AN INTERESTING ADDRESS
TO THE
Independent Part of the People of England,
ON
LIBELS,
AND THE
Unconstitutional Mode of Prosecution by INFORMA-
TION EX OFFICIO, practised by the
ATTORNEY GENERAL.

WITH A VIEW OF THE CASE OF
JOHN HORNE, ESQ.

And a Candid REFUTATION of the
DOCTRINE of INFORMATIONS,
AS LAID DOWN IN,
BLACKSTONE'S COMMENTARIES.
DEDICATED TO ALL
The GENTLEMEN of the LAW.

Very useful for thoseworthy ENGLISHMEN who glory in TRIAL
by JURY, and who may hereafter be impannelled in
CASES of PUBLIC LIBEL.

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DEDICATION.

To all the GENTLEMEN of the LAW.

GENTLEMEN,

If, in the perusal of the following Address to the Independent People of England, you shall find that your attention has not been misemploy'd, nor your senses insulted by the arguments of a man in no higher station than a law student, you will not regret that he has studied in reason and common sense, to explode a species of prosecution for an imaginary crime, which, on examination, appears to disgrace all our law books, and our highest court of criminal justice.

If, on the other hand you should, from superior ability, and a more accurate knowledge of the spirit and principles of our constitution, discover false conclusions, from mistaken premises, your indulgence
indulgence and candour will be requested to excuse, what you cannot approve.

I have a respect for the profession of the law, and glory in the name of a true-born Englishman. In lamenting the violation of our constitution, and the abandoned corruption of political affairs, I have done no more than my superiors, whose names and characters I revere; and though the present subject has been discussed by an artless and simple pen, if it does not rebel against the laws of decency, and constitutional liberty, I shall hope to find that my humble reasoning will not be offensive, and that a doctrine apparently reserved for arbitrary purposes, will soon be abolished; or at least universally condemned.

I am,

With all proper Respect,

Your Humble Servant,

The Author.
AN INTERESTING ADDRESS, 

EVER since his present Majesty (whom God preserve) came to the throne, his kingdom has suffered almost a continued concussion by the violation of our constitution, and the exorbitant power of his respective ministers.—Throughout the present reign, we have observed (with pain is it recollected) that public affairs have been conducted with obstinacy, and in contempt of that opposition which will, so long as the debates of both Houses of Parliament shall be preserved in print, be read with admiration and praise.—Our respective rulers, (some few only excepted) since the accession of George the
Third, (a virtuous and benignant King) have vied with each other who shall wade deepest in the dirty channels of administration, and who shall sacrifice their country's welfare moth for private advantage. — Government has abounded the whole of this inglorious time in wilful error and general abuse. Ministers have studied to withdraw themselves from the interests of the people, (whose servants in truth they are) and to attach themselves to the King and his court. — They have artfully cast out the tub to the whale, the lure to the multitude, like unto the delusive largesse of Julius Cæsar, the better to bring about their own purposes, and by serving themselves to distress their country. — They have announced (having previously lulled the best of Princes on their side) that those subjects are enemies to their King; who, from feelings of humanity, and a love of liberty, presume to speak the dictates of their hearts, or arraign what in ministers appears notoriously destructive of English freedom. — To check their schemes, while sporting with all that is dear to us, is criminal in their estimation, beyond compare; for which, no rancour or resentment appears sufficient in return.

While
While the enemies of our liberties are active and vigilant, to seize every occasion to increase their own power and profit, and while we are timid and thoughtless on our safety, our public complaints can never be relieved, but will rather be increased; to prevent this, it is time to awake from that lethargy into which we have long been thrown, and examine in the hour of trial and necessity, our true condition; corruption and venality will otherwise spread wider and wider over this once prosperous country, until it will be impossible to root them out. They will not die away of course: they are the offspring of tyrants, and tyrants will (unless restrained) keep them alive.

If we look into our own history, no far-back than 1688, we shall find that we have either not been able to keep up our constitution as then settled, because it was imperfectly settled; or because we have been until the present reign (which God prolong) in the hands of foreign kings, and of ministers calculated and disposed to try experiments at the price of liberty and virtue; ministers who have insulted our generosity, and by introducing corruption, have, in a degree, undone what was done in the expulsion of the Stewarts. Endeavours are meditated to persuade us that all is safe;
safe; but a retrospection on our complaints, made in the year 1769, will bring contempt and abhorrence on the causes of them. They were then carried to the foot of the throne by the livery of London, who represented, that the right of trial by jury, was invaded, as well as the force of the Habeas Corpus act: that an individual had been imprisoned without trial, conviction, or sentence: that the military had been employed where peace officers would have been sufficient; and that they had murdered those subjects who they ought only to have apprehended—that the murderers had been concealed—that arbitrary taxes had been imposed in the Colonies—that the Ministry had procured a rejection from a seat in parliament, of a member not disqualified by law, and a reception of one not chosen by a majority of the electors—that the payment of pretended deficiencies in the civil lift, had been procured without examination—that a defaulter of unaccounted millions had been rewarded instead of punished; and that the blood-enveloped beings had been thanked for destroying the lives of the innocent and unarmed in St. George’s fields, in order to quell the riot of an inconsiderate, yet exasperated mob. These were heavy complaints, and sad to reflect upon, but a part of the many we have had reason to make within the present reign, the re-
sult and consequence of our representative body having lost its efficiency; which, instead of being what it was intended to be, (our guard against the encroachments of King and court) is in the high road to be little more than a bastion of the Ministry; or a French parliament, to register royal edicts in; a Roman senate (in the Imperial times) to give the shadow of a free government, but in fact, to accomplish the schemes of a profligate junto.

We are told from the throne of the authority of law, and the necessity of subordination in language, which among freemen perplexes the idea of either: the former is pronounced in contradiction to the strict spirit of our constitution; the latter, as we might expect among slaves.

