

ERSKINE'S DEFENSE OF PAINE*

GENTLEMEN of the Jury.—The Attorney-general, in that part of his address which referred to a letter supposed to have been written to him from France, exhibited signs of strong sensibility and emotion. I do not, I am sure, charge him with acting a part to seduce you; on the contrary, I am persuaded, from my own feelings, and from my acquaintance with my friend from our childhood upwards, that HE expressed himself as he felt.

But—gentlemen, if he felt those painful embarrassments, you may imagine what mine must be: he can only feel for the august character whom he represents in this place as a subject for his Sovereign, too far removed by custom from the intercourses which generate affections to produce any other sentiments than those that flow from a relation common to us all: but it will be remembered that I stand in the same relation† toward another great person more deeply implicated by this supposed letter; who, not restrained from the cultivation of personal attachments by

*Lord Erskine's Speech in behalf of Thomas Paine, Court of King's Bench, December 18, 1792.—Ed.

†Mr. Erskine was then Attorney-general to the Prince of Wales.—Ed.

LIFE AND APPRECIATIONS

those qualifications which must always secure them, has exalted my duty to a prince into a warm and honest affection between man and man.

Thus circumstanced, I certainly should have been glad to have had an earlier opportunity of knowing correctly the contents of this letter, and whether (which I positively deny) it proceeded from the defendant. Coming thus suddenly upon us, I see but too plainly the impression it has made upon *you*, who are to try the cause, and I feel its weight upon *myself*, who am to conduct it; but this shall neither detach me from my duty, nor enervate me (if I can help it) in the discharge of it.

If the Attorney-general be well founded in the commentaries he has made to you upon the book which he prosecutes; if he be warranted by the law of England in repressing its circulation, from the illegal and dangerous matters contained in it; if that suppression be, as he avows it, and as in common sense it must be, the sole object of the prosecution, the public has great reason to lament that this letter should have been at all brought into the service of the cause. It is no part of the charge upon the record; it had no existence for months after the work was composed and published; it was not written by the defend-

WRITINGS OF THOMAS PAINE

ant, if written by him at all, till after he had been in a manner insultingly expelled from the country by the influence of Government; it was not even written till he had become the subject of another country. It cannot, therefore, by any fair inference, decipher the mind of the author when he composed his work; still less can it affect the construction of the language in which it is written.

The introduction of this letter at all is, therefore, not only a departure from the charge, but a dereliction of the object of the prosecution, which is to condemn *the book*: since, if the condemnation of the author is to be obtained, *not by the work itself*, but by *collateral matter*, not even existing when it was written, nor known to its various publishers throughout the kingdom, how can a verdict upon *such* grounds condemn the work, or criminate *other* publishers, strangers to the collateral matter on which the conviction may be obtained to-day?

I maintain, therefore, upon every principle of sound policy, as it affects the interests of the Crown, and upon every rule of justice, as it affects the author of "The Rights of Man," that the letter should be wholly dismissed from your consideration.

LIFE AND APPRECIATIONS

Gentlemen, the Attorney-general has thought it necessary to inform you that a rumor had been spread, and had reached his ears, that he only carried on the prosecution as a *public* prosecutor, but without the concurrence of his own judgment; and, therefore, to add the just weight of his *private* character to his public duty, and to repel what he thinks a calumny, he tells you that he should have deserved to have been driven from society, if he had not arraigned the work and the author before you.

Here, too, we stand in situations very different. I have no doubt of the existence of such a rumor, and of its having reached his ears, because he says so; but for the narrow circle in which any rumor, personally implicating my learned friend's character, has extended, I might appeal to the multitudes who surround us, and ask, which of them all, except the few connected in office with the Crown, ever heard of its existence?

But with regard to myself, every man within hearing at this moment—nay, the whole people of England, have been witnesses to the calumnious clamor that, by every art, has been raised and kept up against me: in every place where business or pleasure collect the public together, day

WRITINGS OF THOMAS PAINE

after day my name and character have been the topics of injurious reflection. And for what? Only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled.

But, Gentlemen, I have no complaint to make, either against the printers of these libels, or even against their authors: the greater part of them, hurried perhaps away by honest prejudices, may have believed they were serving their *country* by rendering *me* the object of its suspicions and contempt; and if there has been among them others who have mixed in it from personal malice and unkindness, I thank God I can forgive *them* also.

Little, indeed, did they know me, who thought that such calumnies would influence my conduct. I will forever, at all hazards, assert the dignity, independence, and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence.

From the moment that any advocate can be permitted to say that he *will* or will *not* stand between the Crown and the subject in the court where he daily sits to practise, from that moment the liberties of England are at an end.

LIFE AND APPRECIATIONS

If the advocate refuses to defend, from what *he may think* of the charge or of the defense he assumes, the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused, in whose favor the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel.

Gentlemen, it is now my duty to address myself without digression to the defense.

The first thing which presents itself in the discussion of any subject is to state distinctly and with precision, what the question is, and, where prejudice and misrepresentation have been exerted, to distinguish it accurately from what it is NOT. The question, then, is NOT whether the Constitution of our fathers—under which we live, under which I present myself before you, and under which alone you have any jurisdiction to hear me—be or be not preferable to the Constitution of America or France, or any other human constitution. For upon what principle can a court, constituted by the authority of any government, and administering a positive system of law under it, pronounce a decision against the Con-

WRITINGS OF THOMAS PAINE

stitution which creates its authority, or the rule of action which its jurisdiction is to enforce? The common sense of the most uninformed person must revolt at such an absurd supposition.

I have no difficulty, therefore, in admitting that, if by accident some or all of you were alienated in opinion and affection from the forms and principles of the English Government, and were impressed with the value of that unmixed representative constitution which this work recommends and inculcates, you could not *on that account* acquit the defendant. Nay, to speak out plainly, I freely admit that even if you were avowed enemies to monarchy, and devoted to republicanism, you would be nevertheless bound by your oaths, as a jury sworn to administer justice according to the English law, to convict the author of the "Rights of Man," if it were brought home to your consciences that he had exceeded those widely extended bounds which the ancient wisdom and liberal policy of the English Constitution have allotted to the range of a free press.

I freely concede this, because you have no jurisdiction to judge either the author or the work by any rule but that of English law, which is the source of your authority. But having made this

LIFE AND APPRECIATIONS

large concession, it follows, by a consequence so inevitable as to be invulnerable to all argument or artifice, that if, on the other hand, you should be impressed (which I know you to be) not only with a dutiful regard, but with an enthusiasm, for the whole form and substance of your own Government; and though you should think that this work, in its circulation among classes of men unequal to political researches, may tend to alienate opinions; still you cannot, *upon such grounds*, without a similar breach of duty, convict the defendant of a libel—unless he has clearly stepped beyond that extended range of communication which the same ancient wisdom and liberal policy of the British Constitution has allotted for the liberty of the press.

Gentlemen, I admit, with the Attorney-general, that in every case where a court has to estimate the quality of a writing, the *mind* and *intention* of the writer must be taken into the account—the *bona* or *mala fides*, as lawyers express it, must be examined—for a writing may undoubtedly proceed from a motive, and be directed to a purpose, not to be deciphered by the mere construction of the thing written. But wherever a writing is arraigned as seditious or slanderous, not upon its ordinary construction in language,

WRITINGS OF THOMAS PAINE

nor from the necessary consequences of its publication, under *any* circumstances, and at *all* times, but that the criminality springs from some *extrinsic matter*, not visible upon the page itself, nor universally operative, but capable only of being connected with it by evidence, so as to demonstrate the effect of the publication and the design of the publisher; such a writing, libelous *per se*, cannot be arraigned as the author's work is arraigned upon the record before the court.

I maintain, without the hazard of contradiction, that the law of England positively requires, for the security of the subject, that every charge of a libel complicated with *extrinsic facts and circumstances, dehors the writing*, must appear literally upon the record by an averment of such extrinsic facts and circumstances, that the defendant may know what crime he is called upon to answer, and how to stand upon his defense.

What crime is it that the defendant comes to answer for to-day?—what is the notice that I, who am his counsel, have from this parchment of the crime alleged against him?

I come to defend his having written *this book*. The record states nothing else: the general charge of sedition in the introduction is notoriously paper and pack-thread; because the innuendoes

LIFE AND APPRECIATIONS

cannot enlarge the sense or natural construction of the text. The record does not state any one *extrinsic fact or circumstance* to render the work criminal at one time more than *another*; it states no peculiarity of time or season or intention, not provable from the writing itself, which is the naked charge upon record. There is nothing, therefore, which gives you any jurisdiction beyond the construction of the *work itself*; and you cannot be justified in finding it criminal because published at *this* time, unless it would have been a criminal publication under any circumstances, or at *any other* time.

The law of England, then, both in its forms and substance, being the only rule by which the author or the work can be justified or condemned, and the charge upon the record being the naked charge of a libel, the cause resolves itself into a question of the deepest importance to us all—
THE NATURE AND EXTENT OF THE LIBERTY OF THE
ENGLISH PRESS.

But before I enter upon it, I wish to fulfil a duty to the defendant, which, if I do not deceive myself, is at this moment peculiarly necessary to his impartial trial. If an advocate entertains sentiments injurious to the defense he is engaged in, he is not only justified, but bound in duty, to

WRITINGS OF THOMAS PAINE

conceal them; so, on the other hand, if his own genuine sentiments, or anything connected with his character or situation, can add strength to his professional assistance, he is bound to throw them into the scale. In addressing myself, therefore, to gentlemen not only zealous for the honor of English Government, but *visibly* indignant at any attack upon its principles, and who would, perhaps, be impatient of arguments from a suspected quarter, I give my client the benefit of declaring that I am, and ever have been, attached to the genuine principles of the British Government; and that, however the Court or you may reject the application, I defend him upon principles not only consistent with its permanence and security, but without the establishment of which it never could have had an existence.

The proposition which I mean to maintain as the basis of the liberty of the press, and without which it is an empty sound, is this: that every man, not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country: that he may ana-

LIFE AND APPRECIATIONS

lyze the principles of its Constitution, point out its errors and defects, examine and publish its corruptions, warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse.

All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the conviction which flows from reasonings dictated by conscience.

If, indeed, he writes *what he does not think*; if, contemplating the misery of others, he wickedly condemns what his own understanding approves; or, even admitting his real disgust against the Government or its corruptions, if he *calumniates living magistrates*, or holds out to individuals that they have a right to run before the public mind in their *conduct*; that they may oppose by contumacy or force what private reason only disapproves; that they may disobey the law, because their judgment condemns it; or resist the public will, because they honestly wish to change it—he is then a criminal upon every principle of rational policy, as well as upon the

WRITINGS OF THOMAS PAINE

immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of *misconduct* in a part of the community, instead of endeavoring to change, by the impulse of reason, that universal assent which, in this and in every country, constitutes the law for all.

I have, therefore, no difficulty in admitting that if, upon an attentive perusal of this work, it shall be found that the defendant has promulgated any doctrines which excite individuals to withdraw from their subjection to the law by which the whole nation consents to be governed; if his book shall be found to have warranted or excited that unfortunate criminal who appeared here yesterday to endeavor to relieve himself from imprisonment by the destruction of a prison, or dictated to him the language of defiance which ran through the whole of his defense; if throughout the work there shall be found any syllable or letter which strikes at the security of property, or which hints that anything less than *the whole nation* can constitute the law, or that the law, be it what it may, is not the inexorable rule of action for every individual, I willingly yield him up to the justice of the Court.

Gentlemen, I say, in the name of Thomas

LIFE AND APPRECIATIONS

Paine, and in his words as author of the "Rights of Man," as written in the very volume that is charged with seeking the destruction of property:

"The end of all political associations is the preservation of the rights of man, which rights are liberty, property, and security; that the nation is the source of all sovereignty derived from it; the right of property being secured and inviolable, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity."

These are undoubtedly the rights of man—the rights for which all governments are established—and the only rights Mr. Paine contends for; but which he thinks (no matter whether right or wrong) are better to be secured by a republican constitution than by the forms of the English Government. He instructs me to admit that, when government is once constituted, no individual, without rebellion, can withdraw their obedience from it; that all attempts to excite them to it are highly criminal, for the most obvious reasons of policy and justice; that nothing short of the will of a WHOLE PEOPLE can change or affect the rule by which a nation is to be governed; and that no private opinion, however

WRITINGS OF THOMAS PAINE

honestly inimical to the forms or substance of the law, can justify resistance to its authority, while it remains in force. The author of the "Rights of Man" not only admits the truth of all this doctrine, but he consents to be convicted, and I also consent for him, unless his work shall be found studiously and painfully to inculcate those great principles of government which it is charged to have been written to destroy.

Let me not, therefore, be suspected to be contending that it is lawful to write a book pointing out defects in the English Government, and exciting individuals to destroy its sanctions, and to refuse obedience. But, on the other hand, I do contend that it is lawful to address the English nation on these momentous subjects; for had it not been for this inalienable right (thanks be to God and our fathers for establishing it!) how should we have had this Constitution which we so loudly boast of? If, in the march of the human mind, no man could have gone before the establishments of the time he lived in, how could our establishment, by reiterated changes, have become what it is? If no man could have awakened the public mind to errors and abuses in our Government, how could it have passed on from stage to stage, through reformation and revolution, so

LIFE AND APPRECIATIONS

as to have arrived from barbarism to such a pitch of happiness and perfection, that the Attorney-general considers it as profanation to touch it further, or to look for any further amendment?

