

(4)

PROCEEDINGS

IN AN

ACTION FOR DEBT,

BETWEEN

THE RIGHT HONOURABLE

CHARLES JAMES FOX, Plaintiff,

AND

JOHN HORNE TOOKE, Esq. Defendant.

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PUBLISHED BY THE DEFENDANT.

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PROCEEDINGS, &c.

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WESTMINSTER-HALL, *April 30, 1792.*

Sittings before Lord KENYON, C. J. K. B.

The Right Hon. Charles James Fox, Plaintiff,

AGAINST

John Horne Tooke, Esq; Defendant.

J U R Y.

EDWARD HUGHES, Piccadilly, Colourman,  
JAMES BUMSTEAD, Ditto, Shoemaker,  
THOMAS HAWORTH, Ditto, Tinman,  
HALE MILLER, Swallow-street, Glazier,  
HENRY VINCENT, Ditto, Spurnaker,  
SAMUEL CROWTHER, Ditto, Whipmaker,  
ROBERT FLADGATE, Ditto, Carpenter,  
BERNARD BUTTER, Ditto, Baker,  
WILLIAM HIGGINS, Air-street, Carpenter,  
HENRY DAWES, Brewer-street, Brazier,  
JOHN HILL, Ditto, Broker,  
JOHN BRUCE, Windmill-street, Shoemaker.

Counsel for the Plaintiff, Messrs. Erskine, Douglas and Garrow.

Counsel for the Defendant, Mr. Cocker.

The Defendant, the Defendant in person.

Counsel for the Defendant, Mr. Bonney.

*Mr. Garrow* opened for the Plaintiff. The Declaration states, that this Action is brought by the Plaintiff against the Defendant to recover the sum of 198l. 2s. 2d. the taxed costs of a petition which was presented by the Defendant to the House of Commons; and which by a Committee of that House was voted *frivolous* and *vexatious*. To this Declaration the Defendant has pleaded, that he owes nothing to the Plaintiff: and thereupon Issue is joined.

*Mr. Erskine.* Gentlemen of the Jury, it will only be necessary for me to say two or three words to you in stating this case. This is an Action of debt, brought by Mr. Fox against Mr. Horne Tooke, to recover from him the amount of a sum of money certified under the warrant of the Speaker of the House of Commons, in consequence of a certain Act of Parliament. This Act does not intitle us to enter into a discussion of the merits, or of any matter or thing relating to them: and therefore I shall certainly say nothing upon this case; but merely put in the evidence that is necessary for Mr. Fox to maintain his Action.

*Evidence for the Plaintiff.*

Mr. Dunn, Secretary to the Speaker of the House of Commons, was first called. The Speaker's warrant was put into his hand, and on looking on it, he said, "I have no doubt but this was signed by the Speaker of the House of Commons. I have seen him frequently write, and I believe this to be of his handwriting."--The warrant was then read by Mr. Lowten, the Clerk of Nisi Prius; from which it appeared that the sum certified amounted to one hundred and ninety-eighty pounds, two shillings and two pence, for which this Action was brought.

The next piece of Evidence put in was an examined copy of the Journals of the House of Commons, dated the 7th of February, 1791. This was also read by the Clerk of Nisi Prius. Among other things it appeared that the Petition of John Horne Tooke, Esquire, was voted *frivolous* and *vexatious*, by the committee which the House had appointed to try its merits.

*Mr. Erskine.* My Lord, This is our Case.

*Lord Kenyon.* IS there any *Defence*?

*The Defendant.* Gentlemen of the Jury, We are called upon this day.—both you and I—to perform a very important business of great national concern: the memory of which, I will venture to foretel, will not be buried with ourselves; nor will its consequences finish with your verdict.

In the performance of this duty to our country, I must beg you to observe, and carefully to remember it to the

and, that there are only three efficient and necessary Parties;—Mr. Fox, the Plaintiff; Myself, the Defendant; and you, gentlemen, the Jury.—The Judge and the Cryer of the court attend alike in their respective situations; and they are paid by us for their attendance: we pay them as well: they are hired to be the Assistants and Reporters, but they are not, and they never were intended to be, the Controulers of our conduct. For the whole of this business is comprized in Mr. Fox's action, in my defence, and in your verdict.

Mr. Fox's part is the first: and in bringing this action against me, he has discharged the duty of an honest man; and for this at least he deserves the thanks and praise of the public. For you will very much wrong us both, both him and me, if you imagine that there is any thing mean, or personal, or mercenary, in this question which you are now to decide between us. No. It is not that he may gain, or that I may save, these two hundred pounds, that is by any means the ultimate object either of his Action or of my Defence. A great and important national right is at stake. The last and only security which the full-grown corruption and iniquity of the times have left to the people of this land for their lives, their liberties, and their property, this last and only security—a *real* Trial by a Jury of our country—is now attempted to be wrested from us.

I do not with certainty know, but I am firmly persuaded, that the Plaintiff and myself shall not be found finally to differ in our sentiments on this question: and I should be highly gratified, if, instead of being the Plaintiff, Mr. Fox himself was one of the present Jury now to decide it. But he has performed the whole of his duty on this occasion; and in bringing this action against me, he has afforded to us, with whom alone it now remains, a desirable opportunity of discharging our duty also.

For myself, with all possible plainness, I will endeavour, as briefly as I can, to discharge my part of this duty to our country. And I trust that you will, as serious and honest men, discharge your duty also, conscientiously and faithfully.

It is not necessary on the present occasion, nor do I intend it, to enter into a minute detail of the transactions of the late Westminster elections. The transactions themselves are sufficiently notorious, and more than sufficiently infamous. I shall only generally bring back to your remembrance the great outlines or sketch of what passed in the short space of four years.

In the year 1784, it happened to suit the views and political purposes of two factions, who have long been con-



tending, and still continue to contend, for the plunder, the government, and the patronage of the whole country; it suited their views in 1784, to dispute the representation of the city of Westminster. The means by which they disputed this representation, were such as were likely enough to follow from the motives of the persons who were engaged in the dispute. *Nominally* indeed the dispute lay between the two candidates, Mr. Fox and Sir Cecil Wray, but the *real* dispute was between the factions. The consequences were not merely such indecencies, improprieties, and irregularities, as commonly attend contested populous elections; but a regular system of the most barefaced and scandalous *bribery*, the most profligate and shameless *perjury*, the most cruel and audacious *riots*, and finally *murder*. A return obtained by such means as these, could not naturally be very satisfactory to the excluded party; and this dissatisfaction produced the demand of a scrutiny.

This attempted scrutiny was very laborious, very tedious, and very expensive. It was repeatedly the subject of questions and strong debate in the House of Commons, for there the factions are in greatest force; and after repeated struggles, they were at length reluctantly obliged to desist from the scrutiny, without any effect, and almost without any progress.

In 1788, the factions again disputed the representation of Westminster: the dispute was then *nominally* between Lord John Townshend and Lord Hood; but again *really* between the factions as before. The consequences and means were the same as before--*Bribery: Perjury: Riot: Murder*. Again, the party who had not the return was dissatisfied with the means by which the return against him had been obtained; and knowing by experience the impossibility of any redress by a scrutiny, he had recourse to the only remaining means, a petition to the House of Commons. The prosecution of this petition was extremely laborious, tedious, and expensive; and turned out finally as ineffectual as the former scrutiny had been. About a thirtieth or fortieth part only of its merits was entered into, and its costs--*for the petitioner alone*--amounted to upwards of 14,000l.

Gentlemen, that the struggle was really between the factions, was notorious; because the factions bore the expence on both sides. In the course of a short time, in little more than *four* years, one hundred thousand pounds, on each side, was expended on the city of Westminster.

Now that so much mischief was done, is no proof that they are worse men in the city of Westminster than in other

places; it is rather a proof that they are better: for if they were naturally bad, one tenth part of the money would have produced ten times more mischief: for do you only consider, what must be the effect of the distribution of two hundred thousand pounds in four years, amongst the worst men of one city: besides all the extravagant promises with which each small portion of it was accompanied, and the foolish and unfounded expectations which each hungry individual entertained as a return for his activity.

Gentlemen, if it were necessary, I could produce to you now from my pocket, a list of those who subscribed to the expences of these Elections; but it is not necessary: and I mean to pass it over as shortly as possible; more shortly than perhaps its importance requires. But the most important part to the country at large, is, that the nation itself, you and I and the public, against whose best rights this expence is incurred, we must ultimately pay this expence ourselves.

The expence on the ministerial side was partly paid by persons in office, at a sort of regular percentage on their places and profits. The Lords of the Admiralty were at first expected to pay two hundred pounds each; but this was thought too much, and on reconsideration it was reduced to 15*l.* for them: the Lords of the Treasury were expected to pay 200*l.* each: persons in superior situations 300*l.* each.—

*Lord Kenyon.* Mr. H. Tooke, I cannot sit in this place to hear great names and persons in high situations caluminated and vilified; persons who are not in this cause; persons who are absent, and who cannot defend themselves. A court of Justice is not a place for calumny: it can answer no purpose: you must see the impropriety of it: and it does not become the feelings of an honourable man.

*Defendant.* Sir, if you please, we will settle this question between us now, in the outset, that I may not be liable to any more interruptions from you.

*Lord Kenyon.* Lord Lovat produced the names of persons of great respectability, and he was stopped in the House of Lords. It was said it was indecent to do it, and that it became a man of his station to refrain from such things.

*Defendant.* I am persuaded I shall be able very easily and very shortly to satisfy you that I am not in the wrong path: and it is the more necessary that I should do so now; because it is the path which I most certainly mean to pursue, and will not be diverted from.

