SUBSTANCE OF

THE SPEECH

OF THE

RIGHT HONOURABLE ROBERT PEEL,

IN THE

HOUSE OF COMMONS,

ON

THURSDAY, MARCH 9th, 1826,

ON MOVING FOR LEAVE TO BRING IN A BILL FOR THE AMENDMENT OF

THE CRIMINAL LAW,

AND

A BILL FOR CONSOLIDATING

THE LAWS RELATING TO LARCENY.

LONDON:
J. HATCHARD AND SON, PICCADILLY.
1826.

SPEECH,

&c.

Mr. Speaker,

I hope, Sir, that the House is prepared to give me its attention, whilst I explain the object of those measures connected with the Criminal Law which I am about to submit to its consideration.

To many, I fear, this subject may appear barren and uninviting. It can borrow no excitement from political feelings, nor can it awaken the hopes or fears of conflicting parties; but it involves higher interests, it concerns the security of property—the prevention of crime—the moral habits of the people—and it prefers, therefore, a just and imperative demand on the serious attention of Parliament.

I claim that attention on another ground.

Of all the subjects which fall within the range of our deliberations, none perhaps has been more neglected than the Criminal Law.

Inter arma silent leges, is a trite remark applied to periods of civil dissention. I fear that it might with equal justice be said that amidst the excitement of party conflicts, the true principles which should regulate the Criminal Jurisprudence of the country have been too frequently disregarded.

I conjure the House, therefore, by these high considerations, by the paramount importance of the subject, and by the reparation which is due for past neglect, now to entertain with favour and attention, a proposal for the simplification and amendment of some important branches of the law.

The two measures which I mean to submit to the House, are a Bill for the Consolidation of the Statute Law of England, relating to the Crime of Theft. And a Bill to improve the Administration of Justice in some particulars, which I will hereafter specify.

And first, with respect to the Bill for the Consolidation of the Law relating to Theft.

I presume that I shall not have to combat at

the outset any objections to the principle of an attempt to consolidate and simplify the Criminal Law.

It appears so conformable to the dictates of common sense, that the law, of which all men are supposed to have cognizance—and which all are bound under heavy penalties to obey, should be as precise and intelligible as it can be made—that it is almost needless to fortify by reasoning or authority, the first impressions of the understanding.

If authority were required, I could cite some of the most illustrious names that have adorned the civil and judicial annals of this country, the names of lawyers and of statesmen, who have either expressed a decided opinion in favour of the attempt to simplify the law, or who have been actually engaged in the undertaking.

To one of these, the first in point of antiquity, as the first in weight and esteem, I will refer, and thus preclude the necessity of summoning other less important testimony.

The Lord Chancellor Bacon submitted to King James I. a proposal for amending the laws of England.

In that treatise, short as it is, is comprised every argument that can be cited in favour of

the measure of which I am speaking, every objection is foreseen, and satisfactorily confuted.

The lapse of two hundred and fifty years has increased the necessity of the measure which Lord Bacon then proposed, but it has produced no argument in favour of the principle, no objection adverse to it, which, to use the words of Cowley applied to Bacon himself, "from the mountain top of his exalted wit," he did not anticipate.

The House will allow me to substitute for my own imperfect expressions the emphatic terms in which Lord Bacon has recorded the suggestions of a mighty intellect.

In addressing his Sovereign, he says that his object is not to tax the laws, "I speak," says he, "only by way of perfecting them, which is easiest in the best things: for that which is far amiss hardly receiveth amendment, but that which hath already, to that more may be given."

"Besides, what I shall propound, is not to the matter of the laws, but to the manner of their registry, expression, and tradition: so that it giveth them rather new light than any new nature."

He proceeds to state, that for the safety and

convenience of the proposal which he makes, "it is good to consider and answer those objections or scruples which may arise or be made against this work."

Objection the first, "That it is a thing needless; and that the law as it now is, is in a good estate comparable to any foreign law; and that it is not possible for the wit of man in respect of the frailty thereof, to provide against the uncertainties and evasions or omissions of law."

The following is the answer of Lord Bacon:

"For the comparison with foreign laws, it is in vain to speak of it, for men will never agree about it. Our lawyers will maintain for our municipal laws—civilians, scholars, travellers will be of the other opinion."

But, Sir, I must interrupt my reference to Lord Bacon by remarking that the lapse of years has supplied us with an answer to the first part of this objection which Lord Bacon had not to urge. Foreign nations have condensed and simplified their laws—and have disentitled us to vindicate the confusion or uncertainty of our own statutes, by the boast (weak and fruitless as an argument, if it were well founded) that those statutes are less confused and less uncertain than the ordinances of other states.

"Certain it is," says Lord Bacon, "that our

laws as they now stand, are subject to great uncertainties, and variety of opinion, delays and evasion."—"Mark," he observes, "whether the doubts that arise are only in cases not in ordinary experience, or in cases which happen every day. If in the first only, impute it to the frailty of man's foresight, that cannot reach by law to all cases; but if in the latter, be assured there is a fault in the law."

"There is an inconvenience of Penal Laws obsolete and out of use: for that it brings a gangrene, neglect, and habit of disobedience upon other wholesome laws that are fit to be continued in practice and execution; so that our laws endure the torment of Mazentius.

"The living die in the arms of the dead."

The second objection foreseen by Lord Bacon is this:—"That it is a great innovation, and innovations are dangerous beyond foresight."

He replies, "All purgings and medicines, either in the civil or natural body, are innovations, so as that argument is a common-place against all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the suspected sense."

"Besides it is on the favourable part, it easeth —it presseth not—and lastly, it is rather a matter of order and explanation than of alteration."

