SPEECHES
IN TRIALS FOR LIBELS
ON
THE DURHAM CLERGY.

INTRODUCTION.

DEATH OF QUEEN CAROLINE.—CONDUCT OF THE
DURHAM CLERGY.

When the late Queen Caroline, yielding to the altogether unexampled course of persecution in every form under which she had suffered, was stricken with a mortal sickness, the immediate consequence of mental distress, parties were variously affected by the intelligence that her life was in danger. The people universally and with but little distinction of party or of sect, were thrown into a state of the most painful anxiety, and waited in suspense the arrival of the tidings which were to confirm or to dissipate the prevailing gloom. After a passing interval of better prospects, all hope was soon banished by information that she was given over; and the news of her decease, which happened on the 7th of August 1821, followed immediately after. In all the places, where the event was made known, and where no undue influence or superior authority was exerted to suppress the public feelings, the utmost concern was manifested, not unaccompanied with indignation at the author of those wrongs which had led to this sorrowful event. Among the more ordinary, and therefore, if displayed, the more unimportant manifestations of concern, was that of tolling the bells in cathedrals and churches, the constant mark of respect paid to all the royal family, even the most insignificant and the least popular,—a ceremony so much of course that nothing could give it any importance except the rudeness or the servility which might obstruct its being performed. Accordingly, the tribute of respect had almost universally been paid, and had excited no comment anywhere. It was reserved for the heads of the Durham Cathedral to form an exception, the only exception
INTRODUCTION.

of any importance, to the general course of conduct pursued upon this mournful occasion. They would not suffer the bells of that venerable edifice to be tolled in the wonted manner.

It might have been thought that even had it been decent for churchmen to take part in such a controversy, and during the Queen's life to side with the oppressors against the injured party, the event which removed the latter from all worldly concerns, would have allayed also the animosity of her clerical antagonists; and that, though they had refused her the benefit of their prayers while living, they would not make themselves the solitary exception among Chapters and other Collegiate bodies, to the regular course of paying an accustomed mark of respect to the consort of the sovereign, now only known to them as one whose death had made his Majesty a widower, and enabled him to gratify his desires without violating his own conjugal duties. These reverend personages, however, thought otherwise; they forbade their bells to toll; and the consequence was some remarks in the Durham Chronicle, a provincial paper long distinguished for its steady though temperate support of liberal opinions, both on civil and on ecclesiastical subjects. These remarks were as follows, and they were published on the 10th of August, while the event was fresh in the recollection of all, and the feeling had not subsided which it was calculated to excite.

"So far as we have been able to judge from the accounts in the public papers, a mark of respect to her late Majesty has been almost universally paid throughout the kingdom, when the painful tidings of her decease were received by tolling the bells of the Cathedrals and Churches. But there is one exception to this very creditable fact which demands especial notice. In this episcopal city, containing six churches independently of the cathedral, not a single bell announced the departure of the magnanimous spirit of the most injured of Queens,—the most persecuted of women. Thus the brutal enmity of those who embittered her mortal existence pursues her in her shroud.

"We know not whether any actual orders were issued to prevent this customary sign of mourning; but the omission plainly indicates the kind of spirit which predominates among our clergy. Yet these men profess to be followers of Jesus Christ, to walk in his footsteps, to teach his precepts, to inculcate his spirit, to promote harmony, charity, and Christian love! Out upon such hypocrisy! It is such conduct which renders the very name of our established clergy odious till it stinks in the nostrils; that makes our churches look like deserted sepulchres, rather than temples of the living God: that raises up conventicles in every corner, and increases the brood of wild fanatics and enthusiasts; that causes our beneficed dignitaries to be regarded as usurpers of their possessions; that deprives them of all pastoral influence and respect; that in short has left them no support or prop in the attachment or veneration of the people. Sensible of the decline of their spiritual and moral influence, they cling to temporal power, and lose in their officiousness in political matters, even the semblance of the character of
ministers of religion. It is impossible that such a system can last. It is at war with the spirit of the age, as well as with justice and reason, and the beetles who crawl about amidst its holes and crevices, act as if they were striving to provoke and accelerate the blow which, sooner or later, will inevitably crush the whole fabric and level it with the dust."

In the Court of King's Bench, Mr. Scarlett, then Attorney-General for the County Palatine, obtained, on the 14th November a Rule to shew cause why a Criminal Information should not be filed against John Ambrose Williams, as the reputed publisher of this paragraph, who indeed never denied that he was also its author. The first of the following speeches is the argument of Mr. Brougham, who with the late learned, able, and most excellent John Bonham Carter, (Member for Portsmouth, and son-in-law of William Smith,) was of counsel for the Defendant. The Rule was, not without hesitation on the part of the Court, made absolute, there being indeed, no similar instance of a Rule so granted, where the party applying did not deny upon oath the matters charged against him in the alleged libel. It was not very easy to support by precedents a prosecution in this form, instituted for a libel against a body so little defined as "the Clergy of Durham;" still less such a body as the Information afterwards filed words them, "the Clergy residing in and near the city of Durham;" there being no means of ascertaining what distance this included, and consequently who the parties libelled really were. But it was a novelty still greater and more alarming to receive as prosecutors by Criminal Information a party who, under the shelter of this vagueness, made no affidavit of the falsehood of the charge, and thus escaped the performance of that condition under which all other parties are laid by the Rule of the court when they apply for its extraordinary interposition, instead of proceeding by Indictment.

The Rule being thus made absolute, the Information was filed, and went down to trial at the next summer assizes for the County Palatine, where it excited extraordinary interest from the parties, the subject, and spirit of political animosity prevailing between the College and a large portion of the community. The cause was tried before Mr. Baron Wood, and the speech in Mr. Williams's defence forms the second and the principal of those connected with this extraordinary proceeding. The jury were enclosed for above five hours, and returned a verdict which restricted the libel, and again raised one of the questions on the record, which had been argued in shewing cause against the Rule. The verdict was, "Guilty of publishing a libel against the
clergy residing in and near the city of Durham and the
suburbs thereof."

The defendant, accordingly, next Michaelmas term, moved
in arrest of judgment, and also for a new trial, when the third
of these speeches was delivered—viz., the argument on that
motion. The result was, that Mr. Brougham obtained a
Rule to shew cause, but the matter stood over, the pro-
secutors never shewing any cause, and consequently no
judgment was ever pronounced, either upon the Rule or upon
the defendant,—who thus was let go free as if he had been
acquitted altogether by the jury. It was the general opi-
nion of Westminster Hall, that no judgment could have
been given upon the verdict which had been found. It was
all but the general opinion there, that the granting this Rule
for a libel so conceived, and above all, without the usual
denial on the prosecutor's oath, was a wide and wholly un-
precedented departure from the established practice in this
most delicate and important matter, and the precedent now
made has certainly never since been followed.

The speech delivered on the trial at Durham naturally
excited much attention at the time, from the nature of the
subject; and perhaps this was increased by the notion which
prevailed, that individuals of the cathedral were alluded to in
it. But for this there could be no foundation. It was uni-
formly denied by Mr. Brougham; whose professional duty,
while it required him freely to discuss the merits of the
Chapitral establishment and the conduct of those form-
ing its present members as a body, certainly did not call for
any singling out of individuals; much less for any deviation
from the act with which alone they were charged, namely,
disrespect, for party purposes, towards the memory of the
late Queen. The Chapter consisted of many most worthy,
pious, learned, and able individuals; and though, while un-
der the influence of party feelings, which clergymen ought
never to indulge, they had been led astray on the particular
occasion, their general conduct was not in question, and was
not made the subject of forensic discussion, either at the
trial or in the court above.
ARGUMENT
IN THE COURT OF KING'S BENCH,
IN THE CASE OF
JOHN AMBROSE WILLIAMS.
JANUARY 25, 1822.

MR. BROUGHAM, on the 25th January, being called upon to shew cause why the Rule Nisi should not be made absolute, addressed the Court to the following effect:—

This was a Rule obtained by my friend, Mr. Scarlett, last term, calling on the defendant to shew cause why a criminal information should not be filed against him for a libel on the Clergy of Durham, the matter being alleged to be libellous. My lords, before I proceed to call your attention to the alleged libel, and to the circumstances in which it was published, I shall in the first instance submit (as I think it will save a great deal of time) a preliminary, and, as it appears to me, a fatal objection to the proceedings altogether, arising out of the manner in which this Rule has been obtained. Your lordships will observe that this is not one of those cases of which a good deal has been heard lately, namely, of a prosecutor unknown to the law, but it is, in fact, the case of a prosecutor altogether unknown to the particular party—it is an anonymous prosecution—it is the most novel of all these recent novelties. I will defy any man to tell who the person is, or who the persons—who the corporation, corporate or sole—upon whose application this Rule was obtained. It is unnecessary for me to remind your lordships, that if an offence has been committed—if a libel has been published—or if any thing has been done which requires that the doors of justice should be open for punishment or redress—the discharging this Rule does not close those doors; for, as was observed by my Lord Kenyon, in a case somewhat similar to the present, “the refusing this application does not close the door of justice; it only bars the access to justice by this particular avenue.” So if a libel has been published, it is still Actionable or Indictable in the ordinary and regular manner. I submit that it is a mere novelty for a party to ask of the Court a Nisi.
formation in this extraordinary fashion, without making himself known to your lordships, and appearing here by affidavit, if need be, for your lordships will easily remember, and indeed it has recently come a good deal under discussion, that where there are libellous publications of any specific matters, whether alone, or connected with others of a more vague description—where, in short, either the whole or any part of the charge is of so precise a nature that an answer may be given—it is necessary, before the application can be complied with, that those matters should be denied on the oath of the applicant. But even if there be no specific matter in the publication now in question before the Court; supposing it to be a case of a general and strictly political nature—of an attack on the Church and State—supposing it to be the case of a different, nay, of an opposite description to that of the paper now accused—for argument's sake I will suppose it to be any one of those publications which have been lately under the consideration of your lordships, and against which first a verdict, and then judgment have passed, so that no man can now be suffered to deny their libellous nature—still I say that my learned friend, who obtained this Rule, must, before he can make it absolute, shew a single instance in which your lordships have allowed such a libel to be prosecuted in this extraordinary manner, by Information. It may be prosecuted ex officio by the law officers of the Crown, or it may be indicted by an individual; but it cannot be prosecuted in this unheard-of manner, by a person unknown to the Court, and who, for anything the Court can know, may have no existence. If it may, then may any person come forward as a prosecutor; any gentleman at the bar, who chances to be unoccupied, may rise in his place and move; he will only have to say, "I call on your lordships to put in motion the process of this Court; a libel has been published, and I call on you to grant me this application." But I think the Court would exercise its discretion before it interposed to grant a Criminal Information in such a case. I say it is a mere novelty for the party who makes this application to be unknown to the Court, and I will defy my learned friend to shew a single instance of the kind; at any rate, there is no one to be found since the statute of William and Mary was passed for regulating proceedings of this kind. It is unnecessary for me to waste the time of the Court in shewing the consequence of your lordships granting this Information. If a person may come forward and apply, putting himself in the office of public prosecutor (an office unknown in our law), what would
CLERGY OF DURHAM.

happen? Why, any gentleman at the bar, without retainer, authority, or instructions—any young amateur in prosecutions—might rise up and say, "I am to move for a Rule to shew cause why a Criminal Information should not be filed against A. B." and he would obtain it without more ado; nay, the process of the Court would immediately after issue, provided he only complied with the statutory condition of entering into a recognizance for L.20, which, indeed, any one might do for him. I say, if your lordships acquiesce in the present application; if the Information is granted to my friend Mr. Scarlett; I can see no reason why it should not be granted to any other gentleman at the bar. My lords, I am exceedingly unwilling to enter into the particular merits of this case; but I think I can satisfy your lordships that, independent of the preliminary objection which I have taken, this Court cannot interpose to relieve the parties in the particular circumstances of this case; supposing those parties to be the Durham clergy; but that it will leave them to their proper and ordinary course of proceeding by Indictment. I think I could satisfy your lordships that there is no ground for this Court's interposing, by shortly adverting to the circumstances of the case; but it would be an unpleasant discussion, as it respects the character of individuals, members of an ecclesiastical body of great note, which is justly venerated in this country. I say, my lords, I am extremely unwilling to be dragged into the details connected with this case, unless I am told that it is necessary by your lordships disposing of this preliminary objection.

