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AN
EXAMINATION
OF THE
EXPEDIENCY
OF CONTINUING THE PRESENT
IMPEACHMENT;
BY
RALPH BROOME, Esq.
AUTHOR OF THE ELUCIDATION OF THE
ARTICLES OF IMPEACHMENT
AGAINST
WARREN HASTINGS, Esq.

LONDON:

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O N
I M P E A C H M E N T S.

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OF THE ARTICLES OF

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Preferred by the last PARLIAMENT against

WARREN HASTINGS, Esq.

B Y

RALPH BROOME, Esq.

Captain in the Service of the EAST INDIA COMPANY
on the Bengal Establishment, and Persian Translator
to the Army on the Frontier station, during Part of
the late War in India.

N. B. At the latter End of this WORK is Con-
tained a View of all the Precedents relative to the Con-
tinuance and Abatement of Impeachments on the Difo-
lution of Parliament, with an Examination of the Ar-
guments pro and con.

L O N D O N

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PROCEEDINGS
UPON THE TRIAL OF
WARREN HASTINGS, ESQ.
IN WESTMINSTER HALL.

*I— curve per Alpes,
Ut PUERIS placeas et DECLAMATIO fias!* JUVENAL.
*Enlighten'd Statesman! go through Toil and Strife,
And for thy Country's Good, embroil thy Life.
Go—mighty Warrior!—wide and wider roam,
To come at length, and be abus'd at home.* ANON.

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January 8th, 1791.

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AN
EXAMINATION,

&c.

I HAVE upon former occasions addressed
the public upon the subject of the present
Impeachment. What I have written has
been collected by Mr. Stockdale, and fold
in the shape of a pamphlet. The collection
has been reviewed by the monthly and lite-
rary reviewers; the former paid me the
compliment of saying, that I had rendered
that intelligible, which had, till then, baffled
the powers of comprehension; and the lat-
ter said, that the arguments I had made use

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of were weighty, and deserving of consideration.

Thus encouraged, I venture to lay before the public some reflections upon the present state of the impeachment above mentioned. It was, till very lately, my decided opinion founded upon search of precedents, that the proceedings would abate or be annihilated by the dissolution of the last Parliament. In that opinion I find myself, as far as respects the House of Commons, totally mistaken; but I have this consolation, that I have erred in company with the most respectable law authorities in this kingdom. Much ingenuity has been made use of to establish the validity of the precedent in 1678, and to destroy the effect of all those that followed. This much, however, stands uncontradicted and uncontroverted by any one. Except the instances that occurred between the years 1678 and 1685, the whole History of England cannot furnish a pre-

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precedent of an impeachment begun by one Parliament and pursued by another. The cases of Lords Peterborough and Salisbury and the Duke of Leeds, are represented as particular cases, and having no analogy to the present; but for my own part I cannot discover any other dissimilarity than that of rank. The cases above mentioned have nobility, members of the upper House, for the accused, and the present case has a less dignified subject, a Commoner only. Whether it be among the privileges of the Peerage that the dissolution of Parliament shall extinguish the impeachment of a Peer, I know not, but it certainly was not put upon that footing. The judgement of the Lords in the cases of Lord Danby, Peterborough, and Salisbury, in the years 1685 and in 1690, was declared to have for its foundation, the laws of the land and the usage of Parliament, without even an insinuation of exclusive peculiarity in favour of their own body. There are, I admit, many peculiarities

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cularities in the case of Mr. Hastings, which distinguish it from all state trials in this country, or in any other. Among these peculiarities may be reckoned the length of time since the facts happened, the duration of the trial; and the severity with which it has been conducted. Were we to estimate the degrees of guilt by the length of the speeches made against him, by the harshness of the epithets with which they are loaded, by the number of days employed totally in the arts of aggravation, and by the duration of the impeachment, we could not fail to consider him as the worst of mankind; as one who had ruined his country, nay, as the common enemy of human nature. If any man writes or speaks in his favour, he is called an hireling or a partaker of the plunder, or he is stigmatized with some other appellation equally opprobrious. Some of those who, being called by the Managers, gave testimony in Mr. Hastings's favour, were either directly or indirectly accused of
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perjury, and I believe every witness without exception, who happened to speak in his favour, was represented to the world as a very suspicious character. On the contrary, those witnesses whose testimony tended to criminate, were extolled as men of unquestionable veracity, of the purest honour, and most inflexible morality.

When Mr. Paterfon's report concerning the infurrection at Rungpore, and the cruelty committed by Deby Sing, was dilated on in Westminster Hall, he was represented as a young gentleman of more than apostolic credit and veracity. But since the same young gentleman, hearing of the unfair use which had been made of that report, and of its being perverted to the purposes of calumny, has written home declaring his abhorrence thereof, and that Mr. Hastings, so far from promoting or protecting guilt, was the most forward for detecting and avenging it, we hear nothing more of his extraordinary
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nary qualities and uncommon attachment to the cause of truth and justice.

I have looked into the history of our own country, where I found many examples of violent and eager prosecutions for state crimes; some of them have been speedily brought to an issue, fatal to the objects of accusation; but there is not one instance to be found, wherein time has not operated to the abatement of public anger and prosecution. Lord Bolingbroke was attainted for high treason, and afterwards pardoned. Lord Oxford was put upon his trial for a similar offence; he was accused of having basely betrayed the interest of his country, and having assisted her enemies. Crimes, greater than these, if true, could not be committed by a minister or statesman, yet we find that the prosecution and punishment of this offender was not thought of consequence equal to the preservation of formal etiquette. The Commons of that day, sooner

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er than suffer the judges of the highest court of judicature in this kingdom, to exercise that right and privilege which must necessarily belong to every court of justice, viz. that of settling the form of proceeding, abandoned the prosecution altogether. Many other instances may be adduced of those who have done the most effectual and most permanent injuries to their country, and yet have owed their safety to the dissolution of Parliament, or to the lapse of time. But none of those things which operated to the preservation of those who injured their country, are permitted to operate in the favour of him who has most effectually served her. Time, instead of cooling, inflames resentment, and the ghost of the Parliament that is dead, rises up to re-ignite and animate the vengeance of that which is living. Precedents are laid aside, analogy is disregarded, and established legal opinions are contradicted. One day we are told, that the prosecution of the House of Commons

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is the prosecution of the people of England, and the next day we hear that every representative is totally independent of his constituents. If the people petition to the rulers of their own creation, their petitions are rejected; but if the name of the people is made use of for form's sake only, they are indissolubly bound and inextricably implicated in the acts of their uncontrollable representatives. According to the doctrine of this day, the resolutions of a past House of Commons are binding upon the present, and the dying request of a dissolved body ought to be regarded by their successors with all the reverence and veneration of a pious son, to the admonitions of a departed father. Posterity in reading the history of the present times will naturally inquire into the cause of these extraordinary doctrines and events. They will say, what crime had the man committed, or what acts of uncommon atrocity had he been guilty of, that the old customs and usage of Parliament

were to be set aside for the special purpose of punishing his offences? And all this in a country where such strict regard is paid to form and ceremony, that many of the most guilty wretches are suffered to avail themselves of some trifling technical error, and thereby escape with their lives and fortunes from the hands of justice. Upon inquiry, they will find nothing but what unavoidably arose from circumstances and situation; that supposing the acts were intrinsically wrong, they were done, not with a view to serve himself or his dependents, but for the indispensably necessary service of that very nation which now prosecutes him; a nation, that, if there were any thing wrong in the conduct of Mr. Hastings, participate, nay, appropriate the guilt to themselves, by keeping possession of what he is said to have taken unjustly from the natives of India. But I think I have demonstrated in the work which I alluded to, in the first page, to the satisfaction of

every candid reader, that the taxing of Cheyt Sing in the time of war, and the advising of the Nabob to confiscate the treasure of which his mother unjustly and unnaturally deprived him, and afterwards turned against him, were perfectly agreeable to the laws and customs of Indostan, and as reconcilable to the principles of sound policy and strict justice, as taxation is in England, and as the decrees concerning property are in the best regulated courts of equity. This may appear very bold after what has been said so often to the contrary, by a gentleman once in full possession of the public confidence. That day, however, is now gone by, and the people reasoning by analogy, say, that he who can artfully misrepresent the affairs of our nearest neighbours, may be justly suspected of misstating things that happened very remote both in time and place. The gentleman I allude to, in the brilliance of his speeches, and the rhetorical exuberance of his writings, is almost without an equal;

but

but in plain reasoning, in the close investigation of facts, in the accurate weighing and balancing of merit and demerit, in making fair deductions and candid statements, he is miserably deficient. There is nothing which mankind ought to guard against more than what is called Oratory. It is to the understanding, what optical glasses are to the eye. The use of the former, like that of the latter, is to magnify or diminish the apparent size of objects.

The facts I have just mentioned make up the principal sum of criminality yet brought forward against Mr. Hastings; for as to the suspicion of his having intended to apply the money he received for the Company, to his own use, I never can be persuaded that it was of importance enough to excite a parliamentary prosecution.

