cretionary punishment. If prosecutions are less frequent, and if sentences are less severe, this arises merely from the spirit of the times, and not from any change in what is called the law upon the subject. And they who suppose, that there have been no instances of oppression and injustice, in prosecutions for libels, since the Revolution, must be little read in the history of such prosecutions.

It is a matter well worthy the serious consideration of the people of this country, whether they will continue to have doctrines obtruded upon them as law, or whether they will receive them as such, which are repugnant to every principle of freedom, which appear to have been coined in the Star-chamber, or introduced into it from the imperial code, which were never authorized by the legislature, and which have
have no legal sanction but the occasional adoption of some of the judges.

In truth, most of the doctrines concerning libels, which are to be found in Viner and in Hawkins, are entitled to no other reception from the people of England, but that of the most indignant contempt. They are totally inconsistent with every principle of a free constitution, they never formed any authentic part of the legal code of this country, they were never ratified by parliament, they were never authorized by our ancestors.

If these doctrines are suffered to prevail, we shall not be permitted in this free country to speak truth, either of the dead, or of the living. No history can be written; for no true history of any country has ever appeared, in which the dead were not libelled; that is, in which some evil was not spoken of them. No man can publish
lish any animadversions on the measures of
government, however iniquitous, but he
publishes a libel. The conduct of no mi-
nister, however wicked, can be arraigned
by any publications from the press. If the
facts which are stated be unquestionably
true, the greater the criminality of the
publication. At least, the truth of the facts
can never be alleged in justification of
what is published. But these doctrines are
no part of the ancient common law of
England, nor have they ever been rati-
fied by the legislature. It is a species of
law repugnant to the principles of a free
constitution; it is law only made by the
judges; and which the people should firmly
and unanimously oppose. In many in-
stances the judges, under the pretence of
declaring what the common law is, have
actually made the law. This has been
particularly the case with respect to most of

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the doctrines which have been advanced concerning libels; and the law which has been made by them upon this subject, has been highly injurious to the rights of the people, and totally inconsistent with national freedom. These doctrines were not, indeed, invented by the judges; they were derived from the court of Star-chamber; but it is the adoption of them by some of the judges, which has alone given to these doctrines the venerable denomination of the law of England. To their authority too implicit an acquiescence has been given. The judges are very high and respectable magistrates, appointed to assist in the administration of the laws; but it was never intended by the constitution that they should be legislators. The latter character has, however, been too much assumed by them; and to this assumed power a submission has been paid, to which it undoubtedly never had a constitutional claim.
If the Star-chamber doctrines concerning libels be the law of England, they are an extreme disgrace to this country, and ought to be immediately abolished by express statute. But they never received the sanction of the legislature, they are adverse to every principle of our free constitution, and can derive no authority from the infamous court to which they owe their origin. Nor ought any maxims to be received as law in this country, which have not a better source, and which are not more congenial to the general spirit of our constitution.

Many hardships and oppressions which have been suffered, by those persons who have undergone prosecutions for libels, and some of whom have been men of as much integrity as any this country has produced, have been the result of the gross partiality of the judges in crown causes. It may also
be observed, that the sentences for libels in the court of Star-chamber were extremely rigorous and cruel; and after the abolition of that court, the Star-chamber sentences, as well as the Star-chamber doctrines, were too closely copied by the courts of law. In the worst times, gross injustice has been committed by the judges in such cases; and these instances are urged as precedents, in better and more moderate times.

The precedents of sentences, in trials for libels, naturally bring to remembrance the remarks of Swift. 'It is a maxim,' says he, 'among these lawyers, that whatever hath been done before, may legally be done again; and, therefore, they take special care to record all the decisions formerly made against common justice, and the general reason of mankind. These, under the name of precedents, they produce as authorities to justify the most iniquitous opinions, and the judges never fail of directing accordingly.' Voyage to the Houyhnhnms, ch. v.
In the reign of queen Anne, the celebrated Daniel Defoe, for writing a pamphlet, entitled, "The shortest Way with the Dissenters, or proposals for the establishment of the Church," was sentenced to stand three times in the pillory, to pay a fine of 200 marks, and to find security for his good behaviour for seven years. It was merely an ironical attack upon the high-church party; and the sentence was extremely iniquitous.