The Judges consulted for several minutes and while they were deliberating,

Mr. Brougham said, perhaps your lordships will allow me to refer you to a case; it is the only one that I can refer you to; for, as I said before, this is the first time that an attempt of the sort has been made; I allude to the King v. Phillips, in 4th Burr., 2009. That was a case in which the then Attorney-general, in his place in Court, moved for a Rule to shew cause why a Criminal Information should not be filed, and the Court said, "for whom do you apply?"

The Lord Chief Justice.—Was that a case of public or private libel? That was a libel upon a private individual, was it not, Mr. Brougham?

Mr. Brougham.—It was not a libel, my lord; it was for an offence of a public nature.

Mr. Carter. It was for a misdemeanor, committed by a magistrate in the execution of his office.
The Lord Chief Justice.—Ah, it was an offence against some particular individual.

Mr. Brougham.—Yes, my lord, and there the Court said, "for whom do you make this application?" when the Attorney-general immediately said, "I make it on behalf of the Crown." There the Court seemed to have reckoned that it was incumbent on them to ascertain who the party applying was.

The Lord Chief Justice.—I think that was very properly said to the Attorney-general. I recollect something of the same kind happening here, when I said, "for whom do you move?" It was replied, "I move individually;" there the counsel was appearing in the character of any other gentleman at the bar; but if he says I move as Attorney-general, or generally for the Crown, that is the distinction.

The Judges again consulted for a short time, after which

The Lord Chief Justice said,—It will not be convenient to take the parts separately.

Mr. Brougham.—Not to take them separately, did your lordship say?

The Lord Chief Justice.—Yes.

Mr. Brougham. Then I have further to request your lordship’s attention to the very strict manner in which the Court has in all instances required an affidavit denying the truth of any matters charged, where those matters were specific enough to be made the subject of denial by affidavit, or where any portion of the matter was so specific as to be capable of being denied by affidavit.

Mr. Justice Bayley.—If the libel charges a crime on an individual, it must be denied; but not if the character of the libel is the same, whether it is true or false.

Mr. Brougham.—I apprehend that when a party is charged with a libel, and that charge consists of any specific fact, that fact ought at all events to be denied.

The Lord Chief Justice.—What is the fact that you say ought to be denied?

Mr. Brougham.—There are several facts, my lord.

The Lord Chief Justice.—Well, what are they? state what they are.

Mr. Brougham.—The first is that which is alleged respecting the Cathedral church and other churches of the city of Durham, namely, that they did not shew the usual mark of respect to the royal family; and this resolves itself into a charge against the clergy of Durham, that they failed in paying the respect due to the royal family, by forbidding the bells to be tolled on the demise of one of its most con-
siderable branches. That is the charge, and it rests upon a fact of such a specific nature, that it might have been made the subject of a distinct denial, and, we contend, ought to have been denied: if, indeed, after all, this party, namely, the clergy of Durham, is the party concerned in the present application.

Mr. Justice Bayley.—In granting a criminal Information there must be some fact. The question here is, did they pay that mark of respect; and if that fact is not negatived on the part of the person making this application, that will warrant the Court in concluding that the fact is true. We may assume that the bell was not tolled: that is a matter for the discretion of the Court.

Mr. Brougham.—I do not mean to deny that it is entirely matter for the discretion of the Court; because this whole proceeding is an appeal to its discretionary powers; but it is equally clear that the discretion will now be exercised, as it always has been, soundly, and according to the known rules and principles long since established by the Court, and by which its discretion is distinctly limited. One of those fixed rules is, that the party applying for a Criminal Information shall deny the truth of the charge of which he complains. I have already reminded your lordships of this principle, and that such an application cannot be granted unless the party brings forward his denial in the first instance. According to the principles of all the decided cases, it is not enough to say that, be the matter true or false, the publication is libellous, and should be prosecuted. Prosecuted it may be, whether true or false, but not in this manner; the merits of the party applying for this extraordinary interference of the Court are the sole grounds of its interposition. For example, there is the case of the King v. Bate, on the Duke of Richmond's application, where the matter was much discussed; and the general rule was laid down, that whoever be the prosecutor he must deny the truth of all specific charges.

The Lord Chief Justice.—What is the subject matter of fact there; your assertion is, that the clergy of Durham did not pay that mark of respect which they ought to have paid in memory of the deceased Queen. Now go on and read the rest, and let us see whether any affidavit can be made with respect to the rest.

Mr. Brougham.—In the King v. Bate it is laid down that when the fact or any part of the fact charged is of a specific nature, it must be clear.
MR. JUSTICE BAYLEY.—Then we must look to what was the subject of that application; if a libel is published which imputes to a man a crime, and he will not state by his affidavit that he is innocent of that crime; in that case the Court will say, "you are not a person to whom we will give relief;" if a man is charged with a crime and he neglects to negative that fact by affidavit, that entitles the Court to consider that the fact which is so charged and not negatived, is a true fact. Now in this case, here is an imputation of a crime, and if the Court is to take the fact to be true, that is a ground why the Court should not interfere. But there may be a case, (I do not say that there is one) but there may be a case where the imputation is not a charge of a crime, and there the fact not being denied may be taken to be true; still the libel may justify this extraordinary mode of proceeding.

MR. BROUGHAM.—That is the point at issue, my lord. Next I have to submit that all, or almost all this paragraph is a charge against a particular body, and that the body ought, in applying for this Rule, to have negatived it by affidavit. Your lordship will recollect that it is laid down in all the cases, that the highest as well as the lowest parties, with the single exception of the Queen-Consort, in applying to this Court for an Information, fall equally within the rule, namely, that their merits are to enter into the consideration of the Court, and that they are bound to remove the imputation from themselves when they seek this peculiar remedy.

MR. JUSTICE HOLROYD.—It is not so in every case; where a party seeks for the interposition of a court, as in the case of a challenge for instance, on account of the public safety and public peace, the court does not refuse the information upon the motion of the party, though the applicant be not blameless.

MR. BROUGHAM.—Undoubtedly, my lord; but, nevertheless, I am sure that your lordship will bear me out in the assertion, that there never is an application to this Court for a Criminal Information on account of a quarrel, in which the whole circumstances attending that quarrel are not gone into, and the merits of the party making the application scrupulously investigated. The party resisting the application is allowed to go at large into all the circumstances of the offence committed, or alleged to be committed, by the party applying; these are always most fully brought before the Court in order to show on what ground the applicant stands. In order that the ends of justice may be satisfied, a minute investigation of the conduct of both parties is entered into by the Court; and though the conduct of the
person insulted is no defence in law for the person insulting yet if it has been blame-worthy, it is held an answer to the demand made for leave to proceed by information. And now I am compelled, however reluctant, to go into the merits of this case: and I am forced to seek about in order to ascertain the party with whom I am contending. It is quite obvious that it must be some person connected with the Cathedral of Durham.

The Lord Chief Justice.—Certainly it is not the conduct of the Cathedral alone; it cannot be applied to them alone.

Mr. Brougham.—When I make use of that expression, I mean the clergy of the city—the Cathedral and the city together—for undoubtedly it refers to both, though most especially to the Cathedral. It is distinctly sworn in the affidavit of the defendant, that these observations referred exclusively to the Durham clergy; and that they did not apply to the clergy of the Church generally; and I still have again to complain, even in this part of the argument, of not knowing precisely whom I am contending with; because, for any thing I know, it may be the very description of persons mentioned in the preamble of statute, "those malicious and contentious persons who, more of late than in former times, have been engaged in prosecutions of this kind." But whoever the persons may be who move in this matter, it is plain, at any rate, that the merits of the parties of and concerning whom this charge is made, are directly in issue before your lordships. Now, in tracing the origin of this dissent, I have first of all to state, that the altercation in which those clergymen and others have been for some time past engaged, are such as to justify your lordships in refusing to lend yourselves to their designs; and leaving these clerical parties to their remedy by action, or by indictment before a grand jury, that you will be justified in refusing to grant the request now made. It is sworn by the defendant, that those clergymen have of late, and for some years past, taken a very active part, not only in the political dissensions of the country, but most especially in those locally relating to the county and city of Durham. They were all on one side, most active agents, who spared no pains to render themselves serviceable to one party; and not only to thwart the designs, but to blacken the character of their antagonists.

The Lord Chief Justice.—This is upon the affidavit I suppose, Mr. Brougham?
Mr. Brougham.—It is in substance upon the affidavit, my lord; the facts are set forth there with much particularity, and I shall come to them immediately. I should be sorry now not to enter into the details, since I am forced to abandon my preliminary objection. I may add that they not only made themselves the most active political agents, but that they scrupled at no means of annoyance, and hesitated at no excess of falsehood and malignity in order to accomplish their purposes; their secular, party, factious, selfish purposes. I should be sorry to annoy the ears of your lordships with a specimen of their vile abuse.

Mr. Scarlett.—I do not find that in the affidavit.

Mr. Brougham.—I mean the persons whose conduct I have alluded to.

The Lord Chief Justice.—Who are they?

Mr. Brougham.—Certain members of the clergy of the church of Durham.

The Lord Chief Justice then read the libel, after which he said, "I do not see how it can apply to the clergy of Durham only."

Mr. Brougham.—I am to submit, my lord, that it does apply to the church and clergy of Durham only. We have distinctly sworn that it applies to them, and if we had no other means of shewing it, I submit that that is the fair construction of the commentaries on their conduct; that it applies exclusively to them. It is made in the course of remarks upon a particular thing done by the Durham clergy, and state in the alleged libel to be done by them alone. Undoubtedly there are one or two severe expressions; the word "brutal" for instance, is used, but the defendant may well say to that "non meus hic sermo;" he copied the word from an attack made upon many persons, and among others on himself, by one of those very clergymen of Durham. In this attack the same word "brutal" is most freely used. The passage in the paragraph which says, "it is such conduct that renders the very name of our Established clergy odious till it stinks in the nostrils," is a strong, a harsh, and (if you will) a coarse mode of speech. But, again, it is not the speech of the defendant. For it is to be found in the writings of a venerable author; who says of a certain body, that they are "as the Augus Estabulum, and do stink in the "nose of God and his people." These expressions are applied by him not to such as the defendant or his party, but to higher quarters.—What if they are used to describe a clerical body? what if that body be this very Cathedral of Durham? What if the writer be one of the body himself? What if it be
very Bishop, who thus strongly and somewhat coarsely describes them?

MR. JUSTICE BAYLEY.—What year was that in?

MR. BROUGHTON.—He was a protestant bishop,—Bishop Barnes. It was in the reign of Elizabeth. I only cite his lordship's words to show that those expressions, harsh as they may seem to be, which the defendant has used, are not without the warranty of high authority, upon a parallel occasion. Now I have to remind your lordships, not only that the contents of the publication are true, but it has been provoked by the conduct of the clergy themselves, who have thought proper to publish pamphlets filled with the most foul and false aspersions against this very defendant. One of them has written a tract, in which he distinctly terms Mr. Williams, if not by name, at least by his designation as Editor of the Durham Chronicle, "a hireling and fulsome panegyrist;" an odious character, doubtless, and worthy of all contempt; but not more hateful nor more despicable than the man who combines with it in his own person, the part of an hireling calumniator; earning a portion of his hire by fulsome flattery to his rich and powerful employer, and working out the residue in foul slanders of those who cannot or who will not buy him. It is against such persons; it is of and concerning such vocations, the scandal and disgrace of the Church, not the establishment itself, that these remarks are made; it is in such conduct, and such characters, that these strictures find their justification, generally; but most of all is this defendant entitled thus to express himself, who has been made the object of these mercenary attacks. Another of the gentlemen with his name, (a Mr. Philipott) publishes a pamphlet, in which he describes Mr. Williams as "a miserable mercenary who eats the bread of prostitution, and panders to the low appetites of those who cannot or who dare not cater for their own malignity." I think that the coarseness and virulence with which these observations have been made by those reverend gentlemen, will at once be allowed fully to justify the remarks of the defendant in return; and when your lordships see that abuse has been thus bandied about on the one side and on the other, in the violence of conflicting secular passions, I trust that you will not lend yourselves to the parties whose indecent animosity has drawn forth the comments of the defendant, by permitting them to come into this Court and seek the protection reserved for those whose hands are pure, and whose demeanour will bear the closest inspection.
Nor is it only individuals of the body who have mixed themselves with such intemperance in the squabbles of party, and forgotten the sacred character which should belong to their station. There was a meeting of the whole clergy some time previous to the date of the publication in question. It was a meeting—an assembly officially convened, and holden at the house of the Archdeacon of the Diocese. Your lordships will find that the body of the clergy were there convened, upon whose conduct as political men these remarks have been made; and at that meeting they thought fit to pass a censure in the most unmeasured terms, (amounting certainly to a breach of privilege) upon a part at least of the Parliament—to make an attack upon what passed there, charging persons and parties with “having been guilty in the highest places of conduct which would disgrace the lowest.” If any doubt remains as to whom these observations were levelled at, the author of the address, and of the publication to which I have already referred, in commenting on a mistake committed by some one, removes that doubt, for he clearly shews that the address referred to what passed in the House of Lords. Now I will, before concluding, beg leave to give your lordships a sample of the decency and regard for truth which guide those calumniators who are now complaining of what they call false and scandalous libels. In the pamphlet to which I first adverted, you will find statements which are not only positively sworn to be as false as they are malignant, but some of which are so notoriously false, (though not more false than sord, allow me to say) that I will venture to say no man, let him be of what political description, or of what rank or class he may, can fail to receive them with extreme disgust. Thus it is positively asserted by one of those reverend partizans, that after the proceedings in 1806, with respect to the late Queen, she never durst go to Court, but that she remained absent from Court from 1806 down to 1814, and of course down to the date of the proceedings against her—that in consequence of what took place in 1806, she remained under a cloud; whereas, it is as notorious as the sun at noon-day, that the very party who since persecuted her, insisted on her being received at Court, the instant that they got into office in 1807; that it was at their instigation she was received at Court, and that she constantly attended it afterwards while the late King* retained his health; that so far from those ministers being able to maintain that the proceedings in 1806 had left Her