Here I wish the reader to pause for a few moments; and if he be conversant with

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the history of the world in general, or with that of his own country in particular, to ask himself this question : Can there be an example found in the whole course of my reading of a man so severely punished for acts of such doubtful criminality ? Has Mr. Hastings injured his country ? Has he betrayed her interest ? Has he by mismanagement lost her provinces ? His greatest enemies acquit him of all these things. What is it, then, that they do lay to his charge ? Why, they say, that in his zeal to defend the country committed to his care, he taxed a zemindar, who his accusers think ought not to have been taxed without some higher authority ; that he advised the Nabob of Oude to take from his unnatural mother certain sums of money, his paternal inheritance, of which she had defrauded him. These are the acts which are held up to this country, now reaping the most solid and substantial benefits from them, as crimes of the blackest dye and of inexpiable

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able guilt. Perhaps some people who read this, will suspect me of having taken the same liberty in extenuating, as Mr. Hastings's accusers have done in aggravating his guilt. But this is not the case. In the Elucidation before alluded to, I gave all the arguments of his accusers their full weight ; I abridged them of nothing but their harsh epithets. And here I hope I shall be pardoned, if I hazard a suspicion of my own, namely, that the length of the speeches, the profusion of epithets, the eccentric deviations from the subject, and the rhetorical dress of the accusations, were artfully intended to inflame the passions, and bewilder the understandings of the hearers. My reason for thinking that confusion was studied more than elucidation, is this : I scarcely ever conversed with any one man, who, though he had constantly attended the trial, understood the principal points which were at issue between the accusers and accused. The only things which seemed to impress upon

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upon the minds of the audience, were the strong terms of abuse, such as Captain General of Iniquity, Tyrant, Oppressor, Murderer, and so forth. Every one said, that Mr. Hastings must have done something very bad, or such epithets would not have been used.

The audience, who formed these hasty conclusions, did not recollect that the same voices which exclaimed against Mr. Hastings, have in the very same manner, and in almost the very same words, exclaimed as loud against the Ministers of this Country. Venality, Corruption, Ruin, and Impeachment, have been echoed and re-echoed in the chapel of St. Stephen, without producing any effect upon the people without doors. It may be asked, why did the speeches of the same men produce so much more effect against the minister of India, than against a minister of England? The reason is plain and obvious. In the latter case,

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case, the scene of action was near and open to the eye of every observer; the knowledge and experience of every individual gave the lye to factious declamation, and fictitious grievances. But in the former case, the scene of action was too remote, both in time and place, for the people to exercise their own judgment. They were obliged to see with the eyes of other men, and take the accusations upon the credit of the accusers: the voice of denial was borne down by the charge of participancy of guilt; ocular demonstration could not be had in one case, as in the other; add to this, there is a natural propensity in the human mind to the believing of marvellous narrations, which concern a remote period, or a distant country, and to the doubting of facts which happened lately, or very near us. Why this propensity exists in defiance of reason and common sense, I know not; but every one who examines the conduct of mankind in all ages, must subscribe to the truth

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truth of the observation. To raise a strong presumption of guilt against Mr. Hastings, his fortune was represented as enormously large. The first idea that springs up in the mind of every one upon hearing of large and rapid acquisitions, is, that the means were unjustifiable. And we readily give a man, credit for the will, as soon as we are assured that he was possessed of the power. For this reason alone, the defence of a man accused of peculation becomes extremely difficult. The object of accusation has to combat the natural prejudice of the mind. Experience shows us, that by much the greater part of mankind are not proof against temptation, and unless any individual has established the most unequivocal character for self-denial, we are apt to suspect, that he did not let slip any opportunity of improving his own circumstances. Some people, who are zealous supporters of the dignity of human nature, may deny what I have now remarked; but if it be not true,

I cannot

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I cannot account for the ready credit which is generally given to accusation, and denied to the assertions of innocence. I do not say, that this preference is universal in all cases, but I think the rule holds without an exception, when the accusation concerns those things to which men are naturally impelled by the force of passions. Such, for example, are intrigues by young men for the possession of women; and by men of a more advanced age for the possession of wealth and power. I shall not enter into a discussion of Mr. Hastings's fortune, nor of the means by which he acquired it. I shall content myself with saying, that one of his former colleagues in office, and who must be best able to judge of the means, expresses his wonder, not at the magnitude, but at the smallness of Mr. Hastings's fortune, alleging, that his salary, properly managed, must have accumulated a much larger sum than he is supposed to be possessed of.

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We read lately in the public papers, of an officer of high rank in his Majesty's service, who had commanded armies in the fields of Indostan, who was personally unacquainted with Mr. Hastings, delivering his sentiments of that gentleman; he said, that the enemies of the Company in India bore the most honourable testimony to Mr. Hastings's ability, as a governor and a politician; that the people whom he was accused of having oppressed, were extravagant in their praise of his justice and moderation; that the country was more or less prosperous and flourishing, in proportion to the greater or less extent of Mr. Hastings's influence; that Bengal, which was immediately under his eye, was of all other provinces the most happy and productive. But how, as we are told by the same papers, was this evidence treated? *It was called an Arabian Night's Entertainment.* In the same manner, the petitions of that very people, whose sufferings are held up to the world as the

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ground of this impeachment, have been treated by the same authority. The natives, instead of praying for justice against Mr. Hastings, supplicate justice and mercy for him. They deny having suffered under the government of Mr. Hastings; but how were their testimonials and petitions answered? The late chief Manager told the Court, that these testimonials should be among the first evidence he would call to support his own allegations, and in proof of Mr. Hastings's oppression. The presumption of innocence was suspended by the curiosity which was excited in every one's mind, by the boldness of the promised extraordinary conclusions; but the evidence of the testimonials was never called for, and they were, or seem to be, wholly forgotten. I must not omit one particular part of the speech which accompanied this promise, and which was, if possible, still bolder than the promise itself.

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The Court was desired to “ consider those
 “ who signed the testimonials as people who
 “ are forced to mix their praises with their
 “ groans, forced to sign with their hands
 “ that had been in torture while yet warm
 “ with thumbscrews upon them, forced to
 “ sign his praises, and that, it was hoped,
 “ would give their Lordships a full and satis-
 “ factory proof of the miseries of these poor
 “ people.” I think I may safely affirm, that
 in all the annals of oratory, both ancient and
 modern, there never appeared a bolder figure,
 or a more extravagant hyperbole. Could the
 author of such words think so meanly of his
 judges, as to flatter himself that such assertions,
 which carried, not improbability, but abso-
 lute impossibility on the face of them, could
 impose upon their weakness and credulity ?
 No, he knew better ; but he hoped that it
 would keep alive the public clamour which
 was dying away with respect to Mr. Hastings,
 and beginning to rise up against himself.

He

He knew that Mr. Hastings had not the
 smallest influence or controul over the na-
 tives of India ; and that the very circum-
 stance of the testimonials having been trans-
 mitted home publicly by Lord Cornwallis,
 was an undeniable proof of their authenti-
 city. Had there been a suspicion of their
 having been obtained by compulsion, influ-
 ence, or solicitation, it would have been an
 easy matter to have inquired into the facts.
 There has been abundant time for doing
 as two years have elapsed since they ar-
 rived in England. No attempt has been
 made to controvert their authenticity ; and
 why ? Because no man, not even the chief
 manager himself, ever seriously doubted
 it. Upon this subject I have but one
 thing more to remark, which is, that there
 never existed an instance previous to this,
 of prosecuting a man for an injury, the
 perpetration of which was denied by those
 who alone had the means of knowing, and
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affirmed by those only who had not the means of knowing.

But the quotations I have already made, are but a small part of the contradictions which have arisen in the course of this impeachment. We find that the last House of Commons voted two resolutions perfectly in opposition to each other, with respect to the state of the province of Bengal. To criminate Mr. Hastings, and to make him appear as an oppressive tyrant, Bengal was voted to be depopulated and ruined; to establish the credit of the East India Company, the same country was voted to be rich, flourishing, and productive. The last House of Commons was frequently reminded of these irreconcilable resolutions. Every member saw and felt it, but not one attempted to deny or justify the fact: it was too plain for denial, and it was too gross for justification; the reproach was heard with conscious silence and affectation of contempt.

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tempt. It was stated among other things in a newspaper, and the paragraph was construed into a libel upon the House of Commons. The author, whom the *mens conscia recti* had induced to affix his name to it, was punished; but upon what grounds? Not for publishing an untruth, but for violating the privilege of Parliament. Other offences of a similar nature, attended with more aggravating circumstances, had been committed by other men, and were passed over without punishment, and almost without notice. The member who had been thus treated, announced his intention of bringing forward a motion with respect to the contradictory resolutions above mentioned. A day was appointed, but before that day came, every engine was set to work to prevent its coming forward, or to render it abortive. He was prevailed upon to abandon the motion, for which he has been justly condemned both by his friends and enemies. The previous question might have

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have been moved to prevent the discussion, but the very shrinking from examination would have established the fact: but the fact cannot stand in need of any establishment, for any man by turning to the charges voted against Mr. Hastings, and to the resolutions of the House of Commons upon the opening of the India budget, may convince himself of the truth of what has been asserted. The price of India stock rose two per cent. upon the credit given to the last resolution, but I cannot say that it fell upon the credit of the former. The ill consequence of abandoning the motion above mentioned is now felt, for we have heard this parliamentary censure made use of to prove that no such contradictions existed.