Defoe was afterwards, in the same reign, prosecuted for another ironical pamphlet, written to promote the interest of the house of Hanover, and received sentence as a libeller. After being some time imprisoned, he received a pardon from the crown for the second publication, but his fortune was greatly impaired by the expences of the prosecution. Defoe was a man of very uncommon merit, and author of a variety of
of ingenious works. He experienced much ill treatment in his own time, and his character was unjustly calumniated after his death. He was nearly ruined by his zeal for the house of Hanover, but received not the least countenance from the princes of that family, after their accession to the throne, though places, pensions, and titles, were conferred on men who had rendered much inferior services. He was unjustly satirized by Pope, and was falsely accused with having deprived Selkirk of his papers. He appears to have been a man of great integrity and great public spirit; and was author of some of the most popular works of imagination in the English language. But, during his whole life-time, he struggled with difficulties, and died in very narrow circumstances.

In 1717, Mr. Redmayne, a printer, was tried and convicted for publishing a libel, written
written by Mr. Howel, and entitled, "The Case of Schism in the Church of England truly stated." He was sentenced to pay a fine of five hundred pounds, to remain a prisoner five years, and to find sureties for his good behaviour during life.*

In very late times, the judgments pronounced against libellers, or those who have been deemed to be such, have been, to say the least, sufficiently severe: and they were sometimes more severe in reality, than in appearance. They were attended with great expences, and the mode of prosecution has been peculiarly burthensome and oppressive. It will hardly be thought, by any impartial man, that sentences for libels, even in the present reign, have been too much characterized by gentleness and mildness. In 1777, Mr. John Horne, now Mr. Horne Tooke, was tried in the

* Chronological Historian, p. 375.
court of King's Bench at Guildhall, for two libels, on an information filed against him by the attorney-general. These libels were advertisements published in the newspapers, in which it was stated, that a subscription was entered into by some members of the "Constitutional Society," for raising one hundred pounds for the widows, orphans, and aged parents of those Americans, who had been "inhumanly murdered by the king's troops at Lexington." Mr. Horne defended himself with uncommon spirit, acuteness, and ability. The jury, however, thought proper to bring him in guilty; and he was sentenced to pay a fine of 200l. to be imprisoned for twelve months, and to find

"This was a different society from one since established under the title of the "Society for Constitutional Information," and which has been frequently termed, the "Constitutional Society;" but Mr. Horne was a member of both societies."
sureties for his good behaviour for three years, himself in 400l. and two sureties in 200l. each. The advertisements had been published more than two years before Mr. Horne was brought to trial. Several printers had been before tried, and convicted, for the publication of the same advertisements.

The manifest design of the advertisements published by Mr. Horne, was, to impress upon men's minds a conviction of the wickedness of that war, which we had then unhappily commenced against the Americans. Of the complicated iniquity and folly of that war, it is probable that few men now entertain a doubt: and if the nation, at its commencement, could have been excited, by publications from the press, to have put an immediate end to it, the consequences to Great Britain would have been beneficial in a very high degree.

It would have prevented an immense expense of blood and of treasure; and would have preserved the nation from many of those taxes, and other burdens, which are now found so grievous and so oppressive.

In Mr. Horne's defence of himself, in which to obtain an acquittal seemed evidently not to be his chief object, he very clearly and ably pointed out to the jury the unconstitutional powers that were exercised by the attorney-general, in filing informations ex officio for libels; the hardships that attended this mode of prosecution; and the disadvantages that attended the defendant in such a cause, from the mode that was adopted, in London and Middlesex, of forming special juries, who are generally preferred to common juries, by the crown officers, for trying such causes. As to the power assumed by the attorney-general, of filing informations for libels at his
his pleasure, it is certainly a power inconsistent with the principles of a free constitution: and it is reported to have been long ago said by Sir Matthew Hale of this species of informations, that "if ever they came into dispute, they could not stand, but must necessarily fall to the ground." In the case of the King against Almon, that bookseller was prosecuted by the attorney-general, and convicted of publishing a libel, in a miscellaneous collection, called "The London Museum," though it was sold at his shop by his servant, without his knowledge or approbation. Before judgment was given, several affidavits were admitted in the court of King's Bench, by which it was proved, that the libels were sent to his shop without his knowledge; and that, when he was acquainted with:

46 Letter concerning Libels, Warrants, the Seizure of Papers, &c. p. 7.
their being in his house, he immediately stopped the sale of them. Notwithstanding these favourable circumstances, he received sentence, in the court of King's Bench, to pay a fine of ten marks, and to be bound himself in a recognizance of 400l. for his good behaviour for two years, and to find two sureties in 200l. each, under pain of imprisonment. His expenses also amounted to more than 200l.