Another objection stated by Lord Bacon, and that which is perhaps most frequently urged at present, is this:

"That it will turn the judges, counsellors of law, and students of law, to school again, and make them to seek what they shall hold and advise for law—and it will impose a new charge upon all lawyers, to furnish themselves with new books of law."

The reply is—"For the former of these—touching the new labour, it is true it would follow, if the law, (the common law,) were new moulded into a text law, for then men must be new to begin, and that is one of the reasons for which I disavow that course."

"But in the way that I now propound, the entire body and substance of law shall remain, only discharged of idle and unprofitable or hurtful matter, and illustrated by order and other helps towards the better understanding of it and judgment thereupon.

"For the latter—touching the new charge of books, it is not worthy the speaking of in a matter of so high importance—it might have been used of the new translation of the Bible and like works."

Lord Bacon adds this brief sentence pregnant with a truth too often disregarded—a truth of

everlasting and universal application. "Books should follow sciences, and not sciences books."

Having urged these reasons for the simplification of the Statute Law, he lays down the principles upon which it should be conducted.

"For the reforming and recompiling of the Statute Law it consisteth of four parts."

The first, "To discharge the books of those statutes, where the case by alteration of time is vanished; as Lombards, Jews, Gauls halfpence, &c. Those may nevertheless remain in the libraries of antiquities, but no reprinting of them; the like of statutes long since expired and clearly repealed.

"The next is, to repeal all statutes which are sleeping and not of use, but yet snaring and in force; in some of these it will perhaps be requisite to substitute some more reasonable law, instead of them, agreeable to the time; in others a simple repeal may suffice.

"The third, that the grievousness of the penalty in many statutes be mitigated, though the ordinance stands.

"The last is, the reducing of concurrent statutes heaped one upon another, to one clear and uniform law."

Such, Mr. Speaker, are the reasons upon which I have undertaken the measure I shall

propose, and such the principles by which I have guided myself in the preparation of it.

May I not add in the concluding words of Lord Bacon, "this is the best way to accomplish this excellent work; of honour to your Majesty's times, and of good to all times."

If, Sir, there be any to whom the authority of Lord Bacon may appear of too remote an antiquity, or who may consider his views too philosophic and abstract, I will for their satisfaction produce another authority more recent, and more practical—the authority of a Committee of the House of Commons.

In the year 1796, a Committee was appointed to inspect and consider all the temporary laws then about to expire.

The chairman of that Committee was the present Lord Colchester, and to him we are indebted on this, as on many other subjects, for one of the ablest reports that can be found on the Journals of the House of Commons.

That Report observes, "That a general revision of the Statute Law appears to have been often recommended from the Throne—to have been petitioned for by both Houses of Parliament—to have engaged the labours of successive Committees, and to have been undertaken by individuals under the sanction of royal

and parliamentary authority, but never to have been carried forward to any degree of maturity. After the Restoration, Finch, Solicitor-General (afterwards Lord Nottingham and Lord Chancellor), Serjeant Maynard, Mr. Robert Atkyns, Mr. Prynne, and others, were appointed in 1666, to be a Committee, to consider of repealing such Statute Laws as they shall find necessary to be repealed, and of reducing all Statute Laws of one nature, under such a method and head as may conduce to the more ready understanding and execution of such Laws. This seems to be the last recorded instance of this sort. "And thus it is," says the Report, "that Parliament has hitherto failed to accomplish this general revision; and has now suffered it to sleep for more than a century, although the delay of it has annually augmented its necessity."

Now, Sir, what I propose is, to break this sleep of a century; of more than a century indeed, for thirty years have passed away since the Report of 1796, and each successive year has added its own heavy incumbrances to the Statute Book.

I shall, Sir, with the leave of the House present a Bill uniting into one statute all the enactments that exist, and are fit to be retained,

relating to the crime of theft, and to offences immediately connected with theft, such for instance as the receiving of stolen property.

I select the laws relating to theft in the first instance, because I consider the crime of theft to constitute the most important class of crime. There are Acts no doubt of much greater malignity, of a much more atrocious character than the simple act of robbery; but looking to the committals and convictions for crime, it will at once be seen, that those for theft so far exceed the committals and convictions for any other species of offence, that there can be no question of its paramount importance in the catalogue of offences against society, and that, if the laws relating to this class of offence can be simplified and united into one statute, we shall have made a most material advance towards the revision of our Criminal Statute Law.

By a reference to the criminal returns for England and Wales it will be found that in the last year, the year 1825, 14437 persons were charged with various crimes; of this number not less than 12500 persons, amounting to six sevenths of the whole number, were charged with the crime of theft.

There were charged with

Burglary	428
Cattle Stealing	42
Horse Stealing	229
Stealing in a Dwelling-house to the value of forty shillings	265
From the person	835
Robbery on the person on the highway and other places	189
Sheep Stealing	166
Simple Larceny	10087

If any other offence be taken it will be seen that the numbers charged with that offence bear a very trifling proportion to the numbers charged with theft.

In 1825, the same year in which 12500 persons were charged with theft, were committed

For the crime of arson	22
For murder	94
For manslaughter	122

If a longer period be taken the result will be nearly the same.

In the last seven years there have been,

Convictions for forgery	331
For murder	121
For perjury	43
For arson	50

while, for simple larceny alone, there have been

in the same period not less than 43,000 convictions. I need say no more to demonstrate the immense importance of the crime of theft, considered as a class of crime, and to shew the necessity of establishing, with regard to it, as clear and intelligible a law as it is possible to establish.

