

Summary
A
SUMMARY
OF
THE TRIAL

The King v. S. F. Waddington,
For purchasing Hops at Worcester.

ALSO
THE PROCEEDINGS
OF THE
COURT OF KING'S BENCH,
When the Rule was granted;
WITH NOTES BY THE DEFENDANT.

THE PREFACE
Dedicated to the Right Hon. Wm. Pitt,
The professed Protector of British Commerce.

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SUMMARY

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PREFACE.

Dedicated to the Right Hon. W. Pitt,

PRIME MINISTER OF GREAT BRITAIN,

&c. &c.

TO you, Sir, who can boast of having enjoyed, for a long period of time, the confidence of the majority of a powerful nation; who possess transcendent talents, which may preserve our internal tranquility, and restore to us the principles of the British Constitution; or, which qualify you to be, in the hand of Providence, the greatest revolutionist in Europe—I humbly dedicate the proceedings, in a cause, which, under all circumstances, augurs to be one of the most important to commercial men, that the courts of this country have lately exhibited to the world.

You have, on every occasion, displayed your protection, and exulted in the extension of those

grand sources of British power—the trade and commerce of these kingdoms. Shall not agriculture, then, have its claim upon you? I boldly assert, and no one can contradict me, that in the culture of that commodity, for the purchasing of which, I have been prosecuted, upwards of £400,000. per annum, was lost in the aggregate, and that the produce of the last three years, has not been equal to one half of the demand!—Will you then not hesitate—Will not the executive power pause—before individuals, who have promoted the interests of the British agriculturalist, shall be disgraced and branded with public infamy?

If I were submitting to the public, a case, which affected me only as an individual, I might, indeed, be accused of arrogance and presumption. The present, however, is not a private, but a public concern; and it is trusted, that every impartial reader will find himself interested in the unprecedented event of this trial. So great a change has, of late, taken place in the freedom of commerce, and such unheard of restrictions have been imposed upon buyers and sellers, that, to the commercial world in general, the verdict given at Worcester against me, must be peculiarly interesting.

They will here see, how far the courts of justice can take cognizance of a fair and open trade.

Whether

Whether the verdict has protected the liberty of the subject—Whether it has benefited the trading interest—they will be the best judges. I am, however, well aware, that the popular clamour, urged by the charges of the judges, is raised indiscriminately against all, who are branded with the names of forestallers and regraters.

Whether it be politic for the courts of justice to interfere in universal usages of commerce; whether it be consistent with law or equity, to work up the minds of the people to a state of frenzy—to promote disgust for one of the most useful bodies in the state—the middle men; may well be doubted. Such speculations as these, however, are vain and useless. We must conform and be amenable to the laws as they exist, whether on the Statute Book or otherwise.

Unconscious of having broken any known law of the realm, I have added but a few remarks to guide the judgment of the public, to some particular points in the case. I must unwillingly express my deep concern, that the courts should have thus wandered into the wilderness of commerce, which presents not even one beaten, though solitary path! That expansive, yet fertile field, has, heretofore, conveyed its treasure gladly into the British coffer, nor, ere

these times, dare any rude hand presume to stay the exuberant harvest! —

To shew that no known law has been offended against, it might be sufficient to state, that no instance has been produced, on this trial, where a single restriction of dealing in hops, is recorded, or where a punishment has been inflicted on any person for the offence imputed to us. If the legal transactions, relative to hops, be traced through two centuries past, whether they were considered as an wholesome or a pernicious ingredient (for it will be found that, in the latter end of the last century, an act of parliament prohibited them, as a “pernicious weed”), no notice has ever been taken by the legislature, or the courts, of any transaction by any individual, although the same circumstances have occurred, and nearly the same language used, and mode of purchasing adopted, as has here been the subject of a prosecution.

Suppose that, by common law, hops are considered as a necessary article of life; I must beg to observe that the common law, if it is suffered to embrace objects not named in the statute law, may annihilate, even the property, and destroy for ever the peace of an humble individual, whilst that individual is completely in the dark, unlearned, as he probably is, in the manœuvres of the law.