* George III.
Majesty under a Cloud, their objection to these proceedings was one of the grounds upon which they made her the stepping-stone to place and power; and that not satisfied with the resolution of 1806 acquitting her of guilt, they made a point of revising all that had been done, and entered, as far as the strongest words could convey it, their solemn protest against all the proceedings which had taken place against her, leaving on record their most ample assertion of her innocence. I give you this as a specimen, (for it is only by sample that I shall deal with so foul a cargo); it is a specimen of the conduct of those clergymen in their secular capacity of political agents, in which they have so greatly abused the name—the more sacred name that ought to belong to them. In another passage of the same pamphlet, Her late Majesty is spoken of in terms closely resembling those for which another reverend slanderer is now suffering sentence of the law. If there be a squabble between conflicting parties in a county, as to its local politics; and if in the heat of the controversy, the character of an individual or body is assailed, let him bring his action in the ordinary manner, or, if he pleases prefer a Bill of Indictment. In the present case I submit to your lordships, that, independent of the primary objection which I have taken, namely, that this is the first time an application of the kind has been made without the appearance of the party in his own name—independent of the nature of the publication to which it refers—I submit that your lordships will not feel justified in granting the application which has been made without the appearance of the party in his own name; and that you will leave those who made it to their ordinary remedy by Indictment, seeing that their own conduct has called forth the strictures of which they complain, and that they were the first to slander their neighbour.
SPEECH

FOR THE

DEFENDANT, AT THE DURHAM ASSIZES,

August 9 1822.

---

MAY IT PLEASE YOUR LORDSHIP,—GENTLEMEN OF THE JURY,—My learned friend, the Attorney-general for the Bishop of Durham, having at considerable length offered to you various conjectures as to the line of defence which he supposed I should pursue upon this occasion; having nearly exhausted every topic which I was not very likely to urge, and elaborately traced, with much fancy, all the ground on which I could hardly be expected to tread—perhaps it may be as well that I should now, in my turn, take the liberty of stating to you what really is the defendant’s case, and that you should know from myself what I do intend to lay before you. As my learned friend has indulged in so many remarks upon what I shall not say, I may take leave to offer a single observation on what he has said; and I think I may appeal to any one of you who ever served upon a jury, or witnessed a trial, and ask if you ever, before this day, saw a public prosecutor who stated his case with so much art and ingenuity—wrought up his argument with such pains—wandered into so large a field of declamation or altogether performed his task in so elaborate and eloquent a fashion as the Attorney-general has done upon the present occasion. I do not blame this course. I venture not even to criticise the discretion he has exercised in the management of his cause; and I am far indeed from complaining of it. But I call upon you to declare that inference which I think you must already have drawn in your own minds, and come to that conclusion at which I certainly have arrived—that he felt what a labouring case he had—that he was aware how very different his situation to-day is from any he ever before knew in a prosecution for libel—and that the extraordinary pressure of the difficulties he had to struggle with, drove him, to so unusual a course. He has called the defendant “that unhappy man.” Unhappy he will be indeed, but not the only unhappy man in this country, if the doctrines laid down by
my learned friend are sanctioned by your verdict; for those doctrines, I fearlessly tell you, must, if established, inevitably destroy the whole liberties of us all. Not that he has ventured to deny the right of discussion generally upon all subjects, even upon the present, or to screen from free inquiry the foundations of the Established Church, and the conduct of its ministers as a body, (which I shall satisfy you are not even commented on in the publication before you). Far from my learned is it to impugn those rights in the abstract; nor indeed have I ever yet heard a prosecutor for libel—an Attorney-general, (and I have seen a good many in my time) whether of our Lord the King or our Lord of Durham, who, while in the act of crushing every thing like unfettered discussion, did not preface his address to the jury with "God forbid that the fullest inquiry should not be allowed;" but then the admission had invariably a condition following close behind, which entirely retracted the concession—"provided always the discussion be carried on harmlessly, temperately, calmly"—that is to say, in such a manner as to leave the subject untouched, and the reader unmoved; to satisfy the public prosecutor, and to please the persons attacked.

My learned friend has asked if the defendant knows that the Church is established by law? He knows it, and so do I. The Church is established by law, as the civil government—as all the institutions of the country are established by law, as all the offices under the Crown are established by law, and all who fill them are by the law protected. It is not more established, nor more protected, than those institutions, officers, and office-bearers, each of which is recognised and favoured by the law as much as the Church; but I never yet have heard, and I trust I never shall; least of all do I expect in the lesson which your verdict this day will read, to hear, that those officers and office-bearers, and all those institutions, sacred and secular, and the conduct of all, whether laymen or priests, who administer them, are not the fair subjects of open, untrammelled, manly, zealous, and even vehement discussion, as long as this country pretends to liberty, and prides herself on the possession of a Free Press.

In the publication before you, the defendant has not attempted to dispute the high character of the Church; on that establishment or its members, generally, he has not endeavoured to fix any stigma. Those topics, then, are foreign to the present inquiry, and I have...
friend, it is fitting that I should claim for this defendant, and for all others, the right to question, freely to question, not only the conduct of the ministers of the Established Church, but even the foundations of the Church itself. It is indeed unnecessary for my present purpose, because I shall demonstrate that the paper before you does not touch upon those points; but unnecessary though it be, as my learned friend has defied me, I will follow him to the field, and say, that if there is any one of the institutions of the country, which more emphatically than all the rest, justifies us in arguing strongly, feeling powerfully, and expressing our sentiments as well as urging our reasons with vehemence, it is that branch of the state which, because it is sacred, because it bears connexion with higher principles than any involved in the mere management of worldly concerns, for that very reason, entwines itself with deeper feelings, and must needs be discussed if discussed at all, with more warmth and zeal than any other part of our system is fitted to rouse. But if any hierarchy in all the world is bound on every principle of consistency—if any Church should be forward not only to suffer but provoke discussion, to stand upon that title and challenge the most unreserved inquiry,—it is the Protestant Church of England; first, because she has nothing to dread from it; secondly, because she is the very creature of free inquiry—the offspring of repeated revolutions—and the most reformed of the reformed Churches of Europe. But surely if there is any one corner of Protestant Europe where men ought not to be rigourously judged in ecclesiastical controversy—where a large allowance should be made for the conflict of irreconcilable opinions—where the harshness of jarring tenets should be patiently borne, and strong, or even violent language, be not too narrowly watched—it is this very realm, in which we live under three different ecclesiastical orders, and owe allegiance to a sovereign, who, in one of his kingdoms, is the head of the Church, acknowledged as such by all men; while, in another, neither he nor any earthly being is allowed to assume that name—a realm composed of three great divisions, in one of which Prelacy is favoured by law and approved in practice by an Episcopalian people; while, in another, it is protected indeed by law, but abjured in practice by a nation of sectaries, Catholic and Presbyterian; and, in a third, it is abhorred alike by law and in practice, repudiated by the whole institutions of the country, scorned and detested by the whole of its inhabitants. His Majesty, almost at the time in which I am speaking, is about to make a progress through the northern provinces of this island, ac-
CLERGY OF DURHAM.

companied by certain of his chosen counsellors, a portion of men who enjoy unenvied, and in an equal degree, the admiration of other countries, and the wonder of their own—and there the Prince will see much loyalty, great learning, some splendour, the remains of an ancient monarchy, and of the institutions which made it flourish. But one thing he will not see. Strange as it may seem, and to many who hear me incredible, from one end of the country to the other he will see no such thing as a bishop; not such a thing is to be found from the Tweed to John o’ Groatz; not a mitre; no, nor so much as a minor canon, or even a rural dean; and in all the land not one single curate, so entirely rude and barbarous are they in Scotland; in such outer darkness do they sit, that they support no cathedrals, maintain no pluralists, suffer no non-residence; nay, the poor benighted creatures are ignorant even of tithes. Not a sheaf, or a lamb, or a pig, or the value of a plough-penny do the hapless mortals render from year’s end to year’s end! Piteous as their lot is, what makes it infinitely more touching, is to witness the return of good for evil in the demeanour of this wretched race. Under all this cruel neglect of their spiritual concerns, they are actually the most loyal, contented, moral and religious people anywhere, perhaps, to be found in the world. Let us hope (many, indeed, there are, not afar off, who will with unfeigned devotion pray,) that his Majesty may return safe from the dangers of his excursion into such a country—an excursion most perilous to a certain portion of the Church, should his royal mind be infected with a taste for cheap establishments, a working clergy, and a pious congregation!

But compassion for our brethren in the north has drawn me aside from my purpose, which was merely to remind you how preposterous it is in a country of which the ecclesiastical polity is framed upon plans so discordant, and the religious tenets themselves are so various, to require any very measured expressions of men’s opinions, upon questions of church government. And if there is any part of England in which an ample licence ought more especially to be admitted in handling such matters, I say without hesitation it is this very Bishopric, where in the 19th century, you live under a Palatine Prince, the Lord of Durham; where the endowment of the hierarchy, I may not call it enormous, but I trust I shall be permitted without offence to term splendid; where the establishment I dare not whisper proves grinding to the people, but I will rather say is an incalculable, an inscrutable blessing—only it is prodiously large; showered down
habitants under a load of obligation overwhelming by its weight. It is in Durham where the Church is endowed with a splendour and a power, unknown in monkish times and popish countries, and the clergy swarm in every corner, an' it were the patrimony of St. Peter,—it is here where all manner of conflicts are at each moment inevitable between the people and the priests, that I feel myself warranted on their behalf, and for their protection,—for the sake of the Establishment, and as the discreet advocate of that Church and that clergy,—for the defence of their very existence,—to demand the most unrestrained discussion for their title and their actions under it. For them in this age, to screen their conduct from investigation is to stand self-convicted; to shrink from the discussion of their title, is to confess a flaw; he must be the most shallow, the most blind of mortals, who does not at once perceive that if that title is protected only by the strong arm of the law, it becomes not worth the parchment on which it is engrossed, or the wax that dangles to it for a seal. I have hitherto all along assumed, that there is nothing impure in the practice under the system; I am admitting that ever person engaged in its administration does every one act which he ought, and which the law expects him to do; I am supposing that up to this hour not one unworthy member has entered within its pale; I am even presuming that up to this moment not one of those individuals has stepped beyond the strict line of his sacred functions, or given the slightest offence or annoyance to any human being. I am taking it for granted that they all act the part of good shepherds, making the welfare of their flock their first care, and only occasionally bethinking them of shearing in order to prevent the too luxuriant growth of the fleece proving an encumbrance, or to eradicate disease. If, however, those operations be so constant that the flock actually live under the knife; if the shepherds are so numerous, and employ so large a troop of the watchful and eager animals that attend them (some of them too with a cross of the fox, or even the wolf, in their breed) can it be wondered at, if the poor creatures thus fleeced, and hunted, and barked at, and snapped at, and from time to time worried, should now and then bleat, dream of preferring the rot to the shears, and draw envidious, possibly disadvantageous comparisons between the wolf without, and the shepherd within the fold—it cannot be helped; it is in the nature of things that suffering should beget complaint; but for those who have caused the pain to complain of the outcry and seek to punish it—for those
who have goaded to scourge and to gag, is the meanest of all injustice. It is moreover the most pitiful folly for the clergy to think of retaining their power, privileges, and enormous wealth, without allowing free vent for complaints against abuses in the Establishment and delinquency in its members; and in this prosecution they have displayed that folly in its supreme degree. I will even put it that there has been an attack on the hierarchy itself; I do so for argument's sake only; denying all the while, that any thing like such an attack is to be found within the four corners of this publication. But suppose it had been otherwise; I will shew you the sort of language in which the wisest and the best of our countrymen have spoken of that Establishment. I am about to read a passage in the immortal writings of one the greatest men, I may say, indeed, the greatest genius, which this country, or Europe, has in modern times produced. You shall hear what the learned and pious Milton has said of prelacy. He is arguing against an episcopal antagonist whom, from his worldly and unscriptural doctrines, he calls a "Carnal Textman;" and it signifies not that we may differ widely in opinion with this illustrious man; I only give his words as a sample of the licence with which he was permitted to press his argument, and which in those times went unpunished:—