A country gentleman is said to have urged these apparent contradictions in the votes of the last House of Commons concerning India, as the ground of his changing

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ging his sentiments in regard to the merit of the impeachment. But how were these arguments treated? He was told that they had been *scouted* as often as they had been used by a gentleman who was ultimately punished for the publication of them. The word *scouting* brings to my recollection a commanding officer in India, who always made it a rule in controversy, to *scout* the argument he could not answer. This I take to be the case of the gentleman in question, who has courage enough to *scout*, but not to deny the truth of the arguments urged against him. Is it reasonable to suppose, that had the facts been untrue or misstated, not one person would think it worth his while to deny them? There is no man whose mode of reasoning I suspect so much, as that of the late chief Manager of the impeachment; and the grounds of my suspicion so peculiarly attached to him, are, that I scarcely ever read three pages of his writing, or heard him speak for ten minutes

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at a time, without discovering some fallacy or other. The vast flow of words which he is master of, and the thick rich dresses which the wardrobe of his imagination can furnish at a moment's warning, enable him to conceal the greatest deformities, and to give falsehood and absurdity the appearance of truth and reason. I read his late pamphlet with the most jealous eye, and though my judgement was sometimes dazzled with the splendour of his diction on the first reading, I discovered a plentiful crop of false premises and unjust conclusions upon the second.

Having said thus much concerning the nature of the impeachment, as it stood in the last Parliament, chiefly for the sake of those who, not having read what I formerly wrote on that subject, may happen to peruse this, I shall now make some observations on the present stage of this slow and artfully embarrassed prosecution.

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A question will soon be agitated, whether the proceedings shall be renewed or discontinued. The arguments in favour of renovation or continuance are principally these :

1. It must be for the advantage of Mr. Hastings that the trial should proceed, because, without an acquittal, his character will descend to posterity, not in such fair colours as it ought to do, if he be innocent.

2. That the present House of Commons is in honour, if not in law, bound by the resolutions of the last.

3. That to suffer crimes of notoriety and enormity to escape without punishment, would lower the dignity of the British Parliament in the eyes of all Europe; and in the opinions of the native princes and inhabitants of Indostan, it would amount to a denial or failure of justice.

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4. That Mr. Hastings's escape by the dissolution of Parliament would prove an encouragement to future offenders to spin out their trials by procrastination and delay, so as to extend them beyond the life of one Parliament.

5. That to discontinue the proceedings on account of past delays, and the probability of future, would be to reflect on the conduct of the late Managers.

6. That strict justice ought to be done, let the difficulties be ever so many or so great, and let the consequences be what they may: *Fiat justitia, ruat cælum.*

These are the principal reasons I have yet heard urged in favour of renovating or continuing the prosecution. I shall now examine them one by one in the order in which I have set them down.

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In regard to the first, I readily agree that it would be for the interest of Mr. Hastings that the trial should go on; but there are certain provisos requisite, without which it must be an irreparable injury. These provisos are, I fear, unattainable. The first requisite is, that there should be a moral certainty, or, at least, a very strong probability of the trial's ending in the space of one Session of Parliament. This is, in its own nature, unattainable. It would derogate from the dignity of both Houses, to enter into a compromise with a prisoner at the bar. It is also incompatible with the very nature of supreme Courts of criminal justice, to fix limitations to the number of charges, and to set bounds to their own authority. The only possible method of shortening the duration of Impeachments, without infringing on the rights of one House or the other, would be, by an exercise of the royal prerogative, to keep the Parliament fitting, without any prorogation, till the trial

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trial

trial should be ended. But Mr. Hastings is not of consequence enough to expect such an exertion in his favour. He has no right to hope that all public business should be suspended, and his case to be the only subject of Parliamentary attention. The Lords have hitherto avoided sitting in Westminster Hall during the severest part of the winter, for their health's sake; and in the spring, which is the only season that has been devoted to this trial, they have not leisure to sit more than two or three days at farthest, in a week. The experience of three years proves that twenty-three days, on an average, are the most that can be given to Westminster Hall in one session; for in three years the Lords have sat just sixty-nine days. Arguing from what has been to what must be, we may fairly conclude, that more than the number above mentioned cannot be allotted to this trial for the three years to come. In estimating the probable duration of the trial, I shall not follow

low the example of a gentleman, who made it appear that upon the present system, it could not end in less than forty years.*

But I will take what I have heard for granted, namely, that the late Managers, if re-elected, would abandon all the remaining articles, except one, namely, that of contracts. We all saw that the last charge, viz. that of presents, occupied the space of two Sessions of Parliament in the prosecution only. Now the charge of contracts is in its own nature capable of much more amplification than that of presents. The latter divided itself into only two heads, that of avowed, and that

* This gentleman's calculation was founded upon false premises. The true way of calculating the trial's duration by analogy, is this: the first two charges were got through by the prosecutors in one session; the next article has taken up two years, and we may reasonably allow the same time for the next, which will make up four years for the second pair of articles. Here we discover the ratio of increasing retar-

that of concealed presents ; but the former will resolve itself into four heads, there being that number of contracts to be inquired into. There will consequently be a much wider field open for evidence and declama-

retardation, or which is the same thing, the decrease of velocity. But we find the ratio to be in geometrical progression, that is, every pair of articles requires four times as many years to be got through, as their immediate predecessors did ; this being settled and the rule established, the calculation stands thus : There are twenty, or ten pair of articles in the whole.

1st	Pair of Articles,	1	Year.
2d	Ditto	— 4	Ditto.
3d	Ditto	— 16	Ditto.
4th	Ditto	— 64	Ditto.
5th	Ditto	— 256	Ditto.
6th	Ditto	— 1024	Ditto.
7th	Ditto	— 4096	Ditto.
8th	Ditto	— 16384	Ditto.
9th	Ditto	— 65536	Ditto.
10th	Ditto	— 262144	Ditto.
Total		349525	Years for the prosecution only.

This may appear laughable, but I insist upon its being the fairest calculation yet made, if we are to reason by analogy.

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tion, as must be evident to every one who considers that it will be necessary to examine the price of the articles contracted for, by way of ascertaining the profits of the contracts. It will lead also to an inquiry into the characters and responsibility of the successful and disappointed candidates, in order to show why a preference was, or should have been given to the proposals of this man or the other. It will be necessary also to trace the history of former contracts, and to show the customs and usage of government in like cases, and to compare the whole with the orders from the direction at home. A thousand other difficulties will occur which I have not time to point out, nor the ability to foresee. Every one who has heard or read the speeches of the late chief Manager, and some of his associates, knows, that either of them can speak four or five days upon the most trifling subject. We are all certain of their powers, and what reason have they ever given us to suspect their inclinations ? Two years would not finish the prosecution.

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secution upon this one article of contracts, even if the future Managers should be more economical of their oratory than their predecessors. After this must come the defence of four charges, which, on the defendant's side, may take three or four years more, and this defence must be followed by a replication, which will require a year or two more at least. These estimates taken together, amount to a greater length of time than Mr. Hastings can afford to spend, from a life already so far advanced, under the torture of hopeless persecution.

Another proviso is also requisite to make it a desirable thing for Mr. Hastings that the trial should proceed; viz. that the accusers and accused should be nearer upon a footing at the bar of the House of Lords, than the Commons seem willing to admit. It is in vain for a Lord Chancellor or a High Steward, to tell the prisoner to be of good cheer, and not to suffer depression from the weight of his accusers, if the defendants and prose-

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cutors are not intitled to the same indulgences from the Court. The very doctrine of *Lex et Consuetudo Parliamenti* is sufficient to discourage any prisoner from placing much confidence in his own defence. For what is this *Lex et Consuetudo Parliamenti** but a right claimed by the Commons to settle their own privileges, not in a fixed and invariable code made for general purposes, but according as occasions may arise? The judges would not take upon them to declare what were the privileges of Parliament, but left each House to settle their own. But even this power of fixing their own privileges would not be so dangerous to the subject, if they were so settled and reduced to

* The definition of this law and custom, according to Vaughan, who was a strong advocate for it in the case of Lord Clarendon, is, *Lex ab omnibus quaerenda, à multis ignorata et à paucis cognita*. If for *paucis* we read *nemine*, the definition is admirable. But I apprehend that *paucis* signifies the leaders of the prevailing party in the House of Commons, and if so, the true meaning of *Lex et Consuetudo Parliamenti* is, the privilege of making privileges.