Among other privileges claimed by the attorney-general, in trials for libels, one is, that of not only enforcing the charge against the defendant at the opening of the cause, but also of replying, after the person accused has made his defence. On the trial of Mr. Horne, this claim was opposed by that gentleman with great spirit; but he was over-ruled, and the claim of the

67 Vid. Second Postscript to the Letter to Mr. Almon, p. 30—38.

attorney-
attorney-general was admitted, and declared to be law. When it has been asked, how this practice came to be law, no satisfactory answer has been returned. But the fact seems to be, that, from the partiality with which judges have frequently acted in crown causes, the persons holding the office of attorney-general have been several times permitted to reply; these instances are exalted into precedents; and we are at length informed, that the practice is law. But if it be law, it is surely not equal justice. If the prosecutor be allowed to speak twice, the defendant ought to have the same liberty. The contrary practice can only be a fervile compliment to the crown, to the prejudice of the subject, and in opposition to the dictates of reason and of justice. If the attorney-general is to speak first, and to speak last, and if the judge, which is no very improbable thing,
should also have a strong disposition to convict the defendant, and should adapt his speech to the jury accordingly, the unfortunate libeller, or pretended libeller, would have very little chance of obtaining an acquittal. If he had not the good fortune to have a spirited and enlightened jury, he might be condemned, and suffer heavy penalties, though his publication might be so far from deserving the censure of his countrymen, that it might be justly entitled to their approbation and applause.

The proceedings in trials for public libels, and the sentences which are passed upon conviction, are attended with various circumstances, that seem studiously intended to render such prosecutions peculiarly grievous and oppressive. Among other appendages to the sentences upon libellers, one commonly is, obliging the person convicted to give security for his future good behaviour.
behaviour. The reason of this seems not very apparent. It has been observed, that security for the peace is calculated as a guard from personal injury; and articles of the peace can only be demanded from a man, who by some positive act has already broken the peace, and therefore is likely to do so again; or where any one will make positive oath, that he apprehends bodily hurt, or that he goes in danger of his life. But a person who has written a libel, or pretended libel, is not on that account supposed to be a man who would bruise, or maim, or knock down his neighbours. Security for the peace, therefore, seems no necessary part of the punishment of a libeller. If he should write another libel, and be again convicted, he will of course be again punished, and there can be no doubt but that the penalties

* Letter concerning Libels, p. 18.
will be amply sufficient. In truth, as there is no reason for requiring sureties for the peace from a supposed libeller previously to his conviction, neither does there appear any just ground for annexing sureties for the behaviour to the sentence of a libeller. But it considerably increases the difficulties of the libeller, and especially if he be a man of a high and unconquerable spirit: and such men, if they engage in support of the rights of the people, are always objects of great aversion to crown lawyers and prerogative judges.

Juries have been sometimes so much puzzled by the directions from the bench, and the contrary pleadings of the counsel, in trials for libels, that they have several times given irregular and incomplete verdicts. Instead of bringing in a general verdict of guilty, or not guilty, they have brought in the party accused guilty of the
THE PARTICULAR FACT CHARGED, specifying the fact in their verdict. It is observed by sir John Hawles, that "such a finding hath generally been refused by the court, as being no verdict;" though, he adds, it had been received, "in a case that required favour." That is, not a case in which the party tried was to be favoured, but in which the prosecution was to be favoured; and in which it was thought a desirable thing to obtain a verdict of GUILTY, at any rate, and in any manner.