You know, at least you ought to know, and I acknowledge, that if, under the pretence of a defence in this cause—I say, under the *pretence* of a defence—I shall wantonly and maliciously say or do any word or thing which would be

punishable by the laws of the land, if said or done by me wantonly and maliciously any where else, in the street, upon any other or no occasion, gratis; I shall be equally liable to prosecution and punishment, by the same laws, and in the same manner, for what I shall say or do here.

But, Sir, you have made use of some words, which I am willing to believe you used in a manner different from their usual acceptation. You spoke of *calumniating* and *vilifying*: those words usually include the notion of *falsehood*. Now I imagine you did not mean them so to be understood; or to insinuate by them your evidence to the Jury, that I had said what was false: but that by *calumny*, you only meant things injurious to the characters of the persons spoken of, such things as would hurt them to hear, whether true, or false.

*Lord Kenyon.* Certainly.

*Defendant.* Well! I thought so; and you see I was not desirous to take advantage of the words to impute to you any other meaning or intention: because had you meant otherwise, and included the notion of falsehood in the word *calumny*, your Lordship would then have *calumniated* me. For I have spoken nothing but the truth, as I believe you know, and which I am able and willing to prove. In one thing which has fallen from you, I go farther and am stricter than you are: I think it hard that any persons either *IN* a cause, or *out* of a cause should at any time *unnecessarily* hear what is unpleasant to them though true. I mean to do nothing of the kind. If I speak or act improperly, your lordship and any persons thinking themselves injured or offended, will have as full and complete satisfaction and remedy as if it had been spoken or done in the streets, without any trial whatever. At my peril therefore I shall proceed; and expect to meet with no farther interruption from your lordship. I will state whatever I judge fit to be stated upon this occasion, whether pleasant or otherwise: for I think this trial of great importance to the nation at large, and not a common trial of disputed property. Had it been merely a common action for two hundred pounds, I should have retained some professional gentleman to manage the cause in the usual course; but I felt it to be necessary to bring forward those things which I could not fairly put upon any professional man whatever.

Gentlemen of the Jury,—I have no connection with any faction or party. I abhor them all and they me. It is not for any political purpose, or to further any man's views, that I have spoken of these factions. I have mentioned them to you that you may consider and feel the situation in which we all stand.



You are, upon this occasion, the Country: and so you are well called: you, the Jury, are on this occasion the representatives of the whole Land, and should act accordingly.

I was telling you, gentlemen, when I was interrupted, the manner in which some part of the expence was paid on the ministerial side of the dispute: and I have stated, I believe, that upwards of 20,000*l.* of the expences for the Election in 1788, were paid by persons most of them in office.

Of the higher orders, the Duke of Richmond paid five hundred pounds: the Duke of Newcastle five hundred pounds: &c. Those in the next degree of office paid three hundred pounds each: The Lords of the Treasury two hundred pounds each: and the Lords of the Admiralty one hundred and fifty pounds each: but there were some few exceptions: I could take the list out of my pocket and read them to you. They may have their Actions or Informations against me, if they please; and I have no objection to a trial on the question. I can prove the fact.--

As the rest of the money was furnished by the Secretary of the Treasury, he best can tell from whence it came.

I stated to you that the Country at large, you and I amongst others, are finally to pay that monstrous sum of money laid out on both sides on this one borough. We know indeed perfectly well, that the gentlemen on the other side, on the opposition side, could not pay this money out of the offices which they are very sorry they do not possess: but they are merchant adventurers; they advance their money on speculation, on promises and expectations of the good things to come hereafter; when *their* leaders shall distribute the national plunder. Then they are to be made amends. And for as many of these promises and expectations as may be fulfilled, the nation at large must pay.

I took myself a part, and a very strenuous part, in the Election of 1788; and I too was bribed: for promises are bribes; and I was promised two important things by persons who, from their stations and situations, were well able to fulfil their promises. And I will tell you what the bribes were to me. I was assured that two things should most undoubtedly follow—Prosecution and punishment upon the offenders to deter men in future from the commission of such outrages, such perjury and subordination of perjury; and an Act of parliament, parliamentary regulations, to make the repetition of such infamous practices impossible in future: and thus to restore a fair and quiet and real election to the people of Westminster.—I received the promises, but never received any thing like a fulfilment of them: for in-

stead of a prosecution of the most atrocious offenders, against whom the evidence was ample, full and compleat; and instead of any parliamentary regulations to prevent these perjuries and subordinations of perjury, and these outrages and slaughters in future;—a COMPROMISE took place between the factions. They had effectually excluded, as they had reason to think, all the rest of the world from disputing an Election in Westminster with them, at such an enormous expence and without any possibility of deciding the merits of the Return. But finding the expence of contending this one single seat too great even for themselves to continue; they imitated the decision which, I think, is called the *Wisdom* of Solomon.—They cut up the living object for which they had contended, and divided it between them.—Cruel enough! but no wonder.—They had mangled it before in the struggle.

Well, Gentlemen, the representation for Westminster was now, to all appearance, effectually annihilated. Who would contest? Who could contest it with them? There was no third faction in the country strong enough to contend with either of them: where then was one to be found, which could contend with a confederacy of both? They never could foresee, such mercenary dealers as these could not even imagine, that any single individual would be so disinterested, or, in their language, so mad, as to sacrifice himself by becoming a candidate at such an election, where it seemed absolutely impossible to succeed: and yet it was that very notion of theirs which made me a candidate for Westminster. It was, just at that period, the last office in the world which I should have wished to undertake; and nothing but the infamy of their conduct made me a candidate: the very methods they took, and by which they hoped to deter all men, determined me. For they were not contented with this compromise alone. It did not satisfy them only to be sure of their present object; but they must also secure the continuance of possession, and guard, as they thought, against all future possible molestation and expence. To make therefore security itself still more secure; to cut off all possible contest; and farther to discourage all independent interference; in 1789, upon the very heels of Lord Hood's expensive and ineffectual petition, they passed that act of parliament—The *frivolous* and *vexatious* act—upon which this present action is brought.

Immediately after the elections in 1784 and 1788, carried on at that enormous expence; after the ineffectual and undecided Scrutiny, at immense labour and cost; and upon the very heels of Lord Hood's ineffectual and undecided Petition, at the expence of fourteen thousand pounds for

the petitioner alone; this *Innovation*, this novel act of parliament is introduced.

Suppose then that this *frivolous* Act had preceded Lord Hood's petition; that he, as I have done, had contested with two adversaries, and had been found *frivolous* and *vexatious*: his own expence of *fourteen thousand* pounds would not have been thought sufficient punishment for him, or sufficient discouragement for others; but he must have been adjudged to pay the whole costs for the three, which would have amounted at least to *forty-two thousand* pounds: and this only for a fortieth part of his petition. If he had gone through the whole of his petition, and it had been voted *frivolous* or *vexatious*, the costs for him to pay would have amounted to above a *Million and a half* of money. A tolerable penalty this, without the intervention of a Jury; and upon a man too not necessarily supposed to possess more than a life-estate of 300l. a year, that is, a principal of about 3000l.

And for what crime is this monstrous punishment inflicted? For being a candidate to represent the people. Upon whom think you this storm was intended to fall? Upon any independent friend of his country; who must consequently be of no faction, but against all factions, and must therefore have all factions against him.

They bring me here indeed only for 200l. to each of my adversaries: I would have been a candidate in order to have come down here to this trial, though I had foreknown that it would be for two millions.

*Frivolous* and *Vexatious* are new crimes invented in the year 1789: the judgment and application of which crimes, the usurpers of the representation of the people, the private proprietors of stolen boroughs, have reserved to themselves: for this act of parliament does not leave you, the Jury, to enter into the merits of the case—(upon which however you are upon your oaths, to pronounce)—nor into any thing that relates to its merits.

And for this most infamous act of parliament, we are obliged to the pretended Reformer of the representation in parliament, to the present most treacherous and deceitful Minister.

Gentlemen of the Jury,

The learned gentleman, Mr. Erskine, who leads this cause against me, has told you, and has told you truly, that this act of parliament “does not intitle him to enter into the merits of the question at issue before you.” These I think were his words; I took them down, when he spoke them. Now I must beg you to retain these words in your



memory ; because they are very important ; and upon them I mean to rest my defence ; and on this very ground, without absolute perjury on your side, I shall be intitled to your verdict.

I listened to him with pleasure when he stated it : for it was what I meant to urge to you. I beg not to be misunderstood ; I do not mean to impute to the learned gentleman, that he made any slip or mistake in so stating it : on the contrary, he was compelled to it : he could not alter the fact. He has done now, as he always does, the most that can possibly be done for his client. I do not say this so much from my own experience of him, for my little experience of this court is before his time ; but it is the general voice, and I believe it.

Gentlemen, This is called an Action of *Debt* ; but it does not require any great degree of understanding, to see that it is, in fact, a *Penalty* for the commission of a new crime. Now, gentlemen, it is worth our while to consider, at what period of the history of our country, this *innovation*, this new penal Statute, is introduced ; and you will find it comes just at the time when almost all the seats in parliament are become private property. Just in the same manner, when Land was the chief property in this country, and the titles of the landed proprietors were settled and secure ; these proprietors, who were the only persons concerned in the making of laws, took care for themselves that they should have a speedier, surer and cheaper remedy than any other man could have for any other species of property. They empowered themselves to seize at once upon their land and every thing they found there ; and left the other party, the tenant, to seek a legal remedy. So now, when this property in representation is become secure and compleat and settled ; then it is that these thieves, the pretended *proprietors of the public*, make acts of parliament, not only to secure to themselves their infamously stolen property ; but to guard themselves from all contest in the possession, and all the expences of a dispute. Then it is that Terror and Ruin are held out to deter all independent competitors for the representation of the people.