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writing as to enable any man to say, Thus far Parliament may go and no farther. Unless the object of accusation could discover the *ne plus ultra* of the power of his accusers, the contest with such a body is like fencing without a foil, or fighting without a sword with an experienced gladiator. I believe there is no instance of an acquittal upon a Parliamentary impeachment, and if there is, I cannot call it to mind at this moment. There are many instances of impeachments inconsiderately undertaken and discontinued upon various pretexts, and some cases where impeachments have ended in bills of attainder. But if a prisoner were acquitted, the Commons may impeach again. Should any House of Commons ever consider it as derogatory to their dignity to be defeated by an individual, they may renew and persevere in their prosecutions till they have crushed him to atoms. Let the reader reflect for a moment on the inequality of the contest between the House of Commons and an Individual. Twenty Managers of select
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abilities, aided by a number of common and civil lawyers, opposed to a prisoner and three counsel. The former invested with powers to call for what papers they please, to send for and examine what witnesses they think proper, and to make use of the public purse for defraying the expences of the prosecution. The prisoner has none of these advantages. I could enumerate many more on the side of the prosecutors; but they are so obvious to every one that reflects, that it were a loss of time to do it. It has been asked, what are Mr. Hastings's wishes on this subject, and why do not his friends come forward upon the occasion? In my opinion, it matters very little what he wishes or desires. The votes of the House of Commons ought not to be influenced by considerations of this nature. Those members who think him guilty of such crimes as deserve everlasting punishment, who think him deserving, not only what he has suffered, but all that ingenuity can make him suffer, will and ought to vote for the
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renovation or continuance of the prosecution. But those who think him guilty of no crime, or that his past sufferings have more than expiated his offences, together with those who think it incompatible with the genius and spirit of the British laws, that a man should be upon trial for his whole life, will, doubtless, vote against it. I do not know what Mr. Hastings's wishes are upon this question; I have heard him say, that no man should know his sentiments, a resolution wisely adopted, and which he should have adopted four years ago. After the Commons had loaded their Journals with criminal allegations against him, he by his friends expressed a wish to be impeached, in order that he might have an opportunity of answering the accusation. Little did he think at that time, that so far from obtaining the object of his wishes, he was supplicating his own misery and destruction. Let him, however, benefit from experience, and take care how he becomes accessory to his own injuries.

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With regard to the retrieval of character by acquittal, I can only say that *vita summa brevis, spem nos vetat inchoare longam*. The prospect is too distant for the most sanguine hope, even if it were resolved to let him enter immediately on his defence. It would then be a work of three years, at the very lowest computation.

I know that some people will say, that I have over-rated the time, but I must again appeal to experience as the foundation of probability. Let us recollect, that the late Managers spent twenty days in making fine speeches, and eleven days in debating upon the admissibility of evidence. The subjects for dilatation will be more in number, and more ample in substance than those that have already occurred. So much time has elapsed since the speeches were made, that the impressions are nearly effaced, and will consequently require to be made anew. There will be all the characters of the defendants witnesses to be cut up, and their testimony

mony to be invalidated and explained away. The speeches of Mr. Hastings's counsel, which will doubtless be very long, must be answered. A variety of circumstances will arise to occasion delay; circumstances which cannot be foreseen or prevented. As many or more, if the Managers are so inclined, may be designedly created. At the rate of twenty-three days for one session, all these things cannot be accomplished in less than three or four years. I am not conscious of having used any exaggeration, and I do defy any person to impeach the probability of my predictions or the justice of my conclusions. It may be said, for I have heard it said, that the House of Commons will take care that no such delays shall happen in future. But great and powerful as that House is, they are not equal to the task. When the late chief Manager and his colleagues are re-appointed, what power upon earth can put the bridle upon their tongues, or limit the length of their speeches? There must be in the conducting of state trials so much

much left to the Managers; that they may protract and procrastinate just as much as they please. There is no remedy but that of changing them, and that would amount to an annihilation of the proceedings, or at least to a discontinuance of the suit. The observations which the late chief Manager made upon the reproof given him by the then House of Commons for charging Mr. Hastings with the death of Nundcomar, are fresh in the memories of all who heard him.

Under these circumstances, Mr. Hastings cannot wish (at least I should think so) for a renovation of the proceedings. In regard to his character, he must leave it to the candour of posterity, who having no personal resentment against him, no danger to apprehend from his acquittal, may be inclined to think (what most disinterested people do at present) that the written testimonials of the natives over whom he presided, with respect to his moderation and justice, and the evidence

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and admission of his enemies with respect to his services, are a full refutation of oratorical abuse, and illiberal, studied invective. The character of his chief accuser, high as it may stand for great talents and literary accomplishments, will weigh not very heavy in the scale of popular opinion, when opposed to the plain affirmation of knowledge and integrity. It will be remembered, that he who contradicted the testimonials of thousands in favour of that governor general, whom they venerated and adored, had effrontery enough to contradict the oral testimony of millions groaning under the oppression of an arbitrary government. It will be remembered, that he who raised his voice to the utmost pitch for the liberty of America, employed his prostituted pen for the enslaving of another kingdom. Biographers will publish the history and anecdotes of his life; and in comparing his orations and writings with each other, they will be struck with the glaring contradictions

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tions and absurdities of his various tenets and opinions. Posterity will see in his character little to commend, much to admire, but infinitely more to lament and reprobate. From the aspersions of such men there is little to apprehend on account of future reputation. It is, however, a serious evil to have such a mass of criminating matter, wherein there is little intelligible, except the terms of abuse, left standing against an accused person on the Journals of the Lords, without an answer or attempt at refutation. But great as this evil may be, it is still a greater to be fixed to the bar for life, without a gleam of hope, or the most distant prospect of conclusion.

The next reason for continuance is, that the present House of Commons is in honour, though not in law, bound by the resolutions of the last.

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It may be easy enough to make a pathetic speech upon this subject, and to represent a dissolving House of Commons in the character of a dying father conjuring and admonishing his heirs to go on with a law suit which he himself had undertaken for some capricious reason or other. I am, however, much inclined to think, that as soon as the litigious father was interred, most people would advise the heir to examine well the grounds of litigation, and unless there were more weighty reasons for continuing than abandoning the prosecution, to let it drop immediately upon the father's death. I think no rational being would carry his ideas of filial obedience to the request of a dying father, so far as to violate the first precepts and injunctions of Christianity. But a comparison of this kind is no ways applicable to the case of a dissolved and a succeeding parliament. If the latter were bound in the smallest degree by the votes of the former, it would prevent the repeal of detrimental statutes,

statutes, and the amendment of every error whatever. The laws of Great Britain would become like the laws of the Medes and Persians, fixed and unalterable. The doctrine is so absurd, that I would as soon set about a serious demonstration of the existence of light and darkness, as undertake a refutation of so palpable an absurdity. I should suppose, that the gentleman I have often alluded to, in his wildest and most eccentric flights, would not maintain so absurd a proposition, as that a succeeding Parliament is bound, either by honour or law, to accede to the votes of their predecessors. Certainly the former ought to examine before they reject, in the same manner as they satisfy themselves of the inexpediency of a statute before they repeal it. The last House of Commons are not entitled to an extraordinary degree of credit; for that they did vote contradictions, is clear beyond a doubt. The present House, when the India minister brings forward his budget, will, probably, have

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have their assent called for to similar propositions. They will vote India to be in a flourishing state in the evening, and the next morning they may go into Westminster Hall to tell the lords, that Mr. Hastings has ruined the provinces of Bengal and Bahar beyond the power of restoration. Many specious arguments may be made use of to entrap unwary members into a belief, that having voted the existence or dependence of an impeachment, they are bound by honour and a just regard to consistency to go on with it. But let it be remembered, that the right and the expediency of enforcing that right, are as distinct as two propositions can possibly be from each other. In examining the question of expediency, the House will, probably, recollect that the leaders of the two parties, which then generally opposed each other, were divided in their opinions with respect to the points of criminality. Both agreed there was something criminal, but what that something was, they could not

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not settle among themselves. It was urged as a reason why the abstract question of abatement or dependence of an impeachment on a dissolution of Parliament, should be discussed separately and without reference to the particular case which gave rise to the question, that if that disjunctive mode were not adopted, it would be impossible for posterity to know upon what basis the resolution was founded. The votes of some might be influenced by one consideration, and some by another. Some might vote against farther discussion from despair of ever seeing the trial ended. Others from humanity towards the prisoner; and others, because in their opinions a dissolution of Parliament extinguished an impeachment. These arguments had deservedly much weight; but it is to be lamented, that the same objections had not been made to that sweeping vote, which passed upon the Benares article; for in that instance, though a majority of thirty-nine agreed that there was something criminal

criminal in one allegation or another, yet, had the allegations been discussed separately, there would not have been a majority in favour of criminality in any one point or allegation in the whole article. There is scarcely a man living whose conduct, even for one day, would bear such a scrutiny as Mr. Hastings's has undergone in this impeachment. You will scarcely ever find a person who does not discover something wrong in every transaction which he analyzes and examines. Suppose the minister on a late occasion had been compelled to lay before the public the whole process of the convention; has any person a doubt but that the ingenuity of his enemies would have discovered something really or apparently reprehensible in his conduct? I believe it is a maxim that admits of no dispute, that no minister can hold his situation in this country longer than he can keep a majority to support him in both Houses; and I think it is equally clear, that no minister

nister would keep that majority long, if he were obliged to expose every transaction, with all its concomitant *minutiae*, to public investigation. The reason of this is, that let a Minister's conduct be as intentionally pure as the snow upon the mountains, it would be easy for those who envy his situation, to give his actions such a colour and hue, as must unavoidably render him unpopular, and consequently drive him from his place. When I consider how the enemies of Mr. Hastings have had access to all his public and much of his private correspondence, how they have ransacked every secret abyss and corner for matter to bring against him, it is really a miracle that they have not been able to find something better to lay hold of, than any thing they have yet urged against him.

