

Mr. Pitt only, is foreign to our purpose; and as to the last part of it, which imputes the sentiments of the Minister to the majority that followed him with their votes on the question, that appears to me to be giving handsome credit to the majority for having voted from conviction and not from courtesy to the Minister. To have supposed otherwise I dare not say would have been a more natural libel, but it would certainly have been a greater one. The sum and substance therefore of the paragraph is only this: that an impeachment for error in judgment is not consistent with the theory or the practice of the English government. So say I. I say without reserve, speaking merely in the abstract, and not meaning to decide upon the merits of Mr. Hastings's cause, that an impeachment for an error in judgment is contrary to the whole spirit of English criminal justice, which, though not binding on the House of Commons, ought to be a guide to its proceedings. I say that the extraordinary jurisdiction of impeachment ought never to be assumed to expose error or to scourge misfortune, but to hold up a terrible example to corruption and wilful abuse of authority, by extra-legal pains. If public men are always punished with due severity when the source of their misconduct appears to have been selfishly corrupt and criminal, the public can never suffer when their errors are treated with gentleness.

From such protection to the magistrate, no man can think lightly of the charge of magistracy itself, when he sees, by the language of the saving judgment, that the only title to it is an honest and zealous intention. If at this moment, gentlemen, or indeed in any other in the whole course of our history, the people of England were to call upon every man in this impeaching House of Commons who had given his voice on public questions, or acted in authority, civil or mil-

itary, to answer for the issues of our councils and our wars, and if honest, single intentions for the public service were refused as answers to impeachments, we should have many relations to mourn for and many friends to deplore. For my own part, gentlemen, I feel, I hope, for my country as much as any man that inhabits it; but I would rather see it fall, and be buried in its ruins, than lend my voice to wound any Minister, or other responsible person, however unfortunate, who had fairly followed the lights of his understanding and the dictates of his conscience for its preservation.

Gentlemen, this is no theory of mine; it is the language of English law and the protection which it affords to every man in office from the highest to the lowest trust of government. In no one instance that can be named, foreign or domestic, did the Court of King's Bench ever interpose its extraordinary jurisdiction by information against any magistrate for the widest departure from the rule of his duty, without the plainest and clearest proof of corruption. To every such application not so supported the constant answer has been, Go to a grand jury with your complaint. God forbid that a magistrate should suffer from an error in judgment, if his purpose was honestly to discharge his trust.

We cannot stop the ordinary course of justice; but wherever the court has a discretion, such a magistrate is entitled to its protection. I appeal to the noble judge and to every man who hears me for the truth and universality of this position; and it would be a strange solecism indeed to assert that in a case where the supreme court of criminal justice in the nation would refuse to interpose an extraordinary though a legal jurisdiction, on the principle that the ordinary execution of the laws should never be exceeded but for the punishment of malignant guilt, the Commons, in their higher

capacity, growing out of the same constitution, should reject that principle, and stretch them yet further by a jurisdiction still more eccentric.

Many impeachments have taken place, because the law could not adequately punish the objects of them; but who ever heard of one being set on foot because the law, upon principle, would not punish them? Many impeachments have been adopted for a higher example than a prosecution in the ordinary courts, but surely never for a different example. The matter therefore in the offensive paragraph is not only an indisputable truth, but a truth in the propagation of which we are all deeply concerned.

Whether Mr. Hastings, in the particular instance, acted from corruption or from zeal for his employers, is what I have nothing to do with; it is to be decided in judgment; my duty stops with wishing him, as I do, an honorable deliverance. Whether the Minister or the Commons meant to found this article of the impeachment on mere error without corruption is likewise foreign to the purpose. The author could only judge from what was said and done on the occasion. He only sought to guard the principle, which is a common interest, and the rights of Mr. Hastings under it. He was, therefore, justified in publishing that an impeachment founded in error in judgment was to all intents and purposes illegal, unconstitutional, and unjust.

