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A  
LETTER  
TO THE  
RIGHT HONOURABLE  
LORD ERSKINE,  
ON THE  
INCONSISTENCY  
OF HIS  
PUBLIC CONDUCT AND OPINIONS.

BY HUMPHREY FRANKPLEDGE.

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“ A fire is often kindled with a little straw, which oftentimes takes hold of greater timber, and consumes the whole building.”

RALEGH.

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LONDON:  
PRINTED FOR C. CHAPPLE, 66, PALL MALL.

1810.

[Price 2s. 6d.]

**LETTER,***&c. &c.*

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MY LORD,

**T**HERE are times and seasons when it would be almost criminal for a man who has any regard for his country to hold his peace; or from any motives of respectful delicacy towards others, and of diffidence in himself, to let the indiscreet conduct of his superiors pass without notice and animadversion. When that conduct has a tendency to encourage bad principles, or to give a colour and sanction to bad practices, it becomes a paramount duty in every honest citizen to remonstrate boldly with the person who debases himself by courting the applauses of the vicious, or lends the authority of his name and opinion to the clamours of the discontented and factious part of the community.

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We are unhappily fallen upon such an evil time, and so portentous is the aspect of the political horizon at the present moment, that the strongest minds cannot help being astonished at the presumption with which the most venerable institutions are assailed; while the meek and contented members of society are alarmed at the violence which disturbs the public peace, under the pretended plea of promoting the public good.

For the space of twenty years has the Continent of Europe been shaken from one end to the other by a succession of the most tremendous convulsions, occasioned by that revolutionary volcano, from whose crater has poured forth an overwhelming torrent of burning lava, which has driven from its ancient and legitimate channel the stream of social order and national intercourse, dried up the genial springs of political confidence, contaminated the atmosphere of civilized life, and reduced the once extensive regions of fertility and happiness, to arid wastes of desolation and misery.

Placed very near the spot where this political phenomenon has reared its frightful head, as yet we have happily known it only by the report of its thunderings, and an occasional view of its alarming coruscations; by hearing its explosions, and marking its destructive operation upon all the countries within the reach of its fury.

From our insular situation, and by virtue more especially, under Providence, of our well balanced Constitution, powerful to preserve the public weal, and secured from the means of doing wrong, we have hitherto remained without internal commotion to shake our security, or external injury to diminish our strength.

So circumstanced, then, and with such fearful examples before their eyes, it was scarcely to be supposed that the people of this land should be insensible of their happiness—that they should regard their own situation with stupid indifference, or that any among them would be

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induced by persuasions of any kind, to venture the loss of present security for problematical advantage.

But unfortunately we have seen, and it is our lamentable lot to behold, a spectacle far worse in a moral view, and as it affects our own national character, than all the ravages which lawless usurpation has effected on the Continent; we see a people more highly favoured than any under Heaven, careless about the preservation of that which renders them the objects of wonder and envy to nearly all the other families of the earth.

This ungrateful spirit has not been a temporary paroxysm of enthusiasm; the effect of delusion and surprise, which considers a sudden revolution as certainly beneficial, without waiting for a trial of its consequences: but it has spread and become more general, even when the delusion has vanished, and left a dreadful scene of real miseries in its stead. This evil

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spirit has held its place, and continues to intoxicate men's minds, even in the face of woeful experience, and when the most convincing proofs have been manifested of the folly and danger of political changes. The lapse of years has not been sufficient to cool the ardour of absurd expectation; neither has the sight of accumulated evils, committed under the pretence of liberty, been able to check the empiricism of the political speculatist, or to cure the morbid imagination which converts the means of health into poison, and views all that is calculated for the good of man in society, as dishonourable to his nature, and destructive of his happiness.

As, however, there necessarily must be in all communities a mixture of the weak and the wise; the good and the bad; and as the condition of public affairs can no more remain always the same than that of private life, a spirit of discontent will undoubtedly sometimes prevail, of which the vicious and cunning, who are most commonly the authors, and always the

fomenters, never fail to take a foul advantage. To complain of objects which limit our prospects, and of restrictions which regulate our course, is one of the allowable infirmities of human nature, placed as it is in a variable state; and to be suspicious of those who exercise dominion over us, begins with the first dawning of the human mind, and is never extinguished till passion itself has ceased to exist. Such being the constitution of man, pity is unquestionably due to those who, from the want of judgment, or by giving way to delusive statements, fancy that there are rights and blessings beyond their present condition, and of which they have been unjustly deprived.

We ought to commiserate rather than be angry with that obliquity of intellect, and impatience of disposition, in consequence of which so many of our fellow-creatures are led to judge harshly of the system by which they are governed, and to imagine that their condition would be greatly improved, if the Legislative

Authorities were abridged, and the Executive Powers reduced.

Such mistaken notions, generally arising from abstract principles, and made feasible by artful application, are very apt to get possession of well-meaning minds; and being more easy to be understood, and to make an impression, than the demonstrations by which only they can be counteracted, it is no wonder that they obtain extensive credit, and are reasoned upon as maxims of moral and political verity.

The ease and advantages which men possess, only serve to fix these notions deeper in their minds, and make them view the Government in a false light; as a machine which may be managed with little trouble, and comparatively at a small expense. They look upon the whole through a false medium; and taking their own judgment, with the graduations which it forms, as their only rule, they begin to condemn every thing which is beyond its measurement, as

monstrous; all which they cannot comprehend, as superfluous; and rules and privileges, orders and distinctions, of which they have no distinct conception, as so many infringements of popular rights, and the assumption of arbitrary power.