The reasons which I have already stated, are sufficient of themselves, but I could bring many more, why the present House

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of Commons, before they determine to recommence the prosecution, should accurately examine every article and allegation. If they hastily adopt them as their own, the chief Manager may at a future period tell them, as he did their predecessors, that the impeachment was as much theirs as his. He might consider them as answerable for every mistake that had crept into the articles. And, doubtless, they would be so in fair and true construction. It would be founded forth to the world, that the adoption of the articles by the present House of Commons was an undeniable proof of their truth and importance. It would be used as an argument against the prisoner in one House, and very possibly at some future time against those who adopted the resolutions in another. It is very reasonable to expect, that those who took an active part in bringing this impeachment forward, will use every argument, however fallacious, to prevail with the present House to give it their

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their unqualified approbation and adoption. But surely it is quite the reverse with respect to the new members, and to those who either voted against it, or took no active concern in its success; it would be not only an act of injustice to Mr. Hastings to adopt the trial without examination, but a breach of that duty which every representative owes to his constituents. The great use of changing our representatives, is to give the people an opportunity of rejudging their deputies, and of correcting the errors of their old representatives, by subjecting their acts to the revival and judgment of their new.

The third reason for the continuance of the impeachment is, that if crimes of such notoriety and enormity are suffered to escape unpunished, it would lower the dignity of the British Parliament in the eyes of all Europe; and in the opinions of the princes and natives of Indostan, it would amount to a denial or failure of justice.

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With respect to the diminution of dignity in the eyes of all Europe, I have this to remark, that were a question stated abstractly, can it become the dignity of an individual, of a body corporate, or of any assembly of people whatever, to carry on a criminal prosecution against one man, for the same crime for seven years or longer? I think there could be but one answer given to it.

Were another question stated in the same abstract way, does it become the dignity of a Prince, of a Ministry, of a Parliament, or of any ruling body, to employ a servant in a high station, necessarily invested with many discretionary powers for a great number of years, and after he has resigned his office, to bring him to trial for actions which his superiors had been informed of regularly, and which had received the avowed approbation of some of his superiors, and the tacit implied approbation of all? I think there could not be two answers given to this

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this question. How then is it possible that the dignity of Parliament can suffer by the abandoning of such a prosecution. But it must reflect upon the wisdom of our ancestors in the eyes of all the world, when it is considered, that it is not repugnant to any written law which they have established, for a man to be kept upon his trial for one and the same offence for his whole life. It is seldom that laws are enacted in any state till occasion calls for them. Our ancestors saw many oppressions by the crown, and they guarded against them, but there never existed an instance before the present one of crushing a man by the bulk, not by the specific weight of accusation. For this reason they made no statute of limitations with regard to Parliamentary impeachments, but surely now the evil does exist, it calls aloud for remedy and redress. Our Parliamentary ancestors acquired infinite honour to themselves, and conferred an inestimable obligation upon their grateful posterity, by their

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their successful struggles in favour of liberty against the despotism and tyranny of Kings; and our cotemporary legislators would acquire equal honour to themselves, and confer equal benefit upon us and our posterity, if they would frame such a statute or law, as would prevent themselves or their successors from carrying their resentment and vengeance beyond the bounds of reason and justice.

With respect to the opinions of the princes and inhabitants of India, I would advise those who think that the honour of Parliament would suffer in their eyes, if Mr. Hastings's persecution were dropped, to recollect the testimonials which these princes and inhabitants sent over in his favour about two years ago. I would then ask the supporters of this argument, whether this nation would think it derogatory to the honour of his Majesty, were he to grant a pardon to a prisoner under sentence of death, in consequence of a

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petition signed by many thousands of his most respectable subjects? But the case of Mr. Hastings is much stronger, for the natives of India do not ask a pardon for him for offences committed, but they say he has done nothing to make him stand in need of it. In order to enter in the opinions of other men, we must reduce our own knowledge down to the standard of theirs, or raise them to the same level: we must take up their prejudices in favour of their own laws and customs: in short, we must place ourselves as nearly as possible in their situations. To exemplify this, let the reader suppose himself one of the India Princes or Zemindars who signed the testimonials; he is told, that after Mr. Hastings had quitted his government, he is impeached for cruelty and oppression committed in India. Conscious of the falsehood of the accusation, and knowing that Mr. Hastings's administration, when compared with any other he had ever seen, was lenient in the extreme, he signs a testimonial of his good

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conduct and petitions in his favour. Afterwards this Indian Prince is told, that his testimonial was not attended to, that those who could know nothing of the matter, were believed in preference to those who alone could know any thing about it. Suppose farther, that this Indian Prince should hereafter be told, that this governor, whom all India loved and adored, was kept upon his trial for eight or ten years, and lastly died from anxiety and despair. What ideas must he entertain of English laws and English justice? With such a view of our boasted constitution, (and this is the only view an Indian can take of it) would he not prefer the speedy sentence of Nader Shaw, to the lingering justice of a British legislature? What must a Mahomedan Cazy or Musti think of our doctrine of evidence, when he compares it with their own? In their courts of justice, the strongest proofs are requisite to establish criminality, but when the Cazy is told, that with us a man may be convicted

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of oppression upon the evidence of those who neither saw nor felt, in defiance of the testimony of those who must have seen and felt, had the oppressions been committed; can he fail of treating our doctrine of evidence with contempt and abhorrence? I do not say that such is the doctrine of evidence among us, in all cases; but with the knowledge which the Indians possess, and from the premises which are before them, they can make no other conclusions.

What can we reason from, but what we know?

Pope's Essay on Man.

The spirit of the Mahomedan laws, both ecclesiastical and civil, is that of lenity. Captives taken in war are always saved by conversion to the faith, and murder itself is not punished with death, even in a slave, if the heirs will accept, and his master pay the stipulated fine.* What opinions, then, must the Mahomedans entertain of our laws, when those who are sup-

* Vid. Hedaga, a Mahomedan law book, translated by Mr. Hamilton, and now in the press.

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posed to have been injured, are not only prevented from remission of the injuries, but are not suffered to bear testimony in favour of the accused, that no such injuries were done to them? Such ideas, as I have described, the natives of India now entertain of this prosecution. I have heard gentlemen who have lately returned from that country declare, that none of the Indians believe that Mr. Hastings is really prosecuted on account of any thing he did in India: they say, it may serve as a pretext, but the real cause must be very different from the ostensible one. In that opinion they are not singular; for I have heard many people throw out suspicions very unfavorable to the moral characters of some of his accusers. They say, that the *amor justitiæ* never exaggerates, that the man who really loves and seeks justice, will endeavour to convince the judgment, not to inflame the passions; he will take care whilst he is doing justice to one person, not to do an act of still greater injustice to another. I think I have

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have sufficiently shewn, that it will be no diminution of honour to the present House of Commons, in the eyes of neighbouring states, nor in the opinions of the princes of India, if this prosecution be discontinued; on the contrary, I have proved, that the long duration of this trial has brought into view an imperfection in the Constitution, which has, till now, remained undiscovered.