When men have got good fruit in their gardens, they post up a warning upon their walls and their gates—“*Steel Traps and Spring Guns are in these grounds*”—This Act is a Spring Gun. This *frivolous* and *vexatious* Act, these new-invented crimes, are to operate like the notice of Steel Traps and Spring Guns. This act speaks a very plain language, not to be misunderstood.—“*Tread not near our Boroughs : for Woe to the man in future who shall be caught in OUR Traps :*



our *frivolous and vexatious Traps*."—What! fine a man six hundred pounds, or six thousand pounds, forty-two thousand pounds, a million of money, without any Jury, or appeal? and for the crime of vexatiously attempting to wrest stolen goods from a thief! If a man cuts his wife's throat, with every aggravating circumstance of deliberate cruelty, and is found guilty by a Jury; he goes to prison for Six months. But if you represent to the House of Commons, and offer proof of a continued series and regular system of bribery, perjury, riot, and murder, at an election, together with the utter impossibility of any decision of the Return; no fine, no punishment, no ruin, is sufficient for such *frivolous and vexatious* charges.

Now then, Gentlemen, let us cast our eyes back, and see from what beginnings, to what length this nation has now proceeded. We know, and our ancestors knew, that every nation must have a government, and must have officers appointed to discharge its duties and execute its trusts. What the people cannot do for themselves, they must trust others to perform. And no nation ever did this more liberally or more generously than our own. But there are two things which the people can perform, and which they cannot safely trust in any other hands:—the choice of their own representatives, to make the laws by which the whole people are to be bound; and the particular application of those general laws and of equal justice to individuals, by a sworn number, an honest impartial Jury, of the people themselves. These two rights and powers the people of this country wisely reserved to themselves. They hold them by no law, by no positive statute. No persons did give or could give them. They owe them to no Kings, no Lords, no House of Commons; and neither Kings, nor Lords, nor House of Commons, nor all of them combined and confederated together, can take them away. They may dare to attempt it; but it will be an act of Suicide upon their own Trusts and Stations: and I doubt not that the people of this country would, in such a case, pursue the wholesome severity of the old law of the land, and drive the stake themselves through their dead body.

Let us consider then, gentlemen, what is now become of these two necessary reserved rights.

Will any man be frontless and hardy enough to deny that the representation of the people is gone; that it has been stolen and usurped from us by those who, little better than beasts themselves, affect to treat other men like cattle.

And having thus established their property in representation, shall these Borough-mongers now be permitted to stretch out their sacrilegious hands to ravish from us also

our other reserved Right of a Trial by Jury? Shall they first take away from us with impunity all the benefit and advantages of representation, and after that take away from us all benefit and advantage of Juries? And shall we without a struggle, proportioned to the importance of the benefits, tamely suffer our safety, security, and peace, to be all torn away from us together? A Jury not intitled to inquire into the merits of the question brought before them, nor into any thing that relates to the merits, is no Jury at all; nor can in any respect answer the object of their appointment: and any Jury that shall give a verdict against any defendant, without having first, according to the oaths of the Jurors, *Well and truly Tried* the question at issue between the parties, is a perjured Jury.

It is not unfit nor improper for you, gentlemen, to consider how the House of Commons first came into possession of any jurisdiction, or of any trial whatever concerning the return upon Elections. The truth is, they had originally no right whatever to it. It was a manifest and gross usurpation upon the rights of the Juries of the people. But the House had indeed, at that time, a plausible pretence for its usurpation;—the corruption of the Judges and their abject dependence on the crown: for they held their offices at that time during pleasure; and Juries were then, as now, often packed, or cajoled, or bullied, for the purposes of these abject instruments of royal injustice. After the Revolution the commission of the Judges was altered; and it is affected to be said, that from that time the Judges have been independent. The pretence then for this usurpation of the House of Commons being removed, why were not the Trials of Returns upon Elections restored to their natural and rightful jurisdiction, a jury of the people in the courts below?

I do not however for my own part believe a syllable of this boasted independence of the Judges. A long experience, and every thing I have seen and heard for many years past have manifested to me the contrary. I do not believe the dependence of the judges on the crown was so great formerly as at present. I believe the judges then were less dependent on the Crown, and more dependent on the people than they are at this hour. The Judges then were frequently displaced, because they did not dare to go the whole length, and do all the wicked business they were ordered to do: they were sometimes too displaced from caprice; and they knew they might be so. They all sat on the Bench, knowing they might be turned down again to plead as common advocates at the Bar; and indeed it was no unusual thing in those days to see a Counsel at the Bar brow-

beaten and bullied by a Chief Justice on the Bench, who in a short time after, was to change stations with the Counsel, and to receive himself the same treatment from the other in his turn. And therefore character and reputation were of more consequence to the Judges then, than they are to the Judges now. They are now completely, and for ever independent of the people, and have every thing to hope for, for themselves and families, from the Crown. What they already possess is secure from every possible interference but that of parliament: and the Minister for the time being is always master of the majority of both Houses. Let the Judges then always take care of every Minister's business in the courts of Law, and every Minister will take care to shelter such useful instruments in the Houses of Parliament. Hence it is that the present practice of the Courts is become little else than a system of plunder, oppression, low fraud, and tricking: and will continue so, until the people have their *real* representatives in parliament, to watch over and check the conduct of the officers of justice, and the proceedings of the courts. Almost all the important rights, and all the real benefits of Juries, have been invaded and taken away; by a variety of new doctrines and practices; by setting aside verdicts, and granting new trials repeatedly, till a verdict suits the purpose of the Judges; by obtaining verdicts of guilty, without consideration of the only material point—the guilt; and then establishing or exaggerating or lessening the guilt or the innocence, by the pleasure of the Judges alone, on posterior affidavits, delivered afterwards in Court: So that in fact, the *real* trial comes after the Jury are dismissed; and their verdict is of no other use than to introduce and place the charge within the jurisdiction and decision of the Judges. Almost all the scandalous legal practices of which we have cause to complain have had their beginnings, not only in my lifetime, but most of them since I am a man, at least since I first attended this Court. Young men come to these courts now, and take what they find practised here for law, without considering its enormity or its principle, or how, or when, or by whom, or why it was introduced: But, my Lord, I am afraid I am about as old as your Lordship; and having seen a different practice, and heard and read different doctrines, I cannot witness the present without indignation and abhorrence.

Gentlemen, if you wish to know how we have lost almost all the great benefit of Juries, and by what means the present legal doctrines and practices have been introduced; you may look into the list of the *Peerage*. And there you will find in the last thirty or forty years, in the course of the present unfinished reign, in part of the reign of one King,



about half as many peerages given to the Bar! It is a temptation that no other profession offers, and that no profession can withstand. Gentlemen, when a theft has been committed, unattended with the usual circumstances by which such crimes are commonly brought home to the offender; it has frequently happened that an observation of some particular individual's being suddenly flush of money, who was never known to have any before, has led to a certain detection of the thief. If the nation could use the same sagacity concerning their public rights as individuals do concerning their private property; if they would compare the ancient legal doctrines and practices with the present, and the ancient situation of the profession with the present; they would at the same time discover the inestimable value of the blessings they have lost, and by what means and by whose agency the robbery has been effected\*.

But I beg pardon, gentlemen, I have wandered something from the subject on which I was speaking: I made a few notes to prevent my wandering and to keep myself in some method; but the mention of the Judges and the trumpeted lie of their *Independence*, have carried me inadvertently too far from my point. I am sure it is not because my mind is not sufficiently impressed with the importance of the matter now to be determined by you: I anxiously wish that your minds may be half as much affected and persuaded as mine is of its importance to the whole country: I protest that if there stood a fire here, and I thought I could by that means affect your minds and the minds of my countrymen the more by it, I would thrust my hand with pleasure into the fire and burn it to ashes whilst I was pleading before you.

But, gentlemen, the subject from which, after I had begun it, I improperly deviated, and to which I now wish to re-attract your attention, is the conduct of the House of Commons. First, upon a plausible pretence of the dependent state of the Judges on the Crown, they not only without but against law, usurped the trial of Elections. This usurped power, by their own confession, they most scandalously and flagrantly abused; seating men as representatives of the people, not with any regard to right, but partially and unjustly, by openly solicited and canvassed majorities of the House.

When they were compelled to acknowledge this abuse, and the incompetence of the whole House in a body to try

\* High-mindedness, spirit, and courage, were anciently the qualities which belonged to, and led to nobility; now servility, meanness, and chicanery: and the brilliant apprenticeship to a Peerage is—to carry a bag in Westminster Hall.



Elections; or rather, when they were induced to it by the private interest which the Borough-proprietors had to secure their respective individual property in representation; What did they then? Restore the jurisdiction to the courts of law, and to a verdict of a Jury of the country? Why not? The pretence on which they took it away,—the dependence of the Judges on the Crown,—they pretend is now removed: and they acknowledge that the question should be tried by a Jury: then why not by a Jury of the country? No. By an act of parliament, the tenth of the present King, the jurisdiction is transferred to a Jury of the House of Commons, that is, to a Jury of the Borough-proprietors themselves and their nominees. And the natural and intended consequence has followed: These Jury-committees consider only whether A or B is the proprietor, or has the intrest of the borough; but they never cast a look or a thought on the people's right of representation; they hold all such consideration to be *frivolous* and *vexatious*.