The very liberty and ease which men enjoy, will incline them to be thus querulous; and where the judgment is narrow, and prejudice is strong, the disposition to censure all that is above them, becomes almost a part of their nature, and cannot be set right without great labour and difficulty.

Thus in ordinary life we not unfrequently see men who, by their own industry, or by the provident care of their ancestors, have obtained large estates, become, by enjoyment, and for want of more to desire or to labour for, so unconscious of what they really have, as to imagine themselves absolutely poor, and in danger of a gaol, or of ending their days in a work-house.

Even persons of so disordered a mind, and affected by a malady originating in a great measure at least, if not wholly, in their own folly, are entitled to pity, though the relation of their complaint is apt to excite a smile of contempt.

But what would be our thoughts of that pretended friend, or medical practitioner, who should endeavour to feed this preposterous disease, and instead of attempting by every argument to remove this delusive impression, should swell the chimerical tumour to such a pitch by misrepresentation, as to render the patient still more miserable, by convincing him of its reality?

Surely, whatever sentiments of compassion we might be inclined to entertain for the man so whimsically possessed, we should be fired with indignation at the treachery and dishonesty of his deceiver.

This is by no means a fictitious case: it has

too often occurred; and perhaps the natural history of man cannot furnish a more lamentable instance of human imbecility.

But how strange and unaccountable soever this species of self-delusion may be, and however much a consideration of it tends to abate our pride and to moderate our desires, it is exceeded by that political mania which sometimes rages throughout a whole community, and sets men raving about the loss of liberty and property, in the midst of unbounded licentiousness and luxury.

This also is a common evil, and it is rendered more common by the officious friendship of pretended Patriots, and the zeal of half-witted Politicians, who devise nostrums for the cure of disorders that never had an existence, and plans of amendment for that which they do not understand.

By such men, every slight occasion of com-

plaint is made a matter of serious lamentation; the unavoidable errors of the best intentions are distorted into crimes of the most heinous magnitude; and even the necessary exercise of judicial authority is stigmatized as an act of tyranny.

The iniquity of these deceivers is of the most malignant dye, and merits the severest censure; since its object is to produce, not an individual, but a public misery; not an incurable disorder in one man's intellects, but a general madness, which may overthrow what no virtue or energy can ever restore, and for which no combination of human wisdom can possibly provide an adequate substitute.

They have just sense enough to do mischief, and sufficient skill to know how to cheat the simple part of a Nation into a belief that they are in a most dangerous condition, through the evil conduct of those who are at the head of affairs.

“ He that goeth about to persuade a multitude,” says the judicious Hooker, “ that they are not so well governed as they ought to be, shall never want attentive and favourable hearers, because they know the manifold defects whereunto every kind of regimen is subject; but the secret lets and difficulties, which in public proceedings are innumerable and inevitable, they have not ordinarily the judgment to consider. And because such as openly reprove supposed disorders of State, are taken for principal friends to the common benefit of all, and for men that carry singular freedom of mind; under this fair and plausible colour, whatsoever they utter passeth for good and current. That which wanteth in the weight of their speech, is supplied by the aptness of men’s minds to accept and believe it\*.”

It would be doing injustice to the reason of any sober-minded man, to allege cases in sup-

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\* Eccles. Pol. b. i. p. 70, ed. 1705.

port of these remarks, because the continued experience of our own times brings home the conviction of their truth to our senses every moment, and from every quarter.

But it unfortunately happens, and frequently too, that even the evidence of obvious truth does not make men sensible of falsehood; and though they admit the force of incontrovertible principles, yet passion and pride, selfishness and prejudice, will, in spite of common sense, carry them away into the regions of error.

This self-deception is so common in ordinary life, as to be the cause of one half, at least, of those aberrations in conduct which make men cautious and suspicious of each other, and miserable to themselves. But the worst consequence of this spirit of delusion is, that men who contrive thus to cheat their own understandings, become most anxious and assiduous in their endeavours to deceive those around them; and for the purpose of gaining credit to



their own perversions, they will often express their approbation of the most extravagant and pernicious distortions of other men.

In the career of politics, this departure from the plain and steady principles of moral truth, is still more frequent; and what is rather difficult to be accounted for, it meets with encouragement even from persons who, in other respects, set a correct example of regular deportment, and whose pride (if it may be called so) is to maintain the lofty distinction of being above every species of artifice. But if we were to observe narrowly the political course of these honourable and right honourable personages, we should often find even them driven by the current of popular opinion, or by the wrong bias which prevails in their own minds from what they would pronounce, in an impartial moment, to be the only straight line of moral and political rectitude; so that while they are flattering themselves on account of their supposed integrity, it would be seen that much of

their boasted consistency and steadiness has been a traverse according to all the points of the compass.

I will not here make any application of these observations to one of your Lordship's character and station; for though my object is partly to accuse you of giving way too much to the dangerous errors of the time, yet it is my aim also to convey salutary advice to others, some above you in rank and talent, and some many ways your inferiors in both.

Of party distinctions I know little, and care less. These are considerations which will never have any weight with a man who is far removed from the temptation, as he is above being actuated by the desire, of ranging himself on one side or the other—who can view them both with perfect indifference as long as neither the men in, nor those out of Administration, manifest a disposition to abridge the power of any part of the Constitution, or to try vain expe-

riments upon its component principles; in short, the Writer is one of so old-fashioned a make, as to be tenaciously desirous of retaining that entire, under which all classes among us have experienced the fullest security and happiness which man in society can reasonably wish for; and who considers, that to look for more would be a most presumptuous cupidity.