We all understand the meaning of the words *honour* and *dignity*, but we are not all agreed, where to place them. In my opinion *true honour* and *dignity* consist in solid and substantial justice, and as there can be no justice in crushing an individual by a long and indefinite prosecution, so there can be neither honour nor dignity in doing it. I know it will be said, that it is disgraceful to Parliament to be baffled by an individual in their pursuit of justice. The proposition is true; but the present case does not

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come within it. If the articles were injudiciously drawn ; if they comprehended a great deal of irrelevant matter ; if they included all the acts of a long administration ; if they were from their unweildy and unmanageable bulk, from their want of shape and form, totally unfit for a court of justice, who are the parties to blame in this transaction ? Surely Mr. Hastings cannot be blamed for things in which he had no concern. The articles were drawn by a Committee, and no doubt the late chief Manager had a principal share. If we portion out the particular shares of blame, they will be divided in this way. The gentleman just alluded to was very injudicious, and shewed vast want of technical skill in his profession, in framing such unweildy articles. The Committee shewed want of judgment or of attention in not correcting the errors of their chairman. And the late House of Commons paid too high a compliment to their Committee, when they
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voted the articles without more examination. These are errors no ways imputable to Mr. Hastings. But that they are errors, and very grievous ones, no man will take upon him to deny. Here I would ask the most zealous advocate for continuing the impeachment, whether there be either honour, dignity, justice, or any thing laudable in persevering in error and mistake. I know that every argument will be urged that ingenuity can invent, to make the present House of Commons believe that their honour is committed ; and the true cause of making this attempt is, that the articles cannot be abandoned without an implied reflection upon him that framed them. But the questions for the consideration of every member are these : Shall we prefer justice to injustice ? Or shall we sacrifice our own honour to save that of another man ?

The fourth reason for continuing the impeachment is, that if Mr. Hastings be suffered

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ferred to escape by dissolution of Parliament, it will encourage other offenders to use the arts of delay, and to defeat justice by protracting the trial beyond the life of one Parliament.

This objection to discontinuance has no weight, for the Commons may renovate process if they think fit. Besides, no one can impute delay to Mr. Hastings. It has been said, in answer to the complaints made by his friends on the score of delay, that he might have defended himself article by article, and that it was the wish of the Managers that he should do so.

A proposal of that kind never would have been made, had not the Managers seen in it great advantages to themselves. They would have had the advantage of turning the admissions in his defence upon the first article into evidence to criminate him upon the next. It may be said, that actions really
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innocent cannot be tortured into criminality; and that a man ought in strict justice to be punished for crimes, let them be brought to light how they may. This is undeniably true when applied to crimes that are in their own nature criminal, and perhaps it may hold good, when applied to positive or prohibited crimes; but by no means when applied to *ex post facto* criminality, such as the taxing of a zemindar, who in the opinion of some was not taxable. But all the crimes imputed to Mr. Hastings are of that nature. They are merely speculative; such for example, was his receiving money for the use of the Company, under an idea that the law sanctioned it. To make the very worst of that offence, it amounts to no more than an involuntary mistake, which cannot be classed among the *mala in se*, nor the *mala prohibita*. When mistakes, not only perfectly innocent, but highly beneficial to his country, are tortured into acts of inexpiable criminality, surely the
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accused is justified in withholding from his accusers all the information he can. Notwithstanding these unfair advantages taken against him, Mr. Hastings, of himself, would not have objected to the mode of trial proposed by his accusers. The objection was made by his counsel, who, in contending for the present mode, acted as all other professional men would, that is, insisted upon that which the law allowed them, and they thought most advantageous to themselves in conducting the defence. It was lately urged as an argument in favour of proceeding with the old articles, rather than to begin *de novo*, that it would be an injustice to the accused, for the prosecutors to avail themselves of his defence, in the constructing of new charges. But the great evil which would have lighted upon Mr. Hastings, had the mode of trial proposed by the Managers been acceded to or decided in their favour, is this; he would from that moment have been certain of being condemned,

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or he must have fought through the whole twenty articles. For had he been acquitted upon nineteen, they would have tried the twentieth. One of the Managers, who is well versed in the doctrine of chances, and who was the proposer, if not the contriver, of this new mode of trial, knows very well, that if the chances upon any one or every one of the articles taken separately, were nineteen to one in the prisoner's favour, there would be almost a certainty of convicting him upon one or the other of the twenty. He knew very well, that no man either in public or private life can conduct himself without some faults, and he knew also that there was nothing so white but himself and his colleagues could tinge it with black.

It is impossible for the ingenuity of man to charge Mr. Hastings with delay, or being the cause of delay.

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The fifth objection I have heard to discontinuance, is, that to abandon the prosecution upon account of the past delay and probable future, would reflect upon the conduct of the late Managers.

I have shown already, that more respect is due to substantial justice, than to the character of any individual whatsoever, and I could make it evidently appear, if it were necessary, that the resolutions of the last House of Commons, though moved by the chief Manager himself, did bear very hard upon his own character. For what was the purport of them? It was to enable the Managers to lay down a load which their own indiscretion had laid upon their own shoulders. It was a tacit acknowledgement that they had overloaded the articles.* To blind

* If any other man had done this, the chief manager would have compared him to the voracious glutton discharging the superfluous crudities of an overloaded stomach.

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the eyes of the public, and to cover their own errors, they talked about the avocations of the judges; but they must have been very ignorant indeed, if they did not know that the judges must devote part of their time to their other duties. When circumstances arise, which no human sagacity can foresee or guard against, there is some excuse for miscarriage and failure of success, but when all the impediments are obvious and irremovable, there can be no excuse pleaded for undertaking what cannot be performed. The wisdom of those who drew the articles, may be compared to that of a man who begins to erect a palace, with not money enough to build a cottage. It is true, the chief Manager in his late pamphlet, ridicules reason and calculation; but I cannot help thinking that calculation, had he condescended to accept its assistance, would have been of great use to him in drawing the articles in this impeachment. It would have saved him from a disgrace,

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which it is not in the power of this House of Commons to wipe away from him, whether they adopt his articles or not. His misconduct may be of this use; it may prove an useful lesson to future Parliaments to employ in serious undertakings men of judgment, instead of men of fancy and imagination. I hope I shall not incur the displeasure of the present House of Commons, when I say that their predecessors proclaimed to the world their own errors, when they determined to abandon sixteen parts out of twenty of their accusations; and they proclaimed their own injustice, when in the very act of abandoning them, they insisted upon their truth and importance. The chief Manager must have felt himself very uncomfortable, when he made the motion for abandonment. He exposed himself to a very just rebuke, had any member thought fit to give it to him. He might have been thus addressed: “ You have persuaded us to
 “ vote twenty articles; you assured us you
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“ would substantiate them all; you drew
 “ them yourself, and you had the aid of
 “ what counsel you thought fit to ask for and
 “ to consult. We placed our confidence in
 “ you and your associates; you have wasted
 “ our time in voting the articles which you
 “ now want to abandon; you have put the
 “ prisoner to a vast deal of unnecessary trouble and expence in answering them, and
 “ you now come to tell us, that we have
 “ voted more articles than can ever be
 “ tried in the life of man. The excuse
 “ you make, is, that the judges must devote
 “ some of the time to the courts
 “ of Westminster, and they must go their
 “ circuits. All this you knew before.”
 Had any member made these observations, I see but one way of answering them, namely, by ribaldry, a method which the gentleman I allude to, always uses as a substitute for reason, when reason will not answer his purpose.

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It has been said, that the late chief Manager is as much upon his trial as Mr. Hastings. If this means his character only, I admit it; but I do not see how his character is more concerned than that of every other leader of a parliamentary Impeachment. All impeachments are planned, contrived, and brought forward by a few, but they are adopted by the many. In the present case the members of both sides of the House pinned their faith on the sleeves of their leaders, viz. the ministerial members on the minister, and the opposition members on the chief Manager. The latter in conducting the prosecution committed his own honor and veracity more than was necessary. He went out of his way to do it. The story of Deby Sing was not in the articles. It was not in the votes of the Commons: it was not in their instructions. I never yet heard the warmest advocate for the gentleman in question, attempt to defend his conduct in this business. It has been considered by every

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body, as contrary to the principles of justice to blacken the character of the accused, with sudden and unexpected charges, totally foreign to the point of issue, even if they were true. But there was a fallacy and a deception made use of in the statement, which can never be too often or too much exposed. The gentleman "would not have believed it, had it not been upon the Company's records." The idea which public records impress on an English mind is, that a suit has been tried, and is recorded. But what was upon the Company's records? Nothing more than that Mr. Paterfon had collected a number of *ex parte* complaints from the insurgents at Rungpore, and transmitted them to the Board at Calcutta, and thence they were sent home. The truth of these complaints had never been inquired into, and were no more proved, than an indictment for an assault can be said to be proved, the moment the clerk has filled up the blanks in order to present the bill to the

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grand jury. The papers collected by Mr. Paterfon were no more matters of record than bills of indictment are before the grand jury has seen them; this the chief Manager knew very well, but he gave them the authenticity of records. The story of Deby Sing is the grand point upon which the gentleman's character for veracity is staked, and this never can come to a decision by the Lords without a new charge voted by the Commons. It is therefore evident, that to continue the trial for the sake of knowing whether a great orator be a calumniator, is of no use, since if the object were of much greater importance, it is unattainable.