In this manner power has reasoned in every age; government, in *its own estimation*, has been at all times a system of perfection; but a free press has examined and detected its errors, and the people have from time to time reformed them. This freedom has alone made our Government what it is; this freedom alone can preserve it; and therefore, under the banners of that freedom, to-day I stand up to defend Thomas Paine. But how, alas! shall this task be accomplished? How may I expect from you what human nature has not made man for the performance of? How am I to address your reasons, or ask them to pause amidst the torrent of prejudice which has hurried away the public mind on the subject you are to judge.

Was any Englishman ever so brought as a criminal before an English court of justice?

If I were to ask you, Gentlemen of the jury, what is the choicest fruit that grows upon the tree of English liberty, you would answer, SECURITY UNDER THE LAW. If I were to ask the whole people of England the return they looked for at the

WRITINGS OF THOMAS PAINE

hands of Government for the burdens under which they bend to support it, I should still be answered, SECURITY UNDER THE LAW; or, in other words, an impartial administration of justice. So sacred, therefore, has the freedom of trial been ever held in England; so anxiously does justice guard against every possible bias in her path, that if the public mind has been locally agitated upon any subject in judgment, the forum has either been changed, or the trial postponed. The circulation of any paper that brings, or can be supposed to bring, prejudice, or even well-founded knowledge, within the reach of a British tribunal, *on the spur of an occasion*, is not only highly criminal, but defeats itself, by leading to put off the trial which its object was to pervert.

On this principle, the noble and learned judge will permit me to remind him that on the trial of the Dean of St. Asaph for a libel, or rather when he was brought to trial, the circulation of books by a society favorable to his defense was held by His Lordship, as Chief-justice of Chester, to be a reason for not trying the cause; although they contained no matter relative to the Dean, nor to the object of his trial; being only extracts from ancient authors of high reputation on the general rights of juries to consider the

LIFE AND APPRECIATIONS

innocence as well as the guilt of the accused; yet still, as the recollection of these rights was pressed forward *with a view to affect the proceedings*, the proceedings were postponed.

Is the defendant, then, to be the only exception to these admirable provisions? Is the English law to judge *him*, stripped of the armor with which its universal justice encircles *all others*? Shall we, in the very act of judging him for detracting from the English Government, furnish him with ample matter for just reprobation, instead of detraction? Has not his cause been prejudged through a thousand channels? Has not the work before you been daily and publicly reviled, and his person held up to derision and reproach? Has not the public mind been excited by crying down the very phrase and idea of the "Rights of Man"? Nay, have not associations of gentlemen—I speak it with regret, because I am persuaded, from what I know of some of them, that they, amongst them at least, thought they were serving the public—yet have they not, in utter contempt and ignorance of that Constitution of which they declare themselves to be the guardians, published the grossest attacks upon the defendant?

Have they not, even while the cause has been

WRITINGS OF THOMAS PAINE

standing here for immediate trial, published a direct protest against the very work now before you; advertising in the same paper, though under the general description of seditious libels, a reward on the conviction of any person who should dare to sell the book itself, to which their own publication was an answer?

The Attorney-general has spoken of a forced circulation of this work; but how have these prejudging papers been circulated? We all know how. They have been thrown into our carriages in every street; they have met us at every turnpike; and they lie in the areas of all our houses. To complete the triumph of prejudice, that high tribunal of which I have the honor to be a member (my learned friends know what I say to be true) has been drawn into this vortex of slander; and some of its members—I must not speak of the House itself—have thrown the weight of their stations into the same scale. By all these means I maintain that this cause has been prejudged.

It may be said that I have made no motion to put off the trial for these causes, and that courts of themselves take no cognizance of what passes elsewhere, without facts laid before them. Gentlemen, I know that I should have had equal justice from the Court, if I had brought myself

LIFE AND APPRECIATIONS

within the rule. But when should I have been better in the present aspect of things? And I only remind you, therefore, of all these hardships, that you may recollect that your judgment is to proceed upon that alone which meets you *here*, upon *the evidence* in the cause, and not upon suggestions destructive of every principle of justice.

Having disposed of these foreign prejudices, I hope you will as little regard some arguments that have been offered to you in court. The letter which has been so repeatedly pressed upon you ought to be dismissed even from your recollection. I have already put it out of the question, as having been written long subsequent to the book, and as being a libel on the King, which no part of the information charges, and which may hereafter be prosecuted as a distinct offense. I consider that letter, besides, and indeed have always heard it treated, as a forgery, contrived to injure the merits of the cause, and embarrass *me personally* in its defense. I have a right so to consider it, because it is unsupported by anything similar at an earlier period.

The defendant's whole deportment, previous to the publication, has been wholly unexceptionable: he properly desired to be given up as the author of the book if any inquiry should take

WRITINGS OF THOMAS PAINE

place concerning it: and he is not affected in evidence, either directly or indirectly, with any illegal or suspicious conduct; not even with having uttered an indiscreet or taunting expression, nor with any one matter or thing inconsistent with the duty of the best subject in England. His *opinions* indeed were adverse to our system; but I maintain that opinion is free, and that conduct alone is amenable to the law.

You are next desired to judge of the author's mind and intention by the modes and extent of the circulation of his work.

The FIRST part of the "Rights of Man" Mr. Attorney-general tells you he did not prosecute, although it was in circulation through the country for a year and a half together, because it seems it circulated only amongst what he styles the judicious part of the public, who possessed in their capacities and experience an antidote to the poison; but that, with regard to the SECOND part now before you, its circulation had been forced into every corner of society; had been printed and reprinted for cheapness even upon whited-brown paper, and had crept into the very nurseries of children as a wrapper for their sweetmeats.

In answer to this statement, which after all stands only upon Mr. Attorney-general's own

LIFE AND APPRECIATIONS

assertion, unsupported by any kind of proof (no witness having proved the author's personal interference with the sale), I still maintain that if he had the most anxiously promoted it, the question would remain exactly THE SAME: the question would still be, whether at the time when Paine composed his work, and promoted the most extensive purchase of it, he believed or disbelieved what he had written?—and whether he contemplated the happiness or the misery of the English nation, to which it is addressed? And whichever of these intentions may be evidenced to your judgments upon reading the book itself, I confess I am utterly at a loss to comprehend how a writer can be supposed to mean something different from what he has written, by proof of an anxiety (common, I believe, to all authors) that his work should be generally read.

Remember, I am not asking your opinions of the *doctrines themselves*—you have given them already pretty visibly since I began to address you—but I shall appeal not only to you, but to those who, without our leave, will hereafter judge, and without appeal, of all that we are doing to-day—whether, upon the matter which I hasten to lay before you, you can refuse to pronounce that from his education—from the acci-

WRITINGS OF THOMAS PAINE

dents and habits of his life—from the time and occasion of the publication—from the circumstances attending it—and from every line and letter of the work itself, and from all his other writings, his conscience and understanding (*no matter whether erroneously or not*) were deeply and solemnly impressed with the matters contained in his book?—that he addressed it to the reason of the nation at large, and not to the passions of individuals?—and that, in the issue of its influence, he contemplated only what appeared to *him* (*though it may not to us*) to be the interest and happiness of England, and of the whole human race?

In drawing the one or the other of these conclusions, the book stands first in order, and it shall now speak for itself.

Gentlemen, *the whole of it* is in evidence before you; the particular parts arraigned having only been read by my consent, upon the presumption that, on retiring from the court, you would carefully compare them with the context, and all the parts with the WHOLE VIEWED TOGETHER.

You cannot indeed do justice without it. The most common letter, even in the ordinary course of business, cannot be read in a cause to prove an obligation for twenty shillings without THE

LIFE AND APPRECIATIONS

WHOLE being read, that the writer's meaning may be seen without deception. But in a criminal charge, comprehending only four pages and a half, out of a work containing nearly two hundred, you cannot, with even the appearance of common decency, pronounce a judgment without the most deliberate and cautious comparison. I observe that the noble and learned judge confirms me in this observation.

If any given part of a work be legally explanatory of every other part of it, the preface, *à fortiori*, is the most material; because the preface is the author's own key to his writing: it is *there* that he takes the reader by the hand and introduces him to his subject; it is there that the spirit and intention of the whole is laid before him by way of prologue. A preface is meant by the author as a clue to ignorant or careless readers; the author says by it, to every man who chooses to begin where he ought, Look at my plan—attend to my distinctions—mark the purpose and limitations of the matter I lay before you.

Let, then, the calumniators of Thomas Paine now attend to his preface, where, to leave no excuse for ignorance or misrepresentation, he expresses himself thus:

WRITINGS OF THOMAS PAINE

I have differed from some professional gentlemen on the subject of prosecutions, and I since find they are falling into my opinion, which I will here state as fully but as concisely as I can.

I will first put a case with respect to any law, and then compare it with a government, or with what in England is or has been called a Constitution.

It would be an act of despotism, or what in England is called arbitrary power, to make a law to prohibit investigating the principles, good or bad, on which such a law, or any other, is founded.

If a law be bad, it is one thing to *oppose the practise* of it, but it is quite a different thing to *expose its errors*, to *reason* on its defects, and to *show cause* why it should be repealed, or why another ought to be substituted in its place. I have always held it an opinion (making it also my practise) that it is better to obey a bad law, making use at the same time of every argument to show its errors and procure its repeal, than forcibly to violate it; because the precedent of breaking a bad law might weaken the force, and lead to discretionary violation, of those which are good.

The case is the same with principles and forms of governments, or to what are called constitutions, and the parts of which they are composed.

It is for the good of nations, and not for the emolument or aggrandizement of particular individuals, that government ought to be established, and that mankind are at the expense of supporting it. The defects of every government and constitution, both as to principle and form, must, on a parity of reasoning, be as open to discussion as the defects of a law, and it is a duty which every man owes to society to point them out. When

LIFE AND APPRECIATIONS

those defects and the means of remedying them are generally seen by a NATION, THAT NATION will reform its government or its constitution in the one case as the government repealed or reformed the law in the other.

Gentlemen, you must undoubtedly wish to deal with every man who comes before you in judgment as you would be dealt by; and surely you will not lay it down to-day as a law to be binding hereafter, even upon yourselves, that if you should publish any opinion concerning existing abuses in your country's government, and point out to the whole public the means of amendment, you are to be acquitted or convicted as any twelve men may happen to agree with you in your *opinions*. Yet this is precisely what you are asked to do to another—it is precisely the case before you.

Mr. Paine expressly says, I obey a law until it is repealed; obedience is not only my principle but my practise, since my disobedience of a law, from thinking it *bad*, might apply to justify another man in the disobedience of a *good one*; and thus individuals would give the rule for themselves, and not society for all. You will presently see that the same principle pervades the whole work; and I am the more anxious to call your attention to it, however repetition may tire

WRITINGS OF THOMAS PAINE

you, because it unfolds the whole principle of my argument; for, if you find a sentence in the whole book that invests any individual, or any number of individuals, or any community short of the WHOLE NATION, with a power of changing any part of the law or constitution, I abandon the cause—YES, I freely abandon it, because I will not affront the majesty of a court of justice by maintaining propositions which, even upon the surface of them, are false. Mr. Paine, pages 162-168,* goes on thus:

When a NATION changes its opinion and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy, to attempt by force what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by a government. There ought, therefore, to be, in every nation, a method of occasionally ascertaining the state of public opinion with respect to government.

There is, therefore, no power but the voluntary will of the people that has a right to act in any matter respecting a general reform; and by the same right that two persons can confer on such a subject, a thousand may. The object in all such preliminary proceedings is to find out what the GENERAL SENSE OF A NATION is, and to be governed by it. If it prefer a bad or defective government to a reform, or choose to pay ten times more taxes than there is occasion for, it has a

*Folios of the original edition.—Ed.

LIFE AND APPRECIATIONS

right so to do; and, so long as the majority do not impose conditions on the minority different to what they impose on themselves, though there may be much error, there is no injustice; neither will the error continue long. Reason and discussion will soon bring things right, however wrong they may begin. By such a process no tumult is to be apprehended. The poor, in all countries, are naturally both peaceable and grateful in all reforms in which their interest and happiness are included. It is only by neglecting and rejecting them that they become tumultuous.

Gentlemen, these are the sentiments of the author of the "Rights of Man"; and, whatever *his* opinions may be of the defects in our Government, it never can change ours concerning it, if our sentiments are just; and a writing can never be seditious, in the sense of the English law, which states that the Government leans on the UNIVERSAL WILL for its support.