"That which he imputes as sacrilege to his country, is the only way left them to purge that abominable sacrilege out of the land, which none but the Prelates are guilty of; who for the discharge of one single duty receive and keep that which might be enough to satisfy the labours of many painful Ministers better deserving than themselves,—who possess huge benefices for lazy performances, great promotions only for the exercise of a cruel disgospelling jurisdiction,—who engross many Plurals under a Non-resident and slumbering dispatch of souls,—who let hundreds of parishes famish in one Diocess, while they the Prelates are mute, and yet enjoy that wealth that would furnish all those dark places with able supply; and yet they eat and yet they live at the rate of Earls, and yet hoard up; they who chase away all the faithful shepherds of the flock, and bring in a dearth of spiritual food, robbing thereby the Church of her dearest treasure, and sending herds of souls starving to hell, while they feast and riot upon the labours of hireling Curates, consuming and purloining even that which by their foundation is allowed and
from which mortal engagement we shall never be free, till we have totally removed with one labour, as one individual thing, prelaty and sacrilege." "Thus have ye heard, readers," (he continues, after some advice to the Sovereign, to check the usurpations of the Hierarchy) "how many shifts and wiles the Prelates have invented to save their ill-got booty. And if it be true, as in Scripture it is foretold, that pride and covetousness are the sure marks of those false prophets which are to come, then boldly conclude these to be as great seducers as any of the latter times. For between this and the judgment day do not look for any arch-deceivers, who in spite of reformation will use more craft, or less shame to defend their love of the world and their ambition, than these Prelates have done."*

If Mr. Williams had dared to publish the tithe part of what I have just read; if any thing in sentiment or in language approaching to it were to be found in his paper, I should not stand before you with the confidence which I now feel; but what he has published forms a direct contrast to the doctrines contained in this passage. Nor is such language confined to the times in which Milton lived, or to a period of convulsion when prelacy was in danger. I will shew you that in tranquil, episcopal times, when the Church existed peacefully and securely as by law established, some of its most distinguished members, who have added to its stability as well as its fame, by the authority of their learning and the purity of their lives, the fathers and brightest ornaments of that Church, have used expressions nearly as free as those which I have cited from Milton, and tenfold stronger than any thing attributed to the defendant. I will read you a passage from Bishop Burnet, one of those Whig founders of the Constitution, whom the Attorney-general has so lavishly praised. He says,

"I have lamented during my whole life that I saw so little true zeal among our clergy; I saw much of it in the clergy of the Church of Rome, though it is both ill-directed and ill-conducted; I saw much zeal, likewise, throughout the foreign churches."

Now comparisons are hateful to a proverb; and it is for making a comparison that the defendant is to-day prosecuted; for his words can have no application to the Church generally, except in the way of comparison. And with whom does the venerable Bishop here compare the clergy? Why, with Antichrist,—with the Church of Rome—casting the balance in her favour—giving the advantage to our
ghostly adversary. Next comes he to give the Dissenters the preference over our own clergy:—a still more invidious topic; for it is one of the laws which govern theological controversy almost as regularly as gravitation governs the universe, that the mutual rancour of conflicting sects is inversely as their distance from each other; and with such hatred do they regard those who are separated by the slightest shade of opinion, that your true intolerant priest abhors a pious sectary far more devoutly than a blasphemer or an atheist: yet to the sectary also does the good Bishop give a decided preference:—

"The dissenters have a great deal (that is of zeal) among them, but I must own that the main body of our clergy has always appeared dead and lifeless to me; and instead of animating one another, they seem rather to lay one another asleep."—"I say it with great regret," (adds the Bishop) "I have observed the clergy in all the places through which I have travelled, Papists, Lutherans, Calvinists and Dissenters; but of them all, our clergy is much the most remiss in their labours in private, and the least severe in their lives, And let me say this freely to you, now I am out of the reach of envy and censure;" (he bequeathed his work to be given to the world after his death) "unless a better spirit possess the clergy, arguments and, which is more, laws and authority will not prove strong enough to preserve the Church."

I will now shew you the opinion of a very learned and virtuous writer, who was much followed in his day, and whose book, at that time, formed one of the manuals by which our youth were taught the philosophy of morals to prepare them for their theological studies, I mean Dr. Hartley:—

"I choose to speak of what falls under the observation of all serious attentive persons in the kingdom. The superior clergy are in general ambitious, and eager in the pursuit of riches—flatterers of the great, and subservient to party interest—negligent of their own particular charges, and also of the inferior clergy. The inferior clergy imitate their superiors, and in general take little more care of their parishes than barely what is necessary to avoid the censure of the law; and the clergy of all ranks are in general either ignorant, or if they do apply, it is rather to profane learning, to philosophical or political matters, than in the study of the Scriptures, of the oriental languages, and the Fathers. I say this is in general the case; that is, far the greater part of the clergy of all ranks in the kingdom are of this kind."
I here must state that the passage I have just read is very far from meeting my approval, any more than it speaks the defendant's sentiments, and especially in its strictures upon the inferior clergy; for certainly it is impossible to praise too highly those pious and useful men, the resident, working parish priests of this country. I speak not of the dignitaries, the pluralists and sinecurists, but of men neither possessing the higher preferments of the Church, nor placed in that situation of expectancy so dangerous to virtue; the hard-working, and I fear too often hard living, resident clergy of this kingdom, who are an ornament to their station, and who richly deserve that which in too many instances is almost all the reward they receive, the gratitude and veneration of the people committed to their care. But I read this passage from Dr. Hartley, not as a precedent followed by the defendant; for he has said nothing approaching to it—not as propounding doctrine authorised by the fact, or which in reasoning he approves—but only for the purpose of shewing to what lengths such discussion of ecclesiastical abuses, (which, it seems, we are now, for the first time, to hold our peace about) was carried near a century ago, when the freedom of speech, now to be stilled as licentiousness, went not only unpunished, but unquestioned and unblamed. To take a much later period, I hold in my hand an attack upon the hierarchy by one of their own body—a respectable and beneficed clergyman in the sister County Palatine of Chester, who undertook to defend the Christian religion, itself the basis, I presume I may venture to call it, of the Church, against Thomas Paine. In the course of so pious a work, which he conducted most elaborately, as you may perceive by the size of this volume, he inveighs in almost every page against the abuses of the Establishment, but in language which I am very far from adopting. In one passage is the following energetic, and, I may add, somewhat violent invective, which I will read, that you may see how a man, unwearied in the care of souls, and so zealous a Christian that he is in the act of confuting infidels and putting scoffers to silence, may yet, in the very course of defending the Church and its faith, use language, any one word of which, if uttered by the defendant, would make my learned friend shudder at the licence of the modern press upon sacred subjects.

"We readily grant, therefore, you see, my countrymen, that the corruptions of Christianity shall be purged and done away; and we are persuaded the wickedness of Christians so called, the lukewarmness of professors, and the reiterated
attacks of infidels upon the Gospel, shall all, under the guidance of infinite wisdom, contribute to accomplish this end."

I have read this sentence to shew you the spirit of piety in which the work is composed; now see what follows:

"The lofty looks of lordly Prelates shall be brought low; the supercilious airs of downy Doctors and perjured Pluralists shall be humbled; the horrible sacrilege of Non-residents, who shear the fleece, and leave the flock thus despoiled to the charge of uninterested hirelings that care not for them, shall be avenged on their impious heads. Intemperate Priests, avaricious Clerks, and buckish Parsons, those curses of Christendom, shall be confounded. All secular hierarchies in the Church shall be tumbled into ruin; lukewarm Formalists of every denomination, shall call to the rocks and mountains to hide them from the wrath of the Lamb."

This is the language—these are the lively descriptions—these the warm, and I will not hesitate to say, exaggerated pictures which those reverend authors present of themselves; these are the testimonies which they bear to the merits of one another; these are opinions coming, not from the enemy without, but from the true, zealous, and even intemperate friend within. And can it be matter of wonder that laymen should sometimes raise their voices tuned to the discords of the sacred choir? And are they to be punished for what secures to clergymen followers, veneration, and—preferment? But I deny that Mr. Williams is of the number of followers; I deny that he has taken a leaf or a line out of such books; I deny that there is any sentiment of this cast, or any expression approaching to those of Dr. Simpson, in the publication before you. But I do contend that if the real friends of the Church, if its own members, can safely indulge, in such language it is ten thousand times more lawful for a layman, like the defendant, to make the harmless observations which he has published, and in which I defy any man to shew me one expression hostile to our ecclesiastical establishment.

[Mr. Brougham then read the following passage from the libel:]

"We know not whether any actual orders were issued to prevent this customary sign of mourning; but the omission plainly indicates the kind of spirit which predominates among our clergy. Yet these men profess to be followers of Jesus Christ, to walk in his footsteps, to teach his precepts, to inculcate his spirit, to promote harmony, charity, and Chris-"
That you may understand the meaning of this passage, it is necessary for me to set before you, the picture my learned friend was pleased to draw of the clergy of the Diocese of Durham, and I shall recall it to your minds almost in his own words. According to him they stand in a peculiarly unfortunate situation; they are, in truth, the most injured of men. They all, it seems, entertained the same generous sentiments with the rest of their countrymen, though they did not express them in the old, free, English manner, by openly condemning the proceedings against the late Queen; and after the course of unexampled injustice against which she victoriously struggled had been followed by the needless infliction of inhuman torture, to undermine a frame whose spirit no open hostility could daunt, and extinguish a life so long embittered by the same foul arts—after that great Princess had ceased to harass her enemies (if I may be allowed thus to speak, applying, as they did, by the perversion of all language, those names to the victim which belong to the tormentor)—after her glorious but unhappy life had closed, and that Princely head was at last laid low by death, which, living, all oppression had only the more illustrously exalted—the venerable the Clergy of Durham, I am now told for the first time, though less forward in giving vent to their feelings than the rest of their fellow-citizens—though not so vehement in their indignation at the matchless and unmanly persecution of the Queen,—though not so unbridled in their joy at her immortal triumph, nor so loud in their lamentations over her mournful and untimely end—did, nevertheless, in reality, all the while, deeply sympathise with her sufferings, in the bottom of their reverend hearts! When all the resources of the most ingenious cruelty hurried her to a fate without parallel—if not so clamorous as others, they did not feel the least of all the members of the community—their grief was in truth too deep for utterance—sorrow clung round their bosoms, weighed upon their tongues, stifled every sound—and, when all the rest of mankind, of all sects and of all nations, freely gave vent to the feelings of our common nature, their silence, the contrast which they displayed to the rest of their species proceeded from the greater depth of their affliction; they said the less because they felt the more!—Oh! talk of hypocrisy after this! Most consummated of all the hypocrites! After instructing your chosen, official advocate to stand forward with such a defence—such an exposition of your motives—to dare utter the word hypocrisy, and complain of those
sense, and outrage the feelings of the whole human race! If you were hypocrites before, you were downright, frank, honest hypocrites to what you have now made yourselves—and surely, for all you have ever done, or ever been charged with, your worst enemies must be satiated with the humiliation of this day, its just atonement, and ample retribution!