In

In 1798, I embarked in this commerce: I well knew that the planters of hops had been, for many years, disposing of their commodity under prime cost. That they were in a most distressed situation—That a fair, perhaps an handsome profit might accrue, and, at the same time, important services rendered to the public. I was not insensible of the difficulties other men had found, when they interfered in a business, which has long been conducted (we hope honourably) by a few individuals, called Factors, in Southwark, and Merchants in Worcester, and who have systematically re-sold the commodity, many times on the same day.

For my conduct, in this adventurous commerce, was I tried and found guilty at Worcester; and, under these circumstances, do I now appeal to the public as a judge, to decide between me and the jury.

The trial by jury, we all acknowledge to be the best and greatest of our privileges; but, that a judge may be partial, a jury be prejudiced and inattentive to their duty, no one will deny. That this has been the case in this trial, it does not become me to assert. The jury were, indeed, forbidden to decide upon the law; that is, whether the facts stated in the indictment constituted an offence or not: still, however, they were at liberty to decide upon the facts themselves; they did so, and gave

a GENERAL verdict of GUILTY. One thing I will assert, which I challenge any one to refute, viz. —that upon some parts of the charges, there was no evidence, of any description, from which any conclusions could be drawn.

My defence shall be, the justice of my case. Whether the charges, stated in the indictment, be proved, and whether these facts amount to an offence in point of law, you Sir, and the public, to whom the trial is now submitted, are solemnly to determine.

To such decision I look forward, and, with confidence say,—that I shall be acquitted.

S. F. Waddington.

Maidstone, 1st November, 1800.

The King v. Waddington.

COURT OF KING'S BENCH,

MAY 16th, 1800.

MR. ERSKINE.—My Lords, I am to apply humbly to the Court for a rule to shew cause why a criminal information should not be filed against Samuel F. Waddington. My Lords, in Hilary Term, I obtained a rule against this Gentleman, for an information *for buying hops to sell again**—hops growing in the County of Kent. I

* CAN any thing be more calculated to fetter, or rather to destroy THE FREE PRINCIPLE OF COMMERCE IN A FREE COUNTRY, than a criminal information being filed against a person, “FOR BUYING AN ARTICLE TO SELL AGAIN!!!” Such, however, is the ground on which the learned counsel *acknowledges* that he obtained the rule for the defendant’s first prosecution. And, in truth, it was no more. Purchasing an article to sell again, upon the principle of an usage, *time immemorial* in this country, was the only OFFENCE he was GUILTY of. *What is to be the punishment of such misdemeanors?*

stated

stated that case with abundant moderation *, meaning to interpose for the protection of the public against the consequences of such offences, but without meaning to infringe against the moral character of the gentleman against whom I moved. I then stated, that, as all the statutes on this subject were repealed †, persons might suppose, that the common law went along with them, and that Mr. Waddington might have done that act without conceiving, that he was offending against the law. My Lords, I am very sorry, that what now lies before me on the subject of this application, does not fall in altogether with that statement. I am sorry, that after the first rule was granted by the court, and after suffering it to be absolute by default, he should have subjected himself to such a statement as I am about to make, and which I am disposed that you should deal with, as you see proper,

* Few people will give Mr. Erskine credit for the *abundant moderation* he boasts of, who peruse the proceedings in the Court of King's Bench, the 8th of February, 1800, when, amongst other charges, he asserted, that Mr. W——, and his agents, went like locusts in a direct course, *sweeping away the whole growth of the country!* An assertion as void of "*moderation*" as of truth. For behold, he purchased "to the amount of £22,000. only," (see Erskine's Speech the 8th of Feb.) and which was, in fact, but about the 100th part of the growth of the kingdom!

† Little did the two houses of parliament think, when they *unanimously* repealed these statutes, "as injurious to the liberty of the subject:" 12 Geo. III. that 31 years afterwards, prosecutions for these *supposed* offences, would have been instituted. Had they known that the courts of justice could produce the same effects with or without these laws, they would hardly have given themselves the trouble of repealing them.

which

which you should dismiss if it is unfounded. I am not going to state any contracts for hops growing on the poles. But as hops are *now* * considered as provisions, and matters of necessity, I pray your Lordships for a moment to suppose, that I am not speaking of hops, but of corn, and then see how easy it is to apply what is done in one instance, to another, and then say, what is to become of the people of this country? But, even independant of that circumstance, this case comes home to the feelings of every man.

