furnished at his own expense, was crammed into the Watch House—one of the prisoners was employed making boots

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and shoes for the Magistrate and his friends—  
 another manufacturing tubs and buckets—the Under  
 Keeper inspected his flour, and the vagrant, who  
 had no particular trade, did his errands. I might  
 entertain you for hours with instances of such petty  
 speculation. 'This great man had his vegetables in  
 one of the cells—another held his *celery* packed  
 in earth. If his house was to be banked, a gang  
 was sent from Bridewell—and of course the priso-  
 ners fed and watered his horse. He was in truth  
 like the Ruler in Scripture, who said to one "go  
 and he goeth, and to another do this and he doth it."  
 It is a curious fact, that since this Inspector of flour  
 became Commissioner for Bridewell, the prisoners  
 have been supplied with no Potatoes, they have  
 been fed entirely on Bread. I am at a loss to dis-  
 cover any reason for this—except by supposing,  
 that there may be some unfortunate Irishman in  
 the place, and that it was intended as part of the  
 punishment of poor Pat, to give him no potatoes.  
 (Laughter.) This is the only reason I can give,  
 but some of the Jury may imagine others for this  
 exclusive consumption of flour.

When this man and his family walked abroad,  
 their feet were protected by the county—when they  
 gave an entertainment, Cain was despatched from  
 Bridewell with the *celery*—when they were dis-  
 posed to enjoy the luxury of the bath, the County  
 furnished the tubs; and even the melody of Miss  
 Roach's Canaries, was breathed through Cages  
 manufactured at the public expense. They had  
 some time ago, a Poet in Bridewell—and I am in-  
 clined to believe, although without access to the  
 document, I would not state it as a fact, that he  
 was fully employed in writing sonnets for the  
 family Album. If you send me there, I shall be  
 compelled to print him a Newspaper for nothing, and

then the list of his luxuries will be pretty complete. I am afraid, however, that he did not anticipate this day. He never imagined that this "Tale of a Tub" would have such a general circulation—he never dreamt, when retiring to the bath, that he was really "getting into hot water." Before we are done with him, I fear he will be in condition to take, what poor Sardinia used to call "one vapour bath." (Laughter.)

These details may be ludicrous, but mark the moral effect of all this, upon the poor petit larceny wretches confined in Bridewell. They were not sent there for punishment only, but for the purpose of reformation. This is one of the benevolent objects of the law, the main point to be considered in every municipal code. But did not all the prisoners know what was going on around them—and what would be the obvious current of their reflections? Would each or would any, under such circumstances, say I am a guilty wretch, and will pray to heaven for a change of heart that shall restore me to society; or would he reason thus—it is true, I have been very unfortunate in getting here, but I was on the right road; if I had only had good luck as well as good intentions, I might have been filling situations of honor and emolument—that might have been my horse—and these poor devils who surround me would have been my servants and my slaves. This is the moral effect of having such Commission.

I was amused at seeing Mr. Roach's averment that he found the provender for his horse—he would have added, had he thought of it, that he also found the water for his bath. But while such things are tolerated by members of their own body—while they attempt to slur them over by partial investigations—how can the Magistrates of Halifax

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come here to prosecute me, for aiding enquiry, or even for the publication of attacks, however unmerited and severe? This is a modern picture of the Bridewell; but as the letter refers to a period of 30 years, I may be pardoned for giving a sketch or two of its ancient history. I can recall a period when my father interested himself deeply for the welfare of the poor inmates of that prison. Though a Magistrate himself, I mention his name with veneration; and I know that there is not a human being who hears me, that does not participate the feeling. He never carried the municipal bag—he never took a shilling of the fees to which he was entitled—he had nothing to do with their dirty accounts and paltry peculations. If he was to blame, it was because he could not suspect that those to whom these matters were confided, would betray their trust—if he had a fault, it was, that being an honest man himself, he could not believe that there was a scoundrel on the face of the earth. Some years ago, it was his practice to take his bible under his arm every Sunday afternoon, and assembling around him in the large room, all the prisoners in Bridewell, to read and explain to them the Word of God—he never filched from them their daily bread, but he sought to impart to them the bread of life. Hardened and abandoned as many of them were, they were softened by his advice, and won by his example—and I have known him to have them, when their time had expired, sleeping unsuspected beneath his roof, until they could get employment in the country.

The person at that time in charge of the establishment was such a brute, and reigned over the place with a profligacy so abandoned, and a cruelty so harsh, that having remonstrated with the Magistracy in vain, and finding it impossible to effect his re-

moval, my father left the establishment in disgust, and has never been near it since. One day he discovered a poor creature with a spiked dog collar around his bare neck, placed there for some petty offence ; and on another morning he found that a woman had been kept in the stocks all night in the open yard, because she would not submit to the brutal embraces of the keeper. My father protested against these abominations, but could get no redress. He thought it strange that such a fiend should be so patronized ; he never suspected peculation ; but I have not a doubt, from the new light now breaking upon us, that the keeper of that day was more compliant than Mr. Roderick O'Brien, that he was very useful in the management of supplies. He was finally ousted, when it was found unsafe any longer to retain him. A fellow who was put there for theft, was in a few weeks raised to the rank of under keeper, and used to be let out upon the town every night ; until the keeper becoming implicated in some of the roguery of the subaltern, he was shipped off to the Canadas, from which he is not likely ever to return. Now, gentlemen, with this evidence before me ; with my own ancient recollections blent with the modern history of this place, could I have dared to refuse publication to that letter ?

In turning to another of these establishments, I hope that he who on Tuesday last read that impudent resolution to their Lordships, hears the sound of my voice—and if he does, while he quails under the statements I make, let him remember that he placed me here—that he tied me to the stake—that he and his colleagues filed against me that Indictment, in which I am charged with sedition and rebellion. Many of these Magistrates, as I before stated, are men of integrity and honor—who are guilty only of neglect—but are far above peculation.

Some of them have urged on this prosecution, not from unkindness to me, but in order that others whom they know to be criminal, but whom they had not the manliness to confront, might be exposed. Should they have done this? Ought they not rather to have formed themselves into a Court of enquiry, and having all the officials under their controul, and books and papers at their disposal, to have gone into a full investigation—to have sifted the popular complaints, and have purged and purified their own body? But they have not done so—they have left it to me, and they have placed me in a position where the performance of a disagreeable duty is essential to my own safety. I feel that it is, and to the public safety also, and shall not shrink from the task.

By the 9th section of 6th Geo. 3, which regulated the affairs of the Poor Asylum, it is expressly enacted, 'that no Commissioner shall have any profit or emolument whatever, by furnishing supplies.' Some members of the Sessions have thought, however, that they could alter this law as they wished to alter the law of libel—for in the face of that section, binding and obligatory as law can be, is it not matter of notoriety that for years the principal part of the supplies for the Poor House passed through a certain store; that nearly all the flour and meal passed through a certain mill, leaving of course an abundant grist behind. Much improvement has been latterly introduced, but for many years this was the system. What was neither in the store nor the mill was purchased upon the credit of the Commissioner, which was bad; or on the credit of the establishment, which in his hands soon became worse. Creditors had to wait years for their money, and to remunerate themselves, when next he came to purchase, put on an additional ten, twenty



or thirty per cent. I could place evidence of undoubted credit before you, who would show that his was the system; and some who will tell you that they would not give credit at all. The effect of this system was ruinous; for although inferior articles were purchased, the highest price were always paid. I do not say that all the profit was enjoyed by the Commissioner, a part might have been pocketed by the merchant for the risk he ran, but in either case it was equally injurious to the paupers and the public.

If the Baker were in that box, and you were to ask him why he did not make better bread, his answer would be how can I out of such materials? If you asked the Miller why he did not make better flour, the reply would be because the materials were bad. What would not a man do, who would thus wring a profit from an Establishment, dedicated to the comfort of the poor and destitute—who would thus filch from mendicants to put money in his purse? Gentlemen there is not a man in your box that would not beg from door to door—that would not rather shake from his back the last rag that covered him, than thus prey upon the unfortunate beings that the storms of life had driven into such a haven.

The best proof of the costliness of the administration of the worshipful Commissioner to whom this letter writer alludes, is to be found in the fact, that while the paupers formerly cost the community  $7\frac{1}{2}$  a head per diem, they are now maintained under the improved management for something over 5d. Formerly the House was always several hundred pounds in debt—now there is a balance of £200 in hand; formerly credit could only be got at these ruinous prices—now persons in business are glad to deal with the Asylum, because they

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are promptly paid. But though the affairs of this establishment are greatly improved, a little of rottenness still remains. Though each Commissioner entrusts the Clerk to purchase supplies, and gives him a check for the amount on the production of vouchers at the end of every month; when the party who formerly monopolized the whole, assumed the controul in December, he reprimanded the Clerk for daring to interfere, and purchased the supplies himself. Mr. Gray, in his address to you, said, that there was no other course open to these Justices but a Bill of Indictment, because no one of them were distinctly pointed out; but was not the person to whom I am now referring particularly attacked—was he not charged with deriving a large sum from the supply of the Poor House? If a charge is made in a Newspaper in such a way that, although the party be not named, it is generally referred to him, he is entitled to his action. Did not every man who read that letter know who was meant? I have not mentioned his name, but is there one of you, Gentlemen, who do not know him as well as if I had? Could he not have brought his action? why did he not? Because he was afraid. But I think, notwithstanding the opinion of the learned Counsel, that either of these Justices might have brought his action. Fraser's Magazine, some time ago, published an article reflecting on the Cooks of London. Lord Grey's Cook, feeling himself aggrieved, and determined to vindicate the interest of his order, prosecuted and received damages for the injury done to himself. Why did not some one of these Magistrates stand forth and act this manly part? They thought perhaps that the more Cooks, the less chance of spoiling the broth—but we shall see how far this opinion was correct. (Laughter.)