The sixth reason I have heard urged for continuing the trial is, that substantial justice ought to be done, let the difficulties be ever so many or so great, and the consequences what they will. *Fiat Jusitia, ruat*

Cælum

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Cælum. To this proposition I agree: but then the present House of Commons ought to be well assured that there is a *dignus Vindice nodus*. The offences ought to be of that serious nature, of that dangerous tendency, and alarming appearance, as may justify the resentment and vindication of such a powerful body as the House of Commons. Great bodies move slow, and it is very fit they should do so; for wherever they fall, they fall heavy. In reading the history of state prosecutions, we are often shocked at the violence of the times, and condemn the mistaken zeal of the accusers. Posterity are always the best judges of the merit and demerit of impeachments. When party considerations cease to blind the eye of reason, nothing is received into the scale, but the evidence and internal criminality of facts. For this reason every member, if he values his future reputation, if he wishes to be thought hereafter the advocate of justice rather than the supporter of a party, will

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from regard to himself, examine well the grounds upon which he assents to the present prosecution. It is absurd in the extreme, as I have fully demonstrated already, in the present House of Commons to pay a compliment to the last at the expence of their own honour and reputation. The very resolution to abandon four fifths of the articles was an unequivocal proof of the want of caution in the last House; for it is impossible for the chief Manager, with all his subtlety to maintain, that they could be both *wisely* taken up and *wisely* laid down. He might as well attempt to bring the two poles together, as to reconcile two such opposite conclusions. This alone, independent of the contradictory votes respecting Bengal, and the numerous testimonials in Mr. Hastings's favour, would be sufficient to justify the present House of Commons in refusing their hasty and unqualified assent to the resolutions of the last. In his endeavour to gain some, the late chief Manager will,

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doubtless, endeavour to touch the feelings of many. He will exclaim against the inconsistency of those who formerly voted for, and now vote against the impeachment. He may talk of turncoats, tergiversation, and various other terms, according as his sportive imagination may suggest them. But there is to be found in the last page of his Reflections on the Revolution in France, and in the very last sentence of that page, a full justification of changed opinion: "*When the equipoise of the vessel is endangered by overloading it upon one side, it is expedient to carry the weight of reason to that which may preserve its equipoise.*" Many members who were formerly persuaded to think Mr. Hastings guilty, might with great propriety vote for the prosecution; but they did not intend to vote for a persecution, and I believe every one will agree, that a three years prosecution is a persecution, and has all the effects of it. A prosecution becomes a persecution whenever it is carried to such a

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length, that if the object of accusation is found innocent, it is not in the power of any earthly being to make him compensation. The present case falls within that description.

There is no inconsistency in departing from the paths of error, nor in withdrawing an abused confidence. Gentlemen, when called upon for their votes and opinions, must give them upon that information which they have before them; but if upon farther examination they find themselves deceived, they would surely be blameable in the highest degree for shutting their eyes against the light of conviction, and persevering in what they know to be wrong. The doctrine of consistency, if consistency means persevering in opinion whether right or wrong, would lead to numberless evil consequences, were it generally adopted. Many commoners, who made part of that House, which voted the impeachment, are now
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Peers, and if they study consistency of opinion, rather than impartial justice, they must condemn the accused at all events. But one would think that a charge of inconsistency would become no man so ill as that gentleman, who of all others is the most likely to make it. I say, the most likely, because it is his interest to do so. The inconsistencies of his political opinions were sufficient to fill a pamphlet many years ago, and if collected up to the present time, would fill a folio. Notwithstanding this, he will be the foremost to brand corrected error with the marks of levity and inconsistency. His motives are as obvious as they are cogent. It is impossible for any man to vote against continuing the impeachment without a tacit condemnation of the chief conductor of it. He anticipates the sentence, well knowing that it will operate against him in the opinion of the world, as much as an acquittal of the prisoner by the lords. It will affect him still more;
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for as it will be more honourable for Mr. Hastings to be acquitted by his prosecutors than by his judges, so it will be more dishonourable for the chief Manager to be abandoned by the Commons, than to be repulsed by the Lords. I know there are those who contend that a dereliction of the trial by the Commons would not clear the character of Mr. Hastings so much as an acquittal by the Lords. But the case is otherwise; suppose him acquitted of the three articles already brought forward, his enemies may say, there are seventeen more, all criminal in the eyes of the last House of Commons, and dropt, not from consideration of probable innocence, but of certain inconvenience in prosecuting them. His friends in answer can only reason from analogy. They may say, that the Managers tried him upon those charges which to them appeared most likely to convict him. This may be answered again; the Commons in a former impeachment (that of

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Lord Oxford) inverted the rule, and chose to try misdemeanours before treasons, and we have therefore a right to suppose in this instance, that they began with charges of the least criminality. An acquittal by the Commons would cure all this, and the innocence of the accused would rest, not upon likelihood and probability, but upon the altered opinions of his accusers.

If I am not much deceived, I have in the foregoing pages demonstrated, that none of the reasons hitherto urged for continuing the impeachment without an attentive re-examination of the articles, have any real weight in them. It cannot be a desirable thing to the prisoner, in any shape; for supposing him sure of being acquitted of the three or four articles, an acquittal of four cannot amount to an acquittal of twenty. But I have shewn, that if the trial commences again, there is not a prospect of its being ended, except by death, during the

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existence of this Parliament. Who can set bounds to the length of speeches, or to the debates upon evidence? There is that kind of equality between the two Houses, which prevents the Lords from curbing the Managers, as the King's Bench may do, when the Crown lawyers take too great liberties. It is true, I have heard it said, and with much appearance of reason, that the Managers are at the bar of the Lords what the King's Attorney General is at the bar of the King's Bench, and intitled to no more authority and respect. This, however, does not agree with the claims of the Managers, who contend that they are clad with the robes of magistracy, not in the gown of solicitation. It is said, also, that if a prisoner be acquitted, the Commons may impeach him again upon the same points of criminality. Now it is not usual to try a man twice upon the same indictment at the suit of the King. With such vast disadvantages, it is a most dreadful thing

thing to enter into contest with so powerful a body.

I have shewn, that so far from its being derogatory to the honour and dignity of the House of Commons, that it is a duty incumbent upon them to examine the conduct of their predecessors in this prosecution; that though the last House joined issue with the prisoner upon the plea of *guilty* or *not guilty*, the present House has not yet gone that length; that, to adopt the articles without due examination, would be an injustice to the prisoner, and a breach of duty to the people; for I think I am justified in saying, that the prosecution of Mr. Hastings is very unpopular. The people are not insensible of his services, nor ungrateful; for how can they doubt of his services, when the acting India Minister has been heard to say, that if Mr. Hastings would have accepted a qualified approbation, or a set-off of merit against

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demerit, he would not have been impeached. The people were for a time misled by delusive oratory and declamation, but the mist of false accusation is dissipated.* They are convinced that it is the man, and not his mea-

* It is curious to observe, that the two Republics Athens and Sparta, which disagreed in most other things, agreed perfectly in this proposition; namely, that Oratory without restraint was an insufferable evil. The former made a law to curb it, and the latter exploded the orator altogether. They both considered all aggravation as a downright lie. Other States in Greece entertained the same opinion of oratory; and permitted no orator to have a share in the administration of public affairs, until his moral character had undergone an examination: and it was also lawful for any citizen to prosecute an impostor, who had found means to conceal his vices from the knowledge of the inspectors. The Spartans had a vast antipathy to long speeches; for when an orator was endeavouring to speak the whole day on various subjects, they drove him out of the city. There was another thing well worth notice in Athenian jurisprudence; The Areopagus sat only in the night, and without light; a regulation, intended to prevent the judges from being prejudiced for or against the

measures, that have excited the indignation of his enemies. Who can think otherwise, when it is recollected that the very system of politics, which was defended the other day so ably in this Parliament, was as much reprobated in the last but one; I mean the scheme for uniting the Indian princes, to crush or reduce the power of that merciless tyrant, Tippoo Sultan. In Mr. Hastings this was a crime, in Lord Cornwallis it is a vir-

the accused. The same court made it a rule to confine the pleader to a simple statement of facts, and allowed him to make no appeal to the passions, in order to warp the judgment. This court of justice was in the estimation of Cicero, (than whom no man better understood the use, and abuse of criminal judicature) so essential to the constitution of the republic, that he gave it as his opinion, that the universe might be as well conducted without the hand of Providence, as the government of Athens to exist without the Areopagus.

Vid. Mr. Mitford's History of Greece, &c.; and le Voyage du jeune Anacharis, by Monsieur Barthelemi.

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tue; the changing of the whole revenue system in Mr. Hastings was a crime, the pursuing of the same system in Lord Cornwallis a merit. Of this nature are all the accusations I have yet seen brought against him. The people begin to see, or I should rather say, have seen for some time, that his enemies are determined to torture, whom they cannot destroy; that if they cannot condemn him by the sentence, they will ruin him by the delays of the law. I never met among Mr. Hastings's greatest enemies without doors, one man who did not reprobate the mode in which he has been prosecuted. What use will it be to acquit a prisoner, when you have ruined his fortune, broke his constitution, and brought him to the brink of the grave? It never can be for the honour and dignity of a House of Commons to carry their vengeance against an individual, who has never injured them, nor his country, to such a length as this has been

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been carried. Take his crimes for granted, nay, admit all the aggravations of his bitterness and most implacable enemies to be literally true, the punishment is greater than the offence; the House of Commons should remember, that the power with which they are intrusted by the people of England, ought no more to be abused, than the power intrusted to the Crown. The laws now in being have no provision against everlasting impeachment by the Commons; but if frequent instances of this kind occur, the people may be necessitated to set limits to the privileges of their representatives, as well as to the prerogatives of their Kings.* What avail Magna Charta and the Habeas Corpus act, if the use of them may be defeated by a new species of prosecution?