I shall now state the substance of the affidavit upon which this application to the court is founded. William Penn says, that he is a clerk to Thomas Hodges, who is a dealer in hops at Worcester. On Saturday, the 29th of March last, this deponent was in the Hop-Market at Worcester, when he heard Mr. Waddington address a large body of hop-planters and dealers in hops, that surrounded him. He informed them, that his advise to them, was not to sell their hops at the then low price of £11. per cwt. He then told the planters and dealers,

* It is indeed a novel matter, to consider hops as a *necessary of life*. Such a notion, we believe, was never broached, till on the 8th of February, 1800, and then only Mr. Erskine asserted it. The use which Mr. Erskine here makes of this decision, is curious. Fearful that he had not sufficiently explained the supposed offence, he desires their lordship's to consider the advanced price of hops as *equally* injurious to the public as that of corn. Since they are now *both* considered NECESSARIES OF LIFE!—Admirable logic indeed!—He might as well have continued his comparisons, and described a scarcity of *cheese* or *oatmeal* in the same lamentable and piteous strain, as a scarcity of *water*. We agree however with Mr. Erskine, that such an unjust application “*comes home to the feelings of every Englishman.*”

so surrounding him, that it was their own fault if they did not raise the price of hops to £20. per cwt. that the present stock of hops was nearly exhausted, and that the Brewers must come to them long before hops could come to market, and that they might depend on his exertions, to endeavour to keep up the price.

That was not all.—On Saturday, the 19th of April last, this deponent says, he followed Mr. Waddington into a warehouse, belonging to Messrs. Yarranton and Philips, who are Hop-merchants at Worcester, and, after having got upon a *sack of clover-seed*, he addressed a number of Hop-planters. He said, he was sorry it was not in his power then to purchase such a quantity as he could wish, but he would then purchase 200 pockets at £12. 10s. per cwt. 200 pockets that day fortnight, at £13. 200 pockets more, in a fortnight after that, at £13. 10s. 200 pockets more, in a fortnight after that, at £14. and 200 pockets more, in a fortnight after that, at £15. per cwt. He then took a paper out of his pocket, and told them to enter their respective names, according to the terms of their respective agreements with him. And it appears, that, on the 29th of March, he told them the low price of hops was occasioned by the prosecution, that had been instituted against him, but that he could assure them, from high authority, it was dropped, and that the price of hops would rise.

Now, my Lords, the question for your Lordship's consideration is, whether these acts, put as facts upon the record, constitute a misdemeanor. My Lords, I ———

Lord Kenyon, interrupting him *—Mr. Erskine, you need not argue it. *I will not say positively what the effects*

* Considering that there was no case on record, in which buying hops was made criminal, one might have supposed that the matter required a *little* further discussion.

may be ; but this I know, that it is a question in which the public are mightily concerned, And it is very fit, whether it constitutes an offence or not, that it should be put in a situation in which the DERNIER RESORT may decide upon it*. And, therefore, we are bound to grant the rule.

It has been said, that people have no more reason to fear forestalling, engrossing, and regrating, than they have to fear witchcraft. It is easy for a man to write a treatise in his closet ; but if he would go to the distance of 200 miles from London, and were to observe people at every avenue of a country town, buying up *butter, cheese, and all the necessaries of life* they can lay hold of, in order to prevent them from coming to market (which has happened to my knowledge), he would find, that his is something more real, and substantial, than the † crime

* This most alarming observation reminds us of what Mr. Burke says, in his two letters on a regicide peace.—“ The highest tribunal of all, could assume a dignity and efficiency, which might enforce or regulate, — or, *if the case required it*, MIGHT SUPPLY THE WANT OF EVERY OTHER COURT.”

† The opinion which the chief justice here alludes to, is that of Dr. Adam Smith, who, in his excellent work on the *Nature and Causes of the Wealth of Nations*. (In which the principles of commerce are discussed with admirable impartiality and discernment)—thus expresses himself:—“ The popular fear of engrossing and forestalling MAY BE COMPARED TO THE POPULAR TERRORS AND SUSPICIONS OF WITCHCRAFT.” The unfortunate wretches accused of the latter crime, were not more innocent of the misfortunes imputed to them, than those who are accused of the former. The law which put an end to all prosecutions against witchcraft, which put it out of

crime of witchcraft The country suffers most grievously by it.