But even this usurped jurisdiction over the people's dearest and most necessary right of representation does not satisfy them: they must have criminal jurisdiction also, and the power of punishment without any Jury or Appeal; and under pretence of costs, they have passed this penal statute to empower themselves to ruin whom they please without any trial by a Jury of the country: for so they intended this penal statute to operate, and so it has been stated to you this day; the Counsel states himself as not intitled to discuss, because you, the Jury, are not intitled to consider, that is, to TRY any thing that relates to the merits of the case.

This scandalous act of parliament passed in the year 1789. The general Election, for so it is called—That is called a general Election, which in fact is generally nothing more than an appointment by the proprietors—This general Election followed the year after, in 1790. The shameful compromise for Westminster between the factions, and this more shameful act of Treason to the country, by which they meant to deter all men, determined me to become a candidate. In so doing I at that time looked forward to this very day, and to this very action which you are now to decide. This sacrifice which I deliberately have made of myself, I did then and do now believe necessary to my country. Led by these motives, I became a candidate. I was sure of one vote, and but of one vote—my own. And on that vote I should equally have petitioned the House, well aware beforehand that whatever my petition should contain, it would be voted *frivolous* and *vexatious*. And with that one vote I should equally have stood here upon this trial this day. Well then—I was a candidate intirely unaided and unsupported by any set

of men or by any individual: and for the first days of the Election, I polled about twenty votes a day: but my poll kept regularly increasing, and on one of the days, and only on one day, I polled more than my adversaries. And what was the consequence? Immediately a gang of prepared and hired ruffians with their bludgeons issued from an adjoining alehouse, and wantonly and cruelly, without any other pretence of provocation, assaulted the harmless unresisting spectators before the hustings. They cruelly wounded many, and one man they murdered, who died a few days after in St. Bartholemew's hospital. My poll was however, in spite of the junction of the factions, finally honoured by near seventeen hundred unsolicited and respectable Electors. The return on the Election was, as might reasonably be expected where such means were practised, in favour of my opponents.

Gentlemen, in consequence of this Election, two things now became duties to me. It was my duty to prosecute the rioters: and it was my duty to present a petition to the House of Commons. Some of the principal rioters were accordingly apprehended. And the man who sits here as associate of the Judge, or Clerk of Nisi Prius, or whatever may be the name of his office, Mr. Lowten, who conducts the business of this criminal court, and who, notwithstanding his situation here, is suffered (to the disgrace of this court and of those who preside in it and of the country at large) is suffered to act as an Attorney, and has much business as an Attorney in consequence of the advantages of his situation here; this man, who had also been an agent for one of the candidates at the Election, this man appeared as Attorney for the rioters; and the rioters were bailed by the two men who keep Brookes's gaming-house for one of the factions in St. James's-street. The Ruffians were however indicted, and, by whose means I know not, the cause was put off for trial to the eighty-ninth on the list; the consequence of this delay was, that for fear of a surprize, which this man appeared to me very capable of producing and seizing, (and this opinion has been well justified since by my experience) I was compelled to have between twenty and thirty witnesses at a great expence at a public-house ready if called upon for three successive days during the sittings. At length the turn for this trial arrived. The Chief Justice then refused to try it at that time; and it was postponed till the following term; when all my expences were to be again renewed, and all the same trouble and attendance might be again repeated. My Counsel addressed the Chief Justice, who now sits before us, on the occasion: he represented to him my expences and the hardship of my situation, who was prosecuting under every disadvantage, and

only for the sake of public justice; that I had no personal motive whatever in the prosecution, for that poor men, who committed riots and murder for half a guinea a day, could be no enemies of mine or objects of personal resentment; but that the interests of the public and of public justice demanded example, and by example restraint of these practices. He therefore requested the Judge that a day might be fixed for the trial in the following term. This the Chief Justice refused; and thus fruitlessly ended my expences and efforts for public justice this term.

This cause was afterwards put down in the paper the second for trial at the sittings in the following term.

Gentlemen, the Clerk of the court, you see, is laughing at this—He may very well laugh. I suppose he is considering how much money he gets by holding these two situations together, of Clerk of the Court and Attorney for the Parties at the same time; and how cleverly he was enabled upon this occasion to take his advantages of this double situation.

This prosecution of the rioters was put down in the paper, the second cause for trial in the ensuing term. It appeared indeed afterwards that the first cause was to be tried by a Special Jury; but it was not so marked in the paper, as it ought to have been. My witnesses, between 20 and 30, were again all summoned, and soon after nine o'clock in the morning were assembled at a public-house in the neighbourhood of Westminster-Hall. But when my Solicitor and my leading Counsel soon after nine o'clock entered the Court, to their astonishment they found that the Chief Justice and this Clerk of the Court (who was also Attorney for these rioters) had come down early into the Court, and without any inquiry after the Prosecutor, the Chief Justice had suffered this Clerk of the Court and Attorney for the rioters hastily to swear in a Jury.—Then indeed the Prosecutor was called for—and the rioters were dismissed for want of a Prosecutor. And thus public justice was defeated.

*Mr. Garrow.* I am extremely sorry to stop Mr. Tooke in his *Eloquence*, were it not that I conceive what he is advancing is extremely improper and indecent. I am not Counsel for many of the respectable persons whom he has named; but that there is no foundation for such assertions may be proved by one of the gentlemen who was Counsel for the gentleman now addressing the Jury. That Counsel is not at present in Court, but he is a man of strict honour, and must say that he was a considerable time in court before that verdict was recorded. He was pressed to address the Jury at any length, in order that the verdict might not be recorded *without a Stating*. Mr. Nowlan was present,



although Mr. Fitzgerald was not. I am very sorry to have stopped the gentleman in his address; but it is rather too much for persons to be baited in this manner, and accused of such charges, when one knows of one's own personal knowledge, that they had no more to do in this, whether it was good or bad, than any man in any part of his majesty's dominions.

*Lord Kenyon.* Certainly not.

*Defendant.* There can be no doubt at all but that your lordship will at all times find some one, in your own court, willing and ready to get up to recommend himself to your favour by a speech in your defence; and I should have been much surprized if it had not been the case now. I am not sorry for it: for Mr. Garrow has given me time to breathe a little.

*Lord Kenyon.* I want no defence. What has been said against me, rather deserves my compassion. I do not *carry about me* any recollection of it, or any of its circumstances.

*Mr. Garrow.* I certainly did not mean to make a defence for your lordship.

*Defendant.* I cannot say that I *carry about me* any thing in consequence of it: I *carry about me* something less, by all the money which it took out of my pocket. But most certainly the fact did so pass as I have stated it: although your lordship's recollection does not serve you. Mr. Garrow indeed has risen up to interrupt me and to deny it. I heard him with much pleasure: for I wanted breath. But I do not think that, upon cool recollection of this proceeding, the Court will be much pleased with its own conduct in suffering this interruption, and listening with so much complaisance to this irregular hearsay evidence. I believe there are gentlemen here present, who can recollect that when they get up in a court of justice, they do not meet with quite so much indulgence as he has met with. But he has been permitted at the same time to go beyond his evidence, to cast a reflection upon my *eloquence*.

*Mr. Garrow.* Very far from it. Nothing was farther from my thoughts.

*Defendant.* I beg your pardon, Sir, it was said with a sneer; and to insinuate to the Jury, that I was attempting by artful words to mislead them: for that is the meaning and purpose of *Eloquence* in this court. I have on the contrary spoken in as plain terms as the language will afford. I have not used a single sentence, or a single word, which the Jury do not understand as well as the Judge or yourself. I repeat it then again. I say I had nearly thirty witnesses, attending at my expence, to punish Rioters for whom this Clerk of the Court was Attorney, waiting for three days,



the Sittings after the former Term, from caution to prevent any trick or surprize; which for the reasons I have given I suspected, and which has since happened, and against which I from the beginning warned my Counsel and Solicitor. I say that when the Trial of the Rioters should have proceeded in its turn, the eighty ninth on the list, the Chief Justice refused to let it be tried, and, to crush me with accumulated expence at least, postponed it to the following term. I say on the first day of the sittings in the following Term, my witnesses were again assembled soon after nine at a public house in the neighbourhood of Westminster Hall: that though this cause was marked the second in the list, and the Chief Justice could not be ignorant of the previous circumstances, he suffered this Clerk of the Court, who was at the same time Attorney for these rioters, in the absence of the Counsel and Attorney for the prosecution, and without their being called for, instantly and hastily to swear in a Jury, and by half an hour after nine, I was informed at my own house, that the Rioters were thus discharged. Is this a proper mode of proceeding in a Court of Justice? And are these the proper means of preventing riot and disorder? This was not a Cause of two pounds, or of twenty pounds, or of the price of an unsound Horse, like the general run of causes in this Court; like such as I heard tried that very day after the prosecution of the rioters had been thus tricked off and baffled; and like such as we have heard this day. It was a cause of great importance to the public peace, and to the exercise of the most important public rights. Causes which would make a serious man ashamed are listened to here by the hour with the utmost gravity and solemnity. It is but the other day that you entertained a long and tedious cause here for a dispute of five shillings, about a Hog; between his owner and a stable keeper in the Haymarket; the learned Counsel, two or three deep on each side (this fluent gentleman, who is so ready to interrupt me where he is not concerned, might perhaps be one of the number) laboured the matter for hours with the deepest researches into the laws and the most profound arguments: when any one of the numerous Counsel on either side, by giving five shillings out of the *first* fee which he received on the occasion, would still have gained sixteen shillings for saving the honour of the court and avoiding to make himself and the profession ridiculous. I do not know how such practices as these, which are but too common, may be considered here; but I believe that all honest men, who are not of the profession, will agree with me, that such Counsel on both sides, who receive the fee of a guinea to contest or support such a claim of five shillings,