In the case of the King against Williams, the jury, instead of bringing in a general verdict of GUILTY, or NOT GUILTY, brought the defendant in guilty of printing the particular paper with the publication of which he was charged. Their verdict was, "Guilty of printing and publishing the North Briton, No. 45." I was present in court

69 Englishman's Right, p. 19, 20.
during that trial; and I remember, that it then appeared evident to me, that the jury, by the manner of bringing in their verdict, meant to find the mere facts of printing and publishing, without determining whether the paper was or was not a libel. It also appeared to me to be a verdict, that the jury ought not to have given, and that the judge ought not to have taken. I did not, however, know, till I was informed by the publication of the "Opinion of the "court of King's Bench, in the case of the "King against Woodfall," that the clerk had taken upon him to alter the verdict. But we now know from the most unquestionable authority, that the clerk altered the verdict, and entered it up as a general verdict of **guilty**. But whatever irregularity there might be in the verdict, or whatever injustice in the alteration of it by the clerk, it is certain, that the bookseller

stood in the pillory, and suffered other penalties, in consequence of that verdict. I also well remember, that, at the trial of Mr. Williams, I was much struck at the strong resemblance which there was, both in point of sentiment and language, between the charge delivered on that occasion, by lord Mansfield, and some parts of the charge delivered in the case of sir Samuel Bernardiston, by lord chief-justice Jefferies.

The irregular verdict, in the case of the King against Williams, was urged by the court, in the case of the King against Woodfall, as a justification for taking a verdict of similar irregularity in the latter case. This shews the necessity of guarding against incroachments, and such dangerous innovations, as are likely to be prejudicial to the liberty of the subject; as such encroachments and innovations are afterwards produced as precedents. It should, however,
be observed, that the same judge, lord Mansfield, tried both these causes; and the same judge, on a motion for arrest of judgment in Woodfall's case, delivered the opinion of the court.

The opinion of the court, in the case of the King against Woodfall, was drawn up with great legal subtilty. It had not the perspicuity, which lord Camden sometimes displayed, on giving important decisions; nor was it intended for common readers, or for common auditors. It was calculated only for the initiated. The dexterity of it was, however, sufficiently manifest, to all those who were capable of understanding it. It is well known, that the doctrines concerning juries, which are conveyed in this opinion, have been publickly questioned by lord Camden.

No jury ought to find any man guilty of writing, printing, or publishing a libel, unless
unless they are convinced it is a criminal production. If the criminality be not apparent to them, or if they are doubtful, they ought to acquit the defendant. In that case, the information or indictment has not been proved to them; and where the matter is doubtful, in criminal prosecutions, an acquittal is always most consonant to the spirit of the law of England. In many cases, when a jury bring in a verdict of Not Guilty, the meaning is not, that they are assured that the accused party is innocent, but that his guilt has not been proved to them: and this is always sufficient ground for an acquittal. Nor should incomplete verdicts ever be given in such cases; or any judgments be pronounced in consequence of such verdicts. In the case of the King against Simons, upon a rule to shew cause why a new trial should not be had, it was said by Mr. Justice Denison, that 'if the verdict
verdict had been taken as the jurors intended to give it; namely, guilty of the fact, but without any evil intention, it would have been an incomplete verdict, and consequently, no judgment could have been given upon it. And in sundry cases, it has been held by law writers, to be extremely improper in juries to bring in special verdicts. Thus it is said in Jenkins's Reports, that 'where fraud, covin, or other doubtful matter of fact occurs to the Jurors, they ought not to make a special verdict of it, but give a positive and categorical verdict.'

It appears, that attempts have been made to establish the Star-chamber doctrines concerning libels even in America, and to deprive jurymen there, as well as in England, of the right of determining the

72 Sayer's Reports, p. 36.
law, as well as the fact, in trials for libels. Thus in the case of John Peter Zenger, who was tried at New York, in 1735, for printing and publishing two libels against the government, it was contended, by the attorney-general of that province, that, as the defendant’s counsel admitted the publication of the papers, stated in the information to be libels, the jury must find a verdict for the king: “for,” said he, “supposing they were true, the law says, “that they are not the less libellous for “that; nay, indeed, the law says, their “being true is an aggravation of the “crime.”” The chief-justice of New York also maintained similar doctrines; and told the jury, in his charge, that whether the papers were libels was a matter of law, which they might leave to the court. The pretended libels were news-papers, con-