Rule granted to shew cause why
an information, &c*.

of any man's power to gratify his own malice, by accusing his neighbour of that imaginary crime, seems effectually to have put an end to those fears and suspicions, by taking away the great cause which encouraged and supported them. The law which should restore entire freedom to the inland trade of corn, would probably prove as effectual to put an end to the popular fears of engrossing and forestalling." Vol. II. p. 309.—That there is some ground for this opinion, no man who reads the above-mentioned work will deny.

* Note.—The defendant so little expected that the Court would seriously take cognizance of commerce, that he declined pleading to the rule ; so a trial was soon afterwards granted by the Court.

The King against Waddington.

THIS cause was tried at the Summer Assizes for the City of Worcester, before Mr. Justice Le Blanc, and the following special jury.

James Hickman, Gent.	Foreman
Thomas Carden, Sen.	Glover
John Wheeley,	Wine-Merchant
Richard Rowlands,	Glover
John Foreft,	Draper
Herbert Rogers,	Malster
Martin Barr,	Chinaman
Thomas Williams,	Druggist
Robert Vellars,	Silk-mercier
Robert Chamberlain,	Chinaman
Thomas Morris,	Builder
Samuel Blackwell,	Salesman.

Counsel for the Crown.

Mr. Plomer

Mills

Manley

Dowding

Scott

Solicitor, Messrs. Weston

Counsel for the Defendant.

Mr. Dauncey

Wigley

Peake

Solicitor, Mr. Elstob

INFORMATION.

1st COUNT.—Accuses the defendant with wickedly intending to enhance the price of hops, and spreading divers rumours and reports with respect to hops, by then and there
(meaning

(meaning in the City of Worcester, on the 29th March, 1800), openly and wickedly, in the presence and hearing of divers hop-planters and dealers, in the same City, *asserting, declaring, and publishing, that the then present stock of hops was nearly exhausted, and that from that time there soon would be a scarcity of hops, and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted; with intent and design, by such rumours and reports, to persuade and induce divers persons, then present, being dealers in hops, and accustomed to sell hops, and having large quantities for sale, not to carry or send, to any market or fair, any hops for sale, and to abstain from selling such hops for a long time, and thereby greatly to enhance the price of hops, in contempt of our said Lord the King, &c.*

2d Count, similar to the first.

3d Count, That the defendant did unlawfully endeavor to promote and enhance the price of Hops, *by persuading, and attempting to persuade, divers persons dealing in hops, and accustomed to sell hops; and, having large quantities for sale, not to go to any market or fair with any hops for sale, and to abstain from selling such hops for a long time, &c.*

4th Count, Accuses the defendant with *unlawfully engrossing, and getting into his hands, on such 29th day of March, and on divers other days and times, between that day, and the day of exhibiting the information, a large quantity of hops, to wit, 100 pockets of one Wm. Green, 100 pockets of one John Bedford, &c. &c. &c. at certain large prices, that is to say, at and after the price of £15. per cwt. with intent to resell the said hops, to be by him bought for an UNREASONABLE PROFIT, and thereby to enhance the price of hops, in contempt, &c.*

5th, 6th, 7th, 8th, and 9th Counts, similar to the 4th.

To

To these charges the defendant pleaded not guilty.

Mr. *Plomer** began his address to the Gentlemen of the Jury with stating, that the Information, which had been just read to them, charged the Defendant with a misdemeanor of no common magnitude; and that in the outset of the business he could not help observing, that the question, in every point of view, was of the greatest importance. It was so to the Defendant; and if he could by fair evidence, vindicate himself against the heavy charges made against him, *those who were engaged in the Prosecution would rejoice extremely in the event of his acquittal.* But, on the other hand, if the charges contained in that information turned out to be well-founded in point of fact, it was certainly of the last importance to the Public that the law on that subject should no longer remain in the smallest state of doubt; and that the event of that Prosecution, which was most anxiously looked for by the people in every part of the kingdom, should remove every doubt from the mind of every man who entertained any doubts on the subject. By the Common Law, it was an offence of great and heavy magnitude, as it respected this or any other article, which constituted a necessary of life. *As to the law on the subject, it was perfectly clear,*