* It was a remark of Solon, that the most perfect government is that, where an injury to one man is the concern of all.

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I have shewn; also, in the course of this work, that the continuance of the impeachment must diminish the admiration which has hitherto been paid to our Constitution by foreign nations, and that so far from raising the dignity of the British Parliament in the eyes of Asiatic princes, it must humble it in the extreme. The spirit of divination will busy itself in discovering the real grounds of the prosecution. They will take a retrospective view of Mr. Hastings's administration, and they will say to themselves, "his prosecution cannot originate from the wars which he conducted, for in *them* he was successful; it cannot originate in the revenue, for *that* he has improved; it cannot originate from the fines which he levied on apostacy and rebellion, for *they* were applied to the service of the state; it cannot originate in the acts of government, for he has never transgressed the laws and usage of the country. They will then turn their

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eyes to the examples which have happened in their own times, and before their own eyes. They will recollect the instances of Jaffier Khan, and other delegated tyrants, whose extortions and oppressions filling the royal coffers, laid the foundation of their advancement, in rank and favour; and having never seen an instance of an oppressor being punished for oppression committed for the benefit of the sovereign, they will ultimately arrive at this conclusion; namely, that their late Governor General is prosecuted, not for what he did do, but for what he did not do; not for having extorted too much, but for not having extorted more. This conclusion, and the only one which they can draw from the premises before them, will naturally excite dread and horror of the British government. They will expect that future Governors, taking example from the sufferings of Mr. Hastings, will redouble their exertions to accumulate for

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the sovereign, and to plunder the subject.

But the dignity of the last House of Commons must suffer, not only in the eyes of foreigners both near and remote, but it must abate in the eyes of all those whom curiosity has induced to inquire into the grounds of this prosecution. For though the two leading parties in the last Parliament agreed to prosecute, they did not agree upon the reason why they should prosecute. They cannot agree upon the facts wherewith to charge him; for whilst the leader of the impeachment contends that Bengal is ruined by Mr. Hastings, the India Ministers say, it is of all countries the most flourishing.*

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* The leader of the impeachment, in introducing the first article to the House of Commons, supposes himself speaking to Mr. Hastings thus: "I inquire not into your particular conduct; I am satisfied with the result; I want not to know if you have made two, three, or five hundred thousand pounds; keep

To conclude. I think I have fully demonstrated, that neither the continuance nor the renovation of the proceedings can be of any public service whatever. It may, for any thing I know to the contrary, serve to promote the politics of some, and to gratify the resentment of others; but there the advantages must stop, for I do bid defiance to the warmest advocate for the prosecution, to point out one possible benefit that can result to this country, or to any other, from Mr.

"keep what you have got; you have made a numerous people happy; you have increased the commerce of the country, enlarged the means of wealth, and improved its revenues; in so doing, you have reflected honour and glory on the British nation." These words were spoken hypothetically, and the inference was, that had the provinces in India been well governed, and rendered happy and flourishing, he would not have moved the impeachment. Now we find by the evidence which the Managers themselves called, by the testimony of one of his Majesty's officers delivered in the House of Commons, and by the votes of the House year after year, that what was stated hypothetically, is strictly and literally true; still the impeachment goes on. Who then will say, that the measures, and not the man, are the ground of this prosecution?

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Hastings's acquittal or condemnation. Neither can an acquittal totally restore the credit of the accused, for the late Commons have insisted upon the truth and importance of the articles they intended to abandon; neither can the prisoner's condemnation rescue the chief Manager's character from the charge of calumny and falsehood; for the principal crimes he imputed to Mr. Hastings, are not at issue between him and the House of Commons.

The discontinuance cannot lessen the dignity of this House of Commons in the eyes of other nations, near or remote; neighbouring kingdoms condemn the tedious system of prosecution, and distant ones have petitioned against it.

It cannot affect future offenders from the East, for a new and more effectual Court of Judicature is provided.

The torturing of Mr. Hastings may be a ruinous, but cannot be an useful example.

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It may deter future governors abroad, generals in the field, and admirals at sea, from taking vigorous measures to serve their country in the moment of necessity. They will recollect that there may again exist a ministry capable of applauding and punishing one and the same transaction;* that there may exist a people, who, while they enjoy the blessings that are procured for them, can behold with a torpid indifference, the severest punishment inflicted upon the man to whom they stand indebted for their enjoyments.

* Mr. Hastings is treated by his countrymen with more severity than the Spartan youth, who being alarmed by the noise of an attack made by an enemy on the city as he was bathing himself, caught up a weapon and ran naked into the midst of the battle. The singularity of his appearance made the enemy believe him to be a god, and the consternation occasioned by such a notion, made them easily desist from the attack; the Spartans paid the highest compliments to the zeal and bravery of the young man; they gave him a crown of laurel worth three-pence, and fined him more than he was worth for going into battle without a shield. This young man was the son of that Phœbides, whose ungrateful treatment by his country I took notice of in the Elucidation.

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It cannot be of any use to this country to proscribe and banish superior virtue as it was to the Athenians. A republic, jealous for its liberty, might justly apprehend danger from the popularity of an individual, but in a settled government like this, there can be no excuse for political ingratitude.

It is not a duty incumbent upon the present House of Commons to follow up the resolutions of the last; for if that were a received maxim, it would have been the duty of the last Parliament to follow up the resolutions of their predecessors against the then and present Minister. No reason can be given why the hyperboles against Mr. Hastings's proceeding from the same ejaculating lips should have more weight and credit, than when they were directed against the British Minister.*

Upon

* "Let no man talk of the decaying energies of nature; all the acts and monuments in the records of peculation, the consolidated corruption of ages, the

Upon a question of this kind, it is hoped that every member will exercise his own judgment. We all know that in great national questions, such as the imposing of taxes, approving of conventions, and the like, the minister must be supported, or his administration is at end. But in a question of impeachment, I do not see any particular interest that a Minister can have in its decision one way or the other, unless he thinks that his own strength consists in the weakness of his opponents, and that to render them weak, he must make them unpopular. The minister, however, may recollect, that what renders the opposition unpopular, will not gain him an augmentation of esteem. That this prosecution has diminished the popula-

"the patterns of exemplary plunder in the heroic times of Roman iniquity, never equalled the gigantic corruption of this single act. Never did Nero, in all the insolent prodigality of despotism, deal out to his prætorian guards a donation to be named with the largesse showered down by our Chancellor of the Exchequer, on the faithful band of his Indian Sepoys." Mr. Burke's Speech in Parliament.

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rity of the gentlemen called the opposition, is a fact beyond all dispute. They feel the effect too sensibly to deny it; even the chief Manager has been heard publicly to lament the growing disrepute of the impeachment.

I have now only to request the reader to consider what I have written, as coming from a person who owes no obligation to Mr. Hastings; who never espoused his cause through gratitude for past favours, nor expectation of future; who, though he courted not his smiles whilst in the plenitude of his power, and in the exercise of a most extensive patronage, has voluntarily and without solicitation joined the standard of his defence, in the day of his adversity.

I here again repeat what I said in the Elucidation, that I never should have written seriously on the subject, had I not found, from every conversation I ever heard concerning the impeachment, that the facts
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were totally obscured in the smoke of invective and aggravation; but as I was careful in the work above mentioned, to state no facts, but what were well authenticated, so I have been cautious in these sheets to advance no proposition that had not the assent of my heart and the sanction of my most deliberative judgment.—I am not the advocate of Mr. Hastings, but the advocate of justice, and had I not from frequently attending at Westminster Hall, from reading a variety of documents, and from Mr. Hastings's general character in India, strengthened by my own observations, been fully convinced that his merit infinitely exceeded his demerit, and that the clearest and most impartial elucidation of his conduct would be the strongest and most effectual defence, I never would have written one line in his vindication.

Should this pamphlet attract the notice of the late chief Manager or his associates,
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they will probably say of the friends of Mr. Hastings, that the nearer he approaches to his defence, the more they are alarmed for his safety. This, however, like most of their assertions, is without foundation.—I disclaim the knowledge of Mr. Hastings's wishes as to the continuance of the proceedings, but I never looked forward to a future event with a stronger confidence in the spirit of prediction than I do to this, namely, that if the present House of Commons re-appoint the late chief Manager, they will find that they have granted him an *estate in prosecution*, determinable only with the political lives of the grantors, or with the natural decease, either of the granted or of the grantee.

T H E E N D.