ought to plead for themselves in vain at a Whipping-post. And yet it is for such questions and such causes as these that the Court has complaisance enough and time sufficient. But for the prosecution of Rioters on a charge of the most atrocious system of outrage on the Electors in the Exercise of their most important right, the Court has neither time nor complaisance; and a person holding the two dangerously inconsistent offices of Clerk of the criminal Court and Attorney for the Culprits at the same time, is at least suffered to get rid of the prosecution in the manner I have stated to you. But it appears to me to be a question of so great importance to the nation at large, that no private consideration, whether I am to rot in a jail, or starve in a work-house, or die on a gallows, no consideration shall make me desist whilst I live from endeavouring to obtain something that shall look like justice. And so much your lordship shall obtain by the imprudent interference and interruption of Mr. Garrow, that I pledge myself now; for I trust the time will soon arrive, when we shall have a very different House of Commons from the present, a House of Commons which will consist of the real representatives of the people; of whom if I shall have the honour to be one, I pledge myself now, that I will in my place in such a House call you to a proper account for your conduct that day, and Mr. Garrow may reserve his justification and defence of your lordship's conduct till that time, when you will want it.

But this fruitlessly, gentlemen, terminated my attempt to obtain justice for the outraged public by a prosecution in a Court of Law.

I will now proceed to give you a short history of my other attempt to obtain justice by the petition which I presented to the House of Commons: and I will read it to you from their own Journals. But before I read it, I think it but fair to acknowledge, that if the charges which it contains are *not true*, the person who should write or should present such a petition, would deserve to be hanged in any civilized country in the world; but I expect also that it shall be acknowledged to me in return, that if the contents of the petition *are true*, they who have the means and the power to redress such grievances, and do not redress them, ought to be hanged themselves. This petition was presented to the House of Commons, and sent by them to a Committee, and was strongly debated in the House, both before it was sent to the Committee, and after it was returned from the Committee: and no man was impudent enough even in that House, or in that Committee, to assert, or even to insinuate, that there was a syllable of falsehood in this petition.

There it stands: I have placed it upon their records, not to be got rid of: and there it has stood too, without the smallest attempt for redress of those enormous grievances of which it truly complains. I will read it to you from their own Journals.

JOVIS, 9<sup>o</sup> DIE DECEMBRIS, 1790.

“ A Petition of John Horne Tooke, Esquire, was read; setting forth, that the Petitioner now is, and at the Time of the last Election for Westminster was, an Elector of Westminster, and a Candidate to represent the said City and Liberty in the present Parliament:

“ That in the said City and Liberty there are Seventeen thousand Two Hundred and Ninety-one Householders, rated in the Parish Books, unrepresented in Parliament, and without the Means of being represented therein, although, by direct and indirect Taxation, they contribute to the Revenue of the State very considerably more than those who send a Hundred Members to Parliament:

“ That at each of the Three last Elections for Westminster, (viz. in 1784, in 1788, and in 1790) notoriously deliberate Outrage, and purposely armed Violence, was used, and at each of those Elections Murder was committed:

“ That for these past Outrages, as if there were no Attorney General, no Government, and no Legislature in the Land, not the least Redress has been obtained, not the least Punishment, nor even the least Censure inflicted; nor has any Remedy whatever been appointed, or attempted, to prevent a Repetition of similar Outrages in future:

“ That at the Election for Westminster in 1784, a Scrutiny was demanded on Behalf of Sir Cecil Wray, which was granted on the 17th of May, 1784, and with the Approbation or Direction of the then House of Commons, was continued till the 3d of March, 1785, when a very small comparative Progress having been made, (viz. through the small Parish of Saint Anne, and not entirely through Saint Martin's, leaving totally untouched the Parishes of Saint George, Saint James, Saint Margaret, Saint John, Saint Paul, Covent Garden; Saint Mary le Strand, Saint Clement, and Saint Martin le Grand), the said Scrutiny was, by the Direction or Approbation of the House of Commons, relinquished without Effect, after having lasted Ten Months, and with an Expence to Sir Cecil Wray of many thousand Pounds more than appears, by some late proceedings in Chancery, to be the allowed Average Price of a perpetual Seat in the House of Commons, where Seats



for Legislation are as notoriously rented and bought as the Standings for Cattle at a Fair:

“ That on the Election for Westminster, in 1788, there being an absolute and experienced Impossibility of determining the Choice of the Electors by a Scrutiny before the Returning Officer, a Petition against the Return was presented to the then House of Commons by Lord Hood; and another Petition also against the Return was presented by certain Electors of Westminster; and a Committee was in consequence appointed, which commenced its Proceedings on Friday, April the 3d, 1789, and continued till June the 18th, 1789; when the Committee (as able and respectable as ever were sworn to try and determine the Matter of any Petition) on their Oaths, “ Resolved, That from “ the Progress which the Committee have hitherto been “ enabled to make since the Commencement of their Pro- “ ceeding, as well as from an attentive Consideration of “ the different Circumstances relating to the Cause, a final “ Decision of the Business before them cannot take Place in “ the Course of the present Sessions, and that not improba- “ bly the Whole of the present Parliament may be consum- “ ed in a tedious and expensive Litigation.”

“ Resolved, That from the necessary Length of the Pro- “ ceeding, and from the Approach of a General Election, “ which must occur not later than Spring, 1791,” (nearly Two Years more) “ the Prosecution of the Cause on the “ the Part of the Petitioners promises to be fruitless, as far “ as it respects the Representation of Westminster in the “ present Parliament.”

“ Resolved, That it be recommended to the Petitioners “ to withdraw their Petitions under the special Circumstan- “ ces of the Case :”

“ That (notwithstanding this extraordinary, and perhaps unparalleled Application from a Court of Justice to its Suitors) Lord Hood and the other Petitioners having refused to withdraw their respective Petitions, the Proceedings of the Committee continued till the 6th of July, 1789, when a very small comparative Progress having been made, the Petitioners, from a Conviction of the Impossibility of any Decision by the Committee, were compelled to abandon their Petitions without any Effect, or Tendency towards Effect, after a tedious and expensive Litigation of Three Months and Three Days, and with an Expence to the petitioning Candidate of more than Fourteen Thousand Pounds.

“ That under these circumstances, as the Petitioner declined demanding a Scrutiny before the Returning Officer, so is he compelled to disclaim all Scrutiny before a Com-



mittee of the House of Commons, for although that Act (the 10th of George the Third) by which the said Committee is appointed, recites in its Preamble, that “ where-  
 “ as the present Mode of Decision upon Petitions com-  
 “ plaining of undue Elections or Returns of Members to  
 “ serve in Parliament, frequently obstructs public business,  
 “ occasions much expence, Trouble, and Delay, to the  
 “ Parties, &c. for Remedy thereof, &c.” yet it would be  
 less expensive and less ruinous to the Petitioner to be im-  
 peached (even according to the present Mode of conducting  
 Impeachments) and to be convicted too of real Crimes,  
 than to be guilty of attempting to obtain Justice for him-  
 self and the injured Electors of Westminster, by the only  
 Mode of Decision, which the new remedial Statute (the  
 10th of George the Third) has appointed for that Purpose,  
 however well adapted that Mode of Decision may be to set-  
 tle the disputed Claims of the Proprietors of small Bo-  
 roughs, for whose usurped and smuggled Interest alone the  
 Framers of that Bill, and of those Bills which have been  
 since built upon it, seem to have had any real Concern:

“ That by the 9th of Anne, Chapter 5, the Right of  
 Electors (before unlimited by Qualification in the Object  
 of their Choice) is restricted in Cities and Boroughs to Ci-  
 tizens and Burgesses, respectively, having an Estate, Free-  
 hold or Copyhold, for their own respective Lives, of the  
 annual Value of Three Hundred Pounds above Reprizes:

“ That this very moderate Restriction (however vici-  
 ous in its Principle) leaving all Citizens and Burgesses eli-  
 gible, possessing Life Estates, Freehold or Copyhold, of  
 the annual Value of Three Hundred Pounds, will hence-  
 forth serve only as a Snare to the Candidate, and a Mock-  
 ery of the Electors, if such Candidate, possessing a life Es-  
 tate of Three Hundred Pounds a Year, must expend Fifty  
 Thousand Pounds (and there is no probable Appearance  
 that a Hundred Thousand Pounds would be sufficient) in  
 attempting by a tedious, expensive, and ineffectual Litiga-  
 tion, to sustain the Choice of his Constituents, and to  
 prove himself duly elected:

“ That though the Petitioner complains (as he hereby  
 does) of the undue Election and Return of Lord Hood and  
 the Right Honourable Charles James Fox, to this present  
 Parliament for the City and Liberty of Westminster, yet  
 is the Petitioner, by a Persecution and Proscription of more  
 than Twenty Years, disabled from making that pecuniary  
 Sacrifice, which by the present new Mode of Investigation  
 is (and ought not to be) necessary effectually to prove such  
 undue Return, and yet the Petitioner fully trusts, that,  
 notwithstanding a very great Majority of the House of

Commons (for so it still continues to be stiled) are not, as they ought to be, elected by the Commons of this Realm (in any honest Meaning of the Word "Commons") and must therefore naturally and necessarily have a Bias and Interest against a fair and real Representation of the People, yet the Petitioner fully trusts, that he shall be able to lay before "a Committee chosen and sworn to try and determine the Matter of this Petition," Evidence of such a Nature, as that the Committee will, on their Oaths, "think proper to report to the House some Resolution or Resolutions other than the determination of the Return, and that the House will make such Orders thereon as to them shall seem proper," and the Petitioner doubts not, that, as an Elector at least, he shall in consequence receive such Redress as will be much more important to him, and to the Electors of Westminster, than any Determination of the Return."