With such a conviction as this, and that strengthened by a little reading of what our ancestors thought and did to preserve this bulwark of our national glory, he can view the opposition of mere parties, without feeling any very lively interest in the cause of either side; as long, indeed, as their contest is constitutionally maintained.

Undoubtedly those men are most entitled to regard, and will obtain the greatest degree of confidence with considerate minds, who display the least parade of ostentatious patriotism; who deal little in political chicanery; and above all,

whose public and private carriage mark a real, internal sense of virtuous sentiment and religious obligation. In all other respects, party names and distinctions are too trivial to merit the slightest notice; and therefore, whether you are a Whig or a Tory, deserves no more consideration than the question would, whether in philosophy you are a Cartesian or a Newtonian.

It should seem, however, that in your own judgment, such distinctions are of primary importance; otherwise, at a season like the present, you certainly would hardly have signified to a motley assembly, calling themselves the Whig Club, that at this great crisis it was your resolution to stand forward as the friend of liberty, and of the rights of the people. That such a communication was made in your name to this Tavern Meeting, cannot be doubted; for the Journals which are in connexion with that Club, stated it explicitly, and mentioned your Son as the bearer of the important message.

No man has a right to call you to account for being the associate of a Club, or to deny you the privilege of making speeches over a bottle; but the community at large are warranted in condemning you, for making such declarations as have a tendency to alarm the people, by inducing a belief that their liberties are in danger, and that the preservation of them requires the aid of your transcendant virtue and powerful talents.

At the time when this declaration was transmitted to the Club, what had been done to call for a pledge of so much pompous solemnity? In what imminent peril was the Nation placed by the conduct of Government, as to render it necessary for you to send a profession of that nature to a self-constituted Assembly, without authority, or even the dignity of character to give a sanction to its resolutions?

Your being a Member of such an unaccredited Association, is a matter of no concern to

the public, and it would be impertinent to censure you for attending its festivals; but this act, done evidently with no other view than to be made generally known through the medium of the press, can be considered in no better light than as a mean trick to catch popularity, when, in fact, no danger could be apprehended; unless, indeed, it was from the very quarter towards which you were looking for a little paltry applause.

The rights of the people have not been affected by the committal of an idle scribbler, for libelling the House of Commons; neither has the Constitution been violated, because that branch of the Legislature has thought fit to exercise its power over an offending Member: "a power," to use the words of a great writer, "which necessity made just, and precedents have made legal."

But it was not enough to send a vaunting ostentatious declaration of your sentiments to a

Political Club, for the purpose of having it sent forth to the world, as your judgment upon that which has the prescription of ages for its support, and the highest legal authorities for its sanction;—for while the question, as arising out of the present case, remained for decision, you presumed to obtrude your crude thoughts upon it in the most elevated Assembly of the kingdom, without having any lights to guide your mind, or the subject being properly before you, to call for the expression of your opinion.

It is hard to say which was most indecorous—the communication of a presumptuous declaration to the Tavern Association, or the premature obtrusion of a hasty determination upon a grave matter in your public character, when the circumstances of the case, the honour of the Legislature, the safety of Government, and a regard to the public tranquillity, ought to have combined in recommending you to hold your peace, till the subject came regularly and fully under discussion.

The occasion, however, was too tempting, and your vanity and thirst for applause too strong, to admit prudence and deliberation into your councils. Silence, at such a time, and upon such a subject, might indeed have gained you credit with the wise and moderate part of society; but then it would not have obtained for you the clamorous plaudits of tumultuary meetings, the high praises of civic orators, and the panegyrics of the vehicles of faction.

What course the House of Commons intended to take, upon a matter which, for the time, solely concerned their own character, power, and privileges, could not possibly be known, till the Committee appointed to search for Precedents had made their Report; and till some Resolutions should be in consequence founded thereon.

While, therefore, the question thus remained suspended, and no line of conduct was resolved upon by the party immediately concerned, it

certainly was no more than common justice in all men, and particularly in one of your professional character and high station, to preserve a silent respect for the deliberations of that great Assembly.

You might surely have waited, without any derogation of your abilities, or danger to the interests of the public, till the whole case was laid out on both sides, and till especially the determination of the House of Commons gave every man a legitimate right to form and express his opinion upon the wisdom and equity of its proceedings.

Such a degree of modest forbearance was certainly due to the high dignity of that Legislative Body, which would be a mere pageant without authority, and contemptible, if deprived of power to make that authority regarded. Instead, however, of setting a becoming example to the people, by patiently reserving your judgment, and calmly watching the pro-

gress of this great cause, until you had accurately viewed it in all its parts and bearings, you ventured to take up the question, and to give your advice upon it, before you knew, or could well guess, what the Committee of the House of Commons would report as the result of their research, and what the House itself would afterwards determine to do in maintenance of its Privileges.

I will not presume to say, that you had no parliamentary right to deliver your sentiments in the manner, and at the time you did, upon this topic; but it will be a difficult thing for the steadiest advocate of free speaking to say, that such a premature declaration as this, was any proof of moral or political wisdom.