These details are painful for me to utter, and for

you to hear ; but I solemnly declare that I have stated nothing but what I believe—nothing but what I believed in January, when I published the letter charged in the Indictment. Their Lordships' classic minds will readily recall the punishment which Dante assigns, in his *Inferno*, to public speculators. He casts them into a lake of boiling pitch, where, as they wallow and plunge, the fiends rend and tear them with their fangs—and delight to increase their agonies. Let the men I have been describing take care, that besides the contempt of this world, they do not get a scalding in the next. They cannot be Christians—let them beware how they adopt the creed of the Italian Poet. They gloat over the idea of the triumph which they expect to-day—but they have yet to learn that

“Thrice is he arm'd who hath his quarrel just,  
And he but naked, though lock'd up in steel,  
Whose conscience with injustice is polluted.”

They will long remember this day—but let them also remember that they thrust forth their rotten reputations to dare the lightning flash of truth—that the lash from which they suffered, was forced into my hand.

Having shown you how taxes are raised, and how some of our establishments have been conducted, I must now introduce you to the brick building below, where the business of the Clerk of the Peace, the Police Office, and the Commissioners Court is conducted. These departments are all more or less within the jurisdiction or under the controul of the Sessions, or of members of that body. The two former especially have for many years been so blended, that it is almost impossible to separate them. From what I have stated, and what I shall state, you will have no difficulty in

believing that, had I been allowed to go into proof, I should have been able, including corruption and neglect, to have proved against their worships the full £1000 a year. The expence, inefficiency and corruption, of these lower departments, it will be recollected, formed a part of the general charge made by the writer of the letter. The preservation of the public peace is included in the duty of the Magistracy—and I ask you, gentlemen, if ever you knew a town of the size and respectability of Halifax where the peace was worse preserved? Scarcely a night passes that there are not cries of murder in the upper streets—scarcely a day that there are not two or three fights upon the wharves. When I lived further to the south, a Sunday seldom went by without two or three pitched battles at the foot of the street—but a police officer or a Magistrate was rarely to be seen. Sometimes, Mr. Fairbanks, who lived opposite, would endeavour to allay the storm—and once I believe Mr. Lawson knocked one or two of the rioters down, and dragged them by the heels to Bridewell, but we never saw any thing of the Police. Boys are playing marbles and pitch and toss all over the streets of a Sunday, without any body to check them; and although these may be trifles, they go to prove the ‘slovenly system’ of which this writer complains; and show with what zeal their worships performed their other duties, where money was not involved. (Having enumerated the salaries of the Clerk of the Peace, Police Magistrate, &c. in order to show that they were sufficient for the duties performed, without other emoluments,) he said that of these he did not complain—every man had a right to his salary, if it was fairly earned, but what the public complained of was, the enormous amount of fees, fines, &c. which went into

the brick building, of which no account was ever given, and of which it was impossible to ascertain the amount.

For every oath, summons, writ or other process, there must be a fee ; and the more unequally the system of assessment bears, and the more resistance is made to the payment of taxes, the more money it brings to the police. The Committee of His Majesty's Council demanded some accounts which were necessary to assist their investigations ; these were subsequently sent down to the Assembly, and I was favored with a perusal of them. Though wretchedly confused and incomplete, there were some things in them which astonished me. There were one or two charges of £5 made by the Police Magistrate for committing criminals to Bridewell ; and about 40 entries of this kind, 2s. 6d. to a poor man, 5s. to a poor boy, and 7s. 6d. to a poor woman. I doubt if the public were aware that there was such a charity in existence, to which any body might go and get a dollar at the county's expence ; but I expect that, after this notice, there will be plenty of applicants to-morrow.

(After enumerating the various offences cognizable by the Police, and for which fines were exacted,) Mr. Howe said, I had reckoned up the list of persons that had been in their hands for 5 years ; and having ascertained the number, I asked a person who, from the opportunities he had for observation, I presumed would be a good judge, how many persons he thought were, on the average, in the hands of the Police every week, leaving something behind—his answer was 25, but *one* a week is the average according to the returns. It is curious to see, in looking over these accounts, how irregular and eccentric is the whole police system. In the course of twelve months there are

perhaps one or two persons fined for selling rum to Indians, although drunken Indians are strewed about the market place for two thirds of the year. Within an equal period perhaps two or three persons are fined for having cows going at large, and then the cows are allowed to go scot free for all the rest of the year. When I lived next door to the Master of the Rolls, we frequently had four or five wandering about the corners for weeks together. I do not complain that the Police have not exacted fines enough ; that is not the complaint urged by the public, or by the writer of this letter ; but that they are levied by fits and starts, in an arbitrary and desultory manner, by which the law is made onerous, and yet contemptible.

The Jury will bear in mind, that one part of the charge against the Police Magistrates is the extortion of sums unauthorized by law. Now is it not notorious that for years, when a person went there to complain of an assault, or a crime, before any redress could be obtained—before they would issue a writ, the party was compelled to pay 3s. 6d. For this charge there was not the shadow of a law ; and the practice was, I believe discontinued, on the remonstrances of some of the newly appointed Magistrates ; but during the long period it was upheld, the very three and sixpences would amount to no inconsiderable part of the sum laid to their charge. These may be trifling matters, but they all help to illustrate the general system. I could put a poor but respectable man in the box who would tell you, that having sued another for a small debt, he met the Constable on the wharf, who told him he had collected it. He treated the man in the joy of his heart, and expected to have got his money, but was told that he had paid it into *the office*. There he applied, but was in-

formed that they would make the debtor pay—but he had not paid yet. That was the invariable answer, and although this occurred years ago, to this hour the poor man has not got his money. Another person I know, who has a claim of three guineas on the Office, has dunned them for years, and refuses to pay, and has not paid, his taxes for the last two years in consequence.

I could bring before you in an instant two men, as respectable as any in town, who served for one year the office of Clerks of the Market. They were very active, performed their duty faithfully—made a great many seizures, and of course a great many enemies; and at the end of the year they calculated that their share of the forfeitures would amount to £30. They called at the Office for their money, but were told that the Books were not made up. Again and again they called, and were put off with similar excuses, and though years have elapsed, they never have received a single sixpence, although they have dunned *the office* every time they met in the street. It happened that one of these men was fined 20s. for a nuisance; he refused to pay, because the office owed him, and to this day has not paid. At this time some altercation arose, and the officer (I may observe that it was not Mr. Liddell,) called upon one party, and stated that if he would wait awhile for his money, he would pay off the other, “who was a very troublesome fellow.” Away this man posted to his friend, and begged him not to take his share, unless both were paid. “But,” said he who told me the story, “he need not have taken the trouble, for I never had the offer.” Now these men are apt to reason in this way: ‘surely the County never received credit for our £30—and as the accounts are never published, and wretchedly kept, how do we

know what has become of the other £30.' Would not such a state of things justify any charge? A short time since some injudicious friend put a notice into the Recorder, calling upon the Community to come forward, and give me any information that might be useful to me on my trial.— The next day I could not get into my office, it was crammed, and the passage leading to it, with people, every one of whom had suffered some exaction, had some complaint to expose, or had had justice denied or delayed. One of them left this Book, which contains the proceedings of the Grocer's Society; and here is a letter dated a year ago, threatening to sue the Police Magistrate for £7 10s. the half of some fines legally due to the Society, but which he informed me had not yet been paid.

Some of these Magistrates, and their functionaries, preside in the Commissioners Court. I will state one instance, in illustration of the mode in which debts are collected there, and of which I can speak from my own experience. Some persons seem to imagine that the liberty of the Press, consists in reading a Newspaper for nothing. Having a dozen or two of such patrons, who had taken the Novascotian for five or six years and never paid for it, I thought that I would try if the Commissioners Court could bring them to their senses. I singled out one who was well able to pay; the account was proved, the fees paid, and the Magisterial machinery, as I thought, set in active motion. Time after time the money was sent for, but the answer always was "we will make him pay, but he has not paid yet;" all this time the party's store was open and he walking the streets. Seven or eight months passed in this way, when Mr. Fielding, who was the Constable of that Court, died, and I was told that I must wait till his papers were



overhauled, to ascertain if the debt had been collected. I did wait several months, found it had not, took out new process, and then expected of course to get my money. But I had to wait about seven months more, and then having written two or three notes to ascertain what was the reason of all this, I got about £4; and some weeks after, with great difficulty, obtained the remainder. Thus was justice delayed to me for 18 months, and more time wasted than would have been necessary to have collected the money without the aid of the law. But the hardship of this was, not so much as regarded the small sum in dispute, but from its preventing me from collecting all the other debts that had been standing equally long; for of course with this experience I could not again apply to the Commissioners Court. This is my own case, but many others could tell you similar tales; these things were of daily occurrence, and if they were, can you wonder that complaints arose? These irregularities formed a part of the general system, which justified the charges of Grand Juries, the surprise of the Executive, the investigations of the Council, and the publication of the alleged libel. I cannot be expected to illustrate the system in all its parts, but I tell you what I know, what was notoriously known to the community in December, and what was strongly impressed on my mind on the 1st of January, when I published the letter.

It may be said that all these things could not have existed so long, because detection was so easy. That is the natural suggestion of every mind—but let it be remembered that the mystical accounts stood between these delinquents and detection. If these had been correctly kept, methodically arranged, and regularly published, many of these corruptions could not have accumulated—

this system of wrong doing could not have been upheld. Those who paid fines would have seen them credited, and traced their appropriation—those who paid fees, could have calculated the annual amount ; and by comparing the sums raised with the amount to be assessed, arrears could not have accumulated. But punctuality and publicity would have given a death blow to the system. The Grand Jury on which I served, with a view to accelerate reform, named a Gentleman of respectability and correct business habits, to supersede the old County Treasurer—believing that much of the evil was attributable to him. He has been sometimes blamed for it all, but his honesty has never been questioned, and I am now satisfied that much of the confusion that ran through his accounts, was attributable to the miserable system forced upon him by the selfishness of others. A Gentleman warned us at the time that we should only injure an individual, without doing any good, and I have often thought of his words. However, we named a person, but met resistance at every step in endeavoring to get him appointed—the excuse the Sessions made was, that the nominee was not a freeholder, although he expressed his willingness to qualify himself in an hour. So strictly did they adhere to the letter of the law in this case, though we have seen that in others they cared little for its letter or spirit.