The firmness shewn by our brethren in America against the same oppression, as to us it would be to have taxes imposed on us by an edict from the King, has by AUTHORITY been pronounced sedition and rebellion; but with due submission to such authority, and with more respect to truth and justice, we may ask when the illustrious Hampden refisted the lawful Sovereign's demand of an unlawful tax, because he had
had no voice in laying it on, was he too guilty of sedition and rebellion? if he was, we are all Rebels but the Jacobites; for the revolution was brought about with a design to prevent a man’s property being seized without his consent, which makes it the same to our Colonists to be taxed by the Parliament of Britain, as that of Paris; and yet it is become almost criminal to deny the Sovereignty of our Parliaments; or in more modern words, its supremacy, notwithstanding the truth is, that sovereignty can dwell nowhere but among the people, who have, in despite of the learned Blackstone, a right to exert it without any “urgency of distress,” without any provocation by government, if they think they can be happier under one mode than another, and can bring it about without greater inconveniencies than the future advantages are likely to ballance. They have an undoubted right to change or new model their government, when necessity, and their general safety, may require it. Government arises from them, and those, into whose hands they trust it, are but trustees for their common welfare. The idea of government, is only an authority of the many over the few: whenever therefore it assumes a power of opposing the sense of a majority, it is downright tyranny. Judge Blackstone, by plac-
ing the sovereignty in the parliament, seems clearly wrong in his idea; because, as may be expected, in the weakness of human nature, parliament is fallible, and has done many wrong things, which, if sovereign or supreme, it would have been impossible to correct. Hence, next under God, sovereignty is immediately in the people at large, who delegate to their governors all the power they have, which in the nature of a free state, is (to make use of a Chancery expression) no more than a resulting trust. It would be absurd to say that governors give power to the people; for without people, there would be no governors. With the People then is all power; and when their trustees abuse it in the characters of governors, they only have the Sovereignty to withdraw it from them.

It is the exorbitant power or authority of government we have reason to condemn, as tending in time and from our own submision, to the artifice and poison of our governors, to rob us of our liberties, and leave us mere instruments for their use and abuse.—If we are corrupt (which indeed we are) it is because our superiors have corrupted us.—We know we are unequally represented in parliament, and that our representatives are chiefly beggars, which is
foundation of our public ills:—We send up those men as our agents, who, for selfish purposes, have lavished their property among us, to intoxicate us into an approbation of them as members of a part of our state, and blinded by folly, temporary licentiousness, and private profit, we are ignorant that those who represent us, have indulged us in a periodical libation to Bacchus, for the sake of having it in their power to oblige the court when returned by us, and in order to have that obligation compensated in places or pensions. So that whatever the English constitution is in theory, liberty now is little more than a name, and our parliament appears to be the state of a monarchy, at a time we are scarcely a remove from passive slavery.

Judge Blackstone in his chapter “on the nature of laws in general,” has attempted to shew that our government is all perfection, and that the respective branches of it, are independent of the other; but the excellencies he attributes to each, are so imaginary, that they have been doubted as true or reasonable; for in regard to the independence of any one branch of our legislature on the other, it seems a paradox in terms, because it is very well known to a common observer, that the King, and most of his Lords, have great influence in the election of members
members of parliament: that the King can at a minute's warning put an end to the existence of the house of commons, and that he has also great influence over both houses, by offices of dignity and profit, given and taken away again at pleasure; from whence, one may rather say, that this independence in the three branches of our state, and the perfection of it when they are knit together, so ingeniously made out, or attempted to be made out, by the learned Blackstone, is little more than dependence and imperfection.—Wherever there is influence, there can be no independence, and where independence is wanting, there can be no perfection; therefore, while we live under the shadow of a limited monarchy, that is, a monarchy limited chiefly by the monarch himself, we are almost in a state of passive slavery*.—Our parliaments are called to give a sanction to what the ministry pre-determine.—A majority is purchased by the court, and we pay the purchase money.—Our property is sacrificed by our representatives, who having first deluded us to choose them, vote it away to the ministry, that they may be the better paid their wages of iniquity; and these beggars, to speak of them in the general, are our legislators and framers of laws, which they break themselves, while they hold them severely over us.

* Vide fragment on government, page 101.

May
May God, and the undebauched spirit of freemen, however redeem us from such mortals, who priding themselves in the conquest they gain over us, by their vicious electioneering largesses, desert our true interest, and instead of deeming themselves, in a refin'd sense, our servants, take upon them the imperious characters of our lords and masters.—They corrupt us, that we may constitute them for corruption.—The court then attaches them to its schemes; taxes are multiplied, and our representative body is but a name preserved for the sake of appearances, while King and Lords rule us under a kind of aristocracy.—We are expelled and divided from government, and as the ingenious Voltaire indignantly tells us, once in seven years we are only free.

If, as a people, sovereignty is only among us, and not in our parliaments, which are of our own fabrication, it must be allowed that we are not to be restrained in our enquiries, into the conduct of those who undertake our public affairs, because (as in a private cafe between man and man) they are undoubtedly answerable for what they do; were it otherwise, and we are to be restrained in such enquiries, it would be argued, that having once constituted a frame of government,
ment, we have no right to complain of its admin-
istrators, though their deeds be ever so atrocious;
in such a case, the state would run to progressive
ruin, and we be left in completest slavery,
when no new revolution, no new stand, against
the effects of abrogated trust would restore us to
our rights, unless founded on firmer principles
than our last, which after all boast of glory on
its occasion, was not sufficiently established for
the purposes intended to be answered by it, one
among which was, the total destruction of the
Court of Star Chamber.—Our state vessel be-
fore that time was in a crazy and rotten condi-
tion.—It had a many leak holes, and though a
great number of them were flopt by our revolu-
tion botchers, the few that were left purposely
unrepaired, have exposed it to the perils it has
since experienced; among those unrepaired de-
fects we may (speaking metaphorically) class
the practice of filing informations ex officio,
which was left open for the benefit of the
crown, whenever it should be expedient for the
ministry to make use of such a practice, in re-
venge for being told their misdeeds, or being
discovered in their private iniquities.