73 Trial of John Peter Zenger, p. 28. edit. 8vo. 1752.
taining passages in which the conduct of the governor of New York was arraigned. The printer was defended, with great spirit and ability, by Andrew Hamilton, Esq; of Philadelphia, who went from that city to New York, on purpose to act as counsel in this cause. Mr. Hamilton firmly maintained, that the jury had a right "to deter-
mine both the law and the fact." The jury asserted that right; and accordingly, though the defendant's counsel admitted the facts of printing and publishing, they found the printer Not Guilty. Mr. Ham-
ilton refused to accept of any fee for his services on this occasion; but the mayor, and corporation of New York, presented him with the freedom of that city in a gold box, for "his generous defence of the " rights of mankind, and the liberty of " the press, in the case of John Peter " Zenger."
As the inhabitants of the United States of America, in consequence of having obtained their independence, have a power of making their own laws, it may be hoped, that they will be too wise to adopt the whole system of our law of libels in their new governments; and that they will preserve unviolated, and in their full extent, the rights of juries. There are many particulars in the law of England, and in the proceedings of our courts, so truly excellent, as to be highly worthy of their adoption; but there are other particulars, in the law and in the practice of the courts, so extremely burdensome and expensive, and of so little advantage to any but the practitioners of the law, that the Americans will act wisely in adopting different maxims of law, and different modes of practice. Indeed, the uncertainty of the law, in a variety of instances, and its enormous expense,
pence, are objects highly worthy the attention of the parliament of England. In many cases, the expence attending lawsuits is so great, that it is better to submit to injustice than to appeal to the law; which is an evil that certainly ought not to subsist in a well-regulated state. Among other things, it may also possibly be doubted, whether the practice is a beneficial one, of readily and frequently granting new trials, because a judge happens not to like a verdict, or because it was given contrary to his direction, though perhaps strictly conformable both to law and equity. This practice contributes much to increase the uncertainty of the law; though it must be acknowledged to be advantageous to its practitioners, however inconvenient it may be to the public in general.

Notwithstanding the attempts which have been made by some judges, and crown lawyers,
lawyers, to deprive juries of those powers which have been given them by the constitution, there have always been some lawyers, and such as have been distinguished for their integrity, and the extent of their legal knowledge, who have asserted the rights of juries, and particularly in the case of libels. Among others, Lord Camden is understood always to have maintained the right of juries to determine both the law and the fact. Even when attorney-general, Mr. Pratt, afterwards lord Camden, in moving before lord Mansfield, for leave to file an information against Dr. Shebbeare for a libel, publicly said, and was not contradicted: 'It is merely to put the matter in a way of trial: for I admit, and his Lordship well knows, that the jury are judges of the law as well as the fact, and have an undoubted right to consider, whether, upon the whole, the pamphlet
pamphlet in question be or be not pub-
lished with a wicked, seditious in-
tent, and be or not a false, mali-
cious, and scandalous libel?"

As the late case of the Dean of St.
Asaph has particularly excited the attention
of the public to the law of libels, and to
the rights and power of juries in such cases,
it may not be improper here to make some
farther observations relative to that cause.
The Dialogue for the publication of which
the Dean was prosecuted, was originally
printed, and distributed gratis, at the ex-
pence of the "Society for constitutional
Information." After a bill of indict-
ment had been found against the Dean of
St. Asaph, for the publication of that edi-
tion of it which was printed in Wales, Sir
William Jones, who was then in Eng-

" Second Postscript to the Letter to Mr. Almon,
8vo. 1770, p. 7. "

land,
land, and who was a member of the society by which it was originally published, sent a letter to Lloyd Kenyon, Esq; then chief-justice of Chester, afterwards master of the rolls, and now lord-chief-justice of the court of King’s Bench, in which he avowed himself to be the author of the Dialogue, and maintained, that every position in it was strictly conformable to the laws and constitution of England. The trial of the Dean, however, came on at Wrexham, on the 1st of September, 1783; and a special jury was empanelled to try the cause, consisting of some of the most respectable gentlemen in Wales. But before they were sworn, an affidavit was offered, and received by the court, in which it was stated, that papers had been dispersed at Wrexham, which were calculated to prejudice the minds of the jury in this cause. These papers consisted of several extracts from the sixth vo-

Vol. II. K lume
Iume of British Biography, octavo, containing certain passages?5, asserting the right of juries to determine the law, as well as the fact, in trials for libels. That volume of this biographical work, from which these extracts were made, was printed in 1770, thirteen years before the trial of the Dean of St. Asaph; and no addition was made to these extracts, but a vote of the "Society for Constitutional Information," for their publication, in which no mention was made of the trial of the dean of St. Asaph. However, in consequence of the dispersion of these papers, an immediate stop was put to the trial, and it was ordered to stand over to the next grand session for the county of Denbigh. But whether it was in any respect just, or reasonable, or proper, thus to suspend the trial, at a great expence

?5 These passages were all written by the author of this Collection of Tracts.
expenSe to the defendant, merely because papers had been dispersed in the neighbourhooh, asserting the general rights of juries, but in which not a single syllable was advanced, relative to the particular cause of the dean of St. Asaph, must be left to the decision of the impartial public, who will probably think and speak as freely of judges, or of masters of the rolls, as they do of kings and ministers of state.