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This is the Petition which has been voted *frivolous* and *vexatious*. Frivolous, we must suppose, in its *matter*, and vexatious to the returned candidates in its *manner*. And yet you may easily perceive, gentlemen, that foreseeing, as I certainly did, that it would be so voted, I took most especial care, as much care as possible, that no *frivolous* matter of any kind should be inserted in it: and undoubtedly there is nothing in it which could be *vexatious* to any honest candidate; which could require any learned or laborious investigation or inquiry; or a single circumstance which could cause the opposite party the smallest trouble or expence. But it certainly does contain not frivolous, but most important matter of serious scandal and offence. It contains complaints of grievances which, by the offenders against whom we complain, (who cannot deny and will not redress them), are constantly charged as *factious* and *seditionous* complaints, and subversive of the government and constitution of the country. When we peaceably and tamely complain that they have despoiled us of our rights; their common Cant and Cry is—"You wish to subvert the Government."

Why, what then are the parts of the constitutional government of this Land?—The King, the Lords, and the Commons.—And is it not as great a subversion of the constitutional government of the country, is it not a worse and more fatal subversion, if you take away the *Commons*, as if you were to dethrone the King, or turn the Lords out of their house? Will his Lordship on the Bench, or any one in the Court, venture to tell you otherwise? If from the

Firm of a Banking House or any commercial house, consisting of three partners, any one of the partners is removed or withdrawn, it is no longer the same Firm: it is a different House. And so it is with the Government of a country. If the Commons no longer form the same part of the government of this Land; in that case the Government is subverted of which they did form a part: and it is only the modesty or the timidity of the complainants which prevents them from asserting, what the real fact is; that that constitution and that government, the former boast of this land, and upon which so many lavish praises and encomiums have been *justly* bestowed, is now, at this time, absolutely subverted and stolen away.

It is this which has made some persons doubt whether we ever had any constitution: and some have even ventured to deny it. But their position is not true. They are mistaken.

We had a good and a glorious constitution. And we still have a constitution—*in the Books*. But some honest and well-meaning men, who know nothing of the constitution in the *books*, and who judge only from the present *practices*, and from what they *see*, deny that we have any constitution; and from what they see too, they may possibly and justifiably not be over fond either of Kings or Lords; and if things continue to go on much longer in the present train, the public at length may justifiably, because necessarily, join in their opinion. But, I believe, that if rational and *dispassionate* and experienced men were at liberty *coolly* to begin again, they would form exactly such a constitution as that which we have a *right* to. I believe they would by choice, and wisely, again establish hereditary Kings and hereditary Lords: taking better care however that they should not exceed their bounds. But the question concerning Kings and Lords does not in our present situation come fairly before the minds of the People. They cannot at this time impartially consider the question of the propriety of King and Lords, each possessing only their own fair and respective share in a well-balanced government: the people at large can only judge of things by what they see.—They think of Kings and Lords, who together with their own legitimate share in the government, have seized and are in possession also of all the share and all the rights of the Commons into the bargain.—Such a situation of Kings and Lords, it is impossible that every honest and rational man in the country should not abhor as much as I do.

I think I see by the side of the Judge—I may be mistaken, for my eyes are not very good, and the gentleman sits in the shade; but I think I see a noble Lord—[*One of*



*the Counsel behind said*—It is Lord Sidney.]—Well, then, I am right. I see a noble Lord by the side of the Judge, who is himself a Proprietor of *two* boroughs, and sends in to the House of Commons any *four* persons he pleases, and then they are called the *Representatives of the People*. This gentleman formerly, not many years ago, indeed he was not then a Lord, professed the same principles and opinions which I hold; and co-operated strenuously with me and many other gentlemen for a reform in the representation of the People. I hope he is still governed by those same principles: for nothing ever gave me more heartfelt satisfaction than his virtuous conduct at that time; when he declared himself ready and willing to forego his own private and personal property and interest in those boroughs, in order to do right and justice to his countrymen, and to secure the peace and happiness and blessing of his fellow-creatures.

Gentlemen, When my Petition, such as you have heard it, was presented to the House of Commons; although the Act of parliament\* expressly commands, that no question shall be put or debate take place on the presenting any such petition; the Speaker of the House of Commons, who but a few weeks before had inclosed me in his arms to prevent the wind of the passage from giving me cold whilst my carriage was drawing up to his door, this very Speaker took the first opportunity he could find against me, to violate his own duty and to contradict the Act of Parliament; himself inviting and encouraging the House to a debate: and a debate took place accordingly on my petition. The House seemed at first to be unanimous that the Petition should be rejected. All the Lawyers in the house were *clear* that it should be rejected; every one of them. One gentleman (who has lately purchased the property and perpetual right of nominating *four* members in that house for ever hereafter) proposed that the house should reject my petition, and leave me at liberty to present some other;

\* 10 Geo. 3. "Whenever a Petition, complaining of an undue election or return of a member or members to serve in parliament, shall be presented to the House of Commons, a day and hour SHALL by the said house be appointed for taking the same into consideration."

RESOLUTION of the House of Commons, 6 December, 1774.

"Resolved,

"That according to the true construction of the act of the 10th year of the reign of his present majesty, whenever a petition complaining of an undue election or return of a member to serve in parliament, shall be offered to be presented to the house, within the time limited by the order of the house for questioning the returns of members to serve in parliament, the said petition shall be delivered in at the table and read, *without a question being put thereupon.*"



such a one as they might approve and receive; observing that there were still six days more in which to receive petitions. But there were others in the house who could easily foresee what this gentleman never dreamed of, (and which indeed would have happened;) that if they took his advice and rejected this petition, they might on the same ground be compelled to reject the second, and so the others in succession: as each succeeding petition would probably contain not only all that was offensive in the first; but always something additional, which would be still less palatable than all the foregoing.

Mr. Fox, who generally sees and seizes, more quickly than most other men, whatever will best answer his own immediate purpose at the moment, saved them from this scrape of rejection. Though he was one of the Parties petitioned against, he was suffered by the house, and by the speaker, to take a part in the debate\*: and he represented to them that it would be better to receive the petition; and to the good sense of this proposal the House assented. But perhaps they did not see what at the same time Mr. Fox was cunningly doing for himself: for, he added, that although, to be sure, they could not break the Act of Parliament; yet they might break through all their own Orders, Rules and Regulations; for that was within their power; and therefore he proposed, that they should take this petition out of the usual and settled course, and hear it at a very early day: To this proposal too, made by one of the parties petitioned against, the House eagerly assented: The decency, propriety, or justice of this sudden partiality, were not once mentioned: It was within their power! And because it was within their power, they readily broke through every rule and regulation and order of the house, and, upon the suggestion of the party petitioned against, appointed the petition to be heard at a very early day†.

\* ORDER of the House of Commons, made at the commencement of every Session.

“ If any thing shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate.”

† RESOLUTION of the House of Commons,  
25 May, 1784.

“ Resolved,

“ That whenever several petitions, complaining of undue elections or returns of members to serve in parliament, shall at the same time be offered to be presented to the house, Mr. Speaker shall direct such petitions to be delivered in at the table, where they shall be classed and read in the following order, viz. Such petitions as complain of double returns, in the first class; Such as complain of the election or return of members returned to serve for two or more places, in the second class; Such as complain of returns only, in the third class; and the residue of the said petitions, in the fourth class.”

By this irregular and partial direction of the house, my adversaries obtained a very important advantage over me; for by that means my Petition must come to be tried by a Committee, before the Rioters could be convicted in a Court of Justice; whereas if with my Petition they had followed the usual and settled method for other Petitions, I should previously have obtained a conviction of the Rioters, and should have had a copy of the record of that conviction to produce to the Committee: But when I say, I should have convicted the rioters; I must be understood to mean, if the Clerk of this Court had not been at the same time Attorney for the Rioters: for, in that case, I have found that I can neither have conviction nor trial.

But, Gentlemen, although my petition was at length, thus, perforce, received by the House and ordered to a Committee; the Minister of the Crown dared impudently to interfere with it beforehand, and to direct previously the decision of this future Committee. He inveighed bitterly against the Petition, and declared, he saw no reason why the Committee should confine themselves only to find it *frivolous* and *vexatious*; but asserted that they ought also to find it *libellous* and *scandalous*; in order to ground upon such finding, God knows what proceedings of the House of Commons (for no man, who knows any thing of the laws of this country, can discover) to inflict upon me some exemplary punishment for the petition. He saw no reason why they should not find me *libellous* and *scandalous*, as well as *frivolous* and *vexatious*! Why?—The veriest fool can see the reason:—Because they are, by the Act of Parliament, empowered to find the one, and are not empowered to find the other.—See what these Ministers are: and how their lust of domineering, and their insolence in the possession of power, blind their understanding and annihilate their common sense! By the Minister's mode of reasoning, the Committee might have found me a Felon or a Murderer. Instead of these two hundred pounds for each of my adversaries, they might take from me ten thousand. By this same Act of Parliament, coupled with the Minister's interpretation, they might take away my life: they might hang me to-morrow; and the Speaker of the House of Commons might sign his warrant for it. And indeed they have as good a right to my life, without a trial of the *merits* by a Jury of the country, as they have to these two hundred pounds, without a trial of the *merits* by a Jury of the country. And if Englishmen at last are become so dastardly and degenerate as to be contented to hold their life or their property at the mercy of these *proprietors of boroughs*; I care not how soon they take them both away from me together.