Suppose that a man should fail in business,—if his accounts were correctly and fairly kept, who would blame him for misfortunes ? But if they were kept in such a manner that nobody but himself could understand them, what would be said ? Now the County accounts cannot be understood by the people or the Government, nor by the Magistrates themselves, for we had some of them before

the Jury who could not or would not unravel them. While large sums appear in the accounts as paid to the County Treasurer, he declares he never received them. The functionaries explain this by saying that instead of handing them to him, they paid them to themselves, and thus saved his per centage. (Laughter.) To say nothing of corruption, it is evident that the system has been this—instead of allowing all sums to go into the hands of the Treasurer, to pay checks in their order as they became due, the Magistrates usually arrested them to pay their own demands against the Establishments under their charge, or their officers seized them to pay their salaries, and thus all others in the community who had demands were left to dance attendance on the County Treasurer, who seldom had any cash. I have dunned the town when a boy for three years, with checks, without getting paid—and it is matter of notoriety that Mr. Fielding, the former Jailor, repeatedly offered his checks at a discount of ten, fifteen, and I know that they were once offered at 20 per cent. Indeed it has been supposed that pecuniary pressure arising from trifling demands, while he had the checks of the County for a large sum in his hand, absolutely broke the poor man's heart. Should such a system as this be allowed to bear down a public servant? Should the poor be permitted to be robbed by these ruinous discounts? Should the checks of this large and populous town be hawked about the streets, with a character so bad as to find no purchaser in the market? One circumstance I forgot to mention, that came under the notice of the Grand Jury on which I served. An account came in for Coals furnished by a Magistrate to one of the Establishments. They were charged higher than they had been bought on the same day from the

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same vessel by a member of the Jury; the Trackage was also charged, although in the general truckage account the same items appeared. A noise was made about this, and the Magistrate confessed the errors, and offered to refund the money to the Foreman of the Jury, who of course could not receive it.

Now, Gentlemen, upon a calm survey of this case, as I have put it before you, can you under that Indictment find me guilty of a malicious libel? When you have examined the hardship, inequality and oppression of the Assessments, the disposition of the Fire Taxes, the miserable but costly corruptions of the Bridewell and Poor House, the inefficiency of the Police, the malpractices of the Brick Building, the delay of justice in the Commissioners Court, and the confusion of the accounts, instead of punishing me for what I have done, what would you have said if I had refused to do it? Would I not have betrayed your interest and the interest of the community, and forfeited the character of my paper, if I had suppressed this letter? I have not attempted to prove to a line the charges which the letter contains; that would be no defence; but I trust I have shown you, that not only had I no wicked or improper motive in this matter, but that there existed a great and overwhelming public necessity, that rendered my act one of virtue, not of malice; or at all events which proves, that there was good ground for my belief that I was doing a duty, not committing a crime. So satisfied am I of the justice of my case, that I believe I might rest it here—and confide myself fearlessly to your firmness and discretion. But you will perceive that the recorded sentiments, and deliberate proceedings of grave and responsible Bodies, justify all I have done. With the exception of the figures,

the Presentment of the Grand Jury at the close of the December Term, is a grosser libel than this letter. In that dated in November, as regards the Assessments they say, that of the whole assessmen' for the year, "but £36 has been collected, and that from persons much less able to pay than many who stand on the list of defaulters ; and that even this small sum has not been paid to the County Treasurer, nor as far as they can discover to any other person authorized to receive it"—and they naturally ask, "why individuals of reputed wealth and possessed of sufficient means, should be allowed to continue on the list of defaulters?"

In the Presentment handed in at the close of the year, they say—"that a very large proportion of the taxes are suffered to remain uncollected year after year, or if collected, not satisfactorily accounted for ; that increased assessments are consequently required on those who regularly pay ; and who therefore loudly complain that the collectors of taxes are permitted to pay into the hands of others instead of into the Treasury, where all monies should directly go : that the persons who thus improperly intercept and forestall the public money appropriate it to suit their own convenience, and send checks to the Treasurer instead thereof ; that no money can therefore be obtained to defray the current expenses, and to provide for the indispensably necessary services of the town ; that some persons in consequence refuse to pay their taxes, because they have claims on the County for which they cannot obtain payment ; and others because they have demands against the Officers of the Court ; that the credit of the County is absolutely so bad, that an advance of forty or fifty per cent" (you will remember that I said 20 or 30) is required in all purchases made on its account, and

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that in many cases credit cannot be allowed at all ; that checks on the Treasury are floating about in the market, and cannot obtain purchasers even at a large discount. That the public establishments are made matters of private convenience and emolument, and that when the Grand Jury, in the performance of their duty, institute an enquiry into the disorder and abuses, they are refused the necessary information from the officer whose duty it is to furnish it."

They declare that they have come to the "same unsatisfactory and unpleasant result as their predecessors for many years past ;" and that "many years experience has proved the utter intility of pursuing the beaten track of remonstrance and complaint." As regards the accounts they say, after noticing the correctness of those handed in by the Commissioners of Streets, "that they wish it was in their power to make the same favourable report of the other public accounts. In the course of their investigation the account of the Commissioner of Bridewell has come under observation, and the Grand Jury are sorry to have to state that the nature of it is such as to preclude the possibility of reporting favorably thereon ; they are therefore compelled to return it to the Court as being incorrect and totally inadmissable." "They are also compelled to return the County Treasurer's account, which to them is incomprehensible ; not so much from any fault originating with the Treasurer, as from the confused manner in which the public accounts are arranged. Suitable vouchers do not accompany this account, one of which especially, an account from the Collector of the Taxes, and for which the Grand Jury applied, and was informed by the Collector that his worship the Custos Rotulorum had forbidden him to fur-

nish it ; the connection between that and the other public accounts, and the confused manner in which the whole are stated, render it utterly impossible to arrive at any correct conclusion as to their accuracy. The Grand Jurors are therefore necessitated to return them unaudited. They have provided for the claims against the County, although they are by no means satisfied of the correctness of the statements in which those claims are embodied."

Now, Gentlemen, was it decent for men against whom such charges were publicly made by an authorized and respectable body—charges which remained unanswered and unexplained—to single out a printer, and attempt to make him a scape goat for their offence? When these abominations had gathered and swelled, and when the odour of them offended the senses of the community, instead of removing the nuisance, they said, we will cover it up with a bill of indictment, lay Joseph Howe on top of it, and having sacrificed him, no one will attempt for years to disturb the ashes, and we shall have peace in the land.

The Governor's opinion of these matters may be gathered from the Message to the Assembly, where, in calling attention to the state of our Municipal affairs, he says, that the revenues "annually amount to Thousands of Pounds," which are not "satisfactorily accounted for;" and he concludes by requesting them to provide a remedy for the evils of "which the Grand Jury have, in his opinion, justly complained." A Committee of His Majesty's Council was appointed to investigate these affairs, and the Sessions sent a Committee to confer with them, and, as their Resolution expresses it, "to afford the said Committee such general information respecting the Magistrates, as

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shall assert their claim to the respect and confidence of that board and of the public." Now we shall see, by the Committee of Council's Report, how that Deputation succeeded. They had before them the Accounts and Returns to which I have already referred. In looking over these I was surprised to find that among other blunders, the officers had made a mistake of £10 against themselves; but I was soon relieved by finding that on the same page there was a mistake of 00l. against the County.

The Committee of Council addressed circulars to all the Magistrates. To these they state "but few answers were received, and their import generally negatived the imputation that any reasonable ground of complaint existed, and suggested no important improvement." I think the Jury will share the astonishment which I feel, that a body chargeable with the abuses which we have reviewed to-day, should have returned such answers; and it will not be much allayed, when I read to them the Note sent in by the worthy Commissioner for Bridewell. Mr. Roach says: "Sir, I am not aware of any dissatisfaction emanating from or among the Sessions of the Peace. Their Sessions have been conducted with great unanimity, and a most ardent desire to promote the public weal." Now, who ever suspected that there was any dissatisfaction emanating from or among the Sessions? The dissatisfaction proceeded from quite a different quarter—from the people who were injured by their neglect and corruption. All was calm and tranquil within the brick building, but the storm was raging fearfully without. They were crying peace—peace, in the Sessions, but in the community there was no peace. No doubt there was great unanimity and ease in the ancient Star Chamber, at the very time that the nation



it oppressed was shaken with distraction and alarm. But, adds Mr. Justice Roach, "As far as I have been made acquainted with the accounts of the County, under the controul of the Justices in Sessions, they have been readily understood, but I am sorry to say that the means for liquidating them have not been forthcoming. From the imperfection of our assessment laws, and from the refusal of Grand Juries to vote monies to meet the demands on the County, and a desire manifested by that body to bring the Magistrates into disrepute." Bring them into disrepute, I wish for his own sake that this worthy Commissioner was only entitled to our contempt. The Committee of conference "seemed willing to admit that the affairs of the Town were not conducted in a satisfactory manner, yet they declined to state what they conceived to be the cause of the evil, or to suggest any suitable remedy;" the Committee of Council had therefore "to form their own opinions from such materials and evidence as they have been able to collect:" Under the head of 'Magistracy generally,' they refer to the act of 1799, which compels 'all Magistrates' to attend a general or quarter sessions, to transact the "public concerns and regulate the important business of the County," under penalty of removal from office—and state that from the record of 5 years it appears that not more than *three* Justices have usually attended the *General Sessions* of the Peace in Halifax—frequently but *two*, and sometimes only *one*. This practice the law does not sanction, but "was passed for the express purpose of preventing it." From this it appears that Mr. Roach himself may sometimes have formed a *General Sessions* of the Peace, and then of course there "were no complaints emanating from or among" that immaculate