* I AM extremely sorry, that it is not in my power to lay before the public, the original speech of this gentleman, as taken in short-hand in court; I have not been able to procure the copy. I must therefore confine myself to a brief abstract of this curious harangue, as given in a respectable morning paper. I must also apologise for not giving the precise interrogatory form of the evidence: But these are the *only* documents not furnished by the shorthand writer. This loss, however, will not be so much felt, as the Judge, in his charge, gives the whole detail at full length.

and no possible doubt could be entertained on it. The offence charged against this Defendant had ever been considered as a serious misdemeanor by the Common Law of the Land, * which was the best system of laws, he believed, the wisdom of man had ever framed for the protection and security of every thing that was dear and valuable in society. However speculative men in their closets might think on the subject, † the Law of the Land was certain. It had been settled by the wisdom of our ancestors, and the only consideration for the Jury was, whether Mr. W. had brought himself within the intent and meaning of it. The learned Counsel here stated, with great clearness and perspicuity, the nature of the charge against Mr. W. and the law on the subject, as it is laid down in the 3d Institute, cap. 25, and by Hawkins, in his Pleas of the Crown, under the Heads of Forestalling, Engrossing, &c. But, said he, if any doubt should be entertained on the Law, and the verdict of the Jury should be unfavourable to the Defendant, that would not

* Can a Lawyer be so totally ignorant of the merits of the cause he is to support, as to assert, that intending to raise the price of hops has ever been considered as a misdemeanor at *Common Law*? Does he mean to say, that the *Common Law*, which was so many ages antecedent to the first cultivation of hops in this country, ever took cognizance of the Hop-Market? Or, is he availing himself of the same honest stratagem as Mr. Erskine, who, availing himself of the Court of King's Bench having allowed hops to be considered as a *necessary of life*, represented corn and hops as equally necessary for the support of the country, and therefore inferred, that enhancing the price of hops and of corn, was one and the same offence.

† Here the learned counsel affects a sneer at the speculations of Dr. Adam Smith, and why?—Lord Kenyon had done it before him.

preclude

preclude him from taking advantage of it, as every thing would appear on the Record, and every doubt and question might hereafter be discussed before the highest Court, out of which this Prosecution issued. This he stated, that the Gentlemen of the Jury might leave it altogether out of their consideration, and confine their attention to the facts of the case. Having stated to the Jury the Law upon the subject, and the nature of the charges, the learned Counsel said, he should proceed next to state the evidence, which he had to adduce in support of those charges; and the Jury, after they had heard it, and any evidence Mr. W. might be able to give in answer to it, would have to pronounce whether the charges were made out in point of fact or not. Mr. *Plomer* first stated to the Jury the evidence he should produce in support of the first charge. He should prove that Mr. W. who was a stranger until very lately at Worcester, came there on the 29th of March last. For what purpose he came, they would suspect from what he did when he was there, and from what he declared was his purpose to those who were in his confidence. At that time he should prove Mr. W. was the possessor of a very considerable quantity of hops, which he had purchased in other places, though that did not constitute the subject of their present consideration. At that period, and for some little time before, at Worcester, there was what was called a falling market. The price of hops did not keep up for various causes, either from the prospect of the ensuing crop, which was certainly then very remote, or because there were more hops in the market than were sufficient to answer the current demand. Mr. W's intention, therefore, was to persuade the Planters to withdraw their hops from the market, in order to enhance the price; or, to use his own words, "to give a fillip to the market." That intention he communicated