It deserves particular attention, that the Speaker's Notice was made to the House of Commons on the very night when you delivered your sentiments so very peremptorily upon the whole merits of the case. That same evening a

Committee was appointed to search for Precedents, and it was not till the 23d that their Report was ordered to be laid on the table, and printed.

Notwithstanding all this cautious deliberation on their part, so precipitately did you make up your mind upon the question, as to advise a judicial determination of it before the Committee had commenced their labours, or were even nominated to make a Report, as a ground to regulate future proceedings.

I know not in what light this conduct has been generally regarded; but it seems that those who immediately witnessed it, preserved a becoming and dignified silence, by suffering the observations and advice to pass without notice.

But the effects of this early and public declaration of your opinion have been very great elsewhere; and a sort of oracular importance has been attached to it by the swarms of Poli-

tical Reformers, which, in this age of declamation, render almost every Corporation a petty republic of noisy orators.

This shews with what extreme caution men of elevated station, or of professional eminence, should guard their minds, and regulate their language, upon subjects which are apt to distract the people, and to create jealousies of the Government.

Your subsequent explanation on the 14th of June, in the Debate upon Earl Grey's Motion, is a full confirmation of the wisdom and justice of such a cautious reserve; for in the Reports of your Speech on that occasion, you complained of "having been much misrepresented as to the opinion you delivered on a former night. At the time of expressing that opinion, you was under a belief, it seems, that the House of Commons did not intend to plead, or to inform the Courts of Law of the cause of the Arrest; and it was under the influence of this feeling

that you pronounced that opinion. Since that time, however, you found that they had pleaded to the Action which had been brought against the Speaker; and this made (you observed) a most essential difference in the case."

It is very extraordinary, that while you thus complained of being misrepresented, you should in the same breath confess, that the opinion before delivered by you, was pronounced under the impulse of *feeling*, without information or judgment. At that time, according to your own account, you did not know what course would be adopted; and yet you then presumed to believe, without any warrant for such a persuasion, that the House did not intend to plead; but since you found that they had pleaded, it was confessed that your feeling was wrong, and that a most essential difference was now made in the case.

But why, I must repeat it, did you not wait till the case was clearly explained and under-

stood? And why, it may be asked, was a presumptuous feeling, without any facts or resolutions for its justification, to be attended to rather than the entire conduct of the party against whom the expression of that feeling must eventually operate? The advice of a grave moralist, whose book, though obsolete, affords lessons of sound instruction to Senators and Judges, would have been useful to you upon this occasion. "Blame not before thou hast examined the truth: understand first, and then rebuke. Answer not before thou hast heard the cause; neither interrupt men in the midst of their consultation\*."

Had this sage counsel prevailed in your mind, instead of the hasty feeling which prompted an erroneous opinion, that has been received with triumph, and circulated with the greatest industry all over the kingdom, you would not have fallen under the censure of meddling with things above your understanding.

\* Eccles. xi. 7, 8.

Having ingenuously confessed that your first opinion was founded upon a false belief, I might be spared any farther trouble of remonstrating with you upon the subject; of entering into any refutation of your mistaken principles, or of pointing out the mischievous tendency of them. As, however, the authority of your name has given a wide credit to very delusive notions, and the most extravagant theories on the science of Government, and as the sanction of your opinions still prevail to a considerable extent among those who, while they despise ancient wisdom and experience, are willing to be guided by modern authority; it may be rendering some service to the sober part of the community, to expose fallacies and inconsistencies, which will evince the danger and folly of taking things upon the trust of high sounding pretensions.

At the time when your feelings produced a precipitate judgment upon a matter which was then no proper subject of discussion, you men-

tioned the case of the committal of Lord Chief Justice Pemberton, for holding a plea of the House of Commons in his Court; and in your strong manner it was added, "that if, upon the present occasion, a similar attack was made upon the present noble President of that Court, for the exercise of his legal jurisdiction, you would resist the usurpation with your strength, and bones, and blood."

A little more reading might have been serviceable to you, before you ventured to tell this story, or to make such a vehement protestation, arising out of another of your hasty suppositions.

This case has not been fairly stated, and the character of the person mentioned, was different from what it has been represented. Pemberton, so far from being Chief Justice when he appeared at the bar of the House of Commons, had even ceased to be a Judge near seven years before this committal. He was made a Justice



of the King's Bench, March 30, 1679; Chief in the same Court, April 1681, removed to the Common Pleas, January 22, 1682-3, and turned out from that situation in September following\*.

The offence of which he had been guilty, and for which he and Jones were committed after the Revolution, was a violation of the Privileges of the House of Commons, in the arbitrary reign of Charles II., by *over-ruling* the plea of that House, and setting its authority at defiance; no doubt in subservience to the Court.

The character of Pemberton, as drawn by one who knew him well, may serve in some measure to relieve this dry exhibition of dates and facts; and it will convince the reader, that his case and circumstances might as well have been passed over in silence on this occasion, especially by those who are so tenacious of Legal Jurisdiction over Parliamentary Privilege.

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\* Salmon's Chronological Historian, vol. i.