The number of the statutes at present in force relating to this offence amounts to about ninety-two—they include a period of time extending from the reign of Henry III., from the statute called the *Charta Forestæ*, passed in the ninth year of that King's reign, to the last year of all, the sixth of his present Majesty. The number of these laws, the remote and various periods at which they have passed, will probably create an apprehension that the attempt to simplify their language, to classify their provisions, and to condense them into one statute is a hopeless undertaking. But, Sir, I hold in my hand the visible proof that the undertaking is not hopeless. Here is the draft of a bill which has been printed for the purpose of facilitating the consideration of its details previously to its introduction, and in the short compass of thirty pages, without making any rash experiment to curtail the phraseology of the existing laws, without the omission, I believe, of a single clause, which it is fitting to

retain, are included all the provisions of the statute law relating to the offence of Larceny.

This reduction of the bulk of the law, has been effected by selecting in some instance from an heterogeneous mass of legislation heaped together in one statute upon matters perfectly unconnected and dissimilar, those enactments that relate to the protection of property from theft, and in other instances by extracting from various statutes which have been passed in particular cases, the principle upon which each was founded, substituting in lieu of various scattered enactments, giving protection to individual articles of property, one general enactment, affording protection to the class of property to which those individual articles belong.

It is clear that Criminal Legislation has been heretofore left to the desultory and unconcerted speculations of every man who had a fancy to legislate If an offence were committed in some corner of the land, a law sprung up to prevent the repetition, not of the species of crime to which it belonged, but of the single and specific act of which there had been reason to complain. The new enactment too was frequently stuck into the middle of a statute passed probably at the latter end of a session; to the compounding of which, every man who saw or

imagined a defect in the pre-existing law, was allowed to contribute.

To give an instance or two of legislation of this kind:

Some member has been injured, or he has a constituent who has been injured by the stealing of madder roots, and a provision is forthwith made for the special protection for the future, of madder roots, not by a single statute, but by including the enactments directed against the stealer of madder roots, in a law of which the following is the comprehensive title.

"An Act to continue several laws therein mentioned for granting liberty to carry sugars of the growth, produce, or manufacture of any of His Majesty's sugar colonies in America, from the said colonies directly into foreign ports, in ships built in Great Britain, and navigated according to law; for the preventing the committing of frauds by bankrupts; for giving further encouragement for the importation of naval stores from the British Colonies in America; and for preventing frauds and abuses in the admeasurement of coals in the City and Liberty of Westminster; *and for preventing the stealing or destroying of madder roots.*"

I will mention another instance of the same kind. There are not less than twenty statutes

relating to the preservation of trees from theft or wilful injury, some properly confined to trees alone, others relating to matters so utterly unconnected with the protection of timber, or with the crime of theft, that I shall be almost suspected of fabricating the title of a bill for the purpose of my argument. It seems to have been discovered about fifty or sixty years since that the various laws which had previously passed with respect to timber, did not afford sufficient protection to hollies, thorns, and quicksets, and to save the trouble of amending the former laws—these neglected shrubs were provided for in an Act, which, in taking charge of them, took charge also of the other matters referred to in the following title.

"An Act for the better securing the Duties of Customs upon certain goods removed from the outports and other places to London; for regulating the fees of His Majesty's Customs in the province of Senegambia in Africa; for allowing to the Receivers General of the Duties on Offices and Employments in Scotland a proper compensation; *for the better preservation of hollies, thorns, and quicksets in forests, chases, and private grounds, and of trees and underwoods in forests and chases;* and for authorizing the exportation of a limited quantity

of an inferior sort of barley called bigg from the port of Kirkwall in the Island of Orkney."

Now, Sir, what I propose is not to lessen the security which the law gives to the owner of madder roots, not to throw open the holly or thorn to wanton depredation, but merely to transplant them to a more congenial soil than the province of Senegambia.

The laws relating to trees are fruitful in instances of hasty and slovenly legislation. For instance, there passed in the 6 Geo. III., two statutes for the protection of certain trees and vegetable productions in gardens, the 36th and 48th chapters, which must have passed almost concurrently. Neither of them refer to the host of antecedent statutes, and the author of chapter 48, must have been unapprized of the labours of him who had introduced and probably was superintending at the time the progress of chapter 36; for offences which by that Act are made a felony, are by chapter 48 punishable only with a fine of twenty pounds. Had the latter statute passed in a succeeding Session of Parliament, it would have amounted to a virtual repeal of the preceding Act. There are no less than three separate Acts of Parliament extending the provisions of chapter 48 to particular species of trees.

I will proceed to explain the material points in which I propose either to simplify and consolidate the law, or in which I propose to remedy, what appear to be glaring defects in the law; for my undertaking is not limited merely to the condensation of the statutes. Where I find any omission through which notorious guilt escapes, I propose to supply it—where I find a just principle at present only partially applied I propose to extend it to all the cases which it ought to include. I trust the House will bear with me in this reference to details, because details are here of the utmost importance.

There are on the Statute Book, twelve statutes relating to the offence of stolen goods. They are so numerous, because they are founded not upon some definite principle, but because they refer to individual articles of property. One statute punishes the receiver of stolen lead, iron, copper, brass, and bell metal. Then follows a statute to punish the receiver of stolen pewter. Another refers to jewels, plate, and watches. Then comes the general Act as to all goods and chattels—but even this was not considered general enough to apply to bank notes and negotiable securities, and therefore, an act was passed in the present reign for their special protection. Now, I shall expunge from the Statute

Book all these special provisions, and substitute in lieu of this legislation directed to particulars, one simple and general enactment, founded on this plain principle, that he who receives, knowing it to have been stolen, any thing whatever the stealing of which amounts by law to a felony, shall himself be deemed guilty of felony.

Surely this is the enactment which common sense suggests as the fit enactment against the wilful receiver of stolen property, whether that property be lead or pewter, jewels or bank notes.

The example to which I have last referred will sufficiently explain the mode in which I have attempted to proceed in simplifying and compressing the law in all other cases of a similar nature.