Gentlemen, the Committee of the House of Commons appointed to try my petition, was as good a one as could rationally be expected from such a description of men;—and not a bit better. They deserve but little mention; but they certainly treated me very unworthily. I tendered them the most unquestionable legal evidence (the verdicts of two Coroner's Juries) of the murders charged in my petition to have been committed at the Elections. The Committee refused to receive this evidence; and easily voted my petition *frivolous* and *vexatious*. And for the costs of this proceeding, two hundred pounds are adjudged to be paid by me to each of my adversaries. It must necessarily be supposed that my expences were equal, indeed much superior to theirs; because the chief burthen lay upon me: I had summoned many witnesses, they none. So that, by this reckoning, the expences of the three parties must at least have amounted to six hundred pounds. Now this Committee sat two days; three hours each day; in all about six hours. So that this blessed new Jurisdiction, when least complicated, goes on at the rate of one hundred pounds an hour. However, the truth is, that my expences were only twenty-eight pounds: and yet my adversaries demand from me two hundred pounds apiece. Undoubtedly they had one expence which I had not: They had Counsel to pay; and those gentlemen are accustomed to take a great deal of money, for doing very little or nothing. But if ever there was a case in which men ought not to be allowed to charge an adversary with the expence of Counsel, this is that case. In all other cases and disputes, men incompetent and incapable of defence may be involuntarily involved. The great bone of contention, property, is not always or necessarily accompanied by the understanding necessary for its defence. But the present is the case of *Candidates*, of men who come forward voluntarily, and beg and intreat other men to trust them with the conduct of their business in parliament: By doing they profess themselves able and declare themselves willing to perform their whole duty to their countrymen in the face of the whole parliament; and it is therefore an absurdity to suppose such men unable to do their own business before a Committee of the House. Had the the decision of the Committee been in my favour, my adversaries would have been adjudged to pay to me *fourteen* pounds each: Judge you then if it is just or fitting that I should pay them *four hundred* pounds, for the incapacity of the one and the idleness of the other.

Perhaps, gentlemen, you may suppose that the House of Commons had now done their utmost with the Petition. No, not yet. As they had most indecently, and in direct



contradiction to the Act of Parliament, had a debate upon it when it was first presented; they certainly might with less impropriety have another debate upon it after it was reported by the Committee, because this latter would violate no Act of Parliament: and a debate they accordingly had, a very threatening debate, in which the most exemplary punishment was called for to be inflicted upon me by that House of Commons. The precious chairman of the committee made their excuse for not having *intirely* obeyed the previous mandate of the Minister; but unfortunately the Act of Parliament had not empowered them to find the petition *libellous* and *scandalous*.—There is no Act of Parliament yet which gives that jurisdiction to the House, however willing they are to assume it.—The debate was serious and long, and every word of it bitter against the Petitioner. One gentleman, and one gentleman only, attempted to say something in my favour; but the Speaker—for your everlasting fanwers know, when it is their interest, to be imperious—abruptly forbad him to proceed. However at last the Minister himself came forward, and humbly intreated them to proceed no farther at present: he assured them, that they might rely upon it, that this business should not go over, nor my offence remain unpunished; but that it was a matter of so much consequence and importance to the privileges of that *house*—(this man formerly talked of the rights and privileges of the *people*)—that great and mature deliberation should be used for the punishment to be inflicted upon me. What right the king's minister has to hang up in this manner the terror of the House of Commons over my head, I do not know; or rather, I know he has none; however there it may hang, till these holders of Boroughs—an event not quite impossible—are hanged themselves. If I had been a mercantile man, this conduct of the minister might have been my ruin; if I had been a younger man, it might have produced my lasting unhappiness: for who would have given credit to, or who would have been connected with, a person in so precarious a situation? Not being so circumstanced, this blow is not so terrible to me, as it might be to others; but in estimating this scandalous conduct, we are not merely to consider how impotent its effects are towards me; but what they may be to other men who, if this is suffered, may be treated in the same manner hereafter.

#### Gentlemen of the Jury,

What I have said to you hitherto, is rather the history previous to the business of this day; an account



circumstances which preceded this action and gave rise to it. It is to put you in possession of that history, and to make you acquainted with the nature and circumstances of this action. Under all these circumstances and in this manner I am brought before you. And I shall now apply myself to you only, and to your verdict. But before I make my application to you, which shall be as short as I can possibly make it, I beg leave to read to you an extract from a Judge, who was not made a Peer; that you may know what he has delivered down to us concerning your present office and duty. And I earnestly intreat you, I beg of you all, gentlemen, not to let your minds tire. I desire you to carry along with you all that has hitherto passed; but I especially intreat you to pay particular attention to what I am now going to read to you: for it was written many years ago; when the Judge who wrote it could not possibly foresee this trial, nor imagine that such an Act, as this *frivolous* and *venacious* act, would ever be endured or attempted in this land. It is in the third book and the twenty-third chapter of Blackstone's Commentaries.

“ The Trial by Jury ever has been, and I trust ever will be, looked upon as the glory of the English Law. It is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution, that I may venture to affirm, has, under providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French writer, who concludes, because Rome, Sparta, and Carthage, have lost their liberties, therefore those of England in time must perish; should have recollected that Rome, Sparta, and Carthage, were strangers to the *Trial by Jury*.

“ Great as this eulogium may seem, it is no more than this admirable constitution, when traced to its principles, will be found in sober reason to deserve. The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely entrusted to the magistracy, a *select body of men*, and those generally selected by the prince or such as enjoy the highest offices in the state, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity: It is not to be expected from human nature, that *The FEW* should be always attentive to the interests and good of *The MANY*.

“ A competent number of sensible and upright Jurymen;  
 “ chosen by Lot, from among those of the middle rank,  
 “ will be found the best investigators of truth, and the  
 “ surest guardians of public justice.

“ This therefore preserves in the hands of the people  
 “ that share which they ought to have in the administration  
 “ of public justice, and prevents the encroachments of the  
 “ more powerful and wealthy citizens. Every new Tri-  
 “ bunal erected for the decision of facts, without the inter-  
 “ vention of a Jury, (whether composed of justices of the  
 “ peace, commissioners of the revenue, judges of a court  
 “ of conscience, or any other standing magistrates) is a step  
 “ towards establishing aristocracy, the most oppressive of  
 “ absolute governments.

“ And in every country on the continent, as the trial  
 “ by the peers has been gradually disused, so the Nobles  
 “ have increased in power, till the state has been torne to  
 “ pieces by rival factions, and OLIGARCHY in effect has  
 “ been established, though under the shadow of real go-  
 “ vernment; unless where the miserable Commons have  
 “ taken shelter under absolute monarchy, as the lighter e-  
 “ vil of the two.

“ And, *particularly*, it is a circumstance well worthy an  
 “ Englishman’s observation, that *in SWEDEN* the trial by  
 “ Jury, that bulwark of northern liberty, which continu-  
 “ ed in its full vigour so lately as the middle of last centu-  
 “ ry, is now fallen into disuse: and that there, though  
 “ the regal power is in no country so closely limited, yet  
 “ the liberties of the commons are extinguished, and the  
 “ government is degenerated into a mere aristocracy.”

I shall only just observe here—That if the learned Judge  
 had lived a little longer, he would have seen the comple-  
 tion of that circle of which he only saw a part. A faction  
 of the nobles in Sweden robbed the people of their rights.  
 The King robbed the nobles of their usurped power. And  
 now an Assassin has robbed the Tyrant of his life. This is  
 the same everlasting round: and the figure is always begun  
 to be described, when the people are robbed of their rights.

But I proceed with the words of the Judge.

“ It is therefore upon the whole, a Duty which every  
 “ man owes to his *country*, his *friends*, his *posterity*, and  
 “ *himself*, to maintain, to the utmost of his power, this  
 “ valuable constitution in all its rights; and *above All*,—  
 “ to guard with the *most jealous circumspection* against the  
 “ introduction of new and arbitrary methods of Trial,  
 “ which, under a variety of *plausible pretences*, may in  
 “ time *imperceptibly* undermine this best preservative of  
 “ English Liberty.”

Gentlemen of the Jury,

I hope you have well noticed what I have read to you, and that you will keep it for ever in your memory. These are the words of a Judge who could not possibly foresee this trial, nor the occasion which I have now to quote them to you. Remember what he tells you—"It is a duty which you owe to your country, to your friends, to your posterity, and to yourselves, to maintain the rights of Juries to the utmost of your power, and to guard with the most jealous circumspection against the introduction of *new and arbitrary methods of TRIAL:*"—That is, to guard against the very thing which the learned gentleman, the Counsel for the plaintiff, and the act of parliament on which he relies, endeavour now to introduce—you must guard against the certificate of a Speaker of the House of Commons; which (after you have been sworn *well and truly* to TRY) the Counsel tells you, forbid him and forbid you to consider in the least "the merits of this case, or any thing that relates to it."