At the great session held at Wrexham, in the September following, the cause of the dean of St. Asaph was to have come on again; but a writ of certiorari was then obtained, by which the indictment was removed into the court of King's Bench, and the cause was ordered to be tried at the next assizes at Shrewsbury. It was accordingly brought on before Mr. Justice Buller, and tried by a special jury, on the 6th of August, 1784. Mr. Erskine, who was counsel for the dean of St. Asaph, defended the

K 2 cause
cause of his client with much spirit and eloquence; and, in a very manly manner, avowed his own personal conviction, that the doctrines contained in the Dialogue were just and constitutional. He also asserted the right of the jury to determine whether the Dialogue was a libel, as well as to inquire into the fact of publication. But the jury were instructed by the judge, that whether the pamphlet was, or was not a libel, was a question of law, to the determination of which they were not competent. It was also somewhat singular, that the learned judge himself, before whom the cause was tried, did not choose to give any opinion whether the Dialogue was, or was not a libel. It was not for him, he said, a single judge, sitting at nisi prius, to say whether the pamphlet was, or was not a libel.

One reason assigned for declining to give any opinion whether the Dialogue was, or was not a libel, was, that, if this were
were done, the prosecutor would thereby be deprived of that valuable birth-right, a writ of error. Another reason was, that it was not yet the proper stage of the business, to determine whether the pamphlet was, or was not a libel. This seems to be an idea truly original. It was formerly thought, that when a man was brought to be tried before a judge and jury, it was their business to acquit or to condemn him. But now, it seems, if he be a libeller, he is to go through several stages. A robber, or a murderer, may, unless the jury bring in a special verdict, which is very seldom done, be either acquitted or condemned at once: but a libeller is to go through a variety of stages, to the great entertainment of himself and the public, and very much to the comfort and emolument of the gentlemen of the law.
The cause of the dean of St. Asaph was first brought on at Wrexham. It was then put off, because papers had been distributed in the neighbourhood relative to the rights of juries. It was brought on again at Wrexham, but was removed by writ of certiorari from the court of King's Bench, by which the cause was to be brought to trial in an English county. It was then tried by a special jury at Shrewsbury. But it was not yet to be finally determined. It had not gone through the necessary stages. Besides the prospect of the judgment which might be passed, the dean might have the additional felicity of an application to the court of King's Bench, and an appeal to the House of Peers. If all this did not satisfy him, he must be a man eminently unreasonable; and if he were not satisfied, it is at least probable that the lawyers would.

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The dean of St. Asaph, being a man of fortune, might indulge himself in this luxury of law: but to a libeller, or one who might be termed such, whose circumstances were less affluent, it would not be quite so pleasant or convenient. Such a man might wish to meet with a jury, who should have sufficient spirit and discernment to do justice to their fellow-citizen themselves, as was originally intended by the very institution of juries, and not leave him to seek it, either from the judges of the court of King's Bench, or from the House of Peers.

The cause of the dean of St. Asaph is now over; but several hundred pounds were expended on the part of that gentleman before it was decided. And "it is "worthy of remark, that after the dean of "St. Asaph had been convicted, on proof of "the publication, according to the doctrine
ratified as law by the court of King’s Bench, which shut out both from Judge and Jury at the trial, the quality of the thing published, he was finally and completely discharged from the prosecution, by a motion made by Mr. Erskine in arrest of judgment: the court unanimously declaring, That no libel was stated on the record. But before this determination of the court of King’s Bench, it had probably been decided by the most enlightened part of the nation, that the Dialogue, for the publication of which the dean was prosecuted, was a production which contained no sentiments, but what were perfectly consonant to the genius of the English constitution. It was a speculative pamphlet on the general principles of government, and on the right of the people to bear arms, and to

28 Appendix to the Trial of John Stockdale, p. 119. qualify
qualify themselves for the use of them. As to the right of the people to bear arms, this is a right which the inhabitants of this country will hardly suffer to be wrested from them. Should they ever be thus tame and servile, the purposes for which the Revolution was effected will be defeated, and the English nation will no longer have any claim to be considered as a free people.