Gentlemen, it is now time for us to return again to the work under examination. The author having discussed the whole of the first article through so many pages, without even the imputation of an incorrect or intemperate expression, except in the concluding passage (the meaning of which I trust I have explained), goes on with the same earnest disposition of the discussion of the second charge respecting the

princesses of Oude, which occupies eighteen pages, not one syllable of which the Attorney-General has read, and in which there is not even a glance at the House of Commons. The whole of this answer is, indeed, so far from being a mere cloak for the introduction of slander, that I aver it to be one of the most masterly pieces of writing I ever read in my life. From thence he goes on to the charge of contracts and salaries, which occupies five pages more, in which there is not a glance at the House of Commons nor a word read by the Attorney-General. He afterward defends Mr. Hastings against the charges respecting the opium contract. Not a glance at the House of Commons; not a word by the Attorney-General; and, in short, in this manner he goes on with the others, to the end of the book.

Now, is it possible for any human being to believe that a man having no other intention than to vilify the House of Commons (as this information charges) should yet keep his mind thus fixed and settled, as the needle to the pole, upon the serious merits of Mr. Hastings's defence, without ever straying into matter even questionable, except in the two or three selected parts out of two or three hundred pages? This is a forbearance which could not have existed if calumny and detraction had been the malignant objects which led him to the inquiry and publication. The whole fallacy, therefore, arises from holding up to view a few detached passages and carefully concealing the general tenor of the book.

Having now finished most, if not all, of these critical observations which it has been my duty to make upon this unfair mode of prosecution, it is but a tribute of common justice to the Attorney-General (and which my personal regard for him makes it more pleasant to pay) that none of my commentaries reflect in the most distant manner upon

him; nor upon the Solicitor for the Crown, who sits near me, who is a person of the most correct honor,—far from it. The Attorney-General, having orders to prosecute in consequence of the Address of the House to his Majesty, had no choice in the mode; no means at all of keeping the prosecutors before you in countenance but by the course which has been pursued. But so far has he been from enlisting into the cause those prejudices which it is not difficult to slide into a business originating from such exalted authority, he has honorably guarded you against them; pressing, indeed, severely upon my client with the weight of his ability, but not with the glare and trappings of his high office.

Gentlemen, I wish that my strength would enable me to convince you of the author's singleness of intention, and of the merit and ability of his work, by reading the whole that remains of it. But my voice is already nearly exhausted; I am sorry my client should be a sufferer by my infirmity. One passage, however, is too striking and important to be passed over; the rest I must trust to your private examination. The author having discussed all the charges, article by article, sums them all up with this striking appeal to his readers:—

“The authentic statement of facts which has been given, and the arguments which have been employed, are, I think, sufficient to vindicate the character and conduct of Mr. Hastings, even on the maxims of European policy. When he was appointed Governor-General of Bengal he was invested with a discretionary power to promote the interests of the India Company and of the British empire in that quarter of the globe. The general instructions sent to him from his constituents were ‘That in all your deliberations and resolutions you make the safety and prosperity of Bengal your principal object, and fix your attention on the security of the pos-

sessions and revenues of the Company.’ His superior genius sometimes acted in the spirit rather than complied with the letter of the law; but he discharged the trust and preserved the empire committed to his care in the same way and with greater splendor and success than any of his predecessors in office; his departure from India was marked with the lamentations of the natives and the gratitude of his countrymen; and on his return to England he received the cordial congratulations of that numerous and respectable society whose interests he had promoted and whose dominions he had protected and extended.”

Gentlemen of the jury, if this be a wilfully false account of the instructions given to Mr. Hastings for his government, and of his conduct under them, the author and publisher of this defence deserve the severest punishment for a mercenary imposition on the public. But if it be true that he was directed to make the safety and prosperity of Bengal the first object of his attention, and that under his administration it has been safe and prosperous; if it be true that the security and preservation of our possessions and revenues in Asia were marked out to him as the great leading principle of his government, and that those possessions and revenues, amidst unexampled dangers, have been secured and preserved; then a question may be unaccountably mixed with your consideration much beyond the consequence of the present prosecution, involving, perhaps, the merit of the impeachment itself which gave it birth; a question which the Commons, as prosecutors of Mr. Hastings, should in common prudence have avoided, unless, regretting the unwieldy length of their proceedings against him, they wished to afford him the opportunity of this strange, anomalous defence; since although I am neither his counsel nor desire to have anything to do with his guilt or innocence, yet in the collateral defence of

my client I am driven to state matter which may be considered by many as hostile to the impeachment.