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body. "The Public Accounts do not appear to have been kept in that accurate and methodical manner so necessary to give general satisfaction. No clear views of public income and expenditure are exhibited. A person desirous of obtaining information upon one subject, must make a laborious search through complicated accounts of great variety and length, and perhaps through a series of years, and may at length discover the object of his search, in accounts where it could not be expected to be found. The Commissioners of Town Property have not kept their accounts in the manner contemplated by law. There was no rent roil. No separate account of Rents received and expenditures for repairs was exhibited to us, but numerous entries of this nature are promiscuously made in accounts signed by the County Treasurer. By these accounts we could not ascertain whether all Rents have been paid, or what sums are in arrears, or what accounts are outstanding for repairs." We have seen the evidence upon which the Magistrates acquitted the worthy Commissioner for Bridewell—let us now see what the Committee of Council think of that acquittal. They say, under this head, "the affairs of this establishment, and the imputation of mismanagement generally, and pointedly against one of the Commissioners, was made the subject of a special presentment by the Grand Jury. The sessions made inquiry into the circumstances, and transmitted to this Committee several affidavits relating to the subject, without expressing any opinion on them. The affidavits, and the papers connected therewith, are submitted. As the Magistrates have expressed no disapprobation of the conduct of a person united with them in the Commission of the Peace, and delegated by them to superintend the affairs of an important establish-

ment, the committee will refrain from stating any stronger opinion than an expression of their regret, that from the unsatisfactory manner in which the accounts were kept, and the affairs of the Bridewell conducted, the Grand Jury had grounds of complaint.

“ The accounts of the County Treasurer have been kept in so confused and irregular a manner as not only to justify the Grand Jury in their complaint against him, but even to subject the Court of Sessions to reproof for permitting an officer under their controul so long to continue the practice of making up his accounts in a manner so unsatisfactory, and so little calculated to show a clear state of the pecuniary affairs of the County.”

Here again, I feel that I could rest my case, but let me beg you to bear with me yet a little while. We have an important duty to perform—let us do it more faithfully than the magistrates have done theirs. Were I only concerned, I would not fatigue you further at this late hour, but the principles to be fixed by your verdict will be important to your children and to mine. While all the impressions which I have endeavoured to convey to your minds pressed strongly on my own, this letter came into my hands. And although it has since been voted a libel by the Sessions, and has formed the groundwork of that terrible indictment, I assure you it appeared to me a very innocent affair. I might have said there are some wild charges—some loose calculations here—but if this body will cover up corruption, if they will stifle inquiry, and brave censure year after year, why let the charge go to the public, and perhaps it may arouse them to do at the ninth hour what they ought to have done at the first.

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The letter commences with a quotation from Shakespeare :

“ There is no truth at all i’ the oracle,

The Sessions shall proceed—this is mere falsehood.”

And surely I could not have fancied that the Magistrates would vote Shakespeare a libel. There was one of his characters that might have looked a little personal, that of Mr. Justice Shallow, for some of their Worships are shallow enough. But where was Mr. Justice Deep ? That was a character that even the fruitful imagination of the inimitable Bard could not have conceived. Oh ! if the Commissioner for Bridewell, or the Magistrate that bore the Resolution of Tuesday, could have sat to the pride of Avon, then indeed we should have had Mr. Justice Deep, side by side with Shallow, and a precious pair of portraits they would have made. (Laughter.)

I have already said, that if the alledged Libel did not contain one word of truth—that if it killed half their worships, instead of merely exciting them, you could only try me by the motives and intentions by which I was influenced. The law infers malice from the publication itself, and it throws the onus of rebutting that inference on the party accused. To rebut it, he must do as I have done, explain the reasons for his conduct, and show that he was innocent from ignorance, or that some public exigency justified him in violating the strict rule of law. Have I not done so ? which of you, in my situation, would have dared to do otherwise ? If this doctrine of intention were not clearly recognized by the English law, and if the Jury were not made the exclusive judges of the circumstances which influenced the accused, there would be no safety for the Press, no freedom of discussion at

all. God forbid that I should attempt to set the Press above the law ; society should tolerate no privileged class that are not amenable to it. I endeavour so to perform my daily duties, that I could at any time come before a Jury and justify my conduct if required. If, influenced by hatred and malice, I publish matter, the tendency of which is injurious, and which is justified by no public necessity, let me be punished with the utmost rigor of the law ; but if in pursuing my lawful calling, I seek the public good, even if I commit an error of judgment, I have a right to protection from a Jury, and from a liberal construction of the law.

Starkie, an eminent authority on the Law of Libel, says " the occasion and circumstance of a communication may supply a qualified defence, dependant on the actual intention to injure. The constituting a large and extensive barrier for the legal protection and immunity of those who act bona fide and sincerely according to the occasion and circumstances in which they are placed, is not only just in a moral part of view, and advisable as a measure of policy, but is absolutely necessary for the purposes of civil Society. Were the more probable effect and tendency of a publication to be the criterion of guilt, without reference to the real motive of the author and the occasion and circumstance under which he acted, the rule would be far too exclusive for the convenience of mankind, and the evil resulting from the publication would greatly outweigh the opposite advantages to be derived from it. It is indeed very possible that a party, actuated by the very best intentions, may propagate erroneous notions, but so long as he urges these opinions bona fide believing them to be just, and intending to do good, his errors are not likely to prevail against the better sense and judgment of mankind to a very serious and prejudicial extent ; and the continual and casual publication of erroneous opinions cannot be placed in competition with the splendid advantages which flow from permitting full and fair discussion on every subject of interest to mankind, as connected with re-

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igion, politics, philosophy, and morals. The security of the public in this respect is amply provided for by distinguishing between that which is published with a sincere and honest though unsuccessful intention to do right, and malicious attempts to injure society in general, or individuals in particular, by profane blasphemies, seditious, or defamatory communications."

And again he says, "in reference to the criminal, as well as the civil branch of the subject, the occasion and circumstances of the communication may furnish either an absolute and peremptory bar to criminal responsibility, or a qualified one, dependant on the particular motive and intention with which the party was actuated in making such communication." "The advantages of free and unrestricted communication on all political subjects is great and reciprocal; if the people have thus an opportunity of forming and expressing their opinions on public measures, those who administer affairs have also the means afforded them of becoming acquainted with the disposition, sentiments and wishes of the people; of availing themselves of beneficial and useful suggestions, of affording explanation and redress where complaints are well founded; in short of securing that esteem, respect and confidence, on the part of the people, which are essential to an useful and vigorous administration." "Where" says he "the willful act of publishing defamatory matter derives no excuse or qualification from collateral circumstances, none can arise from consideration that the author of the mischief was not actuated by any deliberate and malicious intention to injure, beyond that which is necessarily to be inferred from the act itself." This is reasonable and right—and if I had published that letter, while no complaints prevailed against the Sessions—it I willfully sent such a charge abroad, having no good ground for believing that it was true, and that investigation was necessary, then would I have grossly overstepped the line of my duty, and subjected myself to the penalties of the law. But, says Starkie, "the liberty of the Press, and rational freedom of public discussion, are the real bolts and bars by which alone depredators on the religious and political rights of society are to be shut out, and the interests of the

community preserved. To destroy these would be, in a political sense, to sleep with the doors unbolted, without the poor consolation of being able to hang the thief."

In the trial of Perry, the Attorney General, in his opening to the Jury, observed, " From the Bench you will hear laid down from the most respectable authority, the law which you are to apply to those facts. The right of every man to represent what he may conceive to be an abuse or grievance to the Government of the Country, if his intention in so doing be honest, and the statement made upon fair and open grounds, can never for a moment be questioned. I shall never think it my duty to prosecute any person for writing, printing and publishing, fair and candid opinions on the system of the Government and constitution of the Country, nor for pointing out what he may honestly conceive to be grievances, nor for proposing legal means of redress." It has often been thought strange that truth should be a libel, but it is very reasonable notwithstanding. If a man throws a cup of coffee in his wife's face, and I publish that in a Newspaper—though it may be true, yet is it libellous—because there is no public end to be served, and I have no right to invade the sanctity of private life.

Erskine, through whose exertions the declaratory Act was passed, confirming the right of Juries to decide on the law and the facts, and whose views of the true bearing of the law of libel are now generally recognized, says in his defence of the Dean of St. Asaph: " I come now to a point very material for your consideration; on which even my learned friend and I, who are brought here for the express purpose of disagreeing in every thing, can avow no difference of opinion, on which judges of old and of modern times, and lawyers of all interests and parties, have ever agreed; namely that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the Jury, saw reason to believe that it was not published by the Dean with a criminal intention. It is true, that if a paper, containing seditious and libellous matter, be published, the publisher is *prima facie* guilty of sedition, the bad intention being a le-

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gal inference from the act of publishing ; but it is equally true, that he may rebut that inference by showing that he published it innocently." Have I not in this case utterly demolished the legal inference ? And again, says Erskine, in the language of all the law books, " the hostile mind is the crime which you are to decypher." Has my mind been hostile ? Where is the proof of malice ?

Sir James Mackintosh, in his defence of Peltier, says :—" A Jury must be convinced before they find a man guilty of libel that his intention was to libel—not to state facts which he believed to be true : or reasonings which he thought just." Ho further declares, that " This is the only offence where severe and frequent punishments not only intimidate the innocent, but deter men from meritorious acts, and from rendering the most important services to their country—they indispose and disqualify men from the most important duties which they owe to mankind. To inform the public on the conduct of those who administer public affairs, requires courage and conscious security. It is always an invidious and obnoxious office, but it is often the most necessary of all public duties. If it is not done boldly it cannot be done effectually ; and it is not from writers trembling under the uplifted scourge, that we are to hope for it."