It is now an offence to remark on the pro-
ceedings of parliament and administration, tho
we are all concerned in them; and so formidable are ministers become, that no punishments have been, or are severe enough against those who dare to speak the truth, and find fault when faults are flagrant, because we are told, that no private writer or speaker, should have liberty to attack the sacred men who take upon them the care of our state:—this is despotic, and history shews clearly the necessity, the virtue of every subject's having a watchful eye on the conduct of ministers and parliament, and of their not only being secured, but encouraged in alarming their fellow subjects on occasion of every attempt against public liberty, because private independent subjects are more likely to give faithful warning of such attempts than their betters, who, from their rank and fortune, and perhaps courtly connections, would rather conceal than detect the abuses of those in power: if private subjects are to be intimidated, in shewing their fidelity to their country, the principal security to liberty is taken away, and that such attempts have been made to this diabolical end, we have seen too plainly, in the cases of the King against Wilkes, Almon, Woodfall, and Bingley, but praise and thanks to those defendants we have found. Sir William De Grey's words, when Attorney General, verified, that
that the power (wicked as it is) of that officer in prosecuting \textit{ex officio} for libels, has never answered its purpose, which is to stop the pen and mouths, and stifle the complaints of an injured people (of which more hereafter).—Our minds and pens ought to be free, but not mischievous: to curb either is to abuse that liberty, which gives to our governors all their consequence; and to be cheated of a power, which transferred to worthless hands, is exerted to our misfortune and not our good.—It is like one man’s building a house for another to occupy, while he is only permitted silently to look at the outside of it, or marrying a woman, for his enemy to enjoy.—The Miniftry, and their friends the judges, pretend that in all crown prosecutions, for what \textit{they} call a libel, which is any thing that upbraids the conduct of our government, whether \textit{truly} or \textit{falsely}, it is the dignity of the \textit{public peace} they are meant to preserve, and punish the violation of.—They talk largely of libels raising sedition, insurrection, and breaking the peace; but where, in any one case in our time, do we find that these things have been proved?—They are pretended, but not given in evidence, and though, under those great and good men, Holt, Powell, and some other former judges, menti-
owed with reverence in the law books, it was
held indispensible necessary to prove some overt
act in the defendant, whereby the public peace,
and the dignity of the King, as the chief con-
servator of it, was endangered, or actually broke;
by what was charged as a libel; we have now
judges who dispense with such testimony as
immaterial! but are Judges infallible? are they
to supply the defects of such evidence? if they
are, any thing displeasing to them, or to our
governors, may be deemed a libel, and we be
kept in the dark about a definition of what it is.
The public peace is the peace of the people, and
a breach of it is properly punishable; but it is
folly to conclude, that because a King, or his
Ministry, shall say that some one among the
people has wrote a letter which tends to break
such peace, without there be an act, proving
beyond a doubt, and out of the reach of an in-
uendo, such tendency, that the thing complained
of as a libel is really any more than harmless
and insipid—If there be any one bold enough
to say otherwise, he is a tyrant.

It is far from being the intent of these hum-
ble pages to raise sedition.—They contend not
for an overthrow of our frame of government,
but for a reformation in the conduct of its ad-
ministrators.
ministrators.—Our constitution is an excellent one, if supported, but it has received many injuries from our legislators; notwithstanding we have a statute which says, no law shall be good which affects it, as established by Magna Charta.—Judge Blackstone amuses us by saying "wherever the law expresseth a distrust of an abuse of power, it always rests a superior power in some other hands to correct it, the very notion of which destroys the idea of sovereignty; and if the two houses of parliament, or one of them, had a right to animadvert on the King, or the King had a right to animadvert on either of them, the legislature, so subject to animadversion, would cease to be a part of the supreme power; the supposition of law he therefore says, is that neither the King, nor either house of parliament, (collectively taken) is capable of doing any wrong, since in such case, the law feels itself incapable of furnishing any adequate remedy; for which reasons, all oppressions which may happen to spring from any one branch of the sovereign power, must necessarily be out of the reach of any stated rule."—This may sound very well in civil matters, but never in public or political ones. But then he says, "if ever they happen, the pru-
"dence of future times must find new remedies
on new emergencies, as was the case at the
revolution;"—insinuating, if we had not such
a remedy, we should not know how to proceed
in such a case. Strange hesitation! since the
remedy is inevitably to be found in the people,
who would bring about any revolution when ne-
cessity obliged it. But would the people, after
what they have seen in the clandestine reserve of
the doctrine of Informations ex officio, which has
been employed in the most arbitrary manner
since 1685, neglect to blot that doctrine away
from the crown? It is a doctrine as scandalous
to our constitution, as it is inimical to Magna
Charta, which ordains that none shall be im-
prisoned, condemned, or punished, but by his
Peers.

When Sir William De Grey, that able man,
was Attorney General, he confessed in the House
of Commons, A.D. 1770, that his power of
filing Informations ex officio was an odious one,
and that it did not answer the purpose intended,
for that he had not been able to bring any li-
beller to justice; why? because there was no
injustice done; or if there were, Informations
ex officio were not the proper processes to pur-
tsue.

The
The lawyers and law books have differed in opinion about what is and what is not a libel; yet the prevailing doctrine is, that truth is a libel, when it tends in its provocation or aggravation to a breach of the peace; and that falsehood for the same reason is also a libel. We are taught too, that the person libelled, has no right to damage in a private case, if the charge laid against him be true, whereby it should seem that the truth of the thing would take away its criminality; for if a man has no right to damage, he has no right to seek revenge; therefore to libel a person for what he cannot affirm himself innocent of, is no breach of the peace. It may tend to provoke a breach of the peace; but will that make truth a crime? If it will, it is wonderful that prosecutions for libels are not much more common, as any thing that tends to provoke anger, or to excite shame or reformation, may, under these rules, be punished as libellous.