I come now to a subject of at least equal importance. The supplying of those omissions in the law which ensure the impunity of guilt. Of those omissions I will give some examples. Under the law as it stands at present, it has been decided that it is not an offence, at least not an offence in the eye of the law, to rob a ready furnished house, notwithstanding that it is a very serious offence to rob a ready furnished lodging. It is upon record, that after the conviction of a man who robbed of some articles of plate the

house which he had hired, the sentence was respited upon a doubt whether the case were within the statute which uses the word lodging and not lodging-house. It was agreed by all the Judges that the case was not within the statute, and Chief Baron M'Donald ordered the prisoner to be discharged, saying, "I am sorry the laws of England have not provided for your case, for I have no doubt whatever of your guilt."

Again, the statute which makes it an offence to steal or destroy fish in streams, expressly refers to such streams as pass in or through an estate. If therefore the stream, as is frequently the case, neither passes in nor through an estate, but passes between two estates, being the boundary to each, the owner of the fish forfeits his protection under the statute.

Can any man doubt that these are examples of imperfection and omission in the law, which can and ought to be supplied?

Can any man doubt that it is expedient to extend, as I propose to extend, the protection which the law at present gives to securities for property in the British funds, to securities for property in the funds of foreign states, and to mercantile instruments of all kinds, entitling the holder to the payment of money abroad? Is it fitting that these securities and instruments

should be liable to be stolen with impunity? Is it fitting that the stealing of a handkerchief should subject to transportation, and that the stealing of title-deeds, that the stealing of a will on which the property and existence of whole families may depend, should remain altogether exempt from penalty?

The law with respect to a very frequent and very aggravated offence, the embezzlement by servants of their master's property, is at present very defective.

Among the principal defects are these:

It is necessary to state in the indictment, and to prove in evidence the embezzlement of specific monies, not merelyof the sum in the gross of which the master may have been defrauded, but of the particular coin or notes of which that sum consisted, which may have entirely escaped the recollection of the master.

Again, if the servant has defrauded his master by the means of receiving change, he cannot be convicted at all. Supposing, for instance, the servant having ten shillings to receive for his master, gives ten shillings to the party from whom the money is due, and receives a one pound note, which he embezzles, he commits no offence against the law. He cannot be convicted of

embezzling the note, for that was not the property of his master, nor can he be convicted of embezzling shillings, for he has received none.

The main defect in the law is this: the offence is at present a felony; now by the rules of law each act of embezzlement is considered a distinct felony, and only one distinct felony is admitted to be proved upon an indictment for felony. The prosecution therefore often fails from the impossibility of laying the whole case, the whole tissue of fraud before the jury. The proof being confined to a single act of embezzlement, the jury leans not unreasonably to mercy, and frequently chooses to presume that the single act of embezzlement may have arisen from mistake, rather than to convict for the felony.

I propose to remedy these defects; to admit proof that various sums have been received and misapplied by a prisoner, without requiring proof as to the specific coin or bills of which those sums consisted. I propose to alter the legal designation and character of the crime of embezzlement, to make it a misdemeanour, instead of a felony, and thus to admit the proof of that which may be absolutely necessary to enable the jury to determine the real extent of the prisoner's guilt, namely, of the whole series

of embezzlement, in which he may have been engaged.

In the course of the observations which I have made, several cases have been mentioned in which I propose to subject to penalties, acts which at present may be committed with impunity.

But I beg to observe first, that these acts are in every instance acts of great moral guilt, which only escape at present through the imperfection of the law; and secondly, that the new penalties which I affix, amount in no case whatever to death; I constitute no new capital felony.

I propose to extend the grasp of the law, but in no instance do I increase; in some I mitigate its severity.

I will mention two important examples of the abatement of penalty.

The law which makes it an offence punishable with death to steal in a dwelling-house to the amount of forty shillings, extends at present to all out-houses within the curtilage, as it is called.

It is intended to except for the future from the operation of this law, so far as regards capital punishment, the stealing in all out-houses which are not connected with the dwelling-house by some internal communication.

Another case in which it is proposed to reduce the penalties of the law, arises out of an Act of the last Session of Parliament, which makes the robbery of gardens, without any distinction of circumstances, a transportable felony. The severity of the penalty renders this law in many instances inoperative. It is paralyzed by the stronger law of humanity and reason, which tells a man to overlook altogether the offence of the school-boy who robs an orchard, more perhaps from a wanton spirit of enterprize than from vice, rather than consign him to a prison and indict him for a felony.

We shall give more effectual protection to the owner of this species of property, if while we retain the severer penalties for all cases of aggravated delinquency, we empower a magistrate to hear the complaint, and if he shall think fit, to dismiss the offender for the first offence on payment of a reasonable fine.

I have now detailed the leading objects contemplated by the Bill for consolidating the Laws relating to Larceny, or I should rather say, I have given such examples of those objects as will enable the House to understand the general scope of the measure.

I will now proceed to explain the outline of the other, and not less important Bill, which is

intended to effect improvements in the administration of the Penal Law generally.

It is impossible, Sir, to contemplate without painful reflections, the state of this country with respect to the number and the increase of criminal offences. It is useless, it is worse than useless, to conceal from ourselves the truth that there is not in this country that security from fraud and depredation which there ought to be in a well-constituted society: and that there has been of late years a rapid and alarming increase in the amount of that species of crime.

Many causes may concur to swell the amount of crime in this country, as compared with the amount of it in some other countries of Europe.

Property in this country is much greater, more generally extended, and necessarily more exposed. The freedom of action which is allowed to every man by our law, the absence of any controul upon that action through the medium of police establishments, like those which exist in many countries, empowered to act upon vague suspicions, and preventing by unceasing vigilance the commission of offences that would otherwise he completed—such causes no doubt contribute in many instances to favour

the early stages of vice in this country. But while I notice their existence and their effect let it not be supposed that I am blind to the greater good which counterbalances the evil, or that it is my purpose by rash attempts at controlling the excesses which this freedom of action may engender, to impair the noble spirit, the enterprize and energy, that are its blessed offspring.