This universal will is the best and securest title which His Majesty and his family have to the throne of these kingdoms; and in proportion to the wisdom of our institutions, the title must in common sense become the stronger. So little idea indeed have I of any other, that in my place in Parliament, not a week ago, I considered it as the best way of expressing my reverence to the Constitution; as established at the Revolution, to declare (I believe in the presence of the heir-

WRITINGS OF THOMAS PAINE

apparent to the Crown, to whom I have the greatest personal attachment), that His Majesty reigned in England by choice and consent, as the magistrate of the English people; not indeed a consent and choice by personal election, like a King of Poland—the worst of all possible constitutions; but by the election of a family for great national objects, in defiance of that hereditary right, which only becomes tyranny, in the sense of Mr. Paine, when it claims to inherit a nation, instead of governing by their consent, and continuing for its benefit. This sentiment has the advantage of Mr. Burke's high authority, who says with great truth, in a "Letter to his Constituents":

“ Too little dependence cannot be had at this time of day on names and prejudices: the eyes of mankind are opened; and communities must be held together by a visible and solid interest.” I believe, Gentlemen of the jury, that the Prince of Wales will always render this title dear to the people. The Attorney-general can only tell you what he *believes* of him; I can tell you what I KNOW, and what I am bound to declare, since this Prince may be traduced in every part of the kingdom, without its coming in question, till brought in to load a defense with matter collateral to the

LIFE AND APPRECIATIONS

charge. I therefore *assert* what the Attorney-general can only *hope*, that whenever that Prince shall come to the throne of this country (which I pray, but, by the course of nature, may never happen), he will make the Constitution of Great Britain the foundation of all his conduct.

Having now established the author's general intention by his own introduction, which is the best and fairest exposition, let us next look at the occasion which gave it birth.

The Attorney-general throughout the whole course of his address to you (I knew it would be so), has avoided the most distant notice or hint of any circumstance having led to the appearance of the author in the political world, after a silence of so many years; he has not even pronounced, or even glanced, at the name of Mr. Burke, but has left you to take it for granted that the defendant volunteered this delicate and momentous subject, and, without being led to it by the provocation of political controversy, had seized a favorable moment to stigmatize, from mere malice, and against his own confirmed opinions, the Constitution of this country.

Gentlemen, my learned friend knows too well my respect and value for him to suppose that I am charging him with wilful suppression; I know

WRITINGS OF THOMAS PAINE

him to be incapable of it; he knew it would come from me. He will permit me, however, to lament that it should have been left for me to inform you, at this late period of the cause, that not only the work before you, but the first part, of which it is a natural continuation, were written, *avowedly and upon the face of them*, IN ANSWER TO MR. BURKE.

They were written, besides, under circumstances to be explained hereafter, in the course of which explanation I may have occasion to cite a few passages from the works of that celebrated person. And I shall speak of him with the highest respect; for, with whatever contempt he may delight to look down upon my humble talents, however, he may disparage the principles which direct my public conduct, he shall never force me to forget the regard which this country owes to him for the writings which he has left upon record as an inheritance to our most distant posterity.

After the gratitude which we owe to God for the divine gifts of reason and understanding, our next thanks are due to those from the fountains of whose enlightened minds they are fed and fructified. But pleading, as I do, the cause of freedom of opinions, I shall not give offense by

LIFE AND APPRECIATIONS

remarking that this great author has been thought to have changed some of his; and, if Thomas Paine had not thought so, I should not now be addressing you, because the book which is my subject would never have been written.

Who may be right and who in the wrong, in the contention of doctrines, I have repeatedly disclaimed to be the question. I can only say that Mr. Paine may be right THROUGHOUT, but that Mr. Burke CANNOT. Mr. Paine has been UNIFORM in *his* opinions, but Mr. Burke HAS NOT. Mr. Burke can only be right in part; but should Mr. Paine be even mistaken in the whole, still I am not removed from the principle of his defense. My defense has nothing to do with the rectitude of his doctrines.

I admit Mr. Paine to be a republican; you shall soon see what made him one. I do not seek to shade or qualify his attack upon our Constitution; I put my defense on no such matter. He undoubtedly means to declare it to be defective in its forms, and contaminated with abuses which, in his judgment, will, one day or other, bring on the ruin of us all. It is in vain to mince the matter; this is the scope of his work. But still, if it contain no attack upon the King's majesty, nor upon any other LIVING MAGISTRATE; if it excite to

WRITINGS OF THOMAS PAINE

no resistance to magistracy, but, on the contrary, if it even studiously inculcate obedience, then, whatever may be its defects, the question continues as before, and ever must remain, an un-mixed question of the liberty of the press.

I have therefore considered it as no breach of professional duty, nor injurious to the cause I am defending, to express my own admiration of the real principles of our Constitution—a Constitution which I hope may never give way to any other—a Constitution which has been productive of many benefits, and which will produce many more hereafter, if we have wisdom enough to pluck up the weeds that grow in the richest soils and amongst the brightest flowers.

I agree with the merchants of London, in a late declaration, that the English Government is equal to the reformation of its own abuses; and, as an inhabitant of the city, I would have signed it, if I had known, *of my own knowledge*, the facts recited in its preamble. But abuses the English Constitution unquestionably has, which call loudly for reformation, the existence of which has been the theme of our greatest statesmen, which have too plainly formed the principles of the defendant, and may have led to the very conjuncture which produced his book.

LIFE AND APPRECIATIONS

Gentlemen, we all but too well remember the calamitous situation in which our country stood but a few years ago—a situation which no man can look back upon without horror, nor feel himself safe from relapsing into again, while the causes remain which produced it. The event I allude to you must know to be the American War, and the still existing causes of it, the corruptions of this Government. In those days it was not thought virtue by the patriots of England to conceal the existence of them from the people; but then, as now, authority condemned them as disaffected subjects, and defeated the ends they sought by their promulgation.

Hear the opinion of Sir George Saville—not his speculative opinion concerning the structure of our Government in the *abstract*, but his opinion of the settled abuses which prevailed in *his own time*, and which continue at *this moment*. But first let me remind you who Sir George Saville was. I fear we shall hardly look upon his like again. How shall I describe him to you? In my own words I cannot. I was lately commended by Mr. Burke in the House of Commons for strengthening my own language by an appeal to Dr. Johnson. Were the honorable gentleman present at this moment he would no doubt doubly

WRITINGS OF THOMAS PAINE

applaud my choice in resorting to *his own works* for the description of Sir George Saville.

“ His fortune is among the largest; a fortune which, wholly unencumbered as it is, without one single charge from luxury, vanity, or excess, sinks under the benevolence of its dispenser. This private benevolence, expanding itself into patriotism, renders his whole being the estate of the public, in which he has not reserved a *peculium* for himself of profit, diversion, or relaxation. During the session, the first in and the last out of the House of Commons, he passes from the senate to the camp; and seldom seeing the seat of his ancestors, he is always in Parliament to serve his country, or in the field to defend it.”

It is impossible to ascribe to such a character any principle but patriotism, when he expressed himself as follows:—

“ I return to you baffled and dispirited, and I am sorry that truth obliges me to add, with hardly a ray of hope of seeing any change in the miserable course of public calamities.

“ On this melancholy day of account, in rendering up to you my trust, I deliver to you your share of a country maimed and weakened; its treasure lavished and misspent; its honors faded; and its conduct the laughing-stock of Europe:

LIFE AND APPRECIATIONS

our nation in a manner without allies or friends, except such as we have hired to destroy our fellow-subjects, and to ravage a country in which we once claimed an invaluable share. I return to you some of your principal privileges impeached and mangled. And, lastly, I leave you, as I conceive, at this hour and moment, fully, effectually, and absolutely under the discretion and power of a military force, which is to act without waiting for the authority of the civil magistrates.

“Some have been accused of exaggerating the public misfortunes, nay, of having endeavored to help forward the mischief, that they might afterwards raise discontents. I am willing to hope that neither my temper nor my situation in life will be thought naturally to urge me to promote misery, discord, or confusion, or to exult in the subversion of order, or in the ruin of property. I have no reason to contemplate with pleasure the poverty of our country, the increase of our debts and of our taxes, or the decay of our commerce. Trust not, however, to my report: reflect, compare and judge for yourselves.

“But, under all these disheartening circumstances, I could yet entertain a cheerful hope, and undertake again the commission with alacrity, as well as zeal, if I could see any effectual steps

WRITINGS OF THOMAS PAINE

taken to remove the original cause of the mischief. 'Then would there be a hope.'

"But till the purity of the constituent body, and thereby that of the representative, be restored, there is NONE.

"I gladly embrace this most public opportunity of delivering my sentiments, not only to all my constituents, but to those likewise not my constituents, whom yet, in the large sense, I represent, and am faithfully to serve.

"I look upon restoring election and representation in some degree (for I expect no miracles) to their original purity, to be that, without which all other efforts will be vain and ridiculous.

"If something be not done, you may, indeed, retain the OUTWARD FORM of your Constitution, but not the POWER thereof."

Such were the words of that great, good man, lost with those of many others of his time, and his fame, as far as power could hurt it, put in the shade along with them. The consequences we have all seen and felt: America, from an obedient, affectionate colony, became an independent nation; and two millions of people, nursed in the very lap of our monarchy, became the willing subjects of a republican constitution.

Gentlemen, in that great and calamitous con-

LIFE AND APPRECIATIONS

flict Edmund Burke and Thomas Paine fought in the same field of reason together, but with very different successes. Mr. Burke spoke to a Parliament in England, such as Sir George Saville describes it, having no ears but for sounds that flattered its corruptions. Mr. Paine, on the other hand, spoke TO A PEOPLE, reasoned with them, told them that they were bound by no subjection to any sovereignty, further than their own benefit connected them; and by these powerful arguments prepared the minds of the American people for that GLORIOUS, JUST, and HAPPY revolution.

Gentlemen, I have a right to distinguish it by these epithets, because I aver that at this moment there is as sacred a regard to property, as inviolable a security to all the rights of individuals, lower taxes, fewer grievances, less to deplore, and more to admire, in the Constitution of America, than that of any other country under heaven. I wish indeed to except our own, but I cannot even do that, till it shall be purged of those abuses which, though they obscure and deform the surface, have not as yet, *thank God*, destroyed the vital parts.

Why then is Mr. Paine to be calumniated and reviled, because, out of a people consisting of

WRITINGS OF THOMAS PAINE

near three millions, *he alone* did not remain attached *in opinion* to a monarchy? Remember that all the blood which was shed in America, and to which he was for years a melancholy and indignant witness, was shed by the authority of the Crown of Great Britain, under the influence of a Parliament such as Sir George Saville has described it, and such as Mr. Burke himself will be called upon by and by in more glowing colors to paint it.

How, then, can it be wondered at that Mr. Paine should return to this country in his heart a republican? Was he not equally a republican when he wrote "Common Sense"? Yet that volume has been sold without restraint or prosecution in every shop in England ever since, and which nevertheless (*I appeal to the book, which I have in Court, and which is in everybody's hands*) contains every one principle of government, and every abuse in the British Constitution, which is to be found in the "Rights of Man."

Yet MR. Burke himself saw no reason to be alarmed at that publication, nor to cry down its contents, even when America, which was swayed by it, was in arms against the Crown of Great Britain. You shall hear his opinion of it in his

LIFE AND APPRECIATIONS

“Letter to the Sheriffs of Bristol,” pages 33 and 34.

“The *Court Gazette* accomplished what the abettors of independence had attempted in vain. When that disingenuous compilation, and strange medley of railing and flattery, was adduced as a proof of the united sentiments of the people of Great Britain, there was a great change throughout all America. The tide of popular affection, which had still set toward the parent country, began immediately to turn, and to flow with great rapidity in a contrary course.

“Far from concealing these wild declarations of enmity, *the author of the celebrated pamphlet* which prepared the minds of the people for independence*, insists largely on the multitude and the spirit of these addresses; and draws an argument from them which (if the fact were as he supposes) must be irresistible; for I never knew a writer on the theory of government so partial to authority as not to allow that the hostile mind of the rulers to their people did fully justify a change of government; nor can any reason whatever be given why one people should voluntarily yield any degree of pre-eminence to another, but on a supposition of great affection and benevol-

*“Common Sense,” written by Thomas Paine in America.

WRITINGS OF THOMAS PAINE

ence toward them. Unfortunately, your rulers, trusting to other things, took no notice of this great principle of connection.”

Such were the sentiments of Mr. Burke; but there is a time, it seems, for all things.

Gentlemen, the consequences of this mighty Revolution are too notorious to require illustration. No audience would sit to *hear* (what everybody has *seen* and *felt*), how the independence of America notoriously produced, not by remote and circuitous effect, but directly and palpably, the revolutions which now agitate Europe, and which portend such mighty changes over the face of the earth. Let governments take warning.

The Revolution in France was the consequence of her incurably corrupt and profligate Government. God forbid that I should be thought to lean, by this declaration, upon her unfortunate monarch, bending perhaps at this moment under afflictions which my heart sinks within me to think of: when I speak with detestation of the former politics of the French Court, I fasten as little of them upon that fallen and unhappy prince, as I impute to our gracious Sovereign the corruptions of our own. I desire, indeed, in the distinctest manner, to be understood that I mean to speak of His

LIFE AND APPRECIATIONS

Majesty, not only with that obedience and duty which I owe to him as a subject, but with that justice which I think is due to him from all men who examine his conduct either in public or private life.

Gentlemen, Mr. Paine happened to be in England when the French Revolution took place; and notwithstanding what he must be supposed and allowed from his own history to have felt upon such a subject, he remained wholly silent and inactive. The people of this country, too, appeared to be indifferent spectators of the animating scene. They saw, without visible emotion, despotism destroyed, and the King of France, by his own consent, become the first magistrates of a free people.