In a civil sense, a malicious defamation of any person may be properly libellous, as in a settled state of government the defamer ought to complain of any injury done him in the ordinary course of law, and not to revenge himself by becoming Judge, Jury, and executioner, in his own
own cause; but in a criminal sense, it is otherwise; and there can be no prosecution for a libel criminally, but for a breach of the peace, or a tendency proved towards it. Judges Holt, Hale, and Powel, knew this to be true. They had no corrupt attachments to administration, and they made it their duty honestly to expound, and not partially vitiate the law in cases of libel. Let us here see what after Judges have done on this important (though ill understood) subject.

And first, after describing imperfectly the signification of a libel, the learned and elegant Blackstone proceeds to tell us, that the tendency of all libels is the breach of the peace, by stirring up the objects of them to revenge, and, perhaps, bloodshed. These are his words:

"For the same reason it is immaterial with respect to the essence of a libel, whether the matter of it be true or false, since the provocation, and not the falsity, is the thing to be punished criminally, though doubtless the falsehood of it may aggravate its guilt, and enhance its punishment. In a civil action, a libel must appear to be false as well as scandalous; for if the charge be true, there can be no private injury, (nor of course
course any public one, because in civil actions no breach of the peace is suggested
nor any ground to demand compensation,
whatever offence it may be against the public
peace; and therefore, in a civil action, the
truth of the accusation may be pleaded in bar
of the suit (and why not to a criminal charge
where the peace does not appear to be broke)?
But in a criminal prosecution, the tendency
(curse on this word) which all libels have to
create animosity, and disturb the public
peace, is the sole consideration of the law; and
therefore, in such prosecution, the only
points to be considered are, first, the making
the book or writing; second, whether
the matter be criminal; and if both these
points are against the defendant, the offence
against the public is complete."—True, if
the matter be criminal; but the learned Judge
says nothing how this tendency, in all libels, to
disturb the public peace, is to be made out or
known; therefore he leaves us to suppose, that
it is to be done by construction only; very indeterminate indeed, as is the meaning of the
word libel at all. In fact and reason, a libel is
a non entity; that is to say, there is no such of-
fence as Scandal; for if the remorse of scan-
dal was removed; or in better words, if scan-
dal occasioned no remorse, it would be in no sense an evil, because no body would regard scandal that did not deserve it. We believe every character what we know it to be; and if people lived, so that no body would believe their upbraiders, scandal would die away, and we should forget the name; but we find that the most worthless are generally the most tenacious of what they do not deserve, which is a good name and character. Satan corrected fin, and quoted scripture. The devils of this world always personate saints, because the wicked benefit by concealing their vices, and not by an open shew of them; therefore it is from the vilest of people, that we behold rage and revenge against those who, despising their conduct, and dreading the consequences, candidly call them to account for it. The leading men at present, and for the principal part of this reign, seem in this predicament. They have been conscious of their deserts, while striving to rule triumphant over the people, whom they have miserably corrupted and deluded into mischief; and when a lover of his country and fellow subjects has engaged to speak loud truths which reflect deceit and perfidy on them, he is pursued with implacable fury. Even records, those things, the alteration
teration of which by judges, is punishable by statute, have been erased to gratify that fury previous to trial.—Juries have been deprived of their authority; and a corrupt court has punished a man as a libeller without any proof that he had broke the public peace, except by innuendo and implication.

But to return to the worthy Blackstone on libels: if we depend upon what he says, which, to a superficial reader, seems reasonable, it is very plain, that the tendency of all libels, being, as he says, the sole consideration of the law, the prevailing doctrine is right, and juries are then only to try the making or publishing the thing charged as a libel by the Attorney General. If this be allowed, which in justice it never can, the sole consideration of the law becomes no consideration whatever, for in law the supposed libel must be criminal.—If criminal, i.e. if it has broke the public peace, the law is to judge of it, and not the Jury; now what the law has to do solely with that, is difficult to comprehend.—A breach of the peace if committed, one would imagine was more properly the consideration of the Jury than the law, and is a matter as much at issue to be tried by them as that the supposed libel was wrote or published.—The advantage
of a Jury is otherwise lost, and by leaving the tendency of what the supposed libeller has done to break the peace, solely to the law, they seem not to discharge their duty according to their oaths, which are that they shall 

**well and truly try the issue, joined between our Sovereign Lord the King and the Defendant, and a true verdict give according to the evidence.** Suppose then, that any of us should be brought to trial, for having wrote, that a proclamation had been made without the concurrence of Lords and Commons, and that what had been so wrote, was seditious and against the peace, to which Not Guilty was pleaded; would the Jury not be bound by oath to try the whole of such charges? would they not be obliged to try, whether there were malice, falsehood, or a breach of the peace, or an overt act toward it?—If they would be, the law usurps a power to be wantonly exerted in cases of public libel, at the discretion of Judges, to the injury of innocence, and a man under such circumstances would be at their mercy for writing any paper whatever, if the same were offensive to administration.—He would then be convicted of a Guilt by his Judge, which his Jury would be told they have ought to do with. According to this principle, an Attorney General has nothing to do but determine that
that a particular man shall be punished for what he thinks proper to deem libellous in him; and on bringing him before his judge and jury to say, "my Lord and Gentlemen, I charge the defendant with having wrote and published an impudent, wicked, and sediti-ous libel, in saying" such and such things as the nature of the case may be, and then, on proving what the defendant is ready to confess, that he wrote and published such words, to entitle him to a verdict, which when he is possessed of, is not to be set aside or judgment arrested thereon, because the tendency, (without any proof of the fact) of such words, in the sole consideration of the law, was to break the public peace.—Would this be justice? most certainly not, for whatever a criminal is charged with, ought to be proved by positive evidence.—It is cruelty to punish any man for imaginary or constructive faults.—In a civilized, and particularly a free state, all crimes are positive, and even murder is not murder, unless there be positive evidence of an intention to kill. Can that be law therefore that robs a man of his liberty, for having done nothing but in constructive tendency that is criminal, or morally reprehensible? as well might he be punished for a want of charity, or benevolence to his neigh-

D 2 bour,
bour, which seems a greater omission than the other a commission, because society is a loser in the one, but an Attorney General reaps no advantage in the other, except by gratifying his employers, in return for some secret sting, their conscience had separately afforded.