I shall now proceed to submit to the House a few details with respect to the comparative numbers of criminal offenders at different periods, and I deeply regret that the result is in some particulars so unsatisfactory.

In the seven years, ending December 1816, there were committed to the several gaols in England and Wales 47522 persons charged with criminal offences.

In the seven years, ending December 1825, the number was nearly double, amounting to 93718.

In the former period there were 29361 convictions. In the latter 63418.

In the former period there were sentenced to death 4126 persons. In the latter 7770.

In the former period 536 persons were executed. In the latter period 579; being an immense

reduction, let it be observed, in the number of executions as compared with capital convictions.

It is a circumstance worthy of remark, that although in the country generally there would appear by these returns to have been so large an increase in the amount of crime, in the last of the two periods to which I have been referring, an increase nearly of one half the total amount, there has been by no means a corresponding increase in the number of criminal offenders in London and Middlesex, although in this district the increase of the population must have been at least as great as that in any other district.

Taking the more serious offences, those to which the penalty of death is attached, we shall find that in London and Middlesex 1018 persons received sentence of death in the seven years ending December 1816.

In the seven years, ending December, 1825, 1124, being an increase in capital offences of not more than one eleventh.

The total number of convictions generally in the first period was 7421. In the latter period 11624.

If reference be made to the number of executions in London and Middlesex in late years,

compared with former periods, I trust we shall be warranted in concluding that crimes of an atrocious character are on the decrease, though no doubt the reduction in the number of executions must be partly attributed to a greater forbearance in carrying into effect the extreme punishment of the law.

In seven years, ending with December, 1793, there were in London and Middlesex 272 persons executed.

In the same period ending with December, 1825, there were 165.

In two years alone 1786 and 1787, there were 138 executions for offences committed in London and Middlesex.

In the three last years there were only 39.

From the year 1810 to the year 1822, inclusive, there were 173 executions in England and Wales, for robbery on the highway, being at the rate of about fourteen in each year.

In 1823, there were five executions for this offence. In 1824, six. In 1825, six.

For the seven years preceding 1823, the number of convictions for this last offence, were at the rate of 140 in each year. In the last three years they have not exceeded on the average 110.

From the year 1810 to the year 1822, inclu-

sive, there were 260 convictions in England and Wales for murder, being at the rate of 20 in each year.

In the year 1823, there were 12 convictions for murder; in 1824, seventeen; in 1825, twelve.

I trust, therefore, that although there has been so great an increase in late years in the total amount of committals for crime, I am warranted in the inference that crimes of the deepest die are less frequent than they formerly were, and that they are gradually decreasing in number.

With respect to the fact that crime has not increased in London and Middlesex, in the same proportion in which it has increased in every other district of England, almost without an exception, I cannot but think that the cause of this is chiefly to be looked for in the efficiency of that police establishment, which is placed under the superintendence of the Secretary of State, an establishment consisting merely of magistrates, with no higher authority than that which any justice of the peace possesses — of constables and patrol, with no other powers than those which the common constables can exercise, but efficient and active because their whole time is devoted to the duty which they have to perform, and because a responsibility is imposed upon

them, which it is very difficult to impose practically upon the gratuitous discharge of public functions.

I am confident that the House will not require an apology for these general observations on the nature and extent of the criminal offences committed in this country, with which I have prefaced the explanation I will now give of the particular objects of the second measure which I propose to introduce, and which I trust I do not improperly designate a Bill to improve the Administration of the Law.

This bill will regulate in some respects the proceedings connected with the administration of the law, in the various stages of a criminal prosecution. It will re-enact, and more clearly define the duty of the coroner as to taking evidence upon an inquisition of manslaughter or murder—the binding by recognizance—and the certifying of the evidence, the recognizances and the inquisition, to the court before which the trial is to be.

In respect to the magistrate—it will define what is generally understood to be the law as to the power of admitting to bail, which now rests upon the construction of an obscure statute passed in the reign of Edward I.

It will make it obligatory on the magistrate

to do that, which it is the general practice to do in case of felony, (but a practice not enjoined by law,) namely, to take the examinations upon which a prisoner is either committed to prison, or admitted to bail, in the actual presence of the prisoner himself. It will extend this obligation to cases of misdemeanour, as to which there is at present no provision by law, and it will require the return of examinations to the quarter sessions, to which they are not at present by any existing statute bound to be returned.

It will extend to subsequent and to future acts the principle of an Act of King William, which places the felon in the same situation as to the consequences of his guilt, whether that guilt be proved by evidence—or confessed by himself—or admitted by his standing willfully mute—or by his suffering outlawry. At present, there are several offences, constituted such by Acts of the Legislature which have passed subsequently to the Act of King William, in the case of which, the same consequences do not follow to the offender, should he confess his guilt, or stand wilfully mute, as would follow in the case of his conviction by verdict upon evidence.

This bill will extend to accessaries to felony after the fact, the principle of the existing law, which makes accessaries before the fact triable,

either in the county in which the principal felony was committed, or in the county in which the offence of becoming an accessary was committed. The propriety of such an enactment will be best shewn by referring to circumstances which recently occurred connected with a very aggravated burglary in the county of Hertford.

Lord Cowper's house was broken into by night by a gang of eight persons, who went from London for the purpose, and his steward was robbed of the amount of the rents which he was known to have received from Lord Cowper's tenants the day before.