Certainly, at least, it produced none of those effects which are so deprecated by Government at present; nor, most probable, ever would, if it had not occurred to the celebrated person whose name I must so often mention voluntarily to provoke the subject—a subject which, if dangerous to be discussed, HE should not have led to the discussion of; for surely it is not to be endured that any private man shall publish a creed for a whole nation; shall tell us that we are not to think for ourselves, shall im-

WRITINGS OF THOMAS PAINE

pose his own fetters upon the human mind, shall dogmatize at discretion, and yet that no man shall sit down to answer him without being guilty of a libel. I assert that if it be a libel to mistake our Constitution, to attempt the support of it by means that tend to destroy it, and to choose the most dangerous season for doing so, Mr. Burke is that libeler; but not therefore the object of a criminal prosecution.

While I am not defending the motives of one man, I have neither right nor disposition to criminate the motives of another. All I contend for is a fact that cannot be controverted—viz., that *this officious interference was the origin of Mr. Paine's book*. I put my cause upon its being the origin of it—the avowed origin—as will abundantly appear from the introduction and preface to both parts, and from the whole body of the work; nay, from the very work of Mr. Burke himself, to which both of them are answers.

For the history of that celebrated work, I appeal to itself.

When the French Revolution had arrived at some of its early stages, a few, and but a few, persons (not to be named when compared with the nation) took a visible interest in these mighty events—an interest well worthy of Englishmen.

LIFE AND APPRECIATIONS

They saw a pernicious system of government which had led to desolating wars, and had been for ages the scourge of Great Britain, giving way to a system which seemed to promise harmony and peace amongst nations. They saw this with virtuous and peaceable satisfaction; and a reverend divine,* eminent for his eloquence, recollecting that the issues of life are in the hands of God, saw no profaneness in mixing the subject with public thanksgiving, by reminding the people of this country of their own glorious deliverance in former ages.

It happened, also, that a society of gentlemen, France being then a neutral nation, and her own monarch swearing almost daily upon her altars to maintain the new Constitution, thought they infringed no law by sending a general congratulation. Their members, indeed, were very inconsiderable; so much so, that Mr. Burke, with more truth than wisdom, begins his volume with a sarcasm upon their insignificance:

“Until very lately he had never heard of such a club. It certainly never occupied a moment of his thoughts; nor, he believed, those of any person out of their own set.”

Why then make their proceedings the sub-

*Dr. Price.

WRITINGS OF THOMAS PAINE

ject of alarm throughout England? There had been no prosecution against them, nor any charge founded even upon suspicion of disaffection against any of their body. But Mr. Burke thought it was reserved for his eloquence to whip these curs of faction to their kennels. How he has succeeded, I appeal to all that has happened since the introduction of his schism in the British Empire, by giving to the King, whose title was questioned by no man, a title which it is His Majesty's most solemn interest to disclaim.

After having, in his first work, lashed Dr. Price in a strain of eloquent irony for considering the monarchy to be elective, which he could not but know Dr. Price, *in the literal sense of election*, neither did nor could possibly consider it, Mr. Burke published a second treatise; in which, after reprinting many passages from Mr. Paine's former work, he ridicules and denies the supposed right of the people to change their governments, in the following words:

“The French Revolution, *say they*,” speaking of the English societies, “was the act of the majority of the people; and if the majority of any other people, *the people of England for instance*, wish to make the same change, they have

LIFE AND APPRECIATIONS

the same right; just the same undoubtedly; that is, none *at all*."

And then, after speaking of the subserviency of will to duty (in which I agree with him), he, in a substantive sentence, maintains the same doctrine, thus:

"The constitution of a country being once settled upon some compact, tacit or expressed, there is no power existing of force to alter it, without the breach of the covenant, or the consent of all the parties. Such is the nature of a contract."

So that if reason, or even revelation itself, were now to demonstrate to us that our Constitution was mischievous in its effects—if, to use Mr. Attorney-general's expression, we had been insane for the many centuries we have supported it; yet that still, if the King had not forfeited his title to the Crown, nor the Lords their privileges, *the universal voice of the people of England* could not build up a new government upon a legitimate basis.

Passing by, for the present, the absurdity of such a proposition, and supposing it could, beyond all controversy, be maintained; for Heaven's sake, let wisdom never utter it! Let policy and prudence forever conceal it! If you seek

WRITINGS OF THOMAS PAINE

the stability of the English Government, rather put the book of Mr. Paine, which calls it bad, into every hand in the kingdom, than doctrines which bid human nature rebel even against that which is the best.

Say to the people of England, Look at your Constitution, there it lies before you—the work of your pious fathers—handed down as a sacred deposit from generation to generation—the result of wisdom and virtue—and its parts cemented together with kindred blood: there are, indeed, a few spots upon its surface; but the same principle which reared the structure will brush them all away. You may preserve your Government—you may destroy it. To such an address, what would be the answer? A chorus of the nation—YES, WE WILL PRESERVE IT.

But say to the *same* nation, even of the very *same* Constitution, It is yours, such as it is, for better or for worse—it is strapped upon your backs, to carry it as beasts of burden—you have no jurisdiction to cast it off. Let *this* be your position, and you instantly raise up (I appeal to every man's consciousness of his own nature) a spirit of uneasiness and discontent. It is this spirit alone that has pointed most of the passages arraigned before you.

LIFE AND APPRECIATIONS

But let the prudence of Mr. Burke's argument be what it may, the argument itself is untenable. His Majesty undoubtedly was not elected to the throne. No man can be supposed, in the teeth of fact, to have contended it; but did not the people of England elect King William, and break the hereditary succession? and does not His Majesty's title grow out of that election? It is one of the charges against the defendant, his having denied the Parliament which called the Prince of Orange to the throne to have been a legal convention of the whole people; and is not the very foundation of that charge that it *was* such a legal convention, and that it was intended to be so? And *if it was so*, did not the people then confer the crown upon King William without any regard to hereditary right?

Did they not cut off the Prince of Wales, who stood directly in the line of succession, and who had incurred no personal forfeiture? Did they not give their deliverer an estate in the Crown totally new and unprecedented in the law or history of the country? And, lastly, might they not, by the same authority, have given the royal inheritance to the family of a stranger? Mr. Justice Blackstone, in his "Commentaries," asserts in terms *that they might*; and ascribes

WRITINGS OF THOMAS PAINE

their choice of King William, and the subsequent limitations of the Crown, not to want of jurisdiction, but to their true origin, to prudence and discretion in not disturbing a valuable institution further than public safety and necessity dictated.

The English Government stands then on this public consent, the true root of all governments. And I agree with Mr. Burke that, while it is well administered, it is not in the power of factions or libels to disturb it; though, when ministers are in fault, they are sure to set down all disturbances to these causes. This is most justly and eloquently exemplified in his own "Thoughts on the Cause of the Present Discontents," pages 5 and 6:

"Ministers contend that no adequate provocation has been given for so spreading a discontent, our affairs having been conducted throughout with remarkable temper and consummate wisdom. The wicked industry of some libelers, joined to the intrigues of a few disappointed politicians, have, in their opinion, been able to produce this unnatural ferment in the nation.

"Nothing, indeed, can be more unnatural than the present convulsions of this country, if the above account be a true one. I confess I shall assent to it with great reluctance, and only on

LIFE AND APPRECIATIONS

the compulsion of the clearest and firmest proofs; because their account resolves itself into this short but discouraging proposition: 'That we have a very good Ministry, but that we are a very bad people'; that we set ourselves to bite the hand that feeds us; and, with a malignant insanity, oppose the measures and ungratefully vilify the persons of those whose sole object is our own peace and prosperity. If a few puny libelers, acting under a knot of factious politicians, without virtue, parts, or character (for such they are constantly represented by these gentlemen), are sufficient to excite this disturbance, very perverse must be the disposition of that people amongst whom such a disturbance can be excited by such means."

He says true; never were serious disturbances excited by such means!

But to return to the argument. Let us now see how the rights of the people stand upon authorities. Let us examine whether this great source of government insisted on by Thomas Paine be not maintained by persons on whom my friend will find it difficult to fasten the character of libelers.

I shall begin with the most modern author on the subject of government—whose work lies

WRITINGS OF THOMAS PAINE

spread out before me, as it often does at home for my delight and instruction in my leisure hours. I have also the honor of his personal acquaintance. He is a man, perhaps more than any other, devoted to the real Constitution of this country, as will be found throughout his valuable work; he is a person, besides, of great learning, which enabled him to infuse much useful knowledge into my learned friend now near me, who introduced me to him.* I speak of Mr. Paley, Archdeacon of Carlisle, and of his work "The Principles of Political and Moral Philosophy," in which he investigates the first principles of all governments—a discussion not thought dangerous *till lately*. I hope we shall soon get rid of this ridiculous panic.

Mr. Paley professes to think of governments what the Christian religion was thought of by its first teachers—"If it be of God, it will stand"; and he puts the duty of obedience to them upon free will and moral duty. After dissenting from Mr. Locke as to the origin of governments in compact, he says:

"Wherefore, rejecting the intervention of a compact as unfounded in its principle, and dangerous in the application, we assign for the only

*Lord Ellenborough, then Mr. Law.

LIFE AND APPRECIATIONS

ground of the subjects' obligation, THE WILL OF GOD, AS COLLECTED FROM EXPEDIENCY.

“The steps by which the argument proceeds are few and direct. ‘It is the will of God that the happiness of human life be promoted’;—this is the first step, and the foundation, not only of this, but of every moral conclusion. ‘Civil society conduces to that end’—this is the second proposition. ‘Civil societies cannot be upheld unless in each the interest of the whole society be binding upon every part and member of it’—this is the third step, and conducts us to the conclusion—namely, ‘That, so long as the interest of the whole society requires it (that is, so long as the established government cannot be resisted or changed without public inconveniency), it is the will of God (which will universally determines our duty) that the established government be obeyed’—*and no longer.*

“But who shall judge of this? We answer, ‘*Every man for himself.*’ In contentions between the sovereign and the subject, the parties acknowledge no common arbitrator; and it would be absurd to commit the decision to those whose conduct has provoked the question, and whose own interest, authority, and fate are immediately concerned in it. The danger of error and abuse

WRITINGS OF THOMAS PAINE

is no objection to the rule of expediency, because every other rule is liable to the same or greater; and every rule that can be propounded upon the subject (like all rules which appeal to or bind the conscience) must, in the application, depend upon private judgment. It may be observed, however, that it ought equally to be accounted the exercise of a man's private judgment, whether he determines by reasonings and conclusions of his own, or submits to be directed by the advice of others, provided he be free to choose his guide."

He then proceeds in a manner rather inconsistent with the principles entertained by my learned friend in his opening to you:

"No usage, law, or authority whatever, is so binding that it need or ought to be continued when it may be changed with advantage to the community. The family of the Prince—the order of succession—the prerogative of the Crown—the form and parts of the Legislature—together with the respective powers, office, duration, and mutual dependency of the several parts—are all only so many laws, mutable, like other laws, whenever expediency requires, either by the ordinary act of legislature, or, if the occasion deserve it, BY THE INTERPOSITION OF THE PEOPLE."

No man can say that Mr. Paley intended to

LIFE AND APPRECIATIONS

diffuse discontent by this declaration. He must, therefore, be taken to think with me, that freedom and affection, and the sense of advantage, are the best and the only supports of government. On the same principle he then goes on to say: "These points are wont to be approached with a kind of awe; they are represented to the mind as principles of the Constitution, settled by our ancestors; and, being settled, to be no more committed to innovation or debate; as foundations never to be stirred; as the terms and conditions of the social compact, to which every citizen of the state has engaged his fidelity by virtue of a promise which he cannot now recall. Such reasons have no place in our system."

These are the sentiments of this excellent author; and there is no part of Mr. Paine's work, from the one end of it to the other, that advances any other proposition.

But the Attorney-general will say these are the grave speculative opinions of a friend to the English Government, whereas Mr. Paine is its professed enemy; what then? The principle is, that every man, while he obeys the law, is to think for himself, and to communicate what he thinks. The very ends of society exact this license, and the policy of the law, in its provisions for its secu-

WRITINGS OF THOMAS PAINE

riety, has tacitly sanctioned it. The real fact is, that writings against a free and well-proportioned government need not be guarded against by laws. They cannot often exist, and never with effect. The just and lawful principles of society are rarely brought forward but when they are insulted or denied, or abused in practise. Mr. Locke's "Essay on Government" we owe to Sir Robert Filmer, as we owe Mr. Paine's to Mr. Burke; indeed, between the arguments of Filmer and Burke I see no essential difference, since it is not worth disputing whether a king exists by *divine* right or by *indissoluble human* compact, if he exists whether we will or no. If his existence be without our consent, and is to continue without benefit, it matters not whether his title be from God or from man.

That his title is from man, and from every generation of man, without regard to the determination of former ones, hear from Mr. Locke: "*All men,*" say they (*i.e.*, Filmer and his adherents), "*are BORN under government, and therefore they cannot be at liberty to begin a new one. Everyone is born a subject to his father, or his Prince, and is therefore under the perpetual tie of subjection and allegiance.* It is plain mankind never owned nor considered any such nat-

LIFE AND APPRECIATIONS

ural *subjection that they were born in*, to one or the other, that tied them, without their own consents, to a subjection to them and their heirs.

“It is true that whatever engagements or promises anyone has made for himself, he is under the obligation of them, but cannot, by any compact whatsoever, bind his children or posterity; for his son, when a man, being altogether as free as his father, any *act of the father can no more give away the liberty of the son* than it can of anybody else.”

So much for Mr. Locke's opinion of the rights of man. Let us now examine his ideas of the supposed danger of trusting him with them.