If Mr. Williams had known the hundredth part of this at the time of Her Majesty's demise—if he had descried the least twinkling of the light which has now broke upon us, as to the real motives of their actions—I am sure this cause would never have been tried; because to have made any one of his strictures upon their conduct, would have been not only an act of the blackest injustice,—it would have been perfectly senseless. But can he be blamed for his ignorance, when such pains were taken to keep him in the dark? Can it be wondered at that he was led astray, when he had only so false a guide to their motives as their conduct, unexplained, afforded? When they were so anxious to mislead, by facts and deeds, is his mistake to be so severely criticised? Had he known the real truth, he must have fraternised with them; embraced them cordially; looked up with admiration to their superior sensibility; admitted that he who feels most, by an eternal law of our nature, is least disposed to express his feelings; and lamented that his own zeal was less glowing than theirs; but ignorant and misguided as he was, it is no great marvel that he did not rightly know the real history of their conduct, until about three-quarters of an hour ago, when the truth burst in upon us, that all the while they were generously attached to the cause of weakness and misfortune;

Gentlemen, if the country, as well as Mr. Williams, has been all along so deceived, it must be admitted that it is not from the probabilities of the case. Judging before-hand, no doubt, any one must have expected the Durham clergy, of all men, to feel exactly as they are now, for the first time, ascertained to have felt. They are Christians; outwardly at least, they profess the gospel of charity and peace; they behold oppression in its foulest shape; malignity and all uncharitableness putting on their most hideous forms; measures pursued to gratify prejudices in a particular quarter, in defiance of the wishes of the people, and the declared opinions of the soundest judges of each party; and all with the certain tendency to plunge the nation in civil discord. If
and of civil war, to express displeasure at such perilous doings, no man could have charged them with political meddling; and when they beheld truth and innocence triumph over power, they might as Christian ministers calling to mind the original of their own Church, have indulged without offence in some little appearance of gladness; a calm, placid satisfaction, on so happy an event, would not have been unbecoming their sacred station. When they found that her sufferings were to have no end; that new pains were inflicted in revenge for her escape from destruction, and new tortures devised to exhaust the vital powers of her whom open lawless violence had failed to subdue—we might have expected some slight manifestation of disapproval from holy men who, professing to inculcate loving-kindness, tender-mercy, and good will to all, offer up their daily prayers for those who are desolate and oppressed. When at last the scene closed, and there was an end of that persecution which death alone could stay; but when not even her unhappy fate could glut the revenge of her enemies; and they who had harassed her to death now exhausted their malice in reviling the memory of their victim; if among them had been found, during her life, some miscreant under the garb of a Priest, who, to pay his court to power, had joined in trampling upon the defenceless; even such a one, bare he the form of a man, with a man’s heart throbbing in his bosom, might have felt even his fawning, sordid, calculating malignity assuaged by the hand of death; even he might have left the tomb to close upon the sufferings of the victim. All probability certainly favoured the supposition that the clergy of Durham would not take part against the injured, because the oppressor was powerful; and that the prospect of emolument would not make them witness with dry eyes and hardened hearts the close of a life which they had contributed to embitter and destroy. But I am compelled to say that their whole conduct has falsified those expectations. They sided openly, strenuously, forwardly, officiously, with power, in the oppression of a woman, whose wrongs this day they for the first time pretend to bewail in their attempt to cozen you out of a verdict, behind which they may skulk from the inquiring eyes of the people. Silent and subdued in their tone as they were on the demise of the unhappy Queen, they could make every bell in all their chimes peal when gain was to be expected by flattering present greatness. Then they could send up addresses, flock to public meetings, and load the press with their libels, and
brim the measure of their adulation to the reigning monarch, Head of the Church and Dispenser of its Patronage.

In this contrast originated the Defendants feelings, and hence the strictures which form the subject of these proceedings. I say the publication refers exclusively to the clergy of this city and its suburbs, and especially to such parts of that clergy as were concerned in the act of disrespect towards her late Majesty, which forms the subject of the alleged libel; but I deny that it has any reference whatever to the rest of the clergy, or evinces any designs hostile either to the stability of the Church, or the general character and conduct of its ministers. My learned friend has said that Mr. Williams had probably been bred a sectary, and retained sectarian prejudices. No argument is necessary to refute this supposition. The passage which has been read to you carries with it the conviction that he is no sectary, and entertains no schismatical views against the Church; for there is a more severe attack upon the sectaries themselves, than upon the clergy of Durham. No man can have the least hesitation in saying, that the sentiments breathed in it are anything but those of a sectary. For myself, I am far from approving the contemptuous terms in which he has expressed himself of those who dissent from the Establishment; and I think he has not spoken of them in the tone of decent respect that should be observed to so many worthy persons, who, though they differ from the Church, differ from it on the most conscientious grounds. This is the only part of the publication of which I cannot entirely approve, but it is not for this that he is prosecuted. Then, what is the meaning of the obnoxious remarks? Are they directed against the Establishment? Are they meant to shake or degrade it? I say that no man who reads them can entertain a moment's doubt in his mind, that they were excited by the conduct of certain individuals, and the use which he makes of that particular conduct, the inference which he draws from it, is not invective against the Establishment, but a regret that it should by such conduct be lowered. He says no more than this:—"These are the men who do the mischief; ignorant and wild fanatics are crowding the tabernacles, whilst the Church is deserted," and he traces, not with exultation but with sorrow, the cause of the desertion of the Church, and the increase of conventicles. "Here," says he, "I have a fact which accounts for the clergy sinking in the estimation of the community, and I hold up this mirror, not to excite hostility towards the Established Church,..."
to reclaim those particular persons who are the disgrace and
danger of the Establishment, instead of being, as they ought,
its support and its ornament." He holds up to them
that mirror in which they may see their own individual
misconduct, and calculate its inevitable effects upon the
security and honour of the Establishment which they dis-
grace. This is no lawyer-like gloss upon the passage—
no special pleading construction, or far-fetched refinement
of explanation—I give the plain and obvious sense which
every man of ordinary understanding must affix to it. If
you say that such an one disgraces his profession, or that
he is a scandal to the cloth he wears, (a common form of
speech, and one never more in men's mouths than within the
last fortnight, when things have happened to extort an uni-
versal expression of pain, sorrow, and shame), do you mean
by such lamentations to undermine the Establishment? In
saying that the purity of the cloth is defiled by individual
misconduct, it is clear that you cast no imputation on the
cloth generally; for an impure person could not contaminate
a defiled cloth. Just so has the defendant expressed himself,
and in this light I will put his case to you. If he had thought
that the whole Establishment was bad; that all its ministers
were time-servers, who, like the spaniel, would crouch and
lick the hand that fed it, but snarl and bite at one which
had nothing to bestow—fawning upon rich and liberal patrons,
and slandering all that were too proud or too poor to bribe
them; if he had painted the Church as founded upon impos-
ture, reared in time-serving, cemented by sordid interest,
and crowned with spite, and insolence, and pride—to have
said that the Durham clergy disgraced such a hierarchy,
would have been not only gross inconsistency, but stark non-
sense. He must rather have said that they were worthy
members of a base and grovelling establishment—that the
church was as bad as its ministers—and that it was hard to
say whether they more fouled it or were defiled by it. But
he has said nothing that can bring into jeopardy or discredit
an institution which every one wishes to keep pure, and
which has nothing to dread so much as the follies and crimes
of its supporters.

Gentlemen, you have to-day a great task committed to your
hands. This is not the age—the spirit of the times is not
such—as to make it safe, either for the country or for the
Government, or for the Church itself, to veil its mysteries
in secrecy; to plant in the porch of the temple a Prosecutor
brandishing his flaming sword, the Process of the Law, to
prevent the prying eyes of mankind from wandering over the
structure. These are times when men will inquire, and the
day most fatal to the Established Church, the blackest that
ever dawned upon its ministers, will be that which consigns
this defendant, for these remarks, to the horrors of a gaol,
which its false friends, the chosen objects of such lavish
favour, have far more richly deserved. I agree with my
learned friend, that the Church of England has nothing to
dread from external violence. Built upon a rock, and lifting
its head towards another world, it aspires to an imperishable
existence, and defies any force that may rage from without.
But let it beware of the corruption engendered within and
beneath its massive walls; and let all its well-wishers—all
who, whether for religious or political interests, desire its
lasting stability—beware how they give encouragement, by
giving shelter, to the vermin bred in that corruption, who
"stink and sting!" against the hand that would brush the
rotteness away. My learned friend has sympathised with
the priesthood, and innocently enough lamented that they
possess not the power of defending themselves through
the public press. Let him be consoled; they are not so
very defenceless—they are not so entirely destitute of the
aid of the press as through him they have represented them-
seves to be. They have largely used that press (I wish I
could say "as not abusing it,"') and against some persons
very near me,—I mean especially against the defendant,
whom they have scurrilously and foully libelled through that
great vehicle of public instruction, over which, for the first
time, among the other novelties of the day, I now hear they
have no controll. Not that they wound deeply or injure
much; but that is no fault of theirs—without hurting, they
give trouble and discomfort. The insect brought into life
by corruption, and nestled in filth, though its flight be
lowly and its sting puny, can swarm and buzz, and ir-
ritate the skin and offend the nostril, and altogether give
nearly as much annoyance as the wasp, whose nobler
nature it aspires to emulate. These reverend slanderers—
these pious backbiters—devoid of force to wield the sword,
snatch the dagger, and destitute of wit to point or to barb
it, and make it rankle in the wound, steep it in venom to
make it fester in the scratch. The much venerated person-
ages whose harmless and unprotected state is now deplored,
have been the wholesale dealers in calumny, as well as largest
consumers of the base article—the especial promoters of that
vile traffic, of late the disgrace of the country—both furnish-
ing a constant demand for the slanders by which the press is
polluted, and prostituting themselves to pander for the appe-
tites of others; and now they come to demand protection from retaliation, and shelter from just exposure; and to screen themselves, would have you prohibit all scrutiny of the abuses by which they exist, and the mal-practices by which they disgrace their calling. After abusing and well nigh dismantling, for their own despicable purposes, the great engine of instruction, they would have you annihilate all that they have left of it, to secure their escape. They have the incredible assurance to expect that an English jury will conspire with them in this wicked design. They expect in vain! If all existing institutions and all public functionaries must henceforth be sacred from question among the people; if, at length, the free press of this country, and with it the freedom itself, is to be destroyed—at least let not the heavy blow fall from your hands. Leave it to some profligate tyrant; leave it to a mercenary and effeminate Parliament—a hireling Army, degraded by the lash, and the readier instrument for enslaving its country; leave it to a pampered House of Lords—a venal House of Commons—some vulgar minion, servant-of-all-work to an insolent Court—some unprincipled soldier, unknown, thank God! in our times, combining the talents of a usurper with the fame of a captain; leave to such desperate hands, and such fit tools, so horrid a work! But you, an English jury, parent of the press, yet supported by it, and doomed to perish the instant its health and strength are gone—lift not you against it an unnatural hand. Prove to us that our rights are safe in your keeping; but maintain, above all things, the stability of our institutions, by well-guarding their corner-stone. Defend the Church from her worst enemies, who, to hide their own misdeeds, would veil her solid foundations in darkness; and proclaim to them by your verdict of acquittal, that henceforward, as heretofore, all the recesses of the sanctuary must be visited by the continual light of day, and by that light all its abuses be explored!

[After the learned Judge had summed up to the Jury, they retired, and remained inclosed for above five hours. They then returned the following special verdict, viz.:—"Guilty of so much of the matter in the first count as charges libel upon the Clergy residing in and near the City of Durham, and the suburbs thereof, and as to the rest of the first count, and the other counts of the Information, Not Guilty." ]
MR. SCARLETT moved for judgment on this defendant, who was found guilty at the last assizes for the County of Durham, on a Criminal Information granted by this Court, for a libel.

The LORD CHIEF JUSTICE. Mr. Brougham moves in arrest of judgment?

MR. BROUGHAM. Yes, my Lord, and also for a new trial.

The LORD CHIEF JUSTICE. Then the defendant is, I presume, in Court?

MR. BROUGHAM. He has been here, my Lord; but we did not in the least expect the case to come on to-day, and I believe he is gone. I can, at least, move in arrest of judgment, and I dare say he will be here before I find it necessary to state my grounds for a new trial.

MR. SCARLETT. I know that the defendant is in town, and has been here this morning. As far, therefore, as I am concerned, I beg to waive any objection to Mr. Brougham's proceeding.

The LORD CHIEF JUSTICE. Then Mr. Brougham may proceed. You move first for a new trial?

MR. BROUGHAM. No, first in arrest of judgment; and then I shall shew my grounds for thinking that a new trial ought to be granted.

MR. JUSTICE BEST then read Mr. Baron Wood's report of the trial. The learned Judge had stated the verdict to be—"Guilty on the second count of the information."

MR. BROUGHAM said he should first draw the attention of the Court to the record, and shew that it was so defective that no judgment could be pronounced upon it. This would appear on more particularly comparing the verdict with the Information.