The booty was brought to London, and was divided into shares by a man of the name of Dudfield, who received a considerable portion of it, and who, though not himself present at the robbery, was no doubt actively concerned in planning it. He was apprehended and sent to Hertford for trial, but it was impossible to convict him there, because there was no proof that the offence with which he was charged, namely, that of being an accessary after the fact, had been committed in that county in which the principal offence had been committed. He was next arraigned at the Old Bailey, but he escaped there on the same grouud. Ultimately he was convicted in Surrey after very great

difficulty, and at an expense to the prosecutor of four hundred and twenty-six pounds for bringing that single offender to justice.

Should this bill pass into a law, the prisoner indicted under similar circumstances would be liable to be tried in Hertfordshire as well as in Surrey.

By this bill a discretionary power will be given to the Judges of assize and to the court of quarter sessions to award to the prosecutor in certain cases of misdemeanour the actual expences incurred by him.

On a trial for felony it is well known that the courts have such a power at present, and experience proves that the total want of it on trials for misdemeanour, is a serious obstacle to the due execution of the law. I am fully sensible that this power ought to be strictly defined and controlled. It ought not to extend to cases of assault on account of the tendency it might have to encourage a litigious spirit and frivolous prosecutions, and it might probably be expedient to limit it to prosecutions for those offences to which the punishment of hard labour can be by law attached. I will give the fullest consideration to every suggestion for preventing the abuse or the injurious effects of this extension of the authority of courts of justice, but I

must contend that by withholding the authority altogether, you frequently close the avenues of justice in instances in which the poorest classes are the sufferers, and in which the public interest loudly demands reparation from the offender.

What distinction in point of moral guilt, nay in many cases what distinction in point of injury to the sufferer, is there between actual rape and the attempt to commit rape? The law calls the latter offence a misdemeanour, it expects that the party aggrieved, the infant child perhaps of a labouring man, shall overcome all the natural feelings of delicacy and shame, and shall appear in a public court to prove the disgusting details of the injury she has received; it requires the sacrifice of time, the trouble which are inseparable from public prosecution, and after all, inflicts on the injured party the heavy penalty of paying the whole expences of the suit. There may no doubt be occasionally subscriptions towards such expences from private and casual sources, but the public purse is closed by law to the prosecutor in such a case as that which I have been detailing.

Take again the case of gross abuse of authority, or gross neglect of duty, by some public officer, amounting to misdemeanour, Can we expect that private individuals will take upon

themselves the invidious duty of lodging the complaint, the painful task of arranging the proofs, and finally the whole costs of prosecution, and all this out of a pure abstract love of justice and tender care for the public interests?

It is ridiculous to expect it; to withhold public aid from the prosecutor in such instances as these, amounts to the frequent denial of all reparation to the poor man, and to the impunity of great offenders.

My attention was drawn to the last instance which I have mentioned of imperfection in the law, by a gentleman whose name will be familiar to all who hear me, the Reverend Mr. Sydney Smith, a magistrate of the county of York. He had committed a man on the charge of poisoning cattle; the man's house was searched by a constable, who found there the poison (arsenic), brought it to the house of Mr. Smith, and subsequently to screen the prisoner from punishment denied that any poison had been found. The constable confessed the part he had acted in this transaction, and yet the magistrate had no alternative but either to permit such flagrant misconduct to go unpunished, or to take upon himself the whole burden of the prosecution.

Either alternative appears to me fraught with injustice for which I hope to devise a remedy.

Perhaps in my own opinion a more extensive remedy ought to be applied than that which I am at present prepared to apply. But such a remedy might work a change in our institutions and habits too material to be hastily adopted, without feeling our way by the aid of that previous discussion which familiarizes the public mind to changes, that may be good abstractedly considered, but that lose half their benefit, if they are too precipitately carried into effect.

If we were legislating *de novo,* without reference to previous customs and formed habits, I for one should not hesitate to relieve private individuals from the charge of prosecution in the case of criminal offences justly called by writers upon law—Public Wrongs. I would have a public prosecutor acting in each case on principle, and not on the heated and vindictive feelings of the individual sufferer on which we mainly rely at present for the due execution of justice. Such feelings are rarely the fit measure of the propriety of prosecution. They are apt on the one side to overrate the wrong committed; on the other, still more apt to subside after the first impulse of revenge,

and coupled with the just fear of trouble and expence, to lead to disgraceful compromises in which the interests of justice are altogether overlooked.

I would therefore make the prosecution of these public wrongs much more a matter of public concern than it is at present, I would (taking at the same time all proper security against the encouragement of undue litigation) indemnify parties more liberally from the pecuniary charge which the trial of a public offender entails, and I would by the appointment of a public prosecutor guard against malicious or frivolous prosecutions on the one hand, and on the other, I would ensure prosecution in cases in which justice might require it.

In Scotland crimes are prosecuted in this manner through the agency of a public officer, responsible for the justice and propriety of the prosecution when undertaken at the public charge, and for the conduct of it through its various stages.

The public prosecutor in Scotland has another power devolved upon him—the exercise of which is frequently of the utmost advantage. In the prosecution of a crime, to which the penalty of death is attached by law, he is enabled in preferring the indictment, or indeed any subsequent

stage of the trial, to restrict the sentence in case of conviction to a punishment short of death, thus empowering the jury to find a verdict of guilty with a perfect assurance that the death of the prisoner cannot be the consequence of that verdict.

Whether such a power can be safely and properly transferred to the institutions of our own country, I am not now prepared to give an opinion. Of this, however, I am confident that if it should be found possible to borrow from the laws of Scotland suggestions for the improvement of our own law, no Englishman would be found to decry the adoption of such suggestions as monstrous innovations, the offspring of a ridiculous desire for useless uniformity, and the badges of disgrace to the country for whose benefit they were intended.