“Perhaps it will be said that—the people being ignorant, and always discontented—to lay the foundation of government in the unsteady opinion and uncertain humor of the people is to expose it to certain ruin; and no government will be able long to subsist if the people may set up a new legislature whenever they take offense at the old one.

“To this I answer, Quite the contrary; people are not so easily got out of their old forms as some are apt to suggest; they are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed

WRITINGS OF THOMAS PAINE

to; and if there be any original defects, or adventitious ones, introduced by time or corruption, it is not an easy thing to be changed, even when all the world sees there an opportunity for it. This slowness and aversion in the people to quit their old constitutions has, in the many revolutions which have been seen in this kingdom in this and former ages, still kept us to, or, after some interval of fruitless attempts, still brought us back again, to our old legislative of kings, lords, and commons; and whatever provocations have made the crown be taken from some of our princes' heads, they never carried the people so far as to place it in another line."

Gentlemen, I wish I had strength to go on with all that follows; but I have read enough, not only to maintain the true principles of government, but to put to shame the narrow system of distrusting the people.

It may be said that Mr. Locke went great lengths in his positions to beat down the contrary doctrine of divine right, which was then endangering the new establishment. But that cannot be objected to David Hume, who maintains the same doctrine. Speaking of the Magna Charta in his "History," vol. ii, page 88, he says:

"It must be confessed that the former articles

LIFE AND APPRECIATIONS

of the great charter contain such mitigations and explanations of the feudal law as are reasonable and equitable; and that the latter involve all the chief outlines of a legal government, and provide for the equal distribution of justice and free enjoyment of property; the great object for which political society was founded by men, *which the people have a perpetual and unalienable right to recall; and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention.*"

These authorities are sufficient to rest on; yet I cannot omit Mr. Burke himself, who is, if possible, still more distinct on the subject. Speaking not of the ancient people of England, but of colonies planted almost within our memories, he says:

"If there be one fact in the world perfectly clear, it is this, that the disposition of the people of America is wholly averse to any other than a free government; and this is indication enough to any honest statesman how he ought to adapt whatever power he finds in his hands to their case. If any ask me what a free government is, I answer, THAT IT IS WHAT THE PEOPLE THINK SO; AND THAT THEY, AND NOT I, ARE THE NATURAL,

WRITINGS OF THOMAS PAINE

LAWFUL, AND COMPETENT JUDGES OF THIS MATTER. If they practically allow me a greater degree of authority over them than is consistent with any correct ideas of perfect freedom, I ought to thank them for so great a trust, and not to endeavor to prove from thence that they have reasoned amiss; and that, having gone so far, by analogy, they must hereafter have no enjoyment but by my pleasure.”

Gentlemen, all that I have been stating hitherto has been only to show that there is not that *novelty* in the opinions of the defendant as to lead you to think he does not *bona fide* entertain them, much less when connected with the history of his life, which I therefore brought in review before you. But still the great question remains unargued: Had he a right to promulgate these opinions? If he entertained them, I shall argue that he had; and although my arguments upon the liberty of the press may not to-day be honored with your or the Court's approbation, I shall retire not at all disheartened, consoling myself with the reflection that a season may arrive for their reception.

The most essential liberties of mankind have been but slowly and gradually received; and so very late indeed do some of them come to matu-

LIFE AND APPRECIATIONS

riety that, notwithstanding the Attorney-general tells you that the very question I am now agitating is most peculiarly for *your* consideration, AS A JURY under our ANCIENT Constitution, yet I must remind both YOU and HIM that your jurisdiction to consider and deal with it at all in judgment is but A YEAR OLD. Before that late period I ventured to maintain this very RIGHT OF A JURY over the question of libel under the same *ancient* Constitution (I do not mean before the noble judge now present, for the matter was gone to rest in the courts long before he came to sit where he does, but) before a noble and reverend magistrate of the most exalted understanding, and of the most uncorrupted integrity.*

He treated me not with contempt, indeed, for of that his nature was incapable, but he put me aside with indulgence, as you do a child while it is lispings its prattle out of season; and if this cause had been tried *then*, instead of *now*, the defendant must have been instantly convicted on the proof of the publication, whatever *you* might have thought of his case. Yet I have lived to see it resolved, by an almost unanimous vote of the whole Parliament of England, that I had all along been in the right. If this be not an awful

*Earl of Mansfield.

WRITINGS OF THOMAS PAINE

lesson of caution concerning opinions, where are such lessons to be read?

Gentlemen, I have insisted, at great length, upon the origin of governments, and detailed the authorities which you have heard upon the subject, because I consider it to be not only an essential support, but the very foundation of the liberty of the press. If Mr. Burke be right in HIS principles of government, I admit that the press, in my sense of its freedom, ought not to be free, *nor free in any sense at all*; and that all addresses to the people upon the subject of government, and all speculations of amendment, of what kind or nature soever, are illegal and criminal, since, if the people have, without possible recall, delegated all their authorities, they have no jurisdiction to act, and therefore none to think or write upon such subjects; and it would be a libel to arraign Government, or any of its acts, before those who have no jurisdiction to correct them. But, on the other hand, as it is a settled rule in the law of England that the subject may always address a competent jurisdiction, no legal argument can shake the freedom of the press, in my sense of it, if I am supported in my doctrines concerning the great unalienable right of the people, to reform or to change their governments.

LIFE AND APPRECIATIONS

It is because the liberty of the press resolves itself into this great issue that it has been, in every country, the last liberty which subjects have been able to wrest from power. Other liberties are held *under* governments, but the liberty of opinion keeps GOVERNMENTS THEMSELVES in due subjection to their duties. This has produced the martyrdom of truth in every age, and the world has been only purged from ignorance with the innocent blood of those who have enlightened it.

Gentlemen, my strength and time are wasted, and I can only make this melancholy history pass like a shadow before you.

I shall begin with the grand type and example.

The universal God of nature, the Savior of mankind, the Fountain of all light, who came to pluck the world from eternal darkness, expired upon a cross—the scoff of infidel scorn; and His blessed apostles followed Him in the train of martyrs. When He came in the flesh, He might have come like the Mahometan prophet, as a powerful sovereign, and propagated His religion with an unconquerable sword, which even now, after the lapse of ages, is but slowly advancing under the influence of reason over the face of the

WRITINGS OF THOMAS PAINE

earth; but such a process would have been inconsistent with His mission, which was to confound the pride, and to establish the universal rights of men. He came, therefore, in that lowly state which is represented in the Gospel, and preached His consolations to the poor.

When the foundation of this religion was discovered to be invulnerable and immortal, we find political power taking the Church into partnership; thus began the corruptions, both of religion and civil power; and, hand in hand together, what havoc have they not made in the world?—ruling by ignorance and the persecution of truth; but this very persecution only hastened the revival of letters and liberty. Nay, you will find that in the exact proportion that knowledge and learning have been beat down and fettered, they have destroyed the governments which bound them.

The Court of Star Chamber, the first restriction of the press of England, was erected previous to all the great changes in the Constitution. From that moment, no man could legally write without an *imprimatur* from the State; but truth and freedom found their way with greater force through secret channels; and the unhappy Charles, *unwarned by a free press*, was brought to an ignominious death. When men can freely

LIFE AND APPRECIATIONS

communicate their thoughts and their sufferings, real or imaginary, their passions spend themselves in air, like gunpowder scattered upon the surface; but, pent up by terrors, they work unseen, burst forth in a moment, and destroy everything in their course. *Let reason be opposed to reason, and argument to argument, and every good government will be safe.*

The usurper, Cromwell, pursued the same system of restraint in support of his Government, and the end of it speedily followed.

At the restoration of Charles II the Star Chamber Ordinance of 1637 was worked up into an act of Parliament, and was followed up during that reign, and the short one that followed it, by the most sanguinary prosecutions. But what fact in history is more notorious than that this blind and contemptible policy prepared and hastened the Revolution? At that great era these cobwebs were all brushed away. The freedom of the press was regenerated, and the country, ruled by its affections, has since enjoyed a century of tranquillity and glory. Thus I have maintained by English history that, in proportion as the press has been free, English government has been secure.

Gentlemen, the same important truth may be

WRITINGS OF THOMAS PAINE

illustrated by great authorities. Upon a subject of this kind resort cannot be had to law cases. The ancient law of England knew nothing of such libels; they began, and should have ended, with the Star Chamber. What writings are slanderous of *individuals* must be looked for where these prosecutions are recorded; but upon *general* subjects we must go to *general* writers. If, indeed, I were to refer to obscure authors, I might be answered that my very authorities were libels, instead of justifications or examples; but this cannot be said with effect of great men, whose works are classics in our language, taught in our schools, and repeatedly printed under the eye of Government.

I shall begin with the poet Milton, a great authority in all learning. It may be said, indeed, he was a republican, but that would only prove that republicanism is not incompatible with virtue. It may be said, too, that the work which I cite was written against previous licensing, which is not contended for to-day. But if every work were to be adjudged a libel which was adverse to the wishes of Government, or to the opinions of those who may compose it, the revival of a licenser would be a security to the public. If I present my book to a magistrate appointed by law, and

LIFE AND APPRECIATIONS

he rejects it, I have only to forbear from the publication. In the forbearance I am safe; and he too is answerable to law for the abuse of his authority. But, upon the argument of to-day, a man must print at his peril, without any guide to the principles of judgment upon which his work may be afterwards prosecuted and condemned. Milton's argument therefore applies, and was meant to apply, to every interruption to writing, which, while they oppress the individual, endanger the state.

"We have them not," says Milton, "that can be heard of, from any ancient state, or policy, or church, nor by any statute left us by our ancestors, elder or later, nor from the modern custom of any reformed city, or church abroad; but from the most anti-Christian council, and the most tyrannous inquisition that ever existed. Till *then*, books were ever as freely admitted into the world as any other birth; *the issue of the brain was no more stifled than the issue of the womb*."

"To the pure all things are pure; not only meats and drinks, but all kind of knowledge, whether good or evil. The knowledge cannot defile, nor consequently the books, if the will and conscience be not defiled.

"Bad books serve in many respects to dis-

WRITINGS OF THOMAS PAINE

cover, to confute, to forewarn, and to illustrate. Whereof, what better witness can we expect I should produce than one of your own, now sitting in Parliament, the chief of learned men reputed in this land, *Mr. Selden*, whose volume of natural and national laws proves, not only by great authorities brought together, but by exquisite reasons and theorems almost mathematically demonstrative, that all opinions, YEA, ERRORS, known, read, and collated, are of main service and assistance toward the speedy attainment of what is truest?

“Opinions and understanding are not such wares as to be monopolized and traded in by tickets, and statutes, and standards. We must not think to make a staple commodity of all the knowledge in the land to mark and license it like our broadcloth and our woolpacks.

“Nor is it to the common people less than a reproach; for if we be jealous over them that we cannot trust them with an English pamphlet, what do we but censure them for a giddy, vicious, and ungrounded people; in such a sick and weak estate of faith and discretion as to be able to take nothing down but through the pipe of a licenser? That this is care or love of them we cannot pretend.

LIFE AND APPRECIATIONS

“Those corruptions which it seeks to prevent break in faster at doors which cannot be shut. To prevent men thinking and acting for themselves by restraints on the press is like to the exploits of that gallant man who thought to pound up the crows by shutting his park gate.

“This obstructing violence meets, for the most part, with an event utterly opposite to the end which it drives at. Instead of suppressing books, it raises them and invests them with a reputation. The punishment of wits enhances their authority, saith the Viscount St. Albans, and a forbidden writing is thought to be a certain spark of truth that flies up in the face of them who seek to tread it out.”

He then adverts to his visit to the famous Galileo, whom he found and visited in the Inquisition, “for not thinking in astronomy with the Franciscan and Dominican monks.” And what event ought more deeply to interest and affect us? THE VERY LAWS OF NATURE were to bend under the rod of a licenser. This illustrious astronomer ended his life within the bars of a prison, because, in seeing the phases of Venus through his newly invented telescope, he pronounced that she shone with borrowed light, and from the sun as the center of the universe. This was the *mighty crime*,

WRITINGS OF THOMAS PAINE

the placing the sun in the center: that sun which now inhabits it upon the foundation of mathematical truth, which enables us to traverse the pathless ocean, and to carry our line and rule among other worlds, which, but for Galileo, we had never known, perhaps even to the recesses of an infinite and eternal God.

Milton then, in his most eloquent address to the Parliament, puts the liberty of the press on its true and most honorable foundation:

“Believe it, Lords and Commons, they who counsel ye to such a suppressing of books, do as good as bid you suppress yourselves, and I will soon show how.

“If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild, and free, and humane government. It is the liberty, Lords and Commons, which your own valorous and happy counsels have purchased us; liberty, which is the nurse of all great wits. This is that which hath rarefied and enlightened our spirits like the influence of Heaven. This is that which hath enfranchised, enlarged, and lifted up our apprehensions degrees above themselves. Ye cannot make us now less capable, less knowing, less eagerly pursuing the truth, unless ye first

LIFE AND APPRECIATIONS

make yourselves that made us so less the lovers, less the founders, of our true liberty. We can grow ignorant again, brutish, formal, and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary, and tyrannous, as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts now more erected to the search and expectation of greatest and exactest things, is the issue of your own virtue propagated in us. Give me the liberty to know, to utter, and to argue freely, according to conscience, above all liberties.”