to Messrs. Yarranton and Phillips, who are Hop-merchants at Worcester, and who were employed as his Agents. He declared to them that such was his purpose, and gave them a friendly hint to make their purchases before he made his appearance in the market. That was pretty strong to shew with what intention he came into the market. What does he do when he comes into the market? After having publicly invited all the Hop-planters to a dinner, discriminating that class of persons who had an interest with himself to raise the price of hops; after having given them that invitation, which produced a meeting of 97 persons, he made a public address to all the people assembled at the market. He there recommended to the Planters not to sell their hops at the then low price of the market; that by keeping them out of the market for some time, they would obtain much more money, and that it was their own fault if they did not advance the price of hops to 20l. per cwt. the price at that time being from 10l. or 11l. to 12l. according to the goodness of the article. *The present stock, he said, was nearly exhausted,* and the brewers must come to them long before new hops could come to market; and that the Hop-planters might depend upon his exertions to keep up the price of hops. But if any of them were alarmed, and were desirous of selling, he was a Buyer—not a Buyer for any other purpose but to quiet the alarms and fears of others, or to enable them to co-operate in his general plan. His first plan was to keep the commodity out of the market entirely; but, if he could not do that, with respect to some who insisted on selling, he held himself out to them as a Buyer; and, on that subject, he made good his words; for to those who were not convinced by his arguments, he became a Buyer at that market, of no less than 300 pockets of hops, and at an advanced price
of

of 30s. per cwt. so that he was determined at all events to enhance the price by the wealth of his own purse, when his arguments failed to produce the desired effect. If any person was a buyer in the ordinary course of business, he did not use every argument to raise the price of that commodity which he wanted to purchase. There was another circumstance to which he requested the particular attention of the Jury. He told the Planters, that the then low price of hops was owing to a prosecution that had been instituted against him ; and that, at the very moment when that prosecution was hanging over this Defendant's head, he had the daring insolence to come to this place, and, in defiance of the law, and of the Tribunal before whom the prosecution was depending, came to that market, and publicly and falsely declared to the people respecting that prosecution, that he could state to them, from very high authority, that such prosecution was dropped, and that it would not proceed farther against him, and consequently that the price of hops would rise. So that they were to rise and fall with the safety, or the punishment of Mr. Waddington. That declaration was made in order to prevent any of the Hop-planters from being deterred, and to encourage them to co-operate with him in the execution of his general plan. The learned Counsel next followed Mr. Waddington to the Hop-Pole Inn, where, in consequence of his invitation, 97 Hop-planters attended to dine with him, and his orders were, that none but Hop-planters should be admitted, and a paper for that purpose was put over the door of the room. After dinner, one of the toasts given by Mr. Waddington was, " Hops at 20l. per cwt." That toast was drank with rapture by every Hop-planter in the room.

This reminded him of a toast which was represented to be given by a person in a play " Success to usury." It

was rather extraordinary that a person, against whom a public prosecution was then pending, should have so little sense of public decorum—so little sense of decency, and of shame, as to get up in the presence of 97 persons, who were concerned in the sale of hops, and harangue them for the general purposes of enhancing the price, and inviting them to give effect to his plan. He told them, among other things, that till within the two last years, the hop-planters of England had not had a fair price for their hops; that the price in the Worcester market was much below that in London; but it would be their own fault if they did not raise the price of hops to 20l. a cwt. and put Worcester on a level with the London market. *He knew the present stock of hops was nearly exhausted*—that the brewers must soon come to them, and therefore he advised them to keep their hops back; that he was determined to be their friend, and that they should not be obliged to sell their hops for want of money. He repeatedly and strongly recommended to them not to sell their hops, but keep them back out of the market; but, if they would not take his advice, he would buy their hops, or build a warehouse in Worcester, large enough to hold all their hops, where they should place them till the price was such as to encourage them to sell, and in the mean time that he would open a bank at the end of the warehouse, where they should be supplied. These were the topics addressed publicly to a set of sellers of that commodity. The jury would pronounce what was the intention with which he spoke and acted. Whether it was with an intention to enhance the price or not? That was the only question they had to consider. Now, suppose any person had the strongest inclination in the world to enhance the price of that commodity, what other means—what other topics—what other arguments were likely to be more successful,

cessful, and to produce a more powerful effect on the minds of the planters, than the arguments that were addressed to them by the defendant? The question was, Whether he pronounced the words, and did the acts imputed to him; and what was his intent? That was the single question, and it was impossible to deny that his intention was to raise the price of hops to 20l. a cwt. That was his object, *because he declared it.**

At the meeting at the Hop-Pole Inn, he intimated an intention of returning to Worcester in the space of three weeks, and he was as good as his word; for he returned on the 19th of April, to the great joy of the Hop-planters, who considered him as their public patron and friend; as their deliverer from the oppression and bondage in which they were enslaved; as a great public spirited man, who had no view to his own interest, but whose conduct and actions were all guided by the purest and most disinterested benevolence in favour of the poor Hop planters. His breast was totally unacquainted with *lucrum filiens viliosum*. It was not to get ten or twenty thousand pounds to himself. His views rose infinitely superior to all such sordid motives—It was to give relief to the poor, and to the distressed.