Sir William Jones, the author of the Dialogue for the publication of which the dean of St. Asaph has been prosecuted, is now one of the judges of his majesty's supreme court of judicature in Bengal. It was said of this gentleman, by the judge before whom the cause came on at Wrexham, in 1783: 'It is very true, as has been stated by Mr. Erskine, that he is

79 He had been lately appointed to this station when this tract was first published.
gone in a judicial capacity into a country, 
where it would be unwise to send a man 
in that character who has any thing seditious about him. Whether it will be pro-
per to review that appointment, or not, 
is not for me to say: it is certainly a thing 
fit to be considered, and seriously and soberly to be considered, by those to whom 
it belongs to consider it.' I confess, that 
I perfectly agree with this learned judge, 
that the appointment of men to judicial of-
cices, in any part of the British dominions, 
is a matter that deserves to be considered, 
and very "seriously and soberly considered," 
by those who are admitted into his majesty's 
councils. If men are raised to the office of 
judges, who are known to be possessed of 
arbitrary and unconstitutional principles, this 
is a just ground of alarm to the nation: and 
if men, who have distinguished themselves 
by judicial decisions that are repugnant to 
the
the principles of a free and limited government, are preferred to still higher offices, this must afford abundant reason for the people to entertain suspicion and distrust of any administration by which such appointments are made. There can, however, be no occasion for reviewing, or re-considering, the promotion of Sir William Jones. His appointment did honour to the administration by which it was made 80. If this country has any right to send judges to the East Indies, no man could be more proper

80 Though there could be no possible reason to review, or to re-consider, the promotion of Sir William Jones, there have been some appointments to high offices in the law since, which very much deserved to be reviewed, and re-considered. Sir William Jones died in Bengal in 1794. I had some personal knowledge of him before he went to the East Indies; and very sincerely regretted his death, as a loss not only to his friends, but to the republic of letters, of which he was a distinguished ornament.
for that office, than a gentleman distinguished not only by his skill in the laws of England, but by a very extensive acquaintance with oriental languages, and oriental literature, and also possessed of an enlarged and liberal mind, and a sincere attachment to the interests of justice and humanity.

One of the most memorable cases, in which English juries have asserted their right of judging of the law, as well as the fact, in trials for libels, is that of Mr. William Owen, who was tried in the court of King's Bench, by a special jury, in 1752, on an information filed by the attorney-general, for publishing a pamphlet, entitled, "The case of the Hon. Alex. Murray, Esq; in an appeal to the people of Great Britain." This pamphlet contained a narrative of the rigorous treatment which Mr. Murray had received from the house of commons, in consequence of some charges exhibited.
exhibited against him respecting his behaviour at the Westminster election, in 1750, and on account of his having refused to receive the sentence of the house upon his knees. In this publication were also some severe strictures on the conduct of the house in this business. Of the charge against Mr. Murray, who was brother to lord Elibank, it is observed by lord Melcombe Regis, who was present in the house at the time, that he "never saw an accusation worse supported by any thing but numbers." Indeed, the treatment which Mr. Murray received was violent, arbitrary, and oppressive, and such as will ever reflect extreme disgrace on that parliament. The pamphlet, therefore, containing an account of his case, was naturally a severe attack upon the house of commons; but though it was severe, it was just. For the

"Diary, p. 88.

conduct
conduct of the house in this affair was more suitable to the character of a court of inquisition, than to that of a British House of Commons. After the publication of the pamphlet, the house voted it to be "an impudent, malicious, scandalous, and seditious libel:" and presented an address to the king, requesting his majesty to order his attorney-general to prosecute the author, printer, and publisher. Mr. Murray having now quitted the kingdom, the prosecution fell upon the bookseller. The trial came on at Guildhall, before Sir William Lee, lord-chief-justice of the court of King's Bench. Mr. Murray, afterwards lord Mansfield, as solicitor-general, was one of the counsel for the crown against Owen; and Mr. Pratt, afterwards Lord Camden, was one of the counsel for the bookseller. Mr. Murray contended, that the question was, "Whether the jury were satisfied, that the defendant,
defendant, Owen, had published the pamphlet? If the fact was proved,' he said, 'the libel proved itself, the sedition, disturbance, &c. ".'