In the detail of the chief provisions of this bill, I have reserved for the last, that alteration in the existing law to which I attach the greatest importance.

It appears to me, Sir, that when a prisoner charged with a heinous crime, and proved to be guilty on clear evidence, escapes the penalty of the law upon some technical quibble, or in consequence of some omission of useless forms, a grievous injury is done to society. Not only is

justice defeated in the particular case, but the law is discredited, and the numerous class that speculates keenly on the advantages to be derived from crime, compared with the risk of its punishment, sees in every instance of undeserved impunity a fresh encouragement to the adventure. They may, and probably they do, grossly miscalculate—but what is that very circumstance, but a great additional evil to society?

It is surely a gross mistake to boast as the perfection of any system of law, that it favours the escape of the party accused.

That law I apprehend to be most perfect, which most certainly ensures the conviction of the guilty man, and the acquittal of him who has been unjustly accused. But the acquittal of the innocent ought, in justice to innocence, to be upon the merits of the case. The innocent man derives no benefit from the advantage which may be taken of mere informalities; on the contrary, if that advantage be taken in his case, he forfeits, perhaps, the only chance he has of rescuing his character from stigma, by the proof in open court, that the charge against him is totally unfounded.

When I say that the law is most perfect which

ensures with the greatest certainty the conviction of the guilty and the acquittal of the innocent, I ought to add as a qualification, that the law ought to ensure that conviction and acquittal upon principles not capable of being misapplied and perverted.

There are, for instance, provisions in the Criminal Law of France, calculated no doubt in individual instances to elicit truth, but which I should never wish to see ingrafted on the practice of this country.

I should deprecate anything approaching to the compulsory examination of an accused party, above all, I should be unwilling to see the judge who presides at a criminal trial, actively concerning himself in the conduct of that trial. I should fear that the general tendency of such an interference would be, if not to create in the mind of the judge by insensible degrees, a leaning in favour of the accusation rather than the defence, at least, to lead to inferences on the part of the jury as to the impressions of the judge, which might unduly influence their verdict.

I should deprecate the temptation which it might create to the display of superior acuteness in the examination of evidence, every thing in short, which could give to the judge the character of a party to the cause, rather than that of a perfectly unbiassed arbiter.

To return, however, to the immediate object to which I wished to call the attention of the House, namely, the expediency of devising some means, which, at the same time that they in no degree endanger the security of the person unjustly accused, shall diminish the chances of escape to the guilty man through mere quibbles or useless technicalities.

If any one will review the grounds upon which great offenders, of whose guilt there could not be a question—whose guilt had been proved in evidence—nay, upon whom a verdict—upon whom even judgment itself had passed—have still escaped punishment; he cannot rise from that review without lamenting such melancholy triumphs of legal forms over substantial justice.

Ought notorious guilt to be entitled to the same impunity with proved innocence, because, after judgment it is discovered, (to quote the phrases of this bill, which I have had prepared,) that in the indictment for a felony there is wanting some proper addition to the name of the defendant, or because there is the want of a *profert*, or *prout patet per recordam*—or because there is the omission of *vi et armis et contra*

ptcem? Yet these are the grounds upon which offenders have escaped.

Ought the murderer to have all the benefit of acquittal, because the murdered man had three Christian names, and only two of them are set forth in the indictment? or because the wound which caused his death is not described with entire accuracy?

Surely we may rely on the dictates of common sense, and be assured that these things are not perfections in the law. But if I am called upon for professional authority, I will cite the beautiful expressions of Sir Matthew Hale, and let them stand as the fitting preamble to the enactment I propose.

In the History of the Pleas of the Crown, Sir Matthew Hale concludes the chapter on the forms of indictment with these memorable remarks:

"And thus far, touching the forms of indictment, wherein generally we are to take notice that in favour of life great strictnesses have been in all times required in points of indictments, and the truth is, that it is grown to be a blemish and inconvenience in the law, and the administration thereof; more offenders escape by the over easy ear given to exceptions in indictments, than by their own innocence, and many times

gross murders, burglaries, robberies, and other heinous and crying offences, escape by these unseemly niceties, to the reproach of the law, to the shame of the government, and to the encouragement of villainy, and to the dishonour of God. And it were very fit, that by some law this over-grown curiosity and nicety were reformed, which is now become the disease of the law, and will, I fear, in time grow mortal, without some timely remedy."

In the bill which I had prepared for the purpose of applying this timely, or I should rather say, this tardy remedy, it was originally proposed to enact that if upon any trial for felony or misdemeanor, the jury shall be satisfied that any person, time, fact, matter or thing, touching which evidence is given, is really the same person, time, fact, matter, or thing intended by the indictment, it shall be lawful for the jury to find the defendant guilty, notwithstanding any variance in the name or description contained in the indictment.

It was thought, however, by some whom I consulted, and in whose judgment I place implicit confidence, that this enactment goes too far, and that it might introduce a laxity and uncertainty into indictments more mischievous than the excessive subtilty which it is intended to correct. I shall propose, therefore, to limit the

enactment, at least for the present, to a specification of those defects which shall not (as at present they do) vitiate an indictment after verdict, or after confession or default.

I have now, sir, I fear, at very unreasonable length, detailed the objects of the two measures which I propose to introduce.

They may not perhaps answer the expectations of some who call out for the immediate and simultaneous revision of the whole of the Criminal Law.

To those I answer, in the first place, that they are little aware of the difficulties of far less extensive projects, of the labour and caution, and judgment which are requisite in every step of such an undertaking as that to which the present motions refer.

The mere collection of dispersed statutes under one head is an easy process, compared with the more important task of rejecting what is superfluous, clearing up what is obscure, weighing the precise force of each expression, ascertaining the doubts that have arisen in practice, and the solution which may have been given to those doubts by decisions of the Courts of Law.