For if our dependencies have been secured, and their interests promoted, I am driven in the defence of my client to remark that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both; he may and must have offended against the laws of God and nature if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it; he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, insulting superiority, if he was the faithful administrator of your government, which, having no root in consent or affection, no foundation in similarity of interests, no support from any one principle which cements men together in society, could be upheld only by alternate stratagem and force.

The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilization, still occasionally start up in all the vigor and intelligence of insulted nature. To be governed at all, they must be governed with a rod of iron; and our empire in the East would long since have been lost to Great Britain if civil skill and military prowess had not united their efforts to support an authority which Heaven never gave, by means which it never can sanction.

Gentlemen, I think I can observe that you are touched

with this way of considering the subject, and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks in his hand as the notes of his unlettered eloquence: "Who is it," said the jealous ruler over the desert encroached upon by the restless foot of English adventure,— "who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer? Who is it that rears up the shade of these lofty forests and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us; and by this title we will defend it," said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated man all round the globe; and, depend upon it, nothing but fear will control where it is vain to look for affection.

These reflections are the only antidotes to those anathemas of superhuman eloquence which have lately shaken the walls that surround us, but which it unaccountably falls to my province, whether I will or no, a little to stem the torrent of by reminding you that you have a mighty sway in Asia which cannot be maintained by the finer sympathies of life or the practice of its charities and affections. What will they do

for you when surrounded by two hundred thousand men, with artillery, cavalry, and elephants, calling upon you for their dominions which you have robbed them of? Justice may, no doubt, in such a case forbid the levying of a fine to pay a revolting soldiery; a treaty may stand in the way of increasing a tribute to keep up the very existence of the government; and delicacy for women may forbid all entrance into a Zenana for money, whatever may be the necessity for taking it. All these things must ever be occurring.

But under the pressure of such constant difficulties, so dangerous to national honor, it might be better, perhaps, to think of effectually securing it altogether by recalling our troops and our merchants and abandoning our Oriental empire. Until this be done neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations, beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them with no other instructions than to preserve them and to secure permanently their revenues; with what color of consistency or reason can she place herself in the moral chair and affect to be shocked at the execution of her own orders; adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of the excess as the immorality; considering her authority as a dispensation for breaking the commands of God, and the breach of them as only punishable when contrary to the ordinances of man?

Such a proceeding, gentlemen, begets serious reflections. It would be better perhaps for the masters and the servants of all such governments to join in supplication that the great

Author of violated humanity may not confound them together in one common judgment.

Gentlemen, I find, as I said before, I have not sufficient strength to go on with the remaining parts of the book. I hope, however, that notwithstanding my omissions you are now completely satisfied that whatever errors or misconceptions may have misled the writer of these pages the justification of a person whom he believed to be innocent, and whose accusers had themselves appealed to the public, was the single object of his contemplation. If I have succeeded in that object, every purpose which I had in addressing you has been answered.

It only now remains to remind you that another consideration has been strongly pressed upon you, and, no doubt, will be insisted on in reply. You will be told that the matters which I have been justifying as legal, and even meritorious, have therefore not been made the subject of complaint; and that whatever intrinsic merit parts of the book may be supposed or even admitted to possess, such merit can afford no justification to the selected passages, some of which, even with the context, carry the meaning charged by the information, and which are indecent animadversions on authority.

To this I would answer (still protesting as I do against the application of any one of the innuendoes), that if you are firmly persuaded of the singleness and purity of the author's intentions you are not bound to subject him to infamy because, in the zealous career of a just and animated composition, he happens to have tripped with his pen into an intemperate expression in one or two instances of a long work. If this severe duty were binding on your consciences, the liberty of the press would be an empty sound, and no man could

venture to write on any subject, however pure his purpose, without an attorney at one elbow and a counsel at the other.