There is a passage in Curran's defence of Hamilton Rowan, that applies so strongly to this case, that I may be pardoned for quoting it :—" and here, gentlemen, I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of reform, at a moment when that necessity seems admitted by the Parliament itself ; that this same unhappy reform shall at the same moment be a subject of legislative discussion and criminal prosecution. Who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information.' I will not declaim, Gentlemen, on the value of free discussion—but I will trouble you on this head with one other extract from this speech of the Irish Orator ; after alluding to the effects of the penal statutes, he asks—" what then remains ? Only the



liberty of the Press, that sacred palladium, which, no influence, no power, no minister, no government, which nothing but the depravity, or folly, or corruption of a jury, can ever destroy. And what calamity are the people saved from, by having a public communication left open to them? I will tell you, gentlemen, what they are saved from; I will tell you also, to what both are exposed by shutting up that communication. In one case sedition speaks aloud, and walks abroad; the demagogue [doubtless the Sessions believe me to be one] goes forth, the public eye is upon him, he frets his busy hour upon the stage; but soon, either weariness, or bribe, or punishment, or disappointment, bear him down or drive him off and he appears no more. In the other case, how does the work of sedition go forward? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion of even individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints; even the person of the despot is never there in safety. Neither the fears of the despot, nor the machinations of the slave, have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both; the decisive instant is precipitated without warning, by folly on one side, or by phrenzy on the other, and there is no notice of the treason till the traitor acts."

In looking into Hone's trials, I was amused with a verse or two of one of his parodies, to the sentiments of which, after the labors of the day, I think we shall all respond:—

“From Taxes Assessed, now raised at a nod,  
While Inspectors rule o'er us with their iron rod,  
And expect homage paid them like some demi-god,  
Good Lord, deliver us!

From a Workhouse where hunger and poverty rage,

And distinction's a stranger to birth, sex or age;  
Lame and Blind, all must work, or be coop'd in a  
cage,

Good Lord, deliver us !

From six in a bed in those mansions of woe,  
Where nothing but beards, nails, and vermin do  
grow,

And from picking of Oakum in cellars below,

Good Lord, deliver us !

From Stickings of Beef, old, wither'd and tough,  
Bread, like Saw-dust and Bran, and of that not  
enough,

And scarcely a rag to cover our Buff,

Good Lord, deliver us !

The word Oakum reminds me of some other luxuries which may be enjoyed by Commissioners, in virtue of the patronage they possess. But I will not explore the recesses of the Oakum Rooms—they have not spared me, but I shall be magnanimous, and have some mercy upon them.

I had marked many other passages, expressive of the opinions entertained by the most eminent British authorities, of the services rendered by the Press, and the benefits of free discussion. I had also prepared many references illustrative of those principles of law which I have already stated, and which show with how much care the Press has been protected by the spirit and practice of the law in modern times. But night is closing upon us, and I have already trespassed largely on your patience; I shall therefore conclude with a brief notice of the case of the King vs. Reeves; on an ex-officio information, for a libel on the Constitution:

“The Attorney-General, in his opening, stated that this information had been filed by him by the direction of His Majesty, in consequence of an address of the House of Commons to him for that purpose. The House had resolved it to be a malicious, scandalous and seditious libel, tending to create jealousies and divisions amongst His Majesty's liege subjects, and to alienate the affections of the people of this country

from the Constitution ; pursuing this resolution, charged the Defendant with an intention to cause it to be believed that the regal power and government of this realm might, consistently with the freedom of this realm as by law established, be carried on in all its functions, though no Parliaments were holden ; and the fourth count stated that it was done with intent to bring the power of the two Houses of Parliament into contempt. The question for the opinion of the Jury, he said, was whether the Defendant had published this book with the criminal intention charged in the information. If, on reading the whole of the pamphlet, the Jury should be of that opinion, it was their duty to find the Defendant guilty ; but if, on the other hand, they should think that this was a mistaken execution of a good purpose, the Defendant was entitled to an acquittal. He did not call for a verdict upon an inaccurate expression or ill-considered argument, if used with a good purpose.

“ *Plummer*, for the Defendant, argued the merits of the pamphlet at considerable length, contending that the book was published for a good purpose to counteract republican principles, and that the defendant was worthy of praise, and not of censure, for the publication.

“ The Attorney-General replied.

“ Lord Kenyon said that the power of free discussion was the right of every subject of this country. It was a right to the fair exercise of which we are indebted more than to any other that was ever claimed by Englishmen. All the blessings we at present enjoy might be ascribed to it. It opened the way for the Reformation, and afterwards for the Revolution, and by its means were men emancipated from religious slavery in the one case, and the tyranny of the Stuarts in the other. When right was abused and excrescences arose, they might be lopped off, but at the same time, in a free country like ours, the productions of a political author should not be too hardly dealt with. In this country a Defendant could never be crushed by the name of his prosecutor, however great that name might be : this was not the first prosecution commenced under the direction of the House of Commons which had failed. In the *King v. Stockdale*

the House of Commons were also the prosecutors, but the Defendant in that case was not weighed down by the weight of the prosecution, nor did the Jury hold themselves bound to find the publication a libel because the House of Commons had voted it to be such. The Jury were in that case advised to read the whole of the book, and from the whole taken together to decide on the delinquency or innocence of the Defendant. Although the Jury are to form their judgment upon the particular passage stated in the information, they may compare that with the whole book, and see how it is qualified by it.

“The Jury were out a considerable time, and afterwards returned to the bar and said that they were of opinion that the pamphlet was highly improper; but nevertheless, thought that the Defendant was not actuated by a bad motive, and therefore found him not guilty. —Lord Kenyon said he approved of the verdict.”

Here then you see, Gentlemen, that the whole gist of the offence was the defendant's intention, and you see the doctrine admitted in its fullest extent by the Crown Officer, the Judge and the Jury. You see also the noble spirit of independence, the firm and unbending integrity, which distinguish an English Court of Justice. There an innocent man was protected by the law against the whole power of the House of Commons, as your verdict will protect me to day against the persecution of the Sessions. Without this doctrine of intention, the Law, instead of being the parental guardian of the Press, protecting its lawful acts, and checking its abuses, would be a tyrant binding it with chains.

It has been said by the eloquent Mackintosh, “that an English Jury is the most refreshing prospect that the eye of accused innocence ever met in a human tribunal;” I feel this day that the sentiment is just. An English Jury will do justice to the poorest wretch on earth, though menaced by the proudest oppressor. The victim may be bound, and prepared for sacrifice, but an English Jury will cast around him the impenetrable shield of the British law. Gentlemen, I feel that your verdict will rescue me from the perils with which I have been environed. You will not deliver

me over to the tender mercies of the Sessions. You will tell these jobbing Justices that they should have come into Court with clean hands; that they should have "set their house in order"—their Poor House and their Workhouse, before they came to claim a verdict to repair their rotten reputations. You will not send me to serve the Commissioner of Bridewell, nor permit them to make me the first tenant of the Stocks they erected in the market place, but never have used.

I thought of gathering from the Newspaper files the various attacks that have been made from time to time upon the Sessions and their Officers, in order to exhibit to you the gradual swelling of this volume of abuse of which their Worships complain. The task would have been an amusing one, and although it would prove that my persecutors had been for years deaf to the complaints of the community, and had only become suddenly sensitive, when they thought the whole might be answered by a Bill of Indictment, the process would have been tedious, and I have already taken up too much of your time.

Gentlemen, I have thus gone over the facts that rested on my mind at the time I published the alleged Libel—I have shown the bearing and depth of the impressions they made; and have, I trust, convinced you, of the entire absence of any malicious motive. I have also stated to you what I believe to be the sound and rational construction of the English Law—and I have read to you the eulogiums which Britons on the other side of the Atlantic have passed on the value of the Press. I now put it to you—whether you will not, as an English Jury would, take all the circumstances of the case into consideration to rebut the legal inference of malice; and I ask you, if you will not extend to the Press of your country, the same rational protection which the British Press enjoys? Can you err, in following the example of that country, which has been so long the home of liberty—whose noble Institutions have been the fruits of free discussion, and under whose banner and whose laws we are now assembled? I do not ask you to set the Press above that Law which Coke calls, 'the perfection of reason;' but I ask you to cleanse me in that wholesome stream of British au-

thorities revered at home, and imparting its benevolent and invigorating influence to the most distant portions of the Empire.

Will you, my countrymen, the descendants of these men, warmed by their blood—inheriting their language—and having the principles for which they struggled, confided to your care, allow them to be violated in your hands? Will you permit the sacred fire of liberty, brought by your fathers from the venerable temples of Britain, to be quenched and trodden out on the simple altars they have raised? Your verdict will be the most important in its consequences, ever delivered before this tribunal; and I conjure you to judge me by the principles of English law—and to leave an unshackled Press as a legacy to your children. You remember the Press in your hours of conviviality and mirth—Oh! do not desert it in this its day of trial.

If for a moment I could fancy that your verdict would stain me with crime, cramp my resources by fines, and cast my body into prison, even then I would endeavour to seek else where for consolation and support. Even then I would not desert my principles, nor abandon that path that the generous impulses of youth selected, and which my riper judgment sanctions and approves. I would toil on, and hope for better times—till the principles of British liberty and British law, had become more generally diffused, and had forced their way into the hearts of my countrymen. In the mean time I would endeavour to guard their interests—to protect their liberties; and while Providence lent me health and strength, the independence of the Press should never be violated in my hands. Nor is there a living thing beneath my roof that would not aid me in this struggle: the wife who sits by my fire side—the children who play around my hearth—

the orphan boys in my office, whom it is my pride and pleasure to instruct from day to day in the obligations they owe to their profession and their country, would never suffer the Press to be wounded through my side. We would wear the coarsest raiment—we would eat the poorest food; and crawl at night into the veriest hovel in the land, to rest our weary limbs but cheerful and undaunted hearts; and these jobbing Justices would feel, that one frugal and united family could withstand their persecution—defy their power—and maintain the freedom of the Press. Yes, gentlemen, come what will, while I live, Nova Scotia shall have the blessing of an open and unshackled Press. But you will not put me to such straits as these; you will send me home to the bosom of my family, with my conduct sanctioned and approved—your verdict will engraft upon our soil those invaluable principles that are our best security and defence.