Now then, Gentlemen, I beg you to weigh well in your minds; consider seriously—For what you are called here this day?—Consider, I beg of you;—What have you now SWORN to perform?—You have solemnly sworn, that "you will *Well and Truly* TRY the Issue between the parties." You have sworn to TRY it; WELL and TRULY to Try it. Now, pray, What is the *Issue*?—Mr. Fox asserts that I owe him about two hundred pounds: which I deny. Now the question between us is, whether debt or not. That is the *Issue* which you have sworn to TRY: and to Try it *Well*; and *Truly* to Try it. If then he has proved to your satisfaction the merits of his case, the existence of the debt; that I am really and truly, to your conviction and perfect satisfaction, indebted to him two hundred pounds; then you ought and must give a verdict for him: But if he has proved no such thing, then you are compelled to give a verdict for me. For, Remember, you have not sworn to give a verdict only; but you have sworn to TRY, that is, to *Examine* all the circumstances and all the merits of the case; to Try it *Well*, and *Truly* to Try it. It must not be a sham Trial: for if it is a sham Trial, then it is but a sham Jury. Your Verdict is, by your oath, to be in consequence of *Trial* and *examination*; and you cannot without perjury give a verdict *before* a trial and examination of the merits, or *Without* a trial and examination of the merits. Were it otherwise, a Jury would be of no use at all to this country. Now then I desire you will reflect, what proofs of the debt have been brought before you? An examined



copy of the Journals of the House of Commons, and the Speaker's certificate have been produced.---Now what are you to *Try* and examine?---The Speaker's certificate?---If the Speaker's certificate is sufficient to take away our property; why should not the Speaker's certificate be followed by execution? What occasion is there to call a Jury together to TRY nothing; and yet to make them solemnly swear to *Try, Well and Truly*? I ask again, unless it was for the purpose of perjuring a Jury, why might not the Execution have immediately followed the Speaker's certificate, as well as your verdict? Why? There was no reason upon earth but one.---It was done to *colour* the transaction. They are not yet quite ripe enough to strip from us at once (and let us know it at the time) our right to a Trial by Jury. But they have compleatly done it in effect. They have left us the Jury, but taken away the Trial. They have, by a subterfuge, taken away the *Trial*, which is the important part; and have left us the *Jury*, which without *Trial* is a mere mockery. But the *virtual* representatives of the people may very consistently think a *virtual* trial by Jury quite sufficient for us. I wish they would themselves be contented with *virtual* salaries and pensions, and with *virtual* taxes too. But if they thought it necessary, merely to *colour* the business, that it should *nominally* pass through a *sham* Jury; why did they not alter the Juryman's oath, and not compel him to add individual perjury to the baseness of betraying a public duty? Why compel the Juryman to swear *Well and Truly to Try*, as a necessary preliminary to a verdict, what the act directs he shall *not Try* at all? Perhaps they would have altered your oath, if they had thought of it. Perhaps they would have left out---*Well and Truly to Try*. For *they* have Tried it: and then send these Gentlemen here to tell you--after you have sworn to *Try*---that you have nothing to *Try*! It is a mockery equal to the Injury. Why, you cannot, without perjury, give a verdict till you have *Tried* it. Now, if there can be any verdict under such an Act, it is given already; the Trial, if there has been any, is all over before the question comes to you: and the effectual verdict is given before you speak. You are only left to say, that a verdict has been already given by somebody else, but you know not by whom or for what reason. And all that you have to do, if indeed you can do any thing, is, to say, that you have seen a paper containing the verdict, signed by the Speaker.

Now, Gentlemen, can any man be so blind as not to see that, though this Action comes before you in the shape of an action for debt, the Act of Parliament itself is in fact a

penal statute, and very highly penal; giving to a Committee of the House of Commons the power of inflicting very heavy punishment, absolute ruin if they please, without any intervention of a Jury; and that too in a case where they are themselves the interested parties. These purloiners of boroughs, who after having stolen our representation are now attempting to rob us of our Trial by Jury, have not wanted art and cunning so to juggle and contrive it, as to leave the oppressed and ruined man and the baffled public, without any one fixed and determinate object of complaint. The first actors are an uncertain and moveable Committee, whose general and common interest however never varies though the persons do: and yet even these fix nothing of the quantum of punishment, though they can induce it: for they only vote their victim *frivolous* or *exorbitant*. It is not the committee therefore who take the money out of your pocket.—As the Committee know nothing of the quantum of *punishment*; so the Clerk of the House and the Master in Chancery (Receivers of fees themselves and therefore sufficiently indulgent to the fees of others) know nothing, and desire to know nothing of the quantum of your *guilt*.—The Speaker, who signs the certificate is ignorant of both; he neither meddles with guilt nor punishment: he knows nothing of the magnitude of the crime by which the fine is incurred; nor of the proportion of the fine applied to the offence.—The Jury, (they tell us) is only to determine, that they have seen the Speaker's certificate.—Whilst the Judge washes his hands of the whole: for he only records the Jury's verdict.—Such is the cunning contrivance of gentlemen who hold Boroughs: they do not go in the plain and open way of robbery practised out in the world as other thieves do; and so they expect to escape, and so perhaps they may for some time escape hanging.

#### Gentlemen of the Jury,

I will weary you and trouble you no longer upon so plain a point. Your duty, as an English Jury, is, I trust, sufficiently plain and manifest. Your twelve names, gentlemen, must be henceforward recorded for ever in this country, whatever may be your verdict: and if no one was concerned but myself in its consequences, I think I never should have stood more indifferently and pleasantly than under the expectation of it. You will be pleased, gentlemen, to remember, that when you retire from this court, you will, for the rest of your lives, have to encounter the eyes and looks of your fellow citizens and countrymen:

You will have to listen to the familiar and free conversation of your friends and acquaintance: You will go home and embrace your wives and your children, whose dearest and best inheritance you will this day, as far as depends upon you, have either gloriously preserved, or infamously squandered away; You will have to endure the suggestions of that inward monitor, your conscience; which will inform you truly, whether you have or have not observed and paid a proper regard to that sacred and solemn oath which you have this day sworn.—As men then, as Englishmen, as Christians, or if you have any sense of any other tie or religion, you are compelled to pay a sacred regard to that oath which you have sworn; that you will *well and truly* TRY, and that your verdict shall only be in consequence of having *well and truly* Tried the merits of the question. Where *Crime* is the question, the Jury must judge of the *guilt* charged, and of its *extent*: and in actions for *property*, they must judge whether any thing is really *due*, and to what *amount*: For if the Jury are not to try and decide upon the whole merits of the question before them, no man in this country can be safe in life or property for ever hereafter.

Gentlemen, you are all strangers to me. You ought to be, and I believe you to be twelve good and honest men: and if you are so; and act and do your duty accordingly; I will venture to say that you will sleep this night more happily, and with more satisfaction, than ever you slept in your lives.

*Lord Kenyon.* Gentlemen of the Jury, I shall only trouble you with one or two observations on one part of this long address that has been made to you, which certainly comprehend every thing relating to this business. Gentlemen, you are bound by your oath to well and truly try this cause as stated on the record: and the question in Issue between the parties, is, Whether by the Law of the Land the Defendant is bound to the Plaintiff in this cause, in the sum of one hundred and ninety-eight pounds two shillings and two-pence. And in order to prove that, by the law of the land, he is liable; there is an act of Parliament which says, that if a petition is presented to the House of Commons, (I do not affect to state the words of the act) which in the opinion of a Committee of the house, is *frivolous* and *vexatious*, the act provides that a Master of the Court of Chancery, and the Clerk of the House of Commons, shall tax the bill, that no unreasonable charges may be paid by him whose petition is *frivolous* and *vexatious*. And if he refuses to pay those costs so taxed, he may be



brought before a Court of Justice: If you are satisfied; upon your oaths, that this has been done on this occasion; when you will have *well and truly tried* this cause, by finding a verdict for the Plaintiff. It is impossible any doubt can arise, as grounded upon the Law, whether the Plaintiff has made out that proof which the Law requires.

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The Jury, not being agreed, retired from the Court, to consider of their verdict. After they had been out about half an hour, Lord Kenyon said,—“ Send some one to inquire of the Jury, whether they are likely soon to agree on their verdict: if not, I shall order the Court to be adjourned, and order them to bring their verdict to my house.”—The messenger returned with an answer, that—

“ The Jury was not likely soon to agree.”—In a few minutes after, Lord Kenyon adjourned the Court; and gave directions that the Verdict should be brought to the Lord Chancellor’s house in Great Ormond Street.

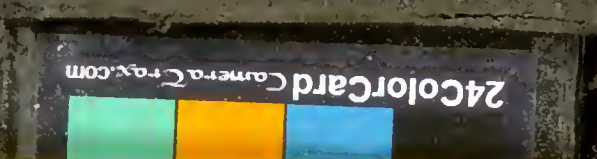
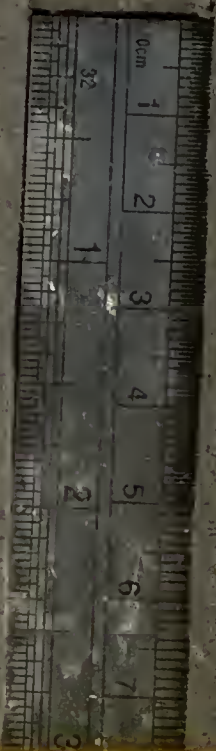
After an Interval of four hours and twenty minutes, the Jury were agreed in their verdict, and delivered it at ten o’clock at night, to the Chief Justice, at the Lord Chancellor’s in Great Ormond Street, *for the Plaintiff*.

F I N I S.









TIGHT  
GUTTERS.