- A criminal prosecution can only be had for a crime, and therefore the publishing of what is either true or false, which does not actually break the peace is no crime at all. It is the publication of what is false, scandalous, and seditious that is a crime, and solely gives jurisdiction to the criminal court, and these things must of necessity be left to a Jury, who by their oaths, are obliged to try whether the supposed libel is true or false, malicious or seditious, which they are to collect from circumstances, as much so, as whether a trespass is wilful or not, or the killing a man with malice prepense, or whether any act was done or words spoken, with a criminal or injurious intent.—The truth of a thing may not defend it from being a libel, which actually causes a breach of the peace.—It may be otherwise by an inflammatory falsehood, for as falsehood is a crime, it may, in particular cases, tend to a breach of the peace, where the King is solely concerned; but in those crown prosecutions,
ons, where no breach of the peace is proved, nor
enquiry made into the truth or falsity of the sup-
posed libel, it must be considered harmless
and constitutionally inoffensive; nor can it be
otherwise, except in the opinion of those our mal-
administrators, who break loose on the liberty of
the subject, when their bad conduct is exposed.
It is in that the crime of libel is to be found.—It
is not the public peace, but the private peace, of
the Ministry that libels tend to break.—It is the
security of the subject in publishing, who, and
what are enemies to his welfare, and not setting
one subject on another, that constitutes the
crime of libels, in the opinion of the law, and
a time-serving Attorney General, who, striving
to obtain a share in the public plunder, is ripe
to oblige those who are at the head of it, by
filing his information ex officio, against any
man that offends them, right or wrong. The
Ministry know the use of such a character well.
His power, by these informations, are as ser-
viceable to them, as Lettres de cachet to a
French court, as is very evident from a motion
made in the House of Commons in 1766, but
in vain for abolishing informations ex officio, as
oppressive to the subject, because the Attorney
General who files them, cannot be called to
account.
account for the damages suffered by innocent people informed against by them.

We are told in the law books, that there are two kinds of informations: first, for offences immediately against the King, filed *ex officio*, by the Attorney General — Second, for enormous misdemeanours, between subject and subject, in the name of the King, filed by his coroner, or master of the crown office, in both which, says Sir William Blackstone,—"there can be no doubt but this mode of prosecution by information, filed by the Attorney General, or the King's coroner, is as antient as the common law itself, (by what authority does he so boldly say this?) for as the King was bound to prosecute, or at least lend his name to a prosecutor, whenever a grand jury informed him, upon their oaths, that there was sufficient ground for instituting a criminal suit, so when these his immediate officers, (meaning the Attorney General and King's coroner) were otherwise sufficiently assured (how was that to be done?) that a man had committed a gross misdemeanour, either personally against the King, or his government, or against the public peace and good order, (pray observe this) they were at
at liberty, without waiting for any further intelligence (what further intelligence can be necessary after sufficient assurance?) to convey that information to the court of King's bench by suggestion upon the roll.”—So that in the first case, the Attorney General is of himself a grand jury, and in the second, the King's coroner is another, in all matters not capital, wherein it is agreed they are not a grand jury. What surprising reasoning is this?

Upon the dissolution of the Star Chamber Court, wherein the doctrine of information at large was practised, with infamy and disgrace to the crown, and to the oppression of its subjects, the Court of King's Bench revived the same doctrine, or rather assumed it, as the pretended custos morum of the nation, for the sake of peace and good order of government; but Sir Mathew Hale, who presided in that court, is said to have been no friend to this mode of prosecution, because he knew the ill use that had been made of it, "by permitting the subject to be harassed, by vexatious informations, whenever applied for by revengeful prosecutors;" yet this same mode prevailed even after that glorious act of Ch. I. f. 10. which entirely destroyed the Star Chamber Court,
Court, and until the 4th & 5th W. & M. f. 18, when to soften the public complaints of its oppression, it was enacted that the King's coroner (who we have before seen acted as grand jury) should not file any information, without express direction from the Court of King's Bench, and that every prosecutor permitted to inform should enter into a recognizance of 20 l. to prosecute his suit with effect, and pay costs to the defendant, in case he be acquitted, unless the Judge who shall try the information shall certify there was sufficient cause for filing it; but notwithstanding this insufficient act, occasioned and procured (by a struggle against the ill use of all informations, before the revolution) soon after the accession of King William, the Attorney General was left still with his power, as a grand jury, in all cases at the King's suit singly, which has been subject matter of complaint ever since, because it has no other authority than long practice, and is contrary to the spirit of our constitution and Magna Charta.