Roger North, in the Life of his namesake, the Lord Keeper, gives the following account of this amiable personage:

“The Lord Chief Justice Pemberton was a better practiser than a Judge; for being made Chief Justice of the King's Bench, he had a towering opinion of his own sense and wisdom, and rather *made* than *declared law*. I have heard his Lordship say, that *in making law, he had outdone King, Lords, and Commons*. This may seem strange to such as see not the behaviour of Judges, and do not consider the propensity of almost all to appear wiser than those that went before them. Therefore, it is the most impartial character of a Judge to defer to eldership or antiquity. But to proceed: this man's morals were very indifferent; for his beginnings were debauched, and his study and first practice in the gaol. For having been one of the fiercest town-rakes, and spent more than he had of his own, his case forced him upon that expedient for a lodging; and there he made

so good use of his leisure, and busied himself with the cases of his fellow-collegiates, whom he informed and advised so skilfully, that he was reputed the most notable fellow within those walls, and at length he came out a sharper in the law. After that he proceeded to study and practice, till he was eminent, and made a Serjeant. After he was Chief Justice of the King's Bench, he proved, as I said, a great ruler, and nothing must stand in the way of his authority. This Chief Justice sat in the King's Bench till near the time that the great cause of the *Quo Warranto* against the City of London, was to be brought to judgment in that Court; and then His Majesty thought fit to remove him. And the truth is, it was not thought any way reasonable to trust that cause, on which the peace of the Government so much depended, in a Court where the Chief never shewed so much regard to the law as to his will, and notorious as he was for little honesty, boldness, cunning, and uncontrollable opinion of himself. After his removal he returned to his practice, and by

that he lost his style of Lordship; and became bare Mr. Serjeant again\*."

With this character Bishop Burnet agrees, who accuses Pemberton of having acted unfairly in summing up the charge, when he presided at the trial of the unfortunate Lord Russell †.

So much for this notable Serjeant, who, after the enactment of the Bill of Rights, was called to account and punished, for having in the plenitude of his power, and in a corrupt reign, trampled on the Privileges of Parliament.

Now if it were possible that a similar character could be again placed in that high station, and should presume to act as Pemberton did, would any Englishman, think you, presume to cry him up as a Patriot, or be warranted in

\* North's Life of Lord Keeper North, vol. ii. p. 122.

† History of his Own Times, vol. ii. p. 386.

exerting his strength, bones, and blood in his defence?

Of the impartiality and wisdom of our Law Courts, as they at present exist, no one can entertain a higher sense, or a more reverential regard, than myself; yet I must contend, that their powers are distinct from, and inferior to, those of Parliament; consequently, that they possess no right of judicial resolution upon any of its Privileges.

The less is necessarily included in, and subordinate to, the greater; and therefore it is repugnant to every principle of common sense, that the Legislative Powers should be bounded and directed by those authorities, which are only their administrative organs.

It has been admitted by yourself, that what either branch of the Legislature has been for the course of ages exercising with the acquiescence of the whole Legislature, would be, in

the absence of Statutes, which is the grand question, evidence of the Common Law of Parliament, and as such, of the Common Law of the Land.

This is sufficiently sound and explicit: why, then, after this, treat the right as doubtful, which has been acted upon with the acquiescence of the whole Legislature for a succession of ages, and which never was conceded or set aside, except by the arbitrary jurisdiction of a venal Court, in one of the worst periods of our history?

I cannot here resist the pleasure of quoting the apposite argument of a powerful writer, whose judgment was equal to the magnitude of the subject, and whose reasoning upon it is unanswerable.

“Here,” says he, “the Patrons of Opposition are in some perplexity. They are forced to confess that, by a train of Precedents suffi-

cient to establish a custom of Parliament, the House of Commons has jurisdiction over its own Members; that the whole has power over individuals; and that this power has been exercised, sometimes in imprisonment, and often in expulsion.

“ That such power should reside in the House of Commons, in some cases, is inevitably necessary; since it is required by every polity, that where there is a possibility of offence, there should be a possibility of punishment. A Member of the House cannot be cited, for his conduct in Parliament, before any other Court; and therefore, if the House cannot punish him, he may attack with impunity the rights of the People, and the title of the King.

“ This exemption from the authority of the other Courts was, I think, first established in favour of the Five Members in the Long Parliament. It is not to be considered as an usurpation, for it is implied in the principles of

Government. If Legislative Powers are not co-ordinate, they cease in part to be Legislative; and if they be co-ordinate, they are unaccountable; for to whom must that power account, which has no superiour?

“ The House of Commons is, indeed, dissoluble by the King, as the Nation has of late been very clamorously told; but while it subsists, it is co-ordinate with the other powers; and this co-ordination ceases only when the House, by dissolution, ceases to subsist.

“ As the particular Representatives of the People are, in their public character, above the controul of the Courts of Law, they must be subject to the jurisdiction of the House; and as the House, in the exercise of its authority, can be neither directed nor restrained, its own resolutions must be its laws, at least, if there is no antecedent decision of the whole Legislature\*.”

\* Dr. Johnson's False Alarm, p. 7.

The same train of reasoning may be extended still further, and be supported, too, by the adduction of numerous cases, which prove that, by the acquiescence of the whole Legislature, the House of Commons has the right of punishing by imprisonment, all who are guilty of trespassing upon its Orders by Libel or Contempt.

Whatever freedom of speech, or of writing, any subject may be entitled to exercise upon Parliamentary Proceedings, he must be limited by the rules of that Court on which he ventures to publish his opinion. There must be a boundary here, as well as to every thing else; and if a man goes beyond it, by whom shall he be punished? If no such power exists in a Legislative Assembly, it becomes a pageant of authority, and only the instrument of making laws, without having the means of enforcing obedience to them.