MR. JUSTICE BAYLEY. The verdict is entered upon the second count of the Information.

MR. BROUGHAM. No, my Lord; it is on the first count, and is in these words—"Guilty of a libel on the Clergy residing in and near the City of Durham, and the suburbs thereof."

MR. SCARLETT. No, it is on the learned Judge's notes.

MR. BROUGHAM begged to refer to the record. MR. JUSTICE BAYLEY accordingly looked at the record. The endorsement on the postea corresponded with the learned Judge's notes, but the record itself was in these words—
"And the jurors aforesaid say that he, the said defendant, is guilty of so much of the first count as charges a libel on the Clergy residing in and near the City of Durham, and the suburbs thereof—and as to the rest of the first count and the other counts of the Information, he is not guilty."

Mr. Brougham proceeded. He would now draw the attention of the Court to the first count in the Information, the only one to which he should have occasion to revert, as the defendant was acquitted on all the others. This count charged him with "printing and publishing a libel of and concerning the United Church of England and Ireland, and of and concerning the Clergy of that Church, and the Clergy residing in and near the City of Durham and the suburbs thereof," not repeating the words "of and concerning," before the words "the Clergy residing in and near the City of Durham."

Mr. Scarlett asserted, that the words "of and concerning" were in his copy of the Information.

Mr. Justice Bayley read the passage from the record, which proved that Mr. Brougham was correct.

Mr. Scarlett. It was so in my copy, I was equally confident with you.

Mr. Brougham. Yes; but there was this difference—you were confident and wrong; I was confident and right. The difference was merely between a well-founded observation, and one that had no foundation at all. I only mention this to prevent any further interruptions, of which I have had two already. The learned Counsel then proceeded to take two objections to the record;—first, that the count charged an offence different from that which the Jury had found; and, second, that the offence of which the Jury had found the defendant guilty, supposing it to be the same with that stated, was in itself too vague and uncertain to be made the foundation of any judgment. And first he would contend that the Information charged one offence, and the Jury had found another. The count set forth the libel as "of and concerning the United Church of England and Ireland, and of and concerning the Clergy of that Church, and the Clergy residing in the City of Durham and the suburbs thereof;" and the Jury had found that there was no libel on the United Church or the Clergy thereof, but on the clergy of Durham. Now he would contend that, even if the words, "of and concerning" had been repeated, and even if the Clergy of Durham were a body distinct from the body of the United Church—thus putting the case far stronger than it was for the prosecution—that the des-
cription was one entire description, and could not be severed. Not only was there no separate count for a libel on the Clergy of Durham (the introduction of which would have been the easiest thing in the world) but there was not even in this count any undivided averment of a libel on them. Suppose a libel were charged “of and concerning A and B;” and suppose A and B were distinct persons, entirely unconnected with each other, and the Jury found that the libel was concerning “A” only, they would find an offence different from that of which they were charged to inquire. There was a case not nearly so strong as this, that of “Lewis and Walter,” which had been argued, but which the Court had not yet decided, where a similar objection was taken, and where the leaning of some, if not all the Judges, seemed strongly in favour of the objection. There the defendant was charged with a libel “of and concerning the plaintiff, and of and concerning him as an attorney;” at the trial there was no proof of his professional character, and the Lord Chief Justice accordingly nonsuited the plaintiff, because, though the publication would be a libel on him in his personal character, he held the plaintiff bound by his averment, and that it was one description of one wrong. The case cited in argument for the plaintiff of “Dickens v. Cogswell,” was clearly inapplicable; for there the averment “of and concerning the plaintiff as an appraiser and carpenter” was clearly partible: and so the Court seemed to regard it. But the present case was far stronger than “Lewis v. Walter;” because here, instead of referring to two distinct characters of the same person, or two distinct individuals like “A and B,” the Clergy of Durham (if they meant any person at all) were included in the previous description, “the Clergy of the United Church.” It was as if the charge had been “of and concerning a certain community, and of and concerning a certain person as a member of that community;” in which case the libel, if anything would be a libel on the community, as the member qua member, could not be severed from it. But here the defendant was actually acquitted of libelling the Clergy in general; and yet found guilty of libelling a body who only had existence as a part of this Clergy; and this without any distinct allegation, or any divisable averment. Here he might advert to the uncertainty of the description, which he should make a substantive objection, as strengthening that which he was now urging; for even this part of the Church, at best to be so taken—was so vaguely described, as, when severed from the rest, to mean nothing. If the description of the Clergy
of Durham was explained as referring to some part of the "United Church," then the acquittal applied to the larger included the less; if it was taken independently, then it referred to no recognised body, and had no meaning at all. This brought him to the second objection—that the offence charged was altogether uncertain. First, there was nothing to define the exact meaning of the word "Clergy"—nothing whatever to limit it to the ministers of the Established Church.

Mr. Justice Best. Are Dissenters ever called Clergy?
Mr. Brougham replied that they were so called in many acts of Parliament; among others, in the 48th of George III., which in its title purported to be "An Act concerning the Clergy of Scotland." But if the dissenting preachers were not legally denominated Clergy, and he contended that they were, the Catholic Priests had, unquestionably, a right to the title; they were so treated in the acts of Henry VIII.; and they had only to abjure to become at once in full orders, and to receive the highest dignities of the Church. At this very time there was a Bishop who had never taken orders in the Protestant Church, but had merely passed from the Roman Church into ours. The term "Clergy" therefore, was altogether vague without further explanation; for it was impossible to import that part of the description of which the defendant had been acquitted, into the other part of which he had been found guilty; on the contrary, the opposite finding seemed to negative all connexion between them. Next, what was meant by the term "near?" Was it one, or two, or ten, or twenty miles? Each man would reply according to his own ideas of nearness, and perhaps no two persons would agree as to the limits within which the labelled Clergy resided. The term "suburbs," was again ambiguous; so that here was a further latitude of proximity almost running into distance. Here, then, the word "Clergy" was ambiguous; the class of Clergy was ambiguous; and if the Court could find no meaning in what the Jury had found, they would not look for it in what they had negatived. And now, leaving these points, he would contend that even supposing the clergy of the Established Church in the City of Durham to be intended, these did not form a body whom the Court meant to protect when they granted the Rule. At the time when the Rule was argued, the publication was called "a libel on the Church of England;" Mr. Scarlett demanded protection for that Church; the Lord Chief Justice three times interrupted the argument when proceeding, on the ground that the clergy
of Durham were the applicants, by observing, "this is a libel on the Church of England;" and when he (Mr. Brougham) contended that it applied only to the Clergy of Durham, he was met by the same answer. Now, he did not believe that the Court ever would have granted the Rule had it been applied for the terms of the verdict, "for a libel on the clergy residing in and near the City of Durham and the suburbs thereof;" for whenever the Court had thus interfered, it was either on behalf of some individual, or some definite body of men recognized by the law. Every case cited by Mr. Scarlett on that occasion was consistent with this principle. The King v. the Justices of Staffordshire was entirely of this nature; for where could be found a more definite body of men than those in the commission of the peace for a particular county? In the case where application was made against certain Justices of Middlesex sitting in Litchfield-street, the motion was refused until affidavits were produced shewing what particular magistrate sat there, and then the Rule was granted. In "the King v. Jerome," which was a libel on the Directors of the East India Company, the Information was granted, because the Directors were a distinct body, chartered by Act of Parliament, and not like the Counsel at a particular bar, or a particular circuit. The case of "the King v. Orme and Nutt," reported in 1 Lord Raymond, 486, was also more fully reported as to this particular point in 3d Salkeld, 224.

Mr. Justice Bayley. Third Salkeld is a very questionable authority; it is not like the first and second volumes of those reports.

Mr. Brougham said he was aware of this, and he would not have quoted it had it differed from the Report in Lord Raymond; but it was consistent with it, and only carried the statement a little further. In Lord Raymond it appeared that the libel was on "certain ladies of London," which was removed by certiorari, because the Recorder stated that he thought himself affected by it, and in Salkeld it was laid down that "where a writing inveighs against mankind in general, or against a particular order of men—as for instance men of the gown—it is no libel; but it must descend to particulars and individuals to make it a libel." In Lord Raymond it appeared that more specific averments to point out the individuals designed were necessary, and probably these were supplied.

Mr. Justice Bayley. Yes: because you cannot say a writing is false and scandalous unless you know to whom it applies.
MR. BROUGHTHAM replied that this was exactly his argument. He then came to "The King v. Osborne," which had been cited by Mr. Swanston, a reporter to whose industry and research the profession were greatly indebted, and who had searched the MSS. in Lincoln's Inn Library for his materials, in the notes to the case for the Bedford charity, which was argued in Chancery in 1818, and where the legal relation of the Jews came chiefly in question. This was a libel charging that certain Jews who had lately arrived from Portugal and lived near Broad-street, had murdered a woman and her child, in consequence of which numbers of persons were assaulted, and terrible riots were excited. It was one of those charges on bodies of men of systematic murder which were frequently made in dark times to inflame the passions of their bigotted neighbours, and which called imperiously for the interference of courts of justice. In that case the Judge seemed to consider the information as improper for a libel; but regarded it as good for a great misdemeanour, which it was absolutely necessary to repress. He had now finished his argument in arrest of judgment and hoped that he had shewn enough to induce the Court to grant a Rule to show cause.

The Lord Chief Justice intimated that it would be more convenient to hear the whole case now.

MR. BROUGHTHAM said he would proceed very shortly to state his grounds for a new trial; and he thought, that even if the Court should not see in the variance between the Information and the Verdict, sufficient reason for arresting the judgment, they would suffer the argument strongly to incline them to a new trial. If they saw that they had granted the Information for one offence, and the defendant had been found guilty of another—if he had actually been acquitted of that which was urged before them, and convicted on a ground hardly, if at all, in the contemplation of either side—they would feel disposed to submit the case to another jury. The defendant was placed in a most unfortunate situation by the course of proceedings; for had the Rule been moved for on the ground upon which he was found guilty—had it been specifically applied for solely on behalf of the Durham Clergy, the Court would never have waved the salutary practice of compelling each Prosecutor to show, by his oath, that he came into Court with clean hands. Then the defendant would have had the opportunity of showing the offences of which each individual had been guilty, and of proving by affidavit the truth of every tittle of his charges. At the trial, the Counsel for Mr. Williams were
entirely misled by the notice of the record, and by the speech of the Prosecutor's Counsel. The case (as the learned judge might testify) proceeded entirely on the question whether the publication was a libel on the Church of England? and to this point all his (Mr. Brougham's) reasoning was directed. Had he supposed that his client was called on to answer for a libel on the Durham Clergy, he would not have expended all his strength in showing that it was not a libel on the Established Church. He should not have made quotation after quotation from the works of pious men to show how that Church had been chartered; but he should have bent all his strength to show that the paragraph contained no libel on the Clergy in and near Durham. On that point he had not yet been heard; of that on which he had been heard the defendant was acquitted; of that on which he had not been heard, he was found guilty. Had he been duly apprised that this was the pith of the Information, and applied himself to that point, the jury might have arrived at a different conclusion. His next ground for a new trial was, that the verdict was against evidence, because the Court charged the defendant "with printing and publishing," and the witnesses for the prosecution expressly proved that Mr. Williams was not the printer.

The Lord Chief Justice asked if the newspaper did not purport to be printed by Mr. Williams?

Mr. Scarlett said he had not the particular paper proved; but he had another paper which purport to be printed and published by and for the defendant.

The Lord Chief Justice observed, that at all events, the objection might be obviated by applying to the learned judge, for leave to amend the verdict by entering it on another count for publishing only.

Mr. Brougham said, he did not rely on this point, though he thought it right to mention it. His next ground was the misdirection of the learned judge. And first, Mr. Baron Wood in his charge told the jury, "The Court of King's Bench have been of opinion that this is a libel, and a fit subject for prosecution." Now the first part of this direction was incorrect; the Court had not given opinion that it was a libel, but had merely given opinion that it was a fit subject for a jury to consider whether it was or was not a libel. But if the jury supposed that the case was merely sent to them to execute the opinion of the Court—

Mr. Justice Bayley.—He did not tell them that, I suppose?

Mr. Brougham.—No; but they might infer it.
MR. JUSTICE BAYLEY.—Did he not tell them what his own opinion was?

MR. BROUGHTON.—Yes; and that is another ground for a new trial.

The LORD CHIEF JUSTICE.—Then almost every judge who has tried a case of libel since the Act passed has been in error; for it has been the uniform practice for the judge to state his opinion, leaving the jury to exercise their own judgment.