Your verdict will, I trust, go far towards curing many of the evils which we have been compelled to review. Were you to condemn me, these men would say there is no truth in those charges, there is nothing wrong, and matters would continue in the old beaten track. If you acquit me, as I trust you will, they must form themselves into a Court of inquiry for self-reformation; they must drive out from among them those men who bring disgrace on their ranks, and mischief on the community in which they reside. But, Gentlemen, I fearlessly consign myself, and what is of more consequence, your country's Press, into your hands. I do not ask for the impunity which the American Press enjoys, though its greater latitude is defended by the opinions of Chancellor Kent; but give me what a British subject has a right to claim, impartial justice, administered by those principles of the Eng-

lish law that our forefather's fixed and have bequeathed. Let not the sons of the Rebels look across the border to the sons of the Loyalists, and reproach them that their Press is not free.

If I wished to be tried by your sympathies, I might safely appeal to you, who have known me from my childhood, and ask if you ever found malice in my heart, or sedition in my hands? My public life is before you; and I know you will believe me when I say, that when I sit down in solitude to the labors of my profession, the only questions I ask myself are, What is right? What is just? What is for the public good? I am of no party; but I hold that when I am performing my duty to the country, I am sincerely doing that which I engaged to do when I took the Press into my hands. You will hear the Attorney General close this case on the part of the Crown, but do not allow yourselves to be won by his eloquence from the plain facts and simple principles I have stated. I must, however, do that gentleman the justice to acknowledge, that in the conduct of this prosecution, I have received nothing but courtesy at his hands. As an Officer of the Crown he is bound to perform this public duty, but I well know that persecutions of the Press are little to his taste. When urged at times by members of the Assembly, over which in his capacity of Speaker, he presides, to resent attacks made on that body in *The Novascotian*, his answer has invariably been—No! let the Press alone, if we cannot stand against its assaults, we deserve to fall. That, I doubt not, would have been his advice to the Magistrates had they deigned to consult him. But Oh! had I his powers of oratory, how I could have set this case before you!



" Were I Brutus,  
 And Brutus Anthony, there were an Anthony  
 That should move the very stones,"

not of Halifax to mutiny and sedition, but the broken stones in Bridewell to laughter and to scorn. The light of his penetrating intellect would have revealed the darkest recesses of municipal corruption ; and with the hand of a master, he would have sketched the portraits of these jobbing Justices, and hanging them around the walls of Bridewell, would have damned them to imperishable renown.

To the gentlemen of the Bar, who surround me; my thanks are also due. They have sympathized with the Press in this its day of persecution ; they have sent me books, and volunteered assistance ; and although the Press sometimes bears upon them, those who are and will be the brightest ornaments of the Profession, have been most forward in endeavoring to sustain it. Their studies teach them the value of the discussion—they know the obligations which Englishmen owe to the Press ; and they well know, that as the securities of life and property were strengthened by its influence, so would they be destroyed beneath its ruins.

Gentlemen, I must apologize for the time which I have occupied, and for the errors and imperfections of this defence. But I now leave it in your hands, confident that you will discharge your duty and do me justice. I have never shrunk from responsibility, and I will again remind you that I would rather be cast into a prison for years, than meet you in after life, to reproach me with having misled you this day by false statements of fact or of law. I have not done so, and I feel that I am entitled to your verdict. The Press has constantly vindicated and maintained the independence of

Juries—English Juries have been the steady friends and protectors of the Press ; and I now commit myself and the Press of Nova Scotia to your keeping, asking only for Justice sanctioned by English Law.

[The delivery of this Speech occupied about six hours and a quarter. The Defendant was frequently interrupted by expressions of popular feeling. The Attorney General rose to reply, but was interrupted by the Chief Justice, who said, that as the hour was late, and the Jury had been confined so long, it would be better to adjourn the Court. Mr. Murdoch remonstrated—Mr. Howe, he believed, had brought his defence to a close much sooner than intended, in order to avoid the necessity of adjourning the trial. It would be unfair, therefore, to allow the other side the advantage of the night to reconstruct their case. Mr. Howe begged the Court to believe that he did not wish to shut out any thing that could shake his statements—all he wished was to have the matter off his mind. The Jury were consulted, and the Foreman expressed their wish to remain—it was therefore determined to do so, but the crowd and the excitement being so great, and the difficulty of preserving order evident, His Lordship adjourned the Court. On Tuesday morning the trial proceeded.]

The ATTORNEY GENERAL then rose, and spoke as follows :

*My Lords, and Gentlemen of the Jury,*

In calling your attention to this case, I will endeavour to divest it of the amazing importance which has been thrown round it, and bring it down to these plain rules of law by which alone it must be decided ; and I trust that you have come here this morning, as I have, disposed to give it a cool and dispassionate consideration. One would suppose, from the vast assemblage around us, and from the feeling manifested, that this was a novel proceeding in Courts of Justice, and that some out-

rage on the rights of parties was about to be committed. But there is no such thing—we have to deal with a plain question brought before us by the ordinary modes of proceeding, and to be defined by the rules of law. I will not attempt to travel over the defence made by the defendant in this cause—I am sorry to meet him here. He is a personal friend—but the feelings of friendship which I entertain for him will not prevent me from doing my duty. Indeed feelings of all kinds ought to be dismissed from your breasts and from mine, for they have been well described by an eminent authority to be the “quicksands of the law ;” for nothing but the cool operations of the mind, influenced only by evidence, and the plain principles of the common law, can be effectual in keeping the peace of society.

It has been said, and I have seen it published in the Newspapers, that when the Magistrates read their Resolution to the Court, their Lordships referred them to me as their Counsel, to direct them to the object of their wishes. I beg to state that I am acting here as the Officer of the Crown. I am not the retained Counsel of these parties, if it had not been for the situation I held, I might have been ; my learned friends who have conducted this case are their Counsel ; I have no interest in the matter, I had no wish to interfere ; but placed as I am at the head of the criminal law of the country, and called on in my official capacity, I should be wanting in my duty if I did not state those rules and principles which the wisdom of our ancestors has considered essential to the public peace. If the peace of society is broken, who are to repair it ? Not the Press, that is not the tribunal, but the Officers of the Crown, the Courts and Juries—therefore it is that those in authority ought to

speaking the sentiments of the law, that those things may be suppressed which would lead to breaches of the peace, and to every man becoming his own avenger.

The defendant in this cause has had every opportunity of stating his case, as I trust, while I hold the office of Attorney General, every man similarly accused, will have. He was under a misapprehension, however, when he supposed that an *ex officio* Information could not have been filed, but upon the oaths of the parties charged, negating the truth of the charge, I could have proceeded by that mode, but I have never been inclined to ride upon the prerogative of the Crown, and I therefore laid the matter before the Grand Inquest of the county. I never shrink from my duty, but seek to perform it in accordance with the established forms of the constitution. One gentleman named the other course to me, but I said no—I will proceed by the fairer mode of indictment. I am proud that the defendant has done me justice in this respect. A copy of the bill of indictment was furnished to him, and he has had liberty to defend himself—and in doing so, he has stated a great variety of things which could not be evidence, which are mere hearsay, and which the Court would not have permitted Counsel to use. I am glad however that he has had every facility for making his defence.

As something has been said about the mode in which the Magistrates have sought redress, I must inform you that no private action would lie upon the publication. When an individual is slandered, he can bring his private action, and claim his damages, and the public peace is not concerned or considered in that mode of trial. In that case the defendant, if he can prove the truth of the publi-

cation, is acquitted, because the law will not permit a party to come into Court and make money by his reputation. That is not the law as respects public bodies. It does not allow the defendant to escape in this way. Let it not be said that because there may be a feeling against one or two individuals in the Magistracy, that any body is at liberty to charge them all. Some of the feeling and excitement which is now abroad may have arisen from charges made by the Grand Jury, and an opinion entertained that they have not been supported against such charges. But if they could have joined in a private action, the justification must have been as broad as the slander, because if it were not, it would have failed. When we turn to the law, and as the defendant has said—God forbid that he should be above it, or below it either—I trust I shall convince him that he has brought himself within its range. That law by virtue of which you sit here, and by which their Lordships preside in this Court—that wholesome stream of the Common Law which runs over even this remote portion of His Majesty's dominions, and in the language of the defendant, purifies and invigorates the country; this is the Law, the rule of conduct, by which he prays to be judged, and I wish to administer to him no other.

Let me now turn your attention to that Law by which the Defendant himself wishes to be judged, that best inheritance from our ancestors, the Common Law of England, by which our rights and liberties are preserved inviolate. The freedom of a British subject consists in personal liberty, personal security, and private property. The person of every man is preserved from violence, and with the protection of personal rights that of reputation has always been considered sacred by our

Law ; no man by nature, independent of any municipal Law, had a right over another, neither had he any right over his reputation : the Common Law early took notice of libel and slander ; all nations whose laws are in any way regarded by the Law of England, classed those offences among crimes against the public peace. The Common Law Courts early took cognizance of them, and punished the offender by fine and imprisonment. The punishment of a Libel is as antient as any part of the Criminal Law, and the rules respecting it are to be collected from those antient writers who describe to us the crimes of murder, arson, burglary, larceny, robbery, and other Common Law felonies. There is no positive enactment it is true, defining Libel ; neither is there any such regarding other Common Law crimes and offences ; it is unnecessary for the Law of the Land to speak where the Law of Nature and the ordinary sense of mankind have plainly spoken before. You have seen me, as Attorney General, in important criminal cases where life has been forfeited, appeal to the general authorities for the Law to guide Juries, as I must now appeal to them as regards this offence.