Gentlemen, I will yet refer you to another author, whose opinion you may think more in point, as having lived in our own times, and as holding the highest monarchical principles of government. I speak of Mr. Hume, who, nevertheless, considers that this liberty of the press extends not only to abstract speculation, but to keep the public on their guard against all the acts of their government.

After showing the advantages of a monarchy to public freedom, provided it is duly controlled and watched by the popular part of the Constitution, he says, “These principles account for the great liberty of the press in these kingdoms, be-

WRITINGS OF THOMAS PAINE

yond what is indulged in any other government. It is apprehended that arbitrary power would steal in upon us were we not careful to prevent its progress, and were there not an easy method of conveying the alarm from one end of the kingdom to the other. *The spirit of the people must frequently be roused in order to curb the ambition of the Court, and the dread of rousing this spirit must be employed to prevent that ambition. Nothing is so effectual to this purpose as the liberty of THE PRESS, by which all the learning, wit, and genius of the nation may be employed on the side of freedom, and everyone be animated to its defense. As long, therefore, as the republican part of our Government can maintain itself against the monarchical, it will naturally be careful to keep the press open, as of importance to its own preservation.*"

There is another authority contemporary with the last, a splendid speaker in the Upper House of Parliament, and who held during most of his time high offices under the King. I speak of the Earl of Chesterfield, who thus expressed himself in the House of Lords: "One of the greatest blessings, My Lords, we enjoy is liberty; but every good in this life has its alloy of evil. Licentiousness is the alloy of liberty, it is—"

LIFE AND APPRECIATIONS

LORD KENYON: Doctor Johnson claims to pluck that *feather* from Lord Chesterfield's wing. He speaks, I believe, of the eye of the political body.

MR. ERSKINE: My Lord, I am happy that it is admitted to be a feather. I have heard it said that Lord Chesterfield borrowed that which I was just about to state, and which His Lordship has anticipated.

LORD KENYON: That very speech which did Lord Chesterfield so much honor is supposed to have been written by Doctor Johnson.

MR. ERSKINE: Gentlemen, I believe it was so, and I am much obliged to His Lordship for giving me a far higher authority for my doctrine. For though Lord Chesterfield was a man of great wit, he was undoubtedly far inferior in learning and, what is more to the purpose, in *monarchical* opinion, to the celebrated writer to whom my Lord has now delivered the work by his authority. Doctor Johnson then says, "One of the greatest blessings we enjoy, one of the greatest blessings a people, My Lords, can enjoy, is liberty; but every good in this life has its alloy of evil. Licentiousness is the alloy of liberty. It is an ebullition, an excrescence; it is a speck upon the eye of the political body, but which I can never touch

WRITINGS OF THOMAS PAINE

but with a gentle, with a trembling hand, lest I destroy the body, lest I injure the eye upon which it is apt to appear.

“There is such a connection between licentiousness and liberty, that it is not easy to correct the one without dangerously wounding the other: it is extremely hard to distinguish the true limit between them: like a changeable silk, we can easily see there are two different colors, but we cannot easily discover where the one ends, or where the other begins.”

I confess I cannot help agreeing with this learned author. THE DANGER OF TOUCHING THE PRESS IS THE DIFFICULTY OF MARKING ITS LIMITS. My learned friend, who has just gone out of court, has drawn no line and unfolded no principle. He has not told us, if *this* book is condemned, *what* book may be written. If I may not write against the existence of a monarchy, and recommend a republic, may I write against any part of the Government? May I say that we should be better without a House of Lords, or a House of Commons, or a Court of Chancery, or any other given part of our establishment? Or if, as has been hinted, a work may be libelous for stating even *legal* matter with *sarcastic* phrase,

LIFE AND APPRECIATIONS

the difficulty becomes the greater, and the liberty of the press more impossible to define.

The same author, pursuing the subject, and speaking of the fall of Roman liberty, says, "But this sort of liberty came soon after to be called licentiousness; for we are told that Augustus, after having established his empire, restored order in Rome by restraining licentiousness. God forbid we should in this country have order restored or licentiousness restrained, at so dear a rate as the people of Rome paid for it to Augustus.

"Let us consider, My Lords, that arbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees, and as it were step by step, lest the people should see its approach. The barriers and fences of the people's liberty must be plucked up one by one, and some plausible pretenses must be found for removing or hoodwinking, one after another, those sentries who are posted by the constitution of a free country for warning the people of their danger. When these preparatory steps are once made, the people may then, indeed, with regret, see slavery and arbitrary power making long strides over their land; but it will be too late

WRITINGS OF THOMAS PAINE

to think of preventing or avoiding the impending ruin.

“The stage, my Lords, and the press, are two of our out-sentries; if we remove them, if we hoodwink them, if we throw them in fetters, the enemy may surprise us.”

Gentlemen, this subject was still more lately put in the justest and most forcible light by a noble person high in the magistracy, whose mind is not at all tuned to the introduction of disorder by improper popular excesses: I mean Lord Loughborough, Chief Justice of the Court of Common Pleas. I believe I can answer for the correctness of my note, which I shall follow up with the opinion of another member of the Lords' House of Parliament, the present Earl Stanhope; or rather, I shall take Lord Stanhope first, as His Lordship introduces the subject by advert- ing to this argument of Lord Loughborough's. “If,” says Lord Stanhope, “our boasted liberty of the press were to consist only in the liberty to write *in praise* of the Constitution, this is a liberty enjoyed under many *arbitrary* governments. I suppose it would not be deemed quite an unpar- donable offense, even by the Empress of Russia, if any man were to take into his head to write a panegyric upon the Russian form of govern-

LIFE AND APPRECIATIONS

ment. Such a liberty as that might therefore properly be termed the *Russian liberty of the press*. But the *English liberty of the press* is of a very different description: for, by the law of England, it is not prohibited to publish speculative works upon the Constitution, whether *they contain praise or censure*.”—(Lord Stanhope’s “Defense of the Libel Bill.”)

You see, therefore, as far as the general principle goes, I am supported by the opinion of Lord Stanhope, for otherwise the noble Lord has written a libel himself, by exciting other people to write *whatever they may think*, be it good or evil, of the Constitution of the country. As to the other high authority, Lord Loughborough, I will read what applies to this subject—“Every man,” said Lord Loughborough, “may publish at his discretion his opinions concerning forms and systems of government. If they be wise and enlightening, the world will gain by them; if they be weak and absurd, they will be laughed at and forgotten; and if they be *bona fide*, they cannot be criminal, however ERRONEOUS. On the other hand, the purpose and the direction may give a different turn to writings whose common construction is harmless, or even meritorious.

“Suppose men, assembled in disturbance of

WRITINGS OF THOMAS PAINE

the peace, to pull down mills or turnpikes, or to do any other mischief, and that a mischievous person should disperse among them an excitation to the planned mischief known to both writer and reader, *To your tents, O Israel*; that publication would be criminal;—not as a libel, not as an abstract writing, but as an act; and the act being the crime, *it must be stated as a fact extrinsic on the record*; for otherwise a court of error could have no jurisdiction but over the *natural construction of the writing*; nor would the defendant have any notice of such matter at the trial, without a charge on the record. To give the jury cognizance of any matter beyond the construction of the writing, the averment should be, in the case as I have instanced, that certain persons were, as I have described, assembled; and that the publisher, intending to excite these persons so assembled, wrote *so and so*. Here the crime is complete, and consists in an *overt act of wickedness evidenced by a writing*.”

In answer to all these authorities, the Attorney-general may say that if Mr. Paine had written his observations with the views of those high persons, and under other circumstances, he would be protected and acquitted;—to which I can only answer, that no facts or circumstances attending

LIFE AND APPRECIATIONS

his work are either *charged or proved*;—that you have *no* jurisdiction whatever but over the natural construction of the work before you, and that I am therefore brought without a flaw to the support of the passages which are the particular subject of complaint.

Gentlemen, I am not unmindful how long I have already trespassed upon your patience; and, recollecting the nature of the human mind, and how much, for a thousand reasons, I have to struggle against at this moment, I shall not be disconcerted if any of you should appear anxious to retire from the pain of hearing me further. It has been said in the newspapers, that my vanity has forwarded my zeal in this cause;—but I might appeal even to the authors of those paragraphs whether a situation ever existed which vanity would have been fonder to fly from—the task of speaking against every known prepossession—with every countenance, as it were, planted and lifted up against me.

But I stand at this bar to give to a criminal arraigned before it the defense which the law of the country entitles him to. If any of my arguments be indecent, or unfit for the Court to hear, the noble Judge presides to interrupt them; if all, or any of them, are capable of an answer,

WRITINGS OF THOMAS PAINE

they will be answered; or if they be so unfounded in your own minds, who are to judge them, as not to call for refutation, your verdict in a moment will overthrow all that has been said. We shall then have all discharged our duties. It is your unquestionable province to judge, and mine not less unquestionably to address your judgments.

When the noble Judge and myself were counsel for Lord George Gordon in 1781, it was not considered by that jury, nor imputed to us by anybody, that we were contending for the privileges of overawing the House of Commons, or recommending the conflagration of this city. *I* am doing the same duty now which *My Lord and I* then did in concert together; and, whatever may become of the cause, *I expect to be heard*; conscious that no just obloquy can be, or will in the end be, cast upon me for having done my duty in the manner *I* have endeavored to perform it.—Sir, I shall name you presently.*

Gentlemen, I come now to observe on the passages selected by the information; and with regard to the first, I shall dispose of it in a moment.

*This expression was provoked by the conduct of one of the jury, which this rebuke put an end to.—Ed.

LIFE AND APPRECIATIONS

“ All *hereditary* government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are heritable *property*. To *inherit* a government is to *inherit* the *people* as if they were flocks and herds.”

And is it to be endured, says the Attorney-general, that the people of this country are to be told that they are driven like oxen or sheep? Certainly not. I am of opinion that a more dangerous doctrine cannot be instilled into the people of England. But who instills such a doctrine? I deny that it is instilled by Mr. Paine. When he maintains that hereditary monarchy inherits a people like flocks and herds, it is clear from the context (*which is kept out of view*) that he is combating the proposition in Mr. Burke's book, which asserts that the hereditary monarchy of England is fastened upon the people of England by *indissoluble compact*.

Mr. Paine, on the contrary, asserts the King of England to be the *magistrate of the people*, existing by their consent, which is utterly incompatible with their being driven like herds. His argument, therefore, is this, and it retorts on his adversary: he says, Such a king as *you*, Mr.

WRITINGS OF THOMAS PAINE

Burke, represent the King of England to be, inheriting the people by virtue of conquest, or of some compact, which, having once existed, cannot be dissolved while the original terms of it are kept *is an inheritance like flocks and herds*. But I deny that to be the King of England's title. He is *the magistrate of the people*, and that title I respect.

It is to your own imaginary King of England, therefore, and not to His Majesty, that your unfounded innuendoes apply. It is the monarchs of Russia and Prussia, and all governments fastened upon unwilling subjects by hereditary indefeasible titles, who are stigmatized by Paine as inheriting the people like flocks. The sentence, therefore, must either be taken in the pure abstract, and then it is not only merely speculative, but the application of it to our own Government fails altogether, or it must be taken connected with the matter which constitutes the application, and then it is MR. BURKE'S KING OF ENGLAND, and NOT His Majesty, whose title is denied.

I pass, therefore, to the next passage, which appears to be an extraordinary selection. It is taken at a leap from page twenty-one to page forty-seven, and breaks in at the words "This convention." The sentence selected stands thus:

LIFE AND APPRECIATIONS

“ This Convention met at Philadelphia in May, 1787, of which General Washington was elected president. He was not at that time connected with any of the state governments, or with Congress. He delivered up his commission when the war ended, and since then had lived a private citizen.

“ The Convention went deeply into all the subjects; and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was, the manner of giving it authority and practise.

“ For this purpose they did not, like a cabal of courtiers, send for a Dutch stadtholder, or a German elector; but they referred the whole matter to the sense and interest of the country.”

This sentence, standing thus by itself, may appear to be a mere sarcasm on King William, upon those who effected the Revolution, and upon the Revolution itself, without any reasoning or deduction; but when the context and sequel are looked at and compared, it will appear to be a serious historical comparison between the Revolution effected in England in 1688 and the late one in America when she established her in-

WRITINGS OF THOMAS PAINE

dependence; and no man can doubt that his judgment on that comparison was sincere.

But where is the libel on the Constitution? For whether King William was brought over here by the sincerest and justest motives of the whole people of England, each man acting for himself, or from the motives and through the agencies imputed by the defendant, it signifies not one farthing at this time of day to the establishment itself. Blackstone properly warns us not to fix our obedience or affection to the government on the motives of our ancestors, or the rectitude of their proceedings, but to be satisfied with what is established. This is safe reasoning, and, for my own part, I should not be differently affected to the Constitution of my country, which my own understanding approved, whether angels or demons had given it birth.

Do any of you love the Reformation the less because Henry VIII was the author of it? or because lust and poverty, not religion, were his motives? He had squandered the treasures of his father, and he preferred Anne Boleyn to his queen: these were the causes which produced it. What then? Does that affect the purity of our reformed religion? Does it undermine its establishment, or shake the King's title, to the

LIFE AND APPRECIATIONS

exclusion of those who held by the religion it had abolished? Will the Attorney-general affirm that I could be convicted of a libel for a volume of asperity against Henry VIII, merely because he effected the Reformation; and if not, why against King William, who effected the Revolution? Where is the line to be drawn?