MR. BROUGHTON.—Undoubtedly; but he ought not to state it as the opinion of the Court, who have only said that it is a fit subject for enquiry.

MR. JUSTICE BENT.—Is it more than saying “the Grand Jury have found a bill?”

MR. BROUGHTON submitted that it was very different; it was almost overwhelming the minds of the jury, to tell them in effect that if they found the publication not a libel, they differed from the highest criminal Court in the kingdom. His Lordship also said, “I am required by law to give you my opinion.” Here again he was incorrect; he was not required, but only authorized to give his opinion, as in other cases; and Lord Ellenborough once, in a similar case having inadvertently used the word “required,” corrected himself, and substituted “not required, but it is expected of me.”

MR. JUSTICE BAYLEY.—Do you really think you can prevail on the Court to grant you a new trial, because a judge has used the word “required” instead of “authorized?” He does not say, I presume, that he is dissatisfied with having said so?

MR. BROUGHTON.—No; the report is silent on that subject; he says nothing either way. The learned judge also broadly stated—“Every publication tending to bring an establishment of this country into hatred or contempt is a libel.” This was much too wide: it might be in the highest degree praiseworthy to bring an establishment into hatred and contempt—to show that its abuses must be corrected, or even that it must be done away; the propriety or impropriety of such attempt would depend on the manner in which it was pursued. There were many excellent men who had exerted all their powers to abolish some of our establishments; and who had passed lives of honourable toil for this purpose without reproach. That which at one time was useful, might become noxious at another; and was it not then to be brought into hatred and contempt in order to its removal? The Small Pox Hospital, for example, was of the highest utility when it was founded; but after the vaccin
inoculation was discovered, it became pernicious; and Lord Ellenborough intimated that it might be prosecuted as a pest-house, unless its baneful effects were prevented: yet here was an establishment, chartered by Act of Parliament, and at one period among the noblest of our charities. There were other establishments which it might be the duty of all good men to expose. For instance, the office of third Secretary of State. Was it a crime to show that this establishment was useless—to cover it with ridicule—to show that it was despicable and abominable in the existing state of the country?

The LORD CHIEF JUSTICE.—I am not prepared to say that this may be done by publication. There is a place where such arguments may be used with freedom. At the same time I do not say that an argumentative discussion of the establishment designed to show its inutility would be a libel.

MR. BROUHAMA.—In that I entirely agree; the whole distinction lies in the manner, and this distinction the learned judge never submitted to the jury.

MR. JUSTICE BEST.—Yes; because he says any publication tending to bring an establishment into "contempt," that cannot be by fair discussion.

MR. BROUHAMA.—O yes, my Lord. To bring that which is pernicious into contempt is the object of all discussion, and even ridicule is often a fair weapon. I am sure we should not be now sitting under a reformed Church—that "United Church" of which the Information speaks would never have existed—but for the use for this weapon against Popery. These (continued Mr. Brougham) were his grounds for asking a new trial, in case the judgment should not be arrested; but he again submitted, on the two points which he first brought to the consideration of the Court, that the record was so inconsistent with the finding, and so imperfect in itself, that no judgment could be founded upon it.

The LORD CHIEF JUSTICE.—You do not mean to say that the learned Judge did not leave the question at last to the jury?

MR. BROUHAMA.—Certainly not, my lord.

The LORD CHIEF JUSTICE consulted with the other judges for few minutes, and then said, "You may take a Rule to show cause why the judgment should not be arrested; but we all think that you have laid no ground before us for a new trial. The points in arrest of judgment are those on which you yourself chiefly rested."
Mr. Brougham.—I relied on them chiefly, without doubt.

Mr. Scarlett.—My learned friend would rather have the verdict he has at present, than any that a new trial would give him.

The Lord Chief Justice.—Will you consent to a new trial, then, Mr. Scarlett?

Mr. Scarlett said, that as the defendant was in town, it would be desirable to know whether the case could come on this term.

The Lord Chief Justice replied, that it was quite impossible that it could come on during the present term.

Mr. Brougham took his Rule to show cause why the judgment should not be arrested.
D I S S E R T A T I O N
ON THE

LAW OF LIBEL AND SLANDER.

The unsatisfactory state of our Libel Law in almost every particular, is brought very strongly into view by the proceedings in the Durham case; and it may not be unprofitable to the great cause of Law Reform, and above all, to the important interests of the Liberty of the Press, if we take a short view of the Objects towards which that law ought to be directed,—the degree and the direction in which it falls short of them,—and the Remedies by which it might be better enabled to attain them.

1. The true and legitimate objects of the Law of Libel are, to secure the public peace against inflammatory and seditious publications, and to protect private character from slander; without so far hampering the discussion of men’s measures and of their public characters as to injure the great interests of liberty and good government, or so far removing the salutary control of public opinion from notorious private vices, as to bestow impunity upon ostentatious immorality. These objects never can be accomplished as regards public libels unless there are certain protections thrown round those who discuss public questions and public characters, and certain difficulties thrown in the way of State prosecutions. Nor can it be accomplished as regards private slander, unless the defence of the injured character is made so easy, safe, and effectual, that the legal proceeding shall not be either loaded with ruinous expense, nor shall imply a consciousness of guilt, nor shall aggravate rather than remove the mischief done.

2. In all these particulars, however, the law of this country is singularly defective. The charge brought by the writer against the government, or against the public character of any functionary of the State, may be ever so true, and ever so fit or even necessary to be stated plainly, strongly, and even vehemently, and yet the statement may be as severely punished as if it were from beginning to end false. A minister may have taken a bribe to betray his trust; he
may, to gratify his private revenge, have exposed a worthy colleague to destruction; he may, to get rid of a rival in the cabinet, or in the senate, or in the boudoir, have prostituted the patronage of his office and given an embassy or a vice-royalty to the least worthy candidate; he may have bartered crown patronage for parliamentary support without decency and without shame. The statement of this, with or without comment, is as severely punishable by our law, as if the whole had been the fabrication of a wicked and spiteful imagination. Upon the trial, no evidence can be given of the truth; in addressing the jury, the judge must declare that true or false the publication is alike criminal; even after the conviction, nothing respecting the truth can be urged in mitigation of punishment, as if the additional circumstance of having safely charged those offences made the crime of publishing the charge no blacker. Again, the whole costs of the defence fall upon the party although he is acquitted, and ought never to have been tried. The government has the power of putting any writer or printer on his trial without a tittle of evidence against him, even without his ever having published any thing at all; and he may be prosecuted over and over again until the expence of his defence have worked his entire ruin. Mr. Perry and Mr. Lambert were punished for saying that George III.'s successor, coming after his reign, would have a fine opportunity of gaining popularity by the contrast which he had it in his power to display with the policy of the last half century. To call this libellous was absurd enough; but if neither Mr. Perry had been the proprietor, nor Mr. Lambert the publisher of the Morning Chronicle, or indeed of any paper at all, they would have equally been exposed to prosecution, and equally had to pay L. 100 or L. 150 in defending themselves. Further, a prosecution may be instituted against a publication which no twelve tradesmen, or farmers, or yeomen, in any district can be found to pronounce libellous; and the crown may have a jury of a higher rank in society, whose feelings are more tender on the subject, and whose leanings are all to the side of power, and all against the free discussion of the press.

As regards private libels, the case is fully worse. The party slandered may bring an action, but if the words are true, he can recover no damages, and yet their truth may be no defence. As, for example, if a woman early in life had made a slip, of which repenting she had for forty years after led a blameless life, and become the respected mother of a family,—the truth here is rather an aggravation than an ex-
tenuation of the offence of disclosing this early accident for
the sake of revenge, possibly because her virtue had now
held out against the attempts of some seducer; yet this cir-
cumstance of the truth is a complete bar to the action.
Then, in prosecuting, there is the difficulty of an opposite
kind; for here the truth is wholly immaterial, and therefore
whoever prosecutes, at least by Indictment, appears to admit
the truth of the charge in the libel. If the prosecution is
by Criminal Information, the prosecutor's oath must deny
the charge,—but the defendant can give no evidence of the
truth at the trial, however easily he could prove it, and in
shewing cause against the Rule he can obtain none but volun-
tary affidavits: so that this proceeding is a very imperfect
vindication of character; as all the charges may be true and
capable of proof, and yet the evidence is excluded. There
remains, indeed, the Action for Damages. But whoever
has been engaged in any such proceedings, either as a
party bringing the suit, or as advising and managing it, is
well aware how unsatisfactory a remedy it affords. There
is nothing upon which greater mistakes are committed;
for men are wont to say that it effectually vindicates the
plaintiff's reputation by defying the calumniator to prove
his charge. But it in truth only shews that the charge
cannot be proved, while it may yet be quite true, though the
evidence of it rests with the guilty party, or between the
guilty parties if there be more than one. Suppose, for in-
stance, an imputation, one of the most frequent of all, against
a female of having violated her chastity, or against a man of
having seduced a female the charge may be quite true, and
yet no one but the parties may be able to prove it; nay,
there may be abundance of proof, but they only may know
how to get at it; or again the witnesses may be so entirely
under their control, that the defendant having no means of
previously examining them, never could bring them into
court in the dark as to their testimony, and consequently
never could be advised in the dark to plead a justification.
The like may be said of almost all acts of official delinquency,
which can only be known in their details to the actors and
their accomplices or dependants. How could any defendant,
after denouncing these upon strong moral evidence, or at least
on very grave suspicion, venture to plead any thing like a
justification, when he must be wholly unable to marshal his
evidence, or even to ascertain the particulars of the trans-
action? Then suppose individual parties charged in a libel
with the private delinquency, or men in office with the mal-
versation, their bringing an action really proves nothing as
to their innocence—it only proves that the offence may have been committed, or it may not; but that the evidence of it is inaccessible, lying within the breast of the guilty parties, or their accomplices, or their dependants. Now it is of the nature of all delinquency, public or private, to shun the light, consequently, there are very few things of which any one can be accused, that do not come within the description of the cases from which the examples now given to illustrate the argument have been chosen. Hence it is that the plea of justification is so seldom pleaded; but hence it also is, as professional men know, men who do not merely look to the theory of our jurisprudence, but are well conversant in the practice of the law, that the remedy for injuries to reputation, by way of action, is so unsatisfactory, as to be rarely recommended to those who have suffered the injury. Even in the intercourse of common life, there are many things, many breaches of decorum and even of morality, which no one who lives in society has the least doubt of, and which nevertheless every one feels to be incapable of proof. Every now and then some one charged, and known to be most justly charged, with those offences, has the courage to bring an action, which all the world knows can have but one result. The defendant cannot justify; the verdict is a matter of course; the inference drawn from it universally by those who know nothing of the parties or the matter, and whose good opinion is not worth having, is, that the charge is groundless, and has been courageously met; the inference equally universally drawn by all who know the parties, all whose opinion forms their reputation, is, that they are guilty, and have not shewn their innocence, but displayed a safe and easy effrontery by the proceedings.

To these considerations, which tend so fully to discredit the remedy by action, is to be added this other,—that the defendant may plead a justification, which does not cover the whole matter in the libel or in the declaration, or he may plead one which he can only partially prove. Then the injured, that is the slandered party, is worse off than ever; for the part justified or not proved may be the worst of the whole, and it may be utterly false, and yet be the event of the trial what it may, and the verdict ever so secure, the party is sure to be believed guilty of the whole matter.

Nay, even if no mischance befalls him in the suit, and he recovers damages, every one knows how very rarely a jury estimates the injury to reputation and to feelings otherwise than by the most cold and imperfect rules—with what a scanty measure the damages are stingily meted out. In
different places the standard varies; in the provinces, where, however, the slander has always a greater effect, the damages awarded, even in very grave cases, are ridiculously small; even in London they are seldom considerable, unless some unexpected accident occurs to inflame them. Now, however frequent the topic may be, that the action is not brought for gain, and that the damages are an object of contempt with the plaintiff, yet every one knows that they are the very reverse of being undervalued, and most justly; for, whatever the plaintiff's counsel may say, he never fails to urge the amount of damages as not merely the measure of his client's injury, but the value of his reputation; and if a few pounds or shillings only be given, the defendant leaves the court with the cry, in which all the public joins, that his adversary's character is worth no more; may, for years the slandered party will hear the value at which a jury has assessed his character quoted maliciously against him, as often as he or his connexions happen to be involved in any personal altercation.