One of the first objects of the Law is to withdraw from the injured the redress of their own grievances, and to administer equity and justice by the wisdom and discretion of those set apart for this important duty ; but the direct tendency of libel, whether true or false, is to excite tumult and lead to private revenge ; and as no man has a natural right over the person or reputation of others, so no man has the power by himself of administering justice by arraiguing, trying, and condemning others, should they even seem to him to do wrong. The Common Law places under its protection the reputation as well as the person, and to insure the

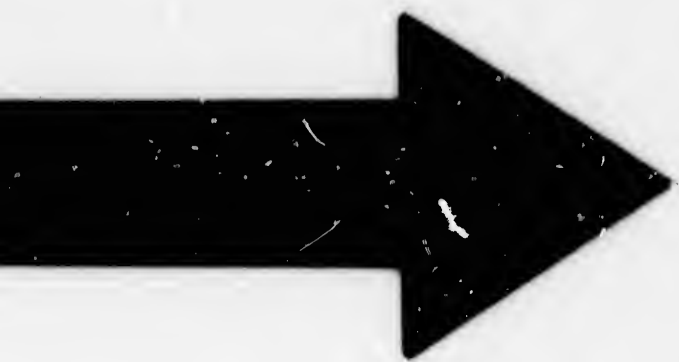
peace of society, ties up the hands of some, and pens of others. The celebrated Hawkins considers libels reflecting on persons charged with the administration of the Law, as of great enormity, tending not only like all others to breaches of the peace, but likewise to encourage insubordination to those in authority. Lord Camden considered it the particular duty of Juries to set their faces against such Libels ; invective, and the assigning of bad motives, can evidently answer no good purpose, such conduct cannot be justified towards private individuals, and Society should communicate something of its sacredness to those in office. Let us then examine the effect of Libel upon the public peace, which it is the first object of Law to preserve. The generality of men are more disposed to resent a contemptuous word than an unjust action. Those who endeavour to dishonor us by words are objects of more violent resentment, and more implacable resentment, than the authors of all other injuries ; it is said that in ancient times there was slander, but Libel was not the offence of an illiterate age ; and if there were few prosecutions, it was because a more summary punishment was inflicted by the sword of the injured. The best of mankind have ever been highly sensitive, and alive to injuries of reputation, and public tranquility demands that the retaliation for offences of this nature should be wrested from the hand of the injured, because anger, which is ever ready to swell into furious passion and prompt to immediate vengeance, will lead the sufferer not only to magnify the wrong, but greatly to mistake the remedy. Experience has taught us that all rules for the government of man are ineffectual in altering human nature, although much may be done, and much has been done to withdraw retaliation from the hand of the injured, and to

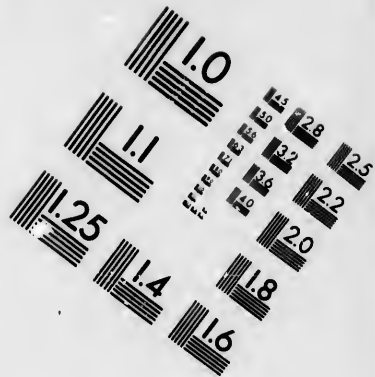
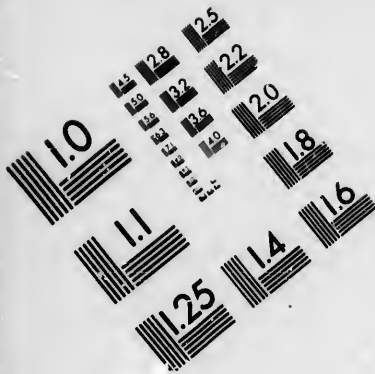
allow him the option of avoiding its exactions—cases particularly which affect reputation, have been considered by men of high honorable feelings, and otherwise of great humanity, as denying them this alternative, and demanding that they shall vindicate themselves. Some are not satisfied that a Court and Jury should hear their appeal, and that the slow process of the law should be interposed for their protection ; the best feelings of human nature will not endure this species of insult ; feelings which no regulations, however framed, have yet been effectual in restraining ; and although the law may demand forbearance, yet we have frequently seen that in an unguarded moment the injured has stood forth as his own avenger, and called for a trespass on the law by seeking the life of the offender at the risk of his own. The due administration of the law is alone capable in a great degree of repressing this feeling, but it is not to be expected that those original principles will ever be wholly eradicated, or that law and custom will ever successfully interpose any compensation which will in all cases be accepted in the place of personal vengeance ; knowing the disposition of mankind, the Law therefore watches over the beginnings of mischief, and the punishment of libel was ordained as a means of maintaining the public peace.

I will not turn again to the libel in the indictment, except for a moment to point out the most offensive passages, (here the Attorney General read the part which charged over exactions, and taking large sums of money from the pockets of the community, by those placed in authority over them.) This he said was the charge of a crime of no ordinary character, a charge of abusing the office they were appointed and sworn to administer, to put money into their own pockets ; he had heard

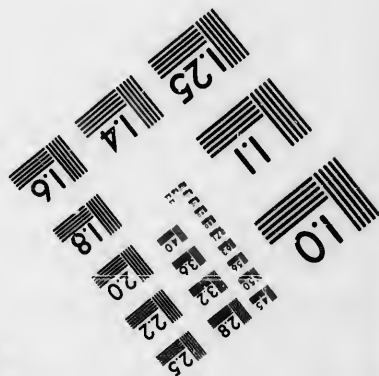
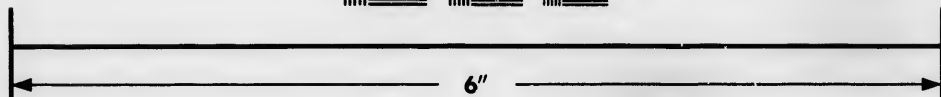
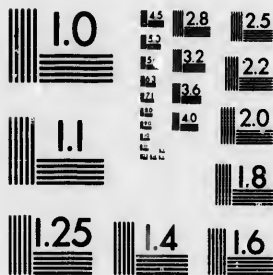








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much from the defendant by way of charge against some, sufficient was it for him to say it was assertion without proof ; if the nature of the charge would have allowed of a private prosecution, the defendant would then have been obliged to put his justification upon the record, and to prove the truth of it by witnesses placed in the Box, and examined on oath, not by hearsay, nor even by the report of a Committee of H. M. Council. The investigation by them might be a proper step to see if there were not errors in this system the Magistrates were called upon to administer, but thank God the reputation of no man can be tried except in the face of the country ; neither a report from the Council Chamber, nor from any other body, could be received in evidence for any such purpose in this court. Had the circumstances stated by the defendant against some of the Magistrates been brought to the notice of this Court by affidavit, and not denied in the same solemn manner, I should have felt it my duty to have filed an Information, and enquired into the truth of the matter charged ; but in the present prosecution, you must consider it mere assertion without legal proof. The libel is not as we are informed an editorial, it is not written by the defendant ; if the charges against the Magistracy were thus broadly to be made, why did the writer shrink from his work, why falsify himself under a borrowed name, and become a coward in his crime. (Here the Defendant interrupted the Attorney General, and stated, that he had full permission to give up the author whenever he pleased—but contrary to the practice in all such cases, the name had never been demanded. This declaration elicited a round of applause, which having been promptly suppressed by the Court, Mr. Archibald continued,) although that was true,

had the author been given up, he would not have proceeded against the publisher. Having said so much on the law of libel, allow me to say a few words upon what is erroneously understood to be the liberty of the Press. There is no question of greater importance in a free country than the liberty of the Press; and within its legitimate bounds, I should be the last to interfere with its operations. The advantages which mankind have derived from the use of the press have excited a feeling in its favour not easily to be overcome in a free government—it was the great means of diffusing that knowledge which before existed only in masses, in Schools, and Universities, and making it the common atmosphere to be breathed by all; moral and religious knowledge, and the principles of liberty, were circulated by it. The term free press however is to be understood with its limitations, as this great engine of human invention may otherwise be as dangerous in its abuse, as it is beneficial in its use; that term was applied to the press in opposition to the licensing and shackling which it underwent in former times. The rulers of the continent seized upon this valuable invention as a sort of royal franchise, and enslaved and controlled it by limitations unknown to the Laws of England. Our law thus defines it, as the personal liberty of the person who uses it to express his thoughts in the more improved way, thus invented by human ingenuity, leaving him always liable for any infringement of the privileges of others; it was a new power, but no new right; and security of reputation was not abridged by this new discovery; the liability of punishment which that law imposed was not, on the one hand abridged, nor was any new right or privilege granted to those who might use the press. Free discussion, although

enlarged by the use of the press, was confined to the same legitimate bounds, as respected the rights of others ; that which if written and published in the streets or stuck upon a corner, and which was in its nature a libel, would be not the less so, when published in the columns of a newspaper—what a man has a right to think and speak he has a consequent right to print and to publish, but no man has a right by the common law to speak and publish what is injurious in a high degree to others; no man has a right of accusation, trial, and judgment ; so likewise no man has a right to publish, true or false, in the press or otherwise, that which a regard to the public peace and the rights of society prohibit. He who cannot justify slander written of me in his individual character, cannot return into the first person plural behind his press, and do the same thing with impunity ; the individual wrong doer is not lost sight of by the law in the plural of the press.

Let me now remark upon the intention of the defendant in this publication ; he has defended himself with the exercise of that clear mind, and sound understanding, which he possesses in so high a degree, but I cannot allow him the range he has taken for the proof of intention. The intention of the writer is to be gathered from the libel written, and for that purpose he may call for the reading of every part of it, although not set forth in the indictment ; and if it be a book, or pamphlet written as a review of the works of others, or for any other purpose, he may read passages from the general work to prove *quo animo* it was written ; but to allow evidence of intention to be given in any other way is unknown to the law ; the extenuating evidence is confined to the proof that it is a report of a trial or a speech in parliament, or the like ; but except in such

cases the writer must be judged by what he has written, and to have done the act with the intention which the ordinary sense of a jury put upon the work ; so clear is this reasoning that I should not despair, from the correct views which the defendant is capable of taking of this point, and notwithstanding his splendid defence, were he in your box to persuade him to convict himself.