If the Parliament, during its sittings, had no summary powers of committal for Contempt, it

would be exposed to continual interruptions from within, and insults from without, its walls; its councils would be restrained by menace, or embarrassed and impeded by perpetual applications to Courts of superior jurisdiction.

All its proceedings are liable to misrepresentation; and as few of its Acts pass without some kind of opposition, either from the spirit of party, or from motives of private interest, its deliberations, if unprotected, must be a perpetual contention with the unrestrained passions and prejudices of the people.

It is said, however, that this power of imprisoning for Libel and Contempt, during the sitting of Parliament, may be abused to the purposes of injustice; and that persons oppressed by it are, in such a case, without redress. To this it is sufficient to answer, that the possibility of abuse is inseparable from the nature of human society, and therefore no form of Government, nor any of its institutions, can be free from the common infirmity.

No authority under Heaven can be established without being liable to this imperfection; and as a seat of final decision must necessarily be placed somewhere, to prevent eternal litigation, this ultimate Court of Appeal, however wisely it may be constituted, or worthily filled, cannot be kept free from the possibility of error.

Even the Trial by Jury, for which you are so strenuous an advocate, and of which you have been considered by some persons as a sort of Guardian, cannot possibly be kept entirely free from abuse.

Ignorance and prejudice are, at least, as likely to give a wrong bias to the minds of twelve men, however carefully selected they may be, as to a great public body consisting of some hundreds.

Indeed the Law itself, for this very reason, has exempted some cases from the determination of a Jury, and, of course, has given to its

Courts the exercise of a discretionary power, without requiring the Verdict of a Jury upon them. You are fully aware of this; and in the very Court where you presided, you found the power established, and acted upon, and without which, indeed, the authority of the Court would be nugatory. But it is very remarkable, that your great zeal for Trial by Jury, should only have abated when you sat as a Judge. It may be considered as extraordinary, that one who has made this subject the motto of his arms, and the darling principle of his popularity, did not himself embrace the opportunity of carrying it into practice, when he had to decide between the exercise of his power or the forbearance of it, when a case of Libel and Contempt came under his cognizance.

Consistency is a virtue to which most persons lay claim, and which public men in particular must always affect, if they wish to be regarded. Your Lordship has consequently assumed a large share of credit, for having maintained this

virtue inflexibly through the whole course of your public life, and for having preserved the same mind and understanding firm and unaltered to the present day.

Truly the claim is strong; and if it can be fairly made out, your fame will not rest upon the fleeting applause of the existing generation, but will descend to far distant ages, as a model of virtuous patriotism, as well as of sterling and disinterested talent.

But this, like all other pretensions to honorable distinction, must endure the test of a strict examination. Where the assumption is of a public nature, and is brought forward merely to sanction doctrines which have for their object an effect upon the Legislature, it is proper to judge, as well the quality of the claimant, as the value of his opinion.

In the present case this will appear the more necessary, since the boast of consistency has

been made use of to give a preponderating weight to your observations on the question of Parliamentary Privilege, and to set your knowledge in the Law, and uniformity of conduct, as an authority against those who have presumed to think that the House of Commons has full as much right to commit for Libel and Contempt, as any of the Courts of Law can have. Its right surely rests upon as good a foundation, and is full as equitable as that of the Chancery in which you presided, and where you took occasion very promptly, upon a Petition, and view of the publication complained of therein, to commit the Authors, and Printer too, for Contempt.

The Counsel for the Defendants alleged, and in my humble judgment with great force, "that the Petitioners had in this case a remedy at Law." But here your Lordship interfered with a very powerful argument, which was conclusive. "A remedy at Law! The subject of this application is not the Libel against the Peti-

tioner. The case of *Roach versus Garoun* (Atk. 469), and another there mentioned, were cases of Constructive Contempt, depending upon the inference of an intention to obstruct the course of Justice."

This is plain, and to the point; and therefore, if the course of public proceedings and legislative business is to be obstructed by Contempt, the offenders must be summarily punished, as they were in the present instance.

I will not pretend to give an opinion of the case as it stands in the Reports (Vesey, vol. xiii. p. 269); but nothing can be more certain than this, that the sentence, and the doctrine with which it was accompanied, completely overthrow all your declamation, and prove, as far as your authority can prove any thing, the uncontrollable right and power of the House of Commons to commit persons for Libel and Contempt, whether they are Members of the House or not.

In this very case, though two of the parties had an interest in the cause concerning which the offensive Pamphlet was published, yet the Printer had not; and, therefore, he must be supposed to stand in the same relation to the Chancery, as any Printer or Writer does to the House of Commons, on whose proceedings he is guilty of publishing a Libel, or of Contempt. The cases are sufficiently analogous, to warrant our resorting to your arguments and practice in Chancery, as a Refutation of what you have advanced since on the subject of committal for similar offences in other Courts.

You have admitted by act, and confirmed it by precedents, that the High Court of Chancery has this power; and as it must be allowed by all men, that the High Courts of Parliament are superior to every other, the same power and right must be in them; for they have often exerted it, and innumerable cases of it are upon record.

Now, in whatever other respects your claim



to consistency may be suffered to remain uncontested, here, at least, your practice and doctrines do not agree; and it will be extremely difficult, even for your greatest admirers, to reconcile what they now consider as the purity of legal judgment, with the decision, that a Judge may commit persons to prison for Contempt, and that too for an indefinite time, without a Trial by Jury.