So numerous and so serious being the difficulties of an action, that the remedy by Information is very generally preferred; for it is prompt, being accessible immediately, inasmuch as the affidavit by which the slandered party denies the truth of the imputation cast on him, is the very first step of the proceeding; and that affidavit, to which he may add the oaths of others, in case the matter lies within their knowledge as well as his own, affords a certain degree of proof that the accusations are unfounded. When this, however, is said, all is said that can be urged in favour of this proceeding; for the witnesses swear without any cross-examination; they swear unseen by the court; and they may select only those things which they can safely deny, leaving much untouched and more unexplained. The defence of an action is, as we have seen, in the great majority of instances, a mere name; nevertheless, in some cases the proof may be forthcoming, if the defendant can be aided by the process of the court to compel witnesses; and in others, witnesses who refuse to volunteer their testimony by swearing an affidavit, which every one knows they cannot be compelled to make, would have no objection to communicate privately with the party, so that he might safely examine them, when he seemed to force them into the witness-box by a subpoena. It follows that no vindication of character can be competent which does not unite the merits of the two proceedings, by Criminal Information and by action—enabling the party and his accomplices or dependants, to swear; defying the defen-
dant to the proof; and above all, exposing the plaintiff's witnesses, if he have any, to cross-examination.

An additional reason exists for preferring the criminal proceeding, or at least for making punishment a part of the result. If damages only are the object, the slanderer may conceal himself, and pay some tool, some man of straw, whom he sets up to publish his calumnies, and engages to save harmless from all costs and charges. It is always far more difficult to find a person who will go to prison for his employer. Now, one great object of the Libel Law should be to bring forward the real offender; this is indeed distinctly included in and implied by the statement made in the outset of this discourse, as to the proper aim and end of that law.

The present frame of our jurisprudence in this particular is singularly defective. A slanderer may invent a false tale respecting some transaction to some part of which he was a party or a witness, and may get a publisher to disseminate it widely. The action being brought against the latter, the publisher, he who knows nothing at all of the matter, is nowise injured by being an incompetent witness; but he produces the real party, the writer of the lie, to swear for him; and it is hardly possible to defeat this conspiracy—the mouth of the other party, the plaintiff, who has been slandered, being of course closed. The two parties thus contend upon most unfair terms; and the right of proving the truth being unrestricted, the propagator of the falsehood has the same privilege of pleading a justification with the inventor of it; the real party to the suit appears, not as defendant, but as witness; and of the two formal parties, neither of whom can be heard, one only is real, and he has the greatest interest in being heard, whilst the other is wholly indifferent whether he be heard or not, having nothing to communicate.

There remains one great defect in our Libel Law, which, though not confined to this branch of criminal jurisprudence is nevertheless of more serious injury here than elsewhere,—that strange anomaly by which the jurisprudence of England is distinguished, and very discreditably, from that of every other country,—the leaving it to private individuals to institute prosecutions for the punishment of crimes. Whether any offence, however grave shall be severely punished or altogether escape with impunity, depends upon the feelings, or the caprice, or the indolence, or the activity, or the disinterestedness, or the sordid feelings, of unknown and irresponsible individuals. The contrast is astonishing between the severity of the penalties denounced against
offences, and the utter relaxation of the law for enforcing these penal sanctions. After providing by a series of the most rigorous enactments the most sanguinary punishments, the sword of justice drops from the lawyer's hand, and not a single precaution is taken to prevent the criminal's escape and secure the enforcement of any one of those provisions. Within a few months of each other, two capital crimes were committed—a murder in the face of day, (which might possibly have been found to be only an aggravated manslaughter,) by one patrician upon another—and an extensive forgery by a wealthy tradesman. In both cases parties were bound over to prosecute, as it is most inaccurately called, in reality to give evidence as witnesses; in both they forfeited their recognizances; and in both the culprits escaped.

The want of a Public Prosecutor is peculiarly felt in prosecutions for libel. The publication most offensive to decorum, most injurious to the peace of society, will never be visited with punishment, as long as it is left with private parties to institute criminal proceedings. Women of delicate feelings, men of weak nerves, persons who because of their invincible repugnance to adopt proceedings of a public kind for the punishment of those that have violated the privacy of domestic life, are the more fit objects for the law's protection, and the less likely to have committed the things laid to their charge, are surely of all others the most unfit to be intrusted with the functions of public accuser, especially in cases where their own admitted weaknesses are in question, or they are charged with immoralities of which they are quite incapable. The impunity of the slanderous press is effectually secured by this cardinal defect in our system of criminal jurisprudence—although it must be admitted, that the exercise of a public prosecutor's functions, in cases of libel on private character, would be attended in many cases with extreme difficulty, and that it would always require a very nice and delicate hand to discharge his duties.

3. A careful consideration of the true objects of a good Libel Law, and of the defects which prevail in our own, brings us easily to the remaining and most important head of discourse,—the remedy required. And first of all we may very briefly dispose of some projects often propounded by persons who have had little practical acquaintance with the subject, and are not even much conversant with the discussion of it.

The necessity of defining what a libel is, has often been urged; but the impossibility of
is at once perceived when the attempt is made; and it exists in the very nature of the thing. No definition of cheating, of cruelty, of conspiracy, can ever be given in any particularity of detail; and to contrive one which should meet all cases of libel would be absolutely impossible. The ill success which has attended the only limitation fixed, the only criterion established of libel or no libel—has not at all tended to encourage any reflecting or experienced person in the pursuit of definitions. Slander is only actionable if it imputes an indictable offence. What is the consequence of a line thus drawn, and drawn to all appearance, upon a sufficiently plain and precise principle—viz. on the only principle that has ever been propounded in discussing the question of definitions? The consequence has been a complete failure; the line excludes what it should include, and vice versa; the definition has every fault that a definition can have; words are actionable which ought not to be so, as, "He committed an assault"—while no action lies for words which impute the most serious offences, as," He committed incest and adultery"—or which tend to dishonour—as, "He is a liar, a coward, and a scoundrel."

Another proposal is to make the truth in every case a defence. But independent of the objection already stated to this rule in the case of private libels, even public libels may be so conceived as to be quite true in all their statements of facts, and yet be most dangerous to the peace and safety of the community. A perfectly well-grounded charge may be brought against the Government at a moment of public excitement, and accompanied with furious commentary tending to produce revolt. The passions of the multitude may be roused at a moment of public danger, from famine or invasion, by statements wholly consistent with the truth—the making of which can do nothing but harm—the suppression of which is the duty of every good citizen. The troops may be appealed to by details quite true, yet brought forward at such a moment, and urged with such invective, as may excite a dangerous mutiny. The slaves in a colony may be excited to insurrection by a statement much under the truth, of their grievances, and of the crimes by which they were carried into slavery and have been kept in it,—of their natural and imprescriptible right to freedom,—accompanied, for instance with the recital of Dr. Johnson's celebrated toast, given at Oxford, at the table of the Head of a House there—"a speedy insurrection of the negroes in Jamaica, and success to it." So on the other hand, many falsehoods may
be published, and even published with a malicious intention, and yet their tendency being innocuous, this will not constitute a libel. The mere truth or falsehood, then, of any matter published, is not a criterion of the innocence or guilt of the publication.

There are other reformers of the Libel law who have considered the abolition of the *ex officio* power to prosecute, as a remedy for all defects. That it would operate a very imperfect relief, however, and would leave much of the mischief untouched even as regards public libels, must be admitted. But we may go a great deal further, and question its being any advantage at all. That it should be placed under wholesome restriction, is very certain. But the evils arising from the want of a public prosecutor who shall institute proceedings, to preserve the purity of the press and check its licentiousness, have been already shown under the second head of this Discourse.

An attentive and dispassionate review of the subject, will show the true remedies for the existing defects, to be deduced from the statements already made respecting the objects in view and respecting those defects.

First, It seems necessary to place the power of filing *ex officio* informations under the control of a grand jury. The law of Scotland is in some respects far better than our own, as regards the prosecution of offences. The Public Prosecutor, representing the Crown, is a known and responsible officer, to whose hands is entrusted the important duty of commencing and conducting all criminal proceedings. But in case he should pass over any offence committed, the party injured, or in case of murder or abduction the relations of the party, are allowed to prosecute with the Public Prosecutor’s concurrence, (concurrence,) which is understood to be granted as of course. Instead of this power so confided to a single person being more liable to abuse in the case of political offences, it is perhaps less likely to be abused, because a grand jury has no individual responsibility, and may receive any bill preferred by an obscure person, as happened in the celebrated case of the Dean of St. Asaph, where a country attorney instituted proceedings, and the grand jury at once found the bill. It is not very likely that the Lord Advocate should ever put a person on his trial for a public libel or other political offence, unless the feeling among those classes from whom petty jurors are taken, happen to be favourably disposed towards the prosecution. Nevertheless, the additional control of a grand jury would have the effect of preventing many vexatious proceedings; which may, as the law
now stands, be instituted against any obnoxious person, both by the \textit{ex officio} powers of the Attorney-general, and by the privileges of the Lord Advocate, merely to give annoyance, and cause expense without any regard to the probability of conviction. In the still more important department of libels against private persons, we have already had occasion to see how important the office of a prosecutor is for keeping the press pure. It would, however, be expedient to give the person libelled some share in the conduct of the proceedings, as an intervening party, although it might not be fit to give him a veto upon the instituting of them.

Secondly, In all cases whatever of prosecution, whether for public or private libel, whether by Criminal Information or Indictment, and in all Actions brought, the defendant should have a right, upon notice, to give the truth in evidence, subject to the next proposition; but then the truth should only go to the question of intention and tendency, as one element for resolving the question whether or not the defendant is guilty of the matter laid to his charge, and if guilty, what punishment he ought to receive, or what damages he ought to pay, and should in no case be of itself a conclusive defence by way of justification. The notice to be given by him of his intention to tender such evidence under the general issue, ought to be special, with leave to the prosecutor or plaintiff to require a fuller particular under the authority of a judge at Chambers; and the evidence tendered at the trial must of course be confined within the limits of the notice.

Thirdly, It being of the utmost importance that anonymous slander should be discouraged, that the real author should by all means be reached, and that the conspiracy between the slanderer and the publisher already adverted to should be defeated, the right to give evidence of the truth of the matters published should be confined strictly, both in civil and criminal cases, to the real author; and in order further to prevent collusion and fraud, the mere statement or admission of a party that he is the author should be of no avail, but before the evidence is received, he ought to prove to the satisfaction of the Court that he is the real author. The consequences of this arrangement would be, that whoever lent himself to publish the libels of others, must be content to suffer punishment without the chance of escape or even mitigation from the matters being undeniably true; while the real author would have every inducement to come forward, and would have all the benefit of the truth to which he is entitled. Nor can it be said with any correctness,
that this restriction upon the mere publisher is unfavourable to the party complaining of injury to his character; for it is no kind of imputation upon any one who offers to meet any charge of his traducer, that he prosecutes the hired publisher without defying him to produce his charges, since he gives him at the same time full power to escape by putting forward the true author of the slander.

Fourthly, It seems necessary, in order to make a prosecution satisfactory in the case of private libel, that the prosecutor should have a right to the fine which the libeller shall be sentenced to pay. This will not only provide for the expense of the proceeding, but give the same compensation which is now obtained by an action, and which we have seen cannot always be safely left with a jury.

Fifthly, In order to make the proceeding by Information as perfect as it can be, there seems to be a necessity for exposing the witnesses who make affidavit to examination in Court. Now, nothing can be more easy than to require that in every case of a Criminal Information being granted, the defendant should have the right to call for the prosecutor's witnesses,—that is, for the production of all the persons who joined with the prosecutor in making the affidavits upon which the Rule was obtained, the defendant being at the same time compelled, whether he calls for the prosecutor's witnesses or not, to produce the persons who made affidavit against the Rule. It is evident that if this proceeding were attended with this production of the witnesses on both sides, it would become extremely satisfactory; for, while on the one hand, it exposes the conduct of the party libelled to a severe scrutiny, it protects him on the other hand from all false swearing as far as cross-examination can afford such security.

It may be a question whether the parties themselves should not possess the right of presenting themselves as witnesses, to undergo cross-examination. Nor does there seem to be any good reason against this permission, except that it is contrary to the general rules of our law of evidence, and that there is no good reason for confining such an examination of parties to the case of libel. It is in no respect contrary to the principles on which the law of evidence should be grounded; and if the examination were extended to other cases, our jurisprudence would only be so much the more improved.

Lastly, The power of having public libels tried by a Special Jury, ought by all means to be taken away. There is no reason why private cases should not still be triable by
special jury, at the option of either party. But there also is no good reason why libel, or indeed any other misdemeanor prosecuted by the public, should not be referred to the same tribunal which disposes of the lives and liberties of the subject in the case of all the graver offences known to the law.