This libel runs against all who have been in office for the last 30 years ; many of them, men of high honor, laboured hard for the good of this community, and have gone to their final account, leaving an unsullied reputation behind them, now for the first time called in question. Many now alive have given up their time to the public without reward, but all are included in one general charge, without any evidence being given against any one. It required the reading of the defendant to select from this " sacred band " of robbers those who are to come under the saving clause. The defendant has read out his venerable Father as one, he need not have done so, his unsullied reputation would never have left him obnoxious to any such charge. I readily assent to all that has been said by a son of a father who is an honor to him. I am proud to call him my friend, he was among my most early acquaintances in this town, and I have never ceased to esteem him, but might he not have returned to this band and handed out others ? [Here he read over the names of several of the Magistrates ] Men whose reputation has never been sullied ; and if angry feeling against one or two was the ground of this proceeding, why not have named them, and allowed them to justify themselves by putting him to the proof of the assertions ; but in this case, even to those aimed at there is no proof, while all who are charged with



keeping the public peace, are included in one libellous attack. Gentlemen, it is with you, under the law of the land, to pronounce upon this publication, and be careful that your verdict be not the occasion of greater mischief ; that you do not open the flood gates of libelling, and lead parties to avenge themselves, and thereby to bring about all the mischief the Common Law intended to prevent. I have stated the view which I think it my duty to take of this publication, and having discharged my duty, I leave the case with you.

His Lordship CHIEF JUSTICE HALLIBURTON, then delivered the following charge :

*Gentlemen of the Jury,*

This is an indictment preferred in the name of the King against Joseph Howe, and it is the duty of the Court to state to you what the law is by which the case is governed. This duty is, perhaps, rendered more imperative by the novelty of the proceeding in our Courts, and by the erroneous views which are often entertained of the law of libel. It has been truly said, that nothing has been more libeled than the law of libel itself. There are three modes by which parties may seek redress, and by which society is protected against the consequences of slanderous and improper accusations : by Bill of Indictment, ex-officio Information, or by an action on the case, instituted by a private party for the damage which his character may have sustained.

The law of libel, like the rest of the Common Law of England, is founded in reason—and if a private party comes into Court for damages to repair his reputation, he must shew that he had one to lose, and that he has in reality been injured. He must not come here to make money of his character—and, therefore, the Defendant can put in his plea of justification, and set out that the

charges were true ; and if he can satisfy the Jury that they were, the plaintiff goes without damages—because none have been sustained. An Information may also be filed at the instance of a private person for the vindication of his character—upon his own affidavit that the charges are slanderous and untrue. So careful is the law of the right of reputation—it assumes that nothing can be more valuable to man than his character, and, therefore, it provides this easy mode by which a man may come into Court and vindicate himself from slanderous imputations. On the other hand, the party opposed may come in and prove that the charges are true, and if he does, the prosecutor loses his action, because it is incumbent upon him to prove that he is an injured man.

When we proceed in the other way we throw the party entirely out of the question. The Magistrates are not known here. The defendant stands charged at the suit of the King—he has defended himself with the warmth and animation natural to the situation in which he was placed—and he has had a wide scope allowed, in stating to the Jury such things as he conceived material to his defence. Where parties undertake to plead their own cause, they are usually allowed a greater latitude than their Counsel would be permitted to take. But as respects the Magistrates we have them not here. Your verdict will not condemn or acquit them. A charge of libel has been made, but it comes to us from the Grand Inquest of the County. In bringing this case before the Court, the Attorney General had two courses open to him—either of which he was at liberty to take. He could proceed either by Information or indictment. A private party may have his information, but then he must come into Court and

swear that the charges are false. He must satisfy the Court that it is libellous matter of which he complains. But in a criminal action we have nothing to do with the truth—we are only bound to protect the public peace.

The other form of Information is directed to this object as well as the Indictment. The Attorney General is entitled to file his Information ex officio, and over this the Court has no controul. He is wisely clothed with this authority, because in times of great public excitement it may be necessary to check disorders promptly, and yet extremely difficult to get a Grand Jury to find a Bill. The Attorney General, of course, in using this mode, is responsible for the exercise of his judgment—for the abuse of his power. A private applicant is bound to negative the imputations—the Attorney General is bound to exercise a sound discretion. The other course is to go before the Grand Inquest, and submit the libellous matter in a Bill of Indictment—and if they should be of opinion that it was not libellous—if they did not think that it was calculated to have a mischievous tendency, then of course they would not find the Bill.

Under these circumstances the party charged in this Indictment has been brought here. The law under which he has been arraigned is founded in reason, and common sense and justice. As individuals are liable to commit offences against society, the Courts have been appointed to try such offenders. It is not in the columns of a newspaper that they are to be tried and condemned. And if instead of parties preferring their accusations and seeking redress before the proper tribunals, they choose to scatter abroad charges and suspicions, under circumstances which induce a Grand

Jury to find a Bill, they have a right to be brought here; and we are to try whether the matter charged was calculated to disturb the public peace, and to incense and degrade the parties at whom it was aimed. With this investigation we are now engaged, and by your verdict the character of the Magistrates will neither be improved nor injured—the King is the prosecutor here, and all you have to determine is whether these charges are libellous, and whether or not they are calculated to disturb the peace.

It would be difficult to say that this letter does not contain a serious reflection upon the Magistrates of Halifax. Although it is my duty to instruct you as to the true bearings of the law—and to tell you the view which I take of the publication itself—still the law has placed the whole responsibility on you; you stand there—12 men chosen from the country, and representing it on this occasion—bound to perform a solemn duty, according to the principles of law, uninfluenced by any feelings but those of reverence for the law.

We have heard much here about the liberty of the Press. The Press is never mentioned without awakening a feeling of friendship in the breast of every Englishman. It is to that great instrument we are indebted for the recognition and general diffusion of those sound principles that existed before its invention, but which by its aid have been vindicated and defined. To this we owe the firm establishment of those salutary principles of the Common Law by which your verdict should be controuled, but which cannot be shaken or destroyed whatever way you decide. Your verdict, I repeat, though it will be very important to the Defendant and the community in which you reside, cannot disturb those rules of law by which

the characters of parties are guarded, and the liberties of the Press secured. They are too firmly established to be undermined by any single decision—but yet it is most desirable that all decisions should be correct and conformable to law. You will do your duty as I do mine, though fully appreciating the benefits of free discussion—the value of that Engine by which the sacred Scriptures are diffused over the universe—and which, though invented by man, was the gift of God to man—for, as he gave him speech by which to communicate his thoughts and impressions to his neighbour, so has he given him the Press by which these may be conveyed over a wider range, only bounded by the circle of human sympathies and civilization.

The gift of speech is sometimes abused. The tongue that has been given to praise its Maker is frequently used to blaspheme him—and thus the Press, bestowed for the purpose of correcting the errors and improving the condition of man, is sometimes directed by malice and revenge, to the injury of private character, and the disturbance of the public peace. He who thus conducts or uses the Press, subjects himself to the penalties of the law—the same law which existed for the protection of society before the Press was invented. That engine has not altered the law, although it has multiplied cases for its exercise. Let discussion be free; but accusation and discussion are different things. Though such charges are frequently found in newspapers, still, if individuals seek their remedy—or if the Crown Officers seek their remedy—the party having had the protection which such an investigation affords—for 12 men out of 24 must find the Bill—comes before a Court whose duty it is to state its opinion of the law and the facts—and if the Jury find that the party has de-

served the penalty of the law, he suffers that from which he should have been shielded by his own prudence and discretion. These are the principles by which public discussion is regulated, and I feel satisfied that while you will be disposed to cherish and protect the Press, you will never sanction its abuse.

The course taken by the Defendant has not been to induce you to believe that this paper is not a libel—but that he was acting under an impression that the charges were true—and that with that belief he admitted it into his columns. It is my duty to tell you that that is no legal excuse. If every word were true it would not be a justification—how then can he be excused? Surely not by the suppositions and impressions on his own mind. Malice is certainly one of the ingredients of a libel—but if a publication is libellous—reflects on the characters of parties in such a manner as to disturb the public peace, the law imputes malice—and that imputation must be rebutted by the Defendant. The onus of rebutting the legal imputation lies upon him, but the only proof that we require in drawing that inference is the libel itself. [Here his Lordship read and commented on the more prominent passages of the letter.] For this paper the Grand Jury have allowed the party to be indicted; they must have believed it to be of a mischievous tendency, else, their duty was not to have found a Bill. In my opinion, the paper charged is a libel, and your duty is, to state by your verdict, that it is libellous. You are not bound by my opinion. You are not to be influenced by feelings, but to pronounce on the case before you according to the sober convictions of your own minds. If you think that this is not a libel, as a consequence you must think that it bears no reflections injurious to

the complaining parties. If this is your opinion, say so, I leave the case in your hands.

[The Jury retired for ten minutes—when they returned with a verdict of *Not Guilty*. The breathless silence in which it was heard, was broken by shouts of acclamation from the immense crowds in and around the Court House. After receiving the congratulations of his friends who were immediately about him, the Defendant begged leave to return thanks to the Court, for the kindness and consideration which had been extended to him throughout the trial. He trusted he had taken no liberty to which a British subject was not entitled, but he felt that the Court might, as had been done elsewhere, have broken his argument by interruptions, and tied him up within narrower limits. On leaving the Province Building he was borne by the populace to his home, amidst deafening acclamations. The People kept holiday that day and the next. Musical parties paraded the streets at night. All the sleds in Town were turned out in procession with banners; and all ranks and classes seemed to join in felicitations on the triumph of the Press. The crowds were briefly addressed by Mr. Howe from his window, who besought them to keep the peace—to enjoy the triumph in social intercourse round their own firesides; and to teach their children the names of the TWELVE MEN, who had established the FREEDOM OF THE PRESS.]

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