Are one, two, or three centuries to constitute the statute of limitation? Nay, do not our own historians detail this very cabal of courtiers from the records of our own country? If you will turn to Hume's "History," volume viii, page 188, etc., etc., you will find that he states, at great length, the whole detail of intrigues which paved the way for the Revolution, and the interested coalition of parties which gave it effect.

But what of all this, concerning the motives of parties, which is recorded by Hume? The question is, *What is the thing brought about?—Not, HOW it was brought about.* If it stands, as Blackstone argues it, upon the consent of our ancestors, followed up by our own, no individual can withdraw his obedience. If he dislikes the establishment, let him seek elsewhere for another; I am not contending for uncontrolled *conduct*, but for freedom of *opinion*.

With regard to what has been stated of the

WRITINGS OF THOMAS PAINE

Edwards and *Henries*, and the other princes under which the author can only discover "*restrictions on power, but nothing of a constitution,*" surely my friend is not in earnest when he selects that passage as a libel.

Paine insists that there was no constitution under these princes, and that English liberty was obtained from usurped power by the struggles of the people. So SAY I. And I think it for the honor and advantage of the country that it should be known. Was there any freedom after the original establishment of the Normans by conquest? Was not the MAGNA CHARTA wrested from John by *open force of arms* at Runnymede? Was it not again re-enacted while menacing arms were in the hands of the people? Were not its stipulations broken through, and two-and-forty times re-enacted by Parliament, upon the firm demand of the people in the following reigns? I protest it fills me with astonishment to hear these truths brought in question.

I was formerly called upon, under the discipline of a college, to maintain them, and was rewarded for being thought to have successfully maintained that our present Constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure conse-

LIFE AND APPRECIATIONS

quence of the oppression of the Norman tenures, which, spreading the spirit of freedom from one end of the kingdom to another, enabled our brave fathers, inch by inch, not to reconquer, *but for the first time to obtain* those privileges which are the unalienable inheritance of all mankind.

But why do we speak of the Edwards and Henries, when Hume himself expressly says, notwithstanding all we have heard to-day of the antiquity of our Constitution, that our monarchy was nearly absolute till the middle of the last century? It is his "Essay on the Liberty of the Press," vol. 1, page 15—

"All absolute governments, and such in a great measure was England till the middle of the last century, *notwithstanding the numerous panegyrics on ANCIENT English liberty*, must very much depend on the administration."

This is Hume's opinion; the conclusion of a grave historian from all that he finds recorded as the materials for history; and shall it be said that Mr. Paine is to be punished for writing to-day what was before written by another, who is now a distinguished classic in the language? All the verdicts in the world will not make such injustice palatable to an impartial public or to posterity.

WRITINGS OF THOMAS PAINE

The next passage arraigned is this (page 56) :
“ The attention of the Government of England (for I rather choose to call it by this name than the English Government) appears, since its political connection with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing.”

That the Government of this country has, in consequence of its connection with the Continent, and the Continental wars which it has occasioned, been continually loaded with grievous taxes, no man can dispute; and I appeal to your justice whether this subject has not been, for years together, the constant topic of unreproved declamation and grumbling.

As to what he says with regard to there hardly existing such a thing as regular law, he speaks *in the abstract* of the complexity of our system; he does not arraign the administration of justice *in its practise*. But with regard to criticisms and strictures on the general system of our Government, it has been echoed over and over again by various authors, and even from the pulpits, of our country. I have a sermon in court,

LIFE AND APPRECIATIONS

written during the American War by a person of great eloquence and piety, in which he looks forward to an exemption from the intolerable grievances of our old legal system in the infant establishment of the New World:—

“ It may be in the purposes of Providence, on yon western shores, to raise the bulwark of a purer reformation than ever Britain patronized; to found a less burdensome, more auspicious, stable, and incorruptible government than ever Britain has enjoyed; and to establish there a system of law more just and simple in its principles, less intricate, dubious, and dilatory in its proceedings, more mild and equitable in its sanctions, more easy and more certain in its execution; wherein no man can err through ignorance of what concerns him, or want justice through poverty or weakness, or escape it by legal artifice, or civil privileges, or interposing power; wherein the rule of conduct shall not be hidden or disguised in the language of principles and customs that died with the barbarism which gave them birth; wherein hasty formulas shall not dissipate the reverence that is due to the tribunals and transactions of justice; wherein obsolete precepts shall not pervert, nor entangle, nor impede the administration of it, nor in any instance ex-

WRITINGS OF THOMAS PAINE

pose it to derision or to disregard; wherein misrepresentation shall have no share in deciding upon right and truth; and under which no man shall grow great by the wages of chicanery, or thrive by the quarrels that are ruinous to his employers.”

This is ten times stronger than Mr. Paine; but who ever thought of prosecuting Mr. Cappe?*

In various other instances you will find defects in our jurisprudence pointed out and lamented, and not seldom by persons called upon by their situations to deliver the law in the seat of magistracy; therefore, the author's *general* observation does not appear to be that species of attack upon the magistracy of the country as to fall within the description of a libel.

With respect to the two Houses of Parliament, I believe I shall be able to show you that the very person who introduced this controversy, and who certainly is considered by those who now administer the Government, as a man usefully devoted to maintain the Constitution of the country in the present crisis, has himself made remarks upon these assemblies, that upon comparison you will think more severe than those which are the

*A late eminent and pious minister at York.

LIFE AND APPRECIATIONS

subject of the Attorney-general's animadversion. The passage in Mr. Paine runs thus—

“ With respect to *the two Houses* of which the English Parliament is composed, they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own.

“ The Minister, whoever he at any time may be, touches it as with an opium wand, and it sleeps obedience.

“ But if we look at the distinct abilities of the two Houses, the difference will appear so great as to show the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the House of Lords; and so little is this nicknamed House regarded that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the furthest removed from the general interest of the nation.”

The conclusion of the sentence, and which was meant by Paine as evidence of the previous assertion, the Attorney-general has omitted in the information and in his speech; it is this: “ In the debate on engaging in the Russian and Turkish War, the majority in the House of Peers in favor

WRITINGS OF THOMAS PAINE

of it was upwards of ninety, when in the other House, which is more than double its numbers, the majority was sixty-three.”

The terms, however, in which Mr. Burke speaks of the House of Lords are still more expressive: “It is something more than a century ago since we voted the House of Lords useless. They have now voted themselves so, and the whole hope of reformation (*speaking of the House of Commons*) is cast upon us.”

This sentiment Mr. Burke not only expressed in his place in Parliament, where no man can call him to an account; but it has been since repeatedly printed among his works. Indeed his opinion of BOTH THE HOUSES OF PARLIAMENT, which I am about to read to you, was originally published in a separate pamphlet, and applied to the settled habitual abuses of these high assemblies. Remember, I do not use them as *argumenta ad hominem*, or *ad invidiam*, against the author; for if I did, it could be no defense of Mr. Paine. But I use them as high authority, the work* having been the just foundation of a substantial and lasting reputation. Would to God

*Mr. Burke's "Thoughts on the Cause of the Present Discontents," published in 1775.

LIFE AND APPRECIATIONS

that any part of it were capable of being denied or doubted!

“ Against the being of Parliament I am satisfied no designs have ever been entertained since the Revolution. Everyone must perceive that it is strongly the interest of the Court to have some second cause interposed between the Ministers and the people. The gentlemen of the House of Commons have an interest equally strong in sustaining the part of that intermediate cause. However they may hire out the *usufruct* of their voices, they never will part with the *fee and inheritance*. Accordingly, those who have been of the most known devotion to the will and pleasure of a court, have at the same time been most forward in asserting an high authority in the House of Commons. *When they knew who were to use that authority, and how it was to be employed, they thought it never could be carried too far.* It must be always the wish of an unconstitutional statesman, that a House of Commons *who are entirely dependent upon him, should have every right of the people dependent upon their pleasure.* FOR IT WAS DISCOVERED THAT THE FORMS OF A FREE AND THE ENDS OF AN ARBITRARY GOVERNMENT WERE THINGS NOT ALTOGETHER INCOMPATIBLE.

WRITINGS OF THOMAS PAINE

“The power of the Crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and far less odium, under the name of influence. An influence which operates without noise and violence—which converts the very antagonist into the instrument of power—which contains in itself a perpetual principle of growth and renovation; and which the distresses and the prosperity of the country equally tend to augment, was an admirable substitute for a prerogative that, being only the offspring of antiquated prejudices, had moulded in its original stamina irresistible principles of decay and dissolution.

“The ignorance of the people is a bottom but for a temporary system; but the interest of active men in the state is a foundation both perpetual and infallible.”

Mr. Burke, therefore, in page sixty-six speaking of the same Court party, says—

“Parliament was indeed the great object of all these politics, the end at which they aimed, as well as the INSTRUMENT by which they were to operate.”

And pursuing the subject in page seventy, proceeds as follows:

“They who will not conform their conduct

LIFE AND APPRECIATIONS

to the public good, and cannot support it by the prerogative of the Crown, have adopted a new plan. They have totally abandoned the shattered and old-fashioned fortress of prerogative, and made a lodgment in the stronghold of Parliament itself. If they have any evil design to which there is no ordinary legal power commensurate, they bring it into Parliament. *There the whole is executed from the beginning to the end; and the power of obtaining their object absolute; and the safety in the proceeding perfect; no rules to confine, nor after-reckonings to terrify.* For Parliament cannot with any great propriety punish others for things in which they themselves have been ACCOMPLICES. Thus its control upon the executory power is lost, because it is made to partake in every considerable act of government: *and impeachment, that great guardian of the purity of the Constitution, is in danger of being lost even to the idea of it.*

“ Until this time, the opinion of the people, through the power of an Assembly, still in some sort popular, led to the greatest honors and emoluments in the gift of the Crown. Now the principle is reversed; and the favor of the Court is the only sure way of obtaining and holding

WRITINGS OF THOMAS PAINE

those honors which ought to be IN THE DISPOSAL OF THE PEOPLE.”

Mr. Burke, in page one hundred, observes with great truth that the mischiefs he complained of did not at all arise from the monarchy, but from the Parliament, and that it was the duty of the people to look to it. He says, “The distempers of monarchy were the great subjects of apprehension and redress in the *last century*; in *this*, the distempers of Parliament.”

Not the distempers of Parliament in this year or the last, but in *this century*—*i.e.*, its settled habitual distemper. “It is not in Parliament alone that the remedy for parliamentary disorders can be completed; and hardly indeed can it begin there. Until a confidence in Government is re-established, the people ought to be *excited* to a more strict and detailed attention to the conduct of their representatives. Standards for judging more systematically upon their conduct ought to be settled in the meetings of counties and corporations, and frequent and correct lists of the voters in all important questions ought to be procured.

“By such means something may be done, since it may appear who those are that, by an indiscriminate support of all administrations, have

LIFE AND APPRECIATIONS

totally banished all integrity and confidence out of public proceedings; have confounded the best men with the worst; and weakened and dissolved, instead of strengthening and compacting, the general frame of Government.”

I wish it was possible to read the whole of this most important volume—but the consequences of these truths contained in it were all eloquently summed up by the author in his speech upon the reform of the household.

“But what I confess was uppermost with me, what I bent the whole course of my mind to, was the reduction of that corrupt influence which is itself the perennial spring of all prodigality and disorder; which loads us more than millions of debt; which takes away vigor from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our Constitution.”

The same important truths were held out to the whole public, upon a still later occasion, by the person now at the head of His Majesty's councils; and so high (as it appears) in the confidence of the nation.* *He*, not in the *abstract*, like the author before you, but upon the *spur of the occasion*, and in the teeth of what had been

*Mr. Pitt.

WRITINGS OF THOMAS PAINE

just declared in the House of Commons, came to, and acted upon, resolutions which are contained in this book*—resolutions pointed to the purification of a Parliament dangerously corrupted into the very state described by Mr. Paine.

Remember here, too, that I impute no censurable conduct to Mr. Pitt. It was the most brilliant passage in his life, and I should have thought his life a better one if he had continued uniform in the support of opinions which it is said he has not changed, and which certainly have had nothing to change them. But at all events, I have a right to make use of the authority of his splendid talents and high situation, not merely to protect the defendant, but the public, by resisting the precedent—that what one man may do in England with approbation and glory, shall conduct another to a pillory or a prison.

The abuses pointed out by the man before you led that right honorable gentleman to associate with many others of high rank, under the banners of the Duke of Richmond, whose name stands at the head of the list, and to pass various public resolutions concerning the absolute necessity of purifying the House of Commons; and we collect the plan from a preamble entered in

*Mr. Erskine took up a book.—Ed.

LIFE AND APPRECIATIONS

the book: “Whereas the life, liberty, and property of every man is or may be affected by the law of the land in which he lives, and every man is bound to pay obedience to the same.

“And whereas, by the Constitution of this kingdom, the right of making laws is vested in three estates, of King, Lords, and Commons, in Parliament, assembled, and the consent of all the three said estates, comprehending the whole community, is necessary to make laws to bind the whole community. And whereas the House of Commons represents all the commons of the realm, and the consent of the House of Commons binds the consent of all the commons of the realm, and in all cases on which the Legislature is competent to decide.