It deserves to be mentioned also, that about the same period, and at the instance of Sir Samuel Romilly, you declared the right of the Court to commit for a Libel on its past Proceedings, by a misrepresentation of them, in the case of Macnamara and Farquharson, though the exercise of that right was then withheld from reasons of discretion\*.

These instances are not produced for the purpose of contending the right of that Court,

\* See a Letter from a Chancery Lawyer, in the Morning Post of May 19, 1810.

or of questioning the propriety of your asserting it as you did; because from the nature of that situation, and aided by every possible degree of information, the cases must be completely understood, and the seriousness of the offence more apparent, than through the contracted medium of even Official Reports.

Supposing that at this period any person, during the sitting of Parliament, had presumed not merely to reflect indiscreetly on some of their Proceedings, but in a virulent pamphlet endeavoured to bring the Legislative Authority into general contempt; would the House so attacked have supported its own dignity, by enduring the insult without notice? Should Parliament, however, from prudential motives, have passed over a single instance or two in silence; would it have been justified to the whole Government, and to the Nation, in bearing with a series of Libels upon its constitution and character, its measures and members?

The Ministry of which you made a part,

would hardly have been so lost to all sense of duty, and regard to the national honour and welfare, as to recommend indifference under such circumstances. What course, then, ought the Parliament to have pursued in such a case; and what line of conduct would have occurred to your mind, or been recommended by you, for the purpose of checking the present evil, and of preventing its recurrence?

By looking into the case just cited, and considering the readiness with which you exerted the authority invested in you, there can be no doubt but that, in the other circumstances, your advice would have been as decisive for committing all the parties.

The rule by which you acted in one place, must have presented itself to your mind in the other; and if it did not, I can feel no hesitation in saying, that the inapplication of it would have betrayed either a shameful want of candour, or a miserable want of judgment.

If the Privileges of Parliament are less than those of the Court of Chancery, it is time that the one should be extended, or the other abridged; for it is a reversal of the order of things, that the Inferior should possess a greater jurisdiction than the Superior. Such, however, is not the case; and as both have the same right to protect their proceedings, so they have a power to punish those who are guilty of trespassing upon them, without calling in the aid of other Courts, which would necessarily imply, what all Englishmen must deprecate, that Parliament is accountable, in some degree, to the King's Courts of Law.

I shall pursue this comparison no farther; for this point must be the inevitable conclusion, if the raging doctrine be true, that the House of Commons has no authority to defend itself from Libel and Contempt, in any other way than by the ordinary course of Legal Process.

And what might be the dreadful conse-

quence, if Parliament should be thus shackled, well deserves the serious consideration of those, who are even now apt to complain of the increasing influence of the Crown.

That this complaint never had any real foundation during the present reign, I am not only perfectly convinced; but equally am I satisfied, that it was never seriously believed, even by those who made the most of it, in order to distract His Majesty's Councils, and to get into the Administration; for when they succeeded in their object, things always went on in the same course, and the Constitution continued as it was found by them; and so they left it to their successors.

This, however, would hardly be the case, if the power of Parliament was to be taken away; and if, in an evil hour, the House of Commons should be left with only the shadow of authority—a melancholy and shrivelled monument of former greatness.

It might, indeed, pass resolutions of considerable magnitude; it might speak loudly of public evils, and even direct prosecutions against offenders:—but all muscular energy being dried up, and the sinews of power contracted, the utmost which it could possibly do, would be to sit and complain, to order and be disobeyed.

I am aware that it will be said, you may impeach evil Ministers, and proceed by information against Libellers, and other offenders; but as those who are inclined to suppose the worst of the House of Commons, must allow us, in our turn, to have our suspicions, and to express our apprehension of consequences; pray why may not the Legal Courts become corrupt, as well as Parliaments prove oppressive?

In fact, there is no method more direct and certain to give the Crown an undue influence, to render Government tyrannical, and public justice weak, than by stripping the House of Commons of all jurisdiction.

Our ancestors well knew this; and as they were sensible that a Legislative Body, limited in its duration, was therefore the natural and best guardian of public liberty, they wisely and cheerfully acquiesced in those Privileges, which the enemies of order are now eager to destroy.

But these men, as was well observed of a similar set in a former day, "are high-flyers of liberty against Parliaments as well as Kings. They would be absolutely free *without any yoke*, which is the English of the word *Belial*. But they are the most fooled by him of any; he leads them into perfect anarchy in quest of liberty! They make every man judge of the Government; they are now for the Lords against the Commons, then for the Commons against the Lords; and then again for the People against both, and again for the Parliament against the People. This is the circle of Liberty, the wheel of Belial, wherein he puts these turnspits to roast the People! They are always climbing the wheel, which turns under

them, and when they have done, they are just in the self same place where they began\*."

There are some minds who will see only what suits their own immediate feeling, and who judge of things, and even persons, merely according to their own habits and connections. Thus you have so long been familiarized to the language of Reformers, as they are called, and they have so generally established you as their Legal Oracle, that it would be unjust to feel any alarm of them and their views; even when their language is unequivocal, and their conduct is marked by violence!!

The broadest hostility is now shewn to one part of the Constitution; and not long since, the same description of men displayed their animosity with equal violence against the other branches; and yet, after all, we are to consider them as only being a little over-zealous and ardent in the cause of Reform!

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\* Rehearsal, or View of the Times, No. 407, folio, 1708.

There is a culpable good-nature, and a reprehensible wilful ignorance, both equally deserving the severest animadversion, particularly when the safety of the State may be put in peril by the indolence of the one, and the stupid prejudice and self-conceit of the other.