Mr. Ford, one of the counsel for the defendant, maintained, on the contrary, that proving the publication, was not proving the charge stated in the information. 'Only proving the sale of the book,' said he, 'does not prove all those opprobrious and hard terms laid in the charge against the defendant.' He added, 'I must observe one thing, which is, the danger of your finding a verdict specially. Suppose you find him guilty of publishing and selling this book. Guilty includes guilt: then guilty of what? Selling paper. Where is the guilt? Take care, gentlemen, of being deceived, by finding him guilty any way. By

bringing in your verdict any way against him, you render him liable to the con-
sequences of the whole; that is, to the same penalties that he would have been liable to, if he had committed the whole crime laid to his charge, and that charge fully proved against him!
—By finding him guilty, you do all that you can against him; and then it will be out of your power to serve him." And then Mr. Pratt also contended, that if that part of the information against the defendant was not proved, that he had published the book maliciously, seditiously, scandalously, &c. that the jury ought to acquit him.

The fact of publication was clearly and circumstantially proved; and the chief-justice, in his charge, gave it as his opinion, that the jury ought to find the defendant


GUILTY;
'Guilty; for he thought the fact of publication was fully proved; and, if so, they could not avoid bringing in the defendant guilty.' The jury, however, thought otherwise; and nobly resolved to assert their right of judging of the law, as well as of the fact. The pamphlet styled a libel contained a real state of facts, and was such an appeal to the public as an injured and oppressed man had a right to make. They, therefore, notwithstanding the opinion of the chief-justice, and the vote of the House of Commons, and though the fact of publication was fully proved, brought in the bookseller Not guilty. At the desire of the attorney-general, the chief-justice asked the foreman of the jury, 'Whether they thought the evidence laid before them, of Owen's publishing the book by selling it,

"State Trials, vol. X. p. 308."

Vol. II. L "was
"was not sufficient to convince them, that the said Owen did sell that book?" The foreman, without answering the question, said "Not guilty, Not guilty;" and several of the other jurymen said, "That is our verdict, my lord, and we abide by it." The attorney-general desired the chief-justice to put some other questions to the jury; but this his lordship thought proper to decline. Thus did reason, justice, and common sense, obtain a clear and decided victory over the efforts of abused power, and the arts of legal sophistry: and, in every similar case, the conduct of Owen's jury is a proper model for future juries.

In 1789, Mr. John Stockdale, bookseller, was tried in the court of King's bench, on an information exhibited ex officio by the attorney-general, in consequence of a motion made for that purpose

in the house of commons. He was charged, in the information, with having
with force and arms, unlawfully, wickedly, maliciously, and seditiously printed
and published, a certain book or pamphlet,
entitled, "A Review of the principal
Charges against Warren Hastings, Esq;
late governor-general of Bengal;" which
was stated to be a libel against the house
of commons. The bookseller was de-
fended with great ability and eloquence by
his counsel Mr. Erskine; and, though the
fact of publication was fully proved, the
jury very properly brought in a verdict of
Not Guilty 86. Whatever might have
been

86 Vid. the whole Proceedings on the Trial of an In-
formation exhibited ex officio, by the King's Attorney-
general, against John Stockdale, for a Libel on the
House of Commons, published in 8vo. by Stockdale,
in 1790; to which is subjoined an Argument in sup-
port of the Rights of Juries, delivered by Mr. Erskine,
been the demerits of Mr. Haftings, or however criminal his conduct, it was certainly unjust and absurd, at a time when the charges against him, and the speeches of the managers in support of those charges, were published in almost every newspaper in the kingdom, that it should be supposed proper to proceed criminally against those who published pieces in his vindication.

This was a prosecution, which reflected no honour on those by whom it was set on foot: such prosecutions come with a peculiarly ill grace from those who profess themselves to be the friends of the people, and of liberty. No house of commons in the Court of King’s Bench, on the 15th of November, 1784, when application was made for a new trial of the dean of St. Asaph, on account of the misdirection of the judge, in his charge to the jury at Shrewsbury.