“And whereas no man is, or can be, actually represented who hath not a vote in the election of his representative.

“And whereas it is the right of every commoner of this realm (infants, persons of insane mind, and criminals incapacitated by law, only excepted) to have a vote in the election of the representative who is to give his consent to the making of laws by which he is to be bound.

“And whereas the number of persons who are suffered to vote for electing the members of the

WRITINGS OF THOMAS PAINE

House of Commons do not at this time amount to one-sixth part of the whole commons of this realm, whereby far the greater part of the said commons are deprived of their right to elect their representatives; and the consent of the majority of the whole community to the passing of laws is given by persons whom they have not delegated for such purposes; and to which the said majority have not in fact consented by themselves or by their representatives.

“And whereas the state of election of members of the House of Commons hath in process of time so grossly deviated from its simple and natural principle of representation and equality, that in several places the members are returned by the property of one man; that the smallest boroughs send as many members as the largest counties, and that a majority of the representatives of the whole nation are chosen by a number of votes not exceeding twelve thousand.”

These, with many others were published, not as *abstract speculative writings*, but within a few days after the House of Commons had declared that no such rights existed, and that no alteration was necessary in the representation. It was *then* that they met at the Thatched House and published their opinions and resolutions to the coun-

LIFE AND APPRECIATIONS

try at large. Were any of them prosecuted for these proceedings? Certainly not, for they were legal proceedings. But I desire you, as men of honor and truth, to compare all this with Mr. Paine's expression of the Minister's touching Parliament with his opiate wand, and let equal justice be done—*that is all I ask*—let all be punished, or none. Do not let Mr. Paine be held out to the contempt of the public upon the score of his observations on Parliament, while others are enjoying all the sweets which attend a supposed attachment to their country, who have not only expressed the same sentiments, but have reduced their opinions to practise.

But *now* every man is to be cried down for such opinions. I observed that my learned friend significantly raised his voice in naming Mr. Horne Tooke, as if to connect him with Paine, or Paine with him. This is exactly the same course of justice; for, after all, he said nothing of Mr. Tooke. What could he have said, but that he was a man of great talents, and a subscriber with the great names I have read in proceedings which they have thought fit to desert?

Gentlemen, let others hold their opinions, and change them at their pleasure; I shall ever maintain it to be the dearest privilege of the people

WRITINGS OF THOMAS PAINE

of Great Britain to watch over everything that affects their happiness, either in the system of their government or in the practise, and that for this purpose THE PRESS MUST BE FREE. It has always been so, and much evil has been corrected by it. If Government finds itself annoyed by it, let it examine its own conduct, and it will find the cause; let it amend it, and it will find the remedy.

Gentlemen, I am no friend to sarcasms in the discussion of grave subjects, but you must take writers according to the view of the mind at the moment; Mr. Burke, as often as anybody, indulges in it. Hear his reason, in his speech on reform, for not taking away the salaries from Lords who attend upon the British Court. "You would," said he, "have the Court deserted by all the nobility of the kingdom.

"Sir, the most serious mischiefs would follow from such a desertion. Kings are naturally lovers of low company; they are so elevated above all the rest of mankind, that they must look upon all their subjects as on a level, they are rather apt to hate than to love their nobility on account of the occasional resistance to their will, which will be made by their virtue, their petulance, or their pride. It must indeed be admitted that

LIFE AND APPRECIATIONS

many of the nobility are as perfectly willing to act the part of flatterers, tale-bearers, parasites, pimps, and buffoons, as any of the lowest and vilest of mankind can possibly be. But they are not properly qualified for this object of their ambition. The want of a regular education, and early habits, with some lurking remains of their dignity, will never permit them to become a match for an Italian eunuch, a mountebank, a fiddler, a player, or any regular practitioner of that tribe. The Roman emperors, almost from the beginning, threw themselves into such hands; and the mischief increased every day till its decline and its final ruin. It is, therefore, of very great importance (provided the thing is not overdone) to contrive such an establishment as must, almost whether a prince will or not, bring into daily and hourly offices about his person a great number of his first nobility; and it is rather a useful prejudice that gives them a pride in such a servitude: though they are not much the better for a court, a court will be much the better for them. I have therefore, not attempted to reform any of the offices of honor about the King's person."

What is all this but saying that a king is an animal so incurably addicted to low company as

WRITINGS OF THOMAS PAINE

generally to bring on by it the ruin of nations; but, nevertheless, he is to be kept as a necessary evil, and his propensities bridled by surrounding him with a parcel of miscreants still worse, if possible, but better than those he would choose for himself. This, therefore, if taken by itself, would be a most abominable and libelous sarcasm on kings and nobility; but look at the whole speech, and you observe a great system of regulation; and no man, I believe, ever doubted Mr. Burke's attachment to monarchy. To judge, therefore, of any part of a writing, *the whole must be read.*

With this same view, I will read to you the beginning of Harrington's "Oceana"; but it is impossible to name this well-known author without exposing to just contempt and ridicule the ignorant or profligate misrepresentations which are vomited forth upon the public, to bear down every man as desperately wicked who in any age or country has countenanced a republic, for the mean purpose of prejudging this trial.

[Mr. Erskine took up a book, but laid it down again without reading from it, saying something to the gentleman who sat near him, in a low voice, which the reporter did not hear.]

Is this the way to support the English Constitution? Are these the means by which Englishmen are to be taught to cherish it? I say,

LIFE AND APPRECIATIONS

if the man upon trial were stained with blood instead of ink, if he were covered over with crimes which human nature would start at the naming of, the means employed against him would not be the less disgraceful.

For this notable purpose, then, Harrington, *not above a week ago*,* was handed out to us as a low, obscure wretch, involved in the murder of the monarch and the destruction of the monarchy, and as addressing his despicable works at the shrine of a usurper. Yet this very Harrington, this low blackguard, was descended (you may see his pedigree at the Herald's Office for sixpence) from eight dukes, three marquises, seventy earls, twenty-seven viscounts, and thirty-six barons, sixteen of whom were Knights of the Garter—a descent which I think would save a man from disgrace in any of the circles of Germany.

But what was he besides? A BLOOD-STAINED RUFFIAN? Oh, brutal ignorance of the history of the country! He was the most affectionate servant of Charles I. from whom he never concealed his opinions; for it is observed by Wood that the King greatly affected his company; but when

*A pamphlet had been published just before, putting T. Paine and Harrington on the same footing—as obscure blackguards.

WRITINGS OF THOMAS PAINE

they happened to talk of a commonwealth, he would scarcely endure it. "I know not," says Toland, "which most to commend: the King, for trusting an honest man, though a republican; or Harrington, for owning his principles while he served a king."

But did his opinions affect his conduct? Let history again answer. He preserved his fidelity to his unhappy prince to the very last, after all his fawning courtiers had left him to his enraged subjects. He stayed with him while a prisoner in the Isle of Wight; came up by stealth to follow the fortunes of his monarch and master; even hid himself in the boot of the coach when he was conveyed to Windsor; and, ending as he began, fell into his arms and fainted on the scaffold.

After Charles's death, the "Oceana" was written, and as if it were written from justice and affection to his memory; for it breathes the same noble and spirited regard, and asserts that it was not CHARLES that brought on the destruction of the *monarchy*, but the feeble and ill-constituted nature of monarchy *itself*.

But the book was a flattery to Cromwell. Once more and finally let history decide. The "Oceana" was seized by the Usurper as a libel,

LIFE AND APPRECIATIONS

and the way it was recovered is remarkable. I mention it to show that Cromwell was a wise man in himself, and knew on what governments must stand for their support.

Harrington waited on the Protector's daughter to beg for his book, which her father had taken, and on entering her apartment, snatched up her child and ran away. On her following him with surprise and terror, he turned to her and said: "I know what you feel as a mother, feel then for ME; your father has got MY child"—meaning the "Oceana." The "Oceana" was afterwards restored on her petition; Cromwell answering with the sagacity of a sound politician, "Let him have his book; if my Government is made to stand, it has nothing to fear from PAPER SHOT." He said true. No GOOD government will ever be battered by paper shot. Montesquieu says that "In a free nation it matters not whether individuals reason well or ill; it is sufficient that they *do* reason. Truth arises from the collision, and from hence springs liberty, which is a security from the effect of reasoning." The Attorney-general has read extracts from Mr. Adam's answer to this book. Let others write answers to it, like Mr. Adam; I am not insisting upon the infallibility of Mr. Paine's doc-

WRITINGS OF THOMAS PAINE

trines; if they are erroneous, let them be answered, and truth will spring from the collision.

Milton wisely says that a disposition in a nation to this species of controversy is no proof of sedition or degeneracy, but quite the reverse. [I omitted to cite the passage with the others.] In speaking of this subject he rises into that inexpressibly sublime style of writing wholly peculiar to himself. He was indeed no plagiarist from anything human; he looked up for light and expression, as he himself wonderfully describes it, by devout prayer to that great Being who is the source of all utterance and knowledge; and who sendeth out His seraphim with the hallowed fire of His altar to touch and purify the lips of whom He pleases.

“When the cheerfulness of the people,” says this mighty poet, “is so sprightly up as that it has not only wherewith to guard well its own freedom and safety, but to spare and to bestow upon the solidest and sublimest points of controversy and new invention, it betokens us not degenerated nor drooping to a fatal decay, but casting off the old and wrinkled skin of corruption, to outlive these pangs, and wax young again, entering the glorious ways of truth and prosperous virtue, destined to become great and

LIFE AND APPRECIATIONS

honorable in these latter ages. Methinks I see, in my mind, a noble and puissant nation rousing herself, like a strong man after sleep, and shaking her invincible locks: methinks I see her as an eagle mewing her mighty youth, and kindling her undazzled eyes at the full midday beam; purging and unscaling her long-abused sight at the fountain itself of heavenly radiance; while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms.”

Gentlemen, what Milton only saw in his mighty imagination, I see in fact; what he expected, but which never came to pass, I see now fulfilling; methinks I see this noble and puissant nation, not degenerated and drooping to a fatal decay, but casting off the wrinkled skin of corruption to put on again the vigor of her youth. And it is because others as well as myself see this that we have all this uproar!—France and its Constitution are the mere pretenses. It is because Britons begin to recollect the inheritance of their own Constitution, left them by their ancestors;—it is because they are awakened to the corruptions which have fallen upon its most valu-

WRITINGS OF THOMAS PAINE

able parts, that forsooth the nation is in danger of being destroyed by a single pamphlet.

I have marked the course of this alarm; it began with the renovation of those exertions for the public which the alarmists themselves had originated and deserted; and they became louder and louder when they saw them avowed and supported by my admirable friend Mr. Fox, the most eminently honest and enlightened statesman that history brings us acquainted with: a man whom to name is to honor, but whom in attempting adequately to describe, I must fly to Mr. Burke, my constant refuge when eloquence is necessary: a man who, to relieve the sufferings of the most distant nation, “put to the hazard his ease, his security, his interest, his power, even his darling popularity, for the benefit of a people whom he had never seen.” How much more then for the inhabitants of his native country!—yet this is the man who has been censured and disavowed in the manner we have lately seen.

Gentlemen, I have but a few more words to trouble you with: I take my leave of you with declaring that all this freedom which I have been endeavoring to assert is no more than the ancient freedom which belongs to our own inbred Constitution. I have not asked you to acquit Thomas

LIFE AND APPRECIATIONS

Paine upon any new lights, or upon any principle but that of the law, which you are sworn to administer;—my great object has been to inculcate that wisdom and policy, which are the parents of the Government of Great Britain, forbid this jealous eye over her subjects; and that, on the contrary, they cry aloud in the language of the poet, adverted to by Lord Chatham on the memorable subject of America, *unfortunately without effect*—

Be to their faults a little blind,
Be to their virtues very kind,
Let all their thoughts be unconfined,
And clap your padlock on the mind.

Engage the people by their affections—convince their reason—and they will be loyal from the only principle that can make loyalty sincere, vigorous or rational—a conviction that it is their truest interest, and that their Government is for their good. Constraint is the natural parent of resistance, and a pregnant proof that reason is not on the side of those who use it. You must all remember Lucian's pleasant story: Jupiter and a countryman were walking together, conversing with great freedom and familiarity upon the subject of heaven and earth. The countryman listened with attention and acquiescence,

WRITINGS OF THOMAS PAINE

while Jupiter strove only to convince him; but happening to hint a doubt, Jupiter turned hastily round and threatened him with his thunder. "Ah, ah!" says the countryman, "now, Jupiter, I know that you are wrong; you are always wrong when you appeal to your thunder."

This is the case with me—I can reason with the people of England, but I cannot fight against the thunder of authority.

Gentlemen, this is my defense for free opinions. With regard to myself, I am, and always have been, obedient and affectionate to *the law*—to that rule of action, as long as I exist, I shall ever give my voice and my conduct; but I shall ever do as I have done to-day, maintain the dignity of my high profession, and perform, as I understand them, all its important duties.

[Mr. Attorney-general arose immediately to reply to Mr. Erskine, when Mr. Campbell (the foreman of the jury) said: "My Lord, I am authorized by the jury to inform the Attorney-general that a reply is not necessary for them, unless the Attorney-general wishes to make it, or Your Lordship." Mr. Attorney-general sat down, and the jury gave in their verdict—GUILTY.]