It is no honour to Judge Blackstone, that he so ingenioulsy defends this power, by saying, that an Attorney General is at liberty, when sufficiently
sufficiently assured of a gross misdemeanor, to suggest it on record in the King's name, without waiting for further information (meaning the information of a grand jury) because a sufficient assurance is positive, but with due submission to the Judge, sufficient assurance when determined by one man without oath or evidence, is no assurance in the least; and Sir Mathew Hale was rather of this way of thinking than what the Judge attributes to him.—In his pleas of the crown, Vol. 2. s. 8. he observes, that the most regular and safe way, and consonant with Magna Charta, is to prosecute criminal cases by indictment, or the presentment of twelve men sworn; and though he says crimes below capital may be prosecuted by information, he gives no other authority than long practice for it.—Judge Blackstone goes something further, and refers to 2 Haw. P. C. 260.—This is what he says in justification of informations ex officio — "As to those offences in which informations were allowed as well as indictments, "so long as they were confined to this high "and respectable jurisdiction, were and carried "on in a legal and regular course in his Majesty's "Court of King's Bench, the subject had no "reason to complain." We are here much embarrassed with the words legal and regular course
course.—Certainly a subject has no reason to complain of what is legal and regular; it is what is illegal and oppressive that is complained of in the mode of prosecuting by informations ex officio, such as leaving the subject in the power of one man, (the Attorney General) who is considered as a grand jury on a criminal act, (not capital) suggested against that subject, and leaving him also remediless and half ruined, by the expence of his traverse, though he should be acquitted of the charge, or prevented in a trial by a nolle prosequi.—The elegant Judge Blackstone will not easily answer these things, neither is there any substantial answer, consistent with the force of our laws, to be given in support of filing informations ex officio.—We have seen that designing tyrannical lawyers have been very aflute in their endeavours to justify them by long practice, and as necessary for the safety and very existence of our executive magistrate, (the King); but whatever may be said of their being referred in the great plan of our constitution, ’tis almost as clear as any demonstration in Euclid, if we can depend on our eyes and ears, that their grand use and convenience is to harass the subject when he becomes troublesome to the court, or when he upbraids a ministry for bad measures; notwithstanding Judge Black-
Blackstone says again, that there is the same notice, the same process, the same pleas, the same trial, and the same judgment, by the same Judges, as if, instead of informations ex officio, the subjects of them had been prosecuted by indictments.—If we admit the major of this assertion and deny the minor of it, we do Sir William great justice; for as informations ex officio, are filed for libels chiefly, on King or government, the jury summoned to try them, by being told they are only to try the fact, and not the crime, charged in them, the trial is not the same as in other cases, where a grand Jury sits deposed on both, in the first instance, and a petit Jury determines on both at nisi prius, or trial finally; therefore, it being adjudged that the crime of libels is the sole consideration of the law, the Attorney General determines the law in his favour, before he files his information ex officio, and his discretionary determination is what Judge Blackstone would persuade us to be a sufficient assurance of a gross misdemeanor; sufficiently so, to render informations ex officio absolutely necessary and right.—But suppose we indulge the worthy Blackstone and give way to him, in his saying that there is the same notice, and the same proceeding, under informations ex officio, as indictments which he mentions,
mentions, purely with a design to prove them inoffensive; will it then be pretended, that for the reasons he has given, they are preferable or more constitutional than presentments or indictments?—He must either prove they are so, which he has not ventured to do, or we must despise his inference; for if informations ex officio are no more or less than presentments or indictments, and the proceedings are as he asserts, surely it is impolitic and absurd, either in him; or the superior criminal court, to give them the preference and retain their practice, particularly, as a destruction of them would, in this mode of reasoning, do no harm to justice, but would abate all publick lamour against them. It is unfortunate that Judge Blackstone should have plunged himself into such kind of logic, which, while he intended to apply it in support of informations ex officio, inevitably destroys his purpose, and exposes the weakness of his argument, in favor of what, in spite of himself, is not to be justified; and however he may think informations ex officio necessary and right, either in his own opinion, which from his reasons, is no opinion at all, or under the influence or superintendence of a second person, we see this subject in a very different point of view; and recollecting the pains taken by a Judge, in concert
concert with an Attorney General to convict Mr. Wilkes of a libel, at the price of altering a record before trial, and by a peculiar direction from the bench to the jury, on that occasion, we cannot help thinking that juries in such cases are only impannell'd to try what perhaps would not be denied, and which might not be criminal; and that the judge and king's attorney, having as grand jury pre-determined the crime of what a defendant is charged with writing, without oath, on the self-sufficient assurance of its being a gross misdemeanor, the jury are only by their half verdict (or rather no verdict) to give a sanction (true authority it cannot) to the judgment of the court of king's bench, for what they never meant or intended, when they said guilty.

If from these premises it appears reasonable that fact and crime are inseparable, before a jury, which to all intents and purposes they seem to be, except where some point of law is necessarily left to the judges for the satisfaction of the jury, and the safety of the delinquent, they have an absolute right to consider them; otherwise they may leave the law to work injustice in the sole consideration of a constructive crime, founded in nothing but tendency, which no man ever understood as a crime, except from some
some false and inflammatory action not morally justified.

In the year 1681, many printers were indicted for scandalous and seditious libels.—The Jury returned the bills against them ignoramus, because their writings did not appear to them malicious or seditious.—Happy and honourable would it be for us and our country, were an Attorney General obliged to submit his charges to a grand Jury in the first instance, and that their criminality should be on a tryal fairly and honestly considered, by a petit Jury.—We should not then hear of verdicts, guilty of printing and publishing only, or guilty of what has no guilt in it, which has been done in the present reign by a special Jury.—Had that Jury who found the printing and publishing only, been in their senses, or apprised that their finding the printing and publishing the thing in question was no crime, they would have pronounced the defendant not guilty.—A man must be guilty of something before convicted; and printing and publishing a thing, unless that thing be criminal, is guiltless.—It is plain that, that Jury found nothing criminal, otherwise they would not have given a verdict of printing and publishing only;
if they had seen any thing criminal, they certainly would have said guilty.

Probably we may be told, in answer to these arguments, if they deserve that name, that the criminal court is guardian to every criminal defendant, who, if he supposes himself aggrieved by a verdict against him, may apply to that court with his objections to arrest judgment thereon.—He may do this, but what precedents have we to shew whereby a defendant has succeeded in such application? We have experienced, that when an Attorney General is in possession of a verdict, the criminal court will not set it aside; it will rather prevent a cause of error, or objection to the proceedings, than assist a defendant to avail himself of either; and as to the law, there is no difficulty to make that constitute any verdict good for a libel, from the tendency, as we have seen before, there is in either truth or falsehood to break the peace. The verdict, when recorded, speaks a very different language to what the jury thought of or could mean.—It does not say that the defendant, for example, printed and published such a writing only, but that he wrote it maliciously, or with intent to raise sedition, to scandalize government, and against the peace of the King, his crown and dignity; all which
which the jury never had evidence of, and could not find or intend, therefore, by not considering what we hear, is only the consideration of the law; they in reality considered nothing, but left the law to do an injury, in the distortion of it by ministerial Judges.