By such an indifference to the spirit of Party, this Nation was once plunged into all the horrors of a Civil War, which might have been prevented, had all our Senators watched the Opposition as vigilantly as they did the Government.

The CHANCELLOR OF HUMAN NATURE, as one beautifully calls him, Lord Clarendon, gives a remarkable account of these persons in his History of the Rebellion; and I quote the passage at length, in the hopes that some of my Countrymen will profit by the example, and the instruction which it affords.

“I know not,” says the Noble Historian, “how those men have already answered it to

their consciences, or how they will answer it to Him who can discern their consciences; who having assumed their Country's trust, and it may be, with great earnestness laboured to procure that trust, by their supine laziness, negligence, and absence, were the first inlets to those inundations, and so contributed to these licenses which have overwhelmed us. For by this means, a handful of men, much inferior in the beginning, in number and interest, came to give laws to the major part; and to shew that three diligent persons are really a greater and more significant number than ten unconcerned, they, by plurality of voices, in the end converted, or reduced the whole body to their opinions. It is true, men of activity and faction, in any design, have many advantages, that a composed and settled Council, though industrious enough, usually have not, and some that gallant men cannot give themselves leave to entertain; for besides their thorough considering and forming their councils before they execute them, they contract a habit of ill-nature and disingenuity

necessary to their affairs, and the temper of those upon whom they are to work; that liberal minded men would not persuade themselves to entertain, even for the prevention of all the mischief the others intend. And whosoever observes the ill arts by which these men used to prevail upon the people in general; their absurd, ridiculous lying, to win the affections, and corrupt the understanding of the weak; and the bold scandals, to confirm the wilful; the boundless promises they presented to the ambitious; and their gross, abject flatteries, and applications to the vulgar-spirited, would hardly give himself leave to use those weapons for the preservation of the three kingdoms\*.

With such a glaring instance of the fatal consequences of placing a false confidence in men's political professions, and of despising the beginnings of Faction as contemptible, I dare not follow your Lordship as a guide; nor can I take your opinion as a rule to judge of the real

\* Hist. of the Rebellion, vol. i. p. 320.

principles and ends of our Political Reformers. In truth, this historical fact alone, assisted by a little insight into human nature, and an observation of existing circumstances, sufficiently warrant me in calling your wisdom, not integrity, in question, when you expressed it as "your belief, that there is no considerable body of men in the kingdom, nor even any individuals, who have any farther object than to obtain what appears to them to be the essence and the spirit of the Constitution."

I am not now to learn the necessity of interpreting men's words by their actions; and on this judicious rule there can be no difference between us, unless it be perhaps in the fitness of its application. You seem to have such a superabundant confidence in the uprightness of the present race of Reformers, as to attribute their "mistaken opinions," and the "ardent zeal," which they have displayed in the expression of them, to the account of the warmth of their feelings for the Liberties of the Country.

Now, truly, how much I may be disposed to admire such feelings, when they are properly manifested, it would be a false liberality to judge favourably of the intemperate language, and violent conduct, which characterize men who arrogate to themselves the exclusive title of Patriots.

The bitterness of invective and tone of menace, which peculiarly mark the parties whose motives you are inclined to think are so pure, appear of a most alarming aspect at the present awful crisis, when the entire spirit and energies of the Empire are barely sufficient to secure our political existence, amidst the wreck of nations.

What are the men who have suddenly assumed this mighty part; who, arrogantly calling themselves the People, dictate Law to the Legislature, and clamour for a change, without defining their objects, or limiting their demands?

They are such as Cicero describes with having pestered the Commonwealth in his time, under the pretence of reforming the State, and freeing it from tyranny and corruption. Like those debased Romans, these men have their Catiline, whom some men of property follow, with a view of obtaining, from the confusion produced by him and his crew, the direction of the State.

There are others, again, who though oppressed with debt, yet hope for power, and who aspire at the chief management of public affairs; imagining they shall obtain those honours by throwing the State into disorder, which they despair of getting during its tranquillity.

The fourth are a mixed, motley, turbulent tribe, who have been long abandoned to a dissolute course, and partly through idleness and extravagance, are ripe for any desperate Revolution which may put them in the way of getting wealth and distinction, of which they have no hopes from their own industry or virtue.

And such as these polluted our own land in the seventeenth century; and under the pretence of removing civil and religious abuses; of restoring Parliament to its pristine purity, and the whole kingdom to a state of glory—overwhelmed the country in blood and rapine, in misery and usurpation. Even men of ability and worth, of rank and riches, were found to judge favourably of these men's motives, and to encourage them in their views and labours, till unfortunately they became the wretched victims of their own credulity; and many of them perished with the King, whom they loved for his virtues, and a Constitution, which it was their original aim to support and improve.

A man of the most brilliant talents, who made no ordinary figure on that great stage of Reform and Revolution; and who resisted the Monarchy with a violence, which brought his life in danger after the Restoration:—MILTON, whose name is so revered by the zealots

for unbounded Liberty, thus describes the Patriots of his own day:

“ They bawl for freedom in their senseless mood,  
 “ And still revolt when Truth would set them free:  
 “ Licence they mean, when they cry Liberty;  
 “ For who loves that, must first be wise and good:  
 “ But from that mark how far they rove, we see,  
 “ For all this waste of wealth, and loss of blood.”

THE END.



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