In the second place, I answer, that nothing would be more unwise than to force on the country in too rapid succession, these alterations in

the law. Even if we could have an entire confidence, that the substituted law was in itself perfect, without a blemish or omission, still we must recollect, that we are not the instruments for carrying it into effect, and we shall defeat our intentions, and blight the prospects of real improvement, unless we give leisure to the various authorities on whose assistance we must depend; nay, to the country generally, to comprehend the full scope of the projected changes. Let us not distract and confound society by a mulplicity of new arrangements relating to matters of such importance, and of such constant recurrence in the daily business of life.

It cannot, I think, be justly said, that of late years at least, the march of amendment in the law has been too slow.

During the four years that I have held the appointment which I now hold, the following measures have been carried through Parliament:—

The whole of the Statute Law relating to Prisons, and Prison discipline has been, after deliberate inquiries, commenced by my predecessor (Lord Sidmouth), consolidated and amended.

The severity of the Criminal Law has been mitigated by extending the benefit of clergy to

many offences that, before, were capital felonies; and one great objection to that severity has been altogether removed, by enabling the judges to abstain from passing sentence of death in every case, excepting that of murder.

The laws relating to the punishment of transportation have been revised and collected into one statute.

The laws relating to the effect of pardons from the crown, and to the rights of convicts after pardon, and after the fulfilment of their sentence, have been placed upon just principles.

The abuses that grew out of the practice that prevailed with regard to Writs of Error have been corrected. And lastly:—The Jury Act, comprizing the regulations that were previously dispersed in sixty-six Acts of Parliament, which now no longer encumber the Statute Book, has been passed, and has, I have every reason to believe, materially improved the constitution of juries.

I have entered into this detail of what has been actually done, for the purpose of satisfying the House, that there is no indisposition on my part to proceed in the review and improvement of institutions connected with the administration of the Criminal Law, though I certainly deprecate that rapid progress, which is inconsistent

with mature deliberaation, and which leaves behind it, in its thoughtless career, the various instruments, without whose concurrence it is useless to advance.

There may, Sir, perhaps be some who may think it extraordinary, that I, who have not had the advantage of professional practice, or even of a legal education, should undertake the introduction of measures, the details of which must necessarily require so much of professional and technical learning, But let it be recollected, that I am placed in an office which devolves upon me the duty of superintending, in many important respects, the administration of justice, which entitles me to advise the Crown as to the remission or execution of almost every sentence of the law, and which gives me daily, I might say, hourly opportunities of witnessing the practical operation of the statutes which I am attempting to simplify and amend. These considerations will probably relieve me from the charge of any unwarranted and presumptuous interference in matters which I do not comprehend.

I should be indeed open to that charge, if in presenting these Bills to the House, I were offering my own crude speculations, unaided

by the learning and experience of professional men. No, Sir; it has been my good fortune to profit by the willing assistance of men who yield to none in respect to general acquirements, to profound knowledge of the principles of law, or to experience in its practice. I owe the preparation of these Bills to those Gentlemen through whose labour and skill the Jury Act of last session was prepared; to Mr. Hobhouse, the Under Secretary of State in the Home Department, (to whom, but for the relation in which he stands to me, I would do much more ample justice); and to Mr. Gregson, a barrister of high eminence on the Northern Circuit, justly respected by all who know him. The Bills, thus prepared, have been submitted to all the Judges, and from many of those eminent individuals, from Mr. Justice Bailey, Baron Hullock, Mr. Justice Holroyd, Mr. Justice Burrough, and Mr. Justice Gaselee, I have received very useful suggestions. The assistance which has been afforded by the Lord Chief Justice, I cannot sufficiently acknowledge. He has devoted to the minute examination of these measures all the leisure which he could spare from the immediate pressure of his judicial duties; and has, I fear, encroached upon that repose

which was essential to the restoration of his health.

In the profession of the law generally, I have found the utmost readiness to co-operate in the work which I have undertaken. It is the fashion to impute to that profession an unwillingness to remove the uncertainty and obscurity of the law, from the sordid desire to benefit by its perplexity. This is a calumny which I know to be unfounded; for I have never made, in the progress of this work, a single application for assistance to any member of the profession of the law, which has not been received in the spirit which becomes a generous mind, rising above the narrow prejudices of habit, and the paltry view to private gain. There is one gentleman among those who have thus shewn a willingness to give assistance—to whom I must make this public return of my acknowledgments, I allude to Mr. Russell, a gentleman who has rendered important service to the law by most valuable publications, and who has offered suggestions with respect to many provisions included in these Bills that are entitled to every attention.

I now leave to the consideration and decision of the House, the measures into which I have entered at such unreasonable length. They will,

I trust, be found, after full investigation, not unworthy of the final sanction of Parliament.

They propose no encroachments upon civil liberty, no extension of executive authority, no rash subversion of ancient institutions, no relinquishment of what is practically good, for the chance of speculative and uncertain improvement. "The work which I propound," as Lord Bacon says, "tendeth to pruning and grafting the law, and not to plowing up and planting it again; for such a remove I should hold indeed for a perilous innovation."

Whatever, Sir, may be the ultimate decision of this House, with respect to the measures themselves, it will not, I am confident, condemn the motives which have prompted me to the undertaking.

I can have no motive, but the desire to improve the opportunities which have been placed within my reach, and to exert to useful ends, the influence and authority which constitute, if rightly applied, the real value of high official station.—And, Sir, if there be mixed with that desire any latent feeling of a more personal nature, why should I disavow the legitimate ambition, to leave behind me some record of the trust I have held, which may outlive the

fleeting discharge of the mere duties of ordinary routine, and that may, perhaps, confer some distinction on my name, by connecting it with permanent improvements in the judicial institutions of the country?

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