It may be said, that by leaving the crime as well as fact to a Jury, a guilty defendant may escape punishment as a libeller, and he cannot be tried a second time on the same charge:—Granted; and much better so than innocence should be fettered, which ninety nine times in a hundred it now is.—Many capital criminals escape punishment, because their Juries, who judge of their crimes in what they are charged with, which is the fact, have not sufficient evidence to convict them upon.—Is a supposed libeller to be put on the same condition as a felon? what would any man think, if he heard a Judge tell a Jury at the Old Bailey Sessions House, that they were to judge of nothing but matter of fact, committed by a prisoner, and leave the crime contained in that fact to him?

It is of the highest import to the subject, that Juries should determine on both, because public libels, and prosecutions for them, by informations ex officio, arise from disputes between the ministry and the people, the former for forgetting
(41)

coming the power that made them, the latter, very naturally complaining that their trustees either neglect their real interests, or make an impious use of their delegation.

Since parliaments have been corrupt, (which they have progressively been for a century and a half) and public affairs mal-administered, the severities consequent to the exertion of the Attorney General's power, have been useful, and it was no doubt foreseen, when parliament passed the statute 4th & 5th W. & M. s. 18. that such inquisitorial power would be serviceable, so long as an universal corruption and mal-administration should prevail; for which reason it was reserved, not in the great plan of the English constitution, according to Judge Blackstone, but concealed, designedly, like the stiletto under the cloak of fraud and tyranny, to be used when a more honourable weapon would be openly ineffectual.—Were parliaments and ministers to be incorrupt, those who speak and write freely of their conduct, would be self-restrained, and the people left at large to remark as they pleased, on the procedure of those who undertake the management of their affairs; but while ministers have schemes of inquiry to carry on, it is not to be wondered at, that they strive
by every severity, to drive away those who come
with prying eyes, to enquire into, or condemn
their behaviour, as calculated eventually, only
for their own selfish and ambitious purposes,
and not for that common utility, which is the
cement of civil and political society, under a free
and well regulated state.

Having thus taken a general survey of the
cause of our public abuses, and looked into the
nature and mode of libels, and prosecutions for
them by information ex officio, and descanted
upon their pernicious effects among a free peo-
ple, we come now to the case of our fellow sub-
ject, Mr. Horne, who is in confinement for a
public libel, in having advertised a subscrip-
tion, for the benefit of the widows and children
of those men, who preferring death to slavery
in America, were slain by the King's troops.—
This was deemed criminal, because it tended to
break the peace, and interrupt the quiet and
harmonious course of government, which had
determined to tax unconstitutionally our bre-
thren in America.—Our ministers levelled their
artillery (the Attorney General) at Mr. Horne,
as the author of this maudit advertisement.—
He has been found guilty as a libeller for it,
and is now in misericordia.

But
But if after all our reasoning on the subject of libels, guilt implies a crime, that crime must contain an injury, as there can be no injury without a crime.—To punish a man who has committed no injury, is illegal and abusive, of moral, natural, and revealed right, and the more so, when he is punished without the original authority of his peers.—Has Mr. Horne broke the peace, raised sedition, insurrection, or promoted public animosities by what he advertised?—Were there any evidence of these things on his trial? No. He had affronted a corrupt and obstinate ministry, in saying publicly that the King's troops had slaughtered some Americans, which, those who read Lieutenant Gould's attestation on the occasion, will best determine the truth of; particularly when they come to that part of it, which says, the King's troops rushed on the Americans, (previous to any firing) shouting, huzzaing, and at last discharging their balls at them, (as if they gloried in what they were about.)—Had Mr. Horne said those unhappy, deluded men, who in contempt of unconditional submission, to a power that had despised and abused them, and who resisting like that fellow Hampden, the lawful sovereign's demand, of an unlawful tax from them, unfortunately
nately fell in defence of themselves and property, perhaps the ministry would not have regarded it, but in all probability they would have rewarded him rather for his silence on such a black day's work, when justice and humanity were eclipsed, than have thought of punishing him by a prosecution on an information \textit{ex officio}, and a trial thereon, in which success was inferred against him from the principles already deduced.

There is no act of parliament which describes a libel, or ordains that in its nature it \textit{tends} to break the peace, neither does Magna Charta take any notice of a libel; yet the learned Blackstone says that informations \textit{ex officio}, are as old as the common law, therefore, until Juries shall know their duty in the trial of one, we must expect to see them imposed upon, and the subject innocently suffer; for there is no necessity that a \textit{tendency} to break the peace should not be examined into by a Jury, because from what we have observed and concluded, the law which seems to claim the \textit{sole consideration of it}, is uncertain and indecisive on the subject. It is very extraordinary that the word \textit{tendency} should be so much abused as we find it to be by Judges and Attorneys General,—in itself it
it means intention or inclination; but by what means, or how is that intention or inclination, whether it be to do a good thing or a bad one, to be known? An intention may be surmised, as was the case with Cain, who after the slaughter of his brother Abel surmised from a conscious desent that who so found him would slay him; but his surmising thus, proceeded from conscience, and from no intention that he should be slain for what he had done; an intention or inclination to do a thing must be either positively known or not known at all; they have no medium but in construction, which is nothing.—How then are they to be discovered? only by some open deed preparatory to the execution of what is intended to be done, or inclined towards, and not by surmise, which according to the ingenious invention of some men, would find intention or inclination to do a bad thing in any of us, as best suited their spleen or caprice.—Hence tendency has a positive meaning, and must be positively proved by some open deed towards committing a crime. But if tendancy thus proved is criminal, it is every way necessary we should next enquire how far the punishment of that tendency to commit a crime, without a perpetration of it, is to be equal to the punishment for a crime really and truly perpetrated.
perpetrated.—If there be any difference between an actual breach of the peace and a tendency towards it, it should seem, if both are punishable, after positive proof, that there should be a different punishment for them, as both would otherwise be equally criminal and punished alike.—We cannot reconcile ourselves to this in any manner, notwithstanding we have experienced that several punishments have been inflicted, not only in cases where no breach of the peace has been proved, but where even a tendency towards it has only been surmised; therefore the word tendency is undoubtedly abused by the law's sole consideration; the very thing in all libels that gives jurisdiction to the criminal court, which is an actual breach of the peace is paid no regard to, and we are (as things now fallaciously and wickedly go) subject to punishment for crimes we do not commit either in fact or tendency.