From minds thus subdued by the terrors of punishment there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard. Under such terrors all the great lights of science and civilization must be extinguished; for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of everything that is great and useful, both in the animate and inanimate world, to be wild and irregular; and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism; but its wanderings are sanctioned by its majesty and wisdom when it advances in its path. Subject it to the critic, and you tame it into dullness. Mighty rivers break down their banks in the winter, sweeping away to death the flocks which are fattened on the soil that they fertilize in the summer; the few may be saved by embankments from drowning, but the flock must perish for hunger.

Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements which, without them, would stagnate into pestilence. In like manner Liberty herself, the last and best gift of God to his creatures, must be taken just as she is: you might pare her down into bashful regularity and shape her into a perfect model of severe, scrupulous law, but she would then be Lib-

erty no longer; and you must be content to die under the lash of this inexorable justice which you had exchanged for the banners of Freedom.

If it be asked where the line to this indulgence and impunity is to be drawn, the answer is easy. The liberty of the press, on general subjects, comprehends and implies as much strict observance of positive law as is consistent with perfect purity of intention and equal and useful society. What that latitude is cannot be promulgated in the abstract, but must be judged of in the particular instance; and consequently, upon this occasion, must be judged of by you without forming any possible precedent for any other case; and where can the judgment be possibly so safe as with the members of that society which alone can suffer if the writing is calculated to do mischief to the public? You must therefore try the book by that criterion and say whether the publication was premature and offensive; or, in other words, whether the publisher was bound to have suppressed it until the public ear was anticipated and abused, and every avenue to the human heart or understanding secured and blocked up? I see around me those by whom, by and by, Mr. Hastings will be most ably and eloquently defended; but I am sorry to remind my friends that, but for the right of suspending the public judgment concerning him till their season of exertion comes round, the tongues of angels would be insufficient for the task.

Gentlemen, I hope I have now performed my duty to my client—I sincerely hope that I have; for, certainly, if ever there was a man pulled the other way by his interests and affections, if ever there was a man who should have trembled at the situation in which I have been placed on this occasion, it is myself, who not only love, honor, and respect, but whose

future hopes and preferments are linked, from free choice, with those who, from the mistakes of the author, are treated with great severity and injustice. These are strong retardments; but I have been urged on to activity by considerations which can never be inconsistent with honorable attachments, either in the political or social world—the love of justice and of liberty, and a zeal for the constitution of my country, which is the inheritance of our posterity, of the public, and of the world. These are the motives which have animated me in defence of this person, who is an entire stranger to me; whose shop I never go to; and the author of whose publication—or Mr. Hastings, who is the object of it—I never spoke to in my life.

One word more, gentlemen, and I have done. Every human tribunal ought to take care to administer justice as we look hereafter to have justice administered to ourselves. Upon the principle on which the Attorney-General prays sentence upon my client—God have mercy upon us! Instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present, for omniscient examination, a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us as I have been pointing out for your example. Holding up the great volume of our lives in his hands, and regarding the general scope of them—if he discovers benevolence, charity, and good will to man beating in the heart where he alone can look; if he finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed; his all-searching eye will assuredly never pursue us into those little corners of our lives, much less will his justice select them for punishment without the

general context of our existence, by which faults may be sometimes found to have grown out of virtues, and very many of our heaviest offences to have been grafted by human imperfection upon the best and kindest of our affections.

No, gentlemen, believe me, this is not the course of divine justice, or there is no truth in the gospels of Heaven. If the general tenor of a man's conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life; because he knows that, instead of a stern accuser to expose before the Author of his nature those frail passages which, like the scored matter in the book before you, checker the volume of the brightest and best-spent life, his mercy will obscure them from the eye of his purity, and our repentance blot them out forever.

All this would, I admit, be perfectly foreign and irrelevant if you were sitting here in a case of property between man and man, where a strict rule of law must operate or there would be an end of civil life and society. It would be equally foreign, and still more irrelevant, if applied to those shameful attacks upon private reputation which are the bane and disgrace of the press; by which whole families have been rendered unhappy during life by aspersions cruel, scandalous, and unjust. Let such libellers remember that no one of my principles of defence can at any time, or upon any occasion, ever apply to shield them from punishment; because such conduct is not only an infringement of the rights of men, as they are defined by strict law, but is absolutely incompatible with honor, honesty, or mistaken good intention.