It may here be asked, whether we should be more secure were Juries to determine crime and fact together? and whether Juries would not as often convict on both from the ingenious direction of a Judge, as they would do on fact singly? The questions are nice, but we answer, that were Juries to exert such a right, they would do justice to themselves, even though an Attorney General might succeed by means.
means of a Judge’s lulling an interested or partial special Jury (composed of contractors or time-serving men) on his side, to pronounce that fallacious word guilty; yet it is to be hoped that the greater number of Juries would be independent, and not determine a fact criminal not malum in se.

It requires recollection to be consistent.—Truth is uniform, but the learned Blackstone (whether from design or otherwise we will not say) is a little perplexing, in explaining a Jury’s duty in trying a public libel.—In book III. cap. xxiii., page 380, on trial by Jury, after speaking in very high praise of the advantages of such mode of trial, which he says, “ever will be looked on as the glory of the English law,” and again, that, “if the impartial administration of justice be entrusted to the magistracy, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias;” he proceeds to tell us, that “in settling and adjusting a matter of fact, when entrusted to a single magistrate, partiality and injustice have an ample field to range in, either by boldly asserting that to be proved which is not so, or more artfully, by suppressing some circumstances,
“stretching and warping others, and disfiguring away the remainder.”—The learned Judge is nowhere more reasonable in all his view of the English laws, yet if he is sincere in this part of his commentaries, when commenting at large on trial by Jury, why does he, in cases of public libel, leave the crime to the judgment of this very single magistrate, and leave a Jury to try nothing? If trial by Jury is that glory he says it is, why does he extol it on one hand, with all possible propriety, and on the other, explain it to be little more than mockery? Why is not trial by Jury the same in all criminal cases as in civil? And why is a single magistrate to risk “his natural integrity,” in a field of partiality and injustice, in the former cases, and not the latter? The answers are clear; because, in the former (keeping our minds particularly on libels) the Crown having the apparent illegal power of prosecuting the authors of them by information ex officio; and because they are offences against the delicacy of the court, Juries shall be called ultimately for form only, while in the latter case, justice shall constitutionally take her course; and therefore, when speaking of trial by Jury in civil cases, the Judge very sensibly says, “Here then a competent number of sensible and upright Jurymen, chosen by
"lot, among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice."

If Juries are the best investigators of truth, and the surest guardians of public justice, there can be no reason given why they are not so in all cases whatever, except what we have by this time exploded, as nugatory and despotic, even under the definition of Sir William Blackstone.

But let us see how the Jury acted in regard to Mr. Horne.—When he had expatiated in defence of the charge brought against him by the Attorney General, and had proved that what he had done, was not criminal in itself, and could only be so in the construction of his prosecutor, a mere creature of the court and ministry; the noble Judge, in his charge to the Jury, (prefac’d by telling them there never was a clearer case) said, that the offence was compleatly made out, because he had confessed himself the author of the supposed libel, and therefore that the Jury must convict him on the clearest evidence.—The Jury took the hint, swallowed the bait, and did as they were directed, in finding him guilty;—but of what? Not only of what he had confessed; but contrary,
perhaps, to what they thought, (unless they were slaves and friends to the ministry) of the crime of sedition and malice, against the King and his government, tending to break the peace, and so was their verdict recorded; Mr. Horne moved in arrest of judgment, not within the quarto die post, after the return of the dislingus juratores, but on the day he was called up for judgment; his objections were to the charge, which his Jury had either ignorantly, or partially found him guilty of, because that charge was vague and uncertain.—Remark the genius of the King’s court to be as we have suggested.—After the court had taken time to advise, curia advisare vult, his objections were found immaterial, because they were supplied in evidence, which was despising the maxim that, beau pleader is the very heart string of the law, and was as much as to say, that if he had been charged with a rape on a Judge’s wife, who, instead of giving all the necessary evidence to convict him of it, proved that he had robbed her; and from which evidence of the latter, though no charge was made against him of it, he should be punished, and his objections to the indictment, for not charging him with what evidence constituted, should be deemed immaterial.—Wonderfully casuistical! judgment was pronounced, and Mr. Horne
is in confinement for having affronted the ministry, and not for having either broke the peace or even alarmed it, or injured any one, and for not having done this, security is demanded of him for his keeping it for three years.—O law where is thy spirit? Oh, ye Judges where is your integrity?

Mr Horne informed the Court of King's Bench, that he was brought there for judgement, more in consequence of his Judge's direction to his Jury than of their full deliberation of the fact and crime laid to his charge, the truth whereof we may now very easily discover, not only from our examination into the right of tryal by Jury, but from the defultory discussions of Judge Blackstone himself, against whose errors the author of the fragment on government properly warns the admiring student, by recommending him to place more confidence in his own strength and less in the infallibility of great names; for whoever reads the celebrated commentaries with attention and without taking all to be found therein for granted, will in all probability conclude, that all is not gold that giltens. In regard to law and fact, the Judge separates them in a criminal sense, and consolidates them in a civil one.—This he does when