* It might have been supposed, that the Jury would not pay much attention to arguments, which the counsel knew he could not bring evidence to support. Of this kind is his repeated assertions, that the defendant told the planters, *that the stock of hops was nearly exhausted*. This is certainly laid in the information, but not proved by the evidence; and is a thing of so absurd and improbable a nature, that it must be presumed, in justice to the counsel's understanding, that he did not believe it himself. Next, he roundly asserts, that Mr. W. had declared, *it was his intention to raise the price of hops to £20. per cwt.* Can human modesty go farther?—

The learned Counsel, with great abilities, stated the conduct of Mr. W. on the 19th of April, and 3d of May, which was extremely similar to what it had been on the 29th of March. He also laid before the Jury the evidence by which he should substantiate his statement.

After the counsel had stated the *facts of the case*, he told the Jury, that he should unquestionably prove them by the testimony of respectable witnesses, at that Bar. Did Mr. W. come to Worcester for the purpose imputed to him—to enhance the price of hops? That undoubtedly constituted an ingredient in every count in the information; and of that intention the Jury must be convinced, or they ought to acquit him. The single great question was, *quo animo*, he came to that place. If the Jury were convinced that his intention was to enhance the price of hops, there was no doubt but he was guilty of the charge imputed to him by the information; and what was the nature of this offence? The laws of England had branded the man who was guilty of it, as *pauperum depressor*, & *totius communitatis* & *patriæ publicus inimicus*. When a man abused his wealth to make others poor, that was the greatest possible abuse of wealth, which ought to be used for the good and benefit of the whole community? * What could we think of a man who made others

* It happens rather unfortunately for Mr. P. that, having but just before acknowledged the extreme joy of the hop-planters, in having found a friend and deliverer, he should now brand the same person with the name of *pauperum depressor*, and such abusive appellations as enter into a fertile head. He gives a sufficient reason for considering the defendant in the favourable point of view, at which he affects to smile; he gives no reason why he

merits

others poor in order to make himself rich, and by that means to accumulate the distresses of the community? If a man could commit that sort of offence with impunity—if it was to be declared to be no offence, what was to become of the people of England with respect to every article of life—corn, meat, salt, coals, butter, cheese, &c.? The same practices might be pursued, and had been pursued, in every other necessary of life, by people who possessed large purses. In that way the distresses of the poor might be accumulated to an infinite extent. Whoever was guilty of this offence, became the oppressor of the poor, and the public enemy of his country. It was absolutely necessary, for the salvation of the community, to rescue it from the bad passions of men, and to prevent them from abusing that wealth which Providence had conferred upon them, for very different purposes. There never was a cause, to the result of which the public looked with more anxiety than the present. He did not, however, desire them to strain the evidence; but, if the facts were clearly and satisfactorily made out, the necessary result would be; however painful (it was a great duty they owed to their country), to pronounce this Gentleman guilty. He was persuaded the offence would be proved to their most complete satisfaction, and if so, they would pronounce him guilty of every charge laid against him in the information.

merits abuse. But let us see, who are the poor persons whom Mr. W. is said to have oppressed? Why the Brewers!!! It is loss of time and paper to say more about this *modest* harangue.

MR. DAUNCEY'S SPEECH FOR THE DEFENDANT.

Gentlemen of the Jury,

AFTER having been exhausted by such attention as it was my duty to pay to this case for eight long hours, I have a right to claim at your hands a little indulgence for myself, and also for the gentleman I represent. I have to solicit all your attention to a question, which, though my friend, in his opening to you, stated to be *so clear, that no man can doubt of it*, he has employed EIGHT HOURS in endeavouring to convince you of it. This of itself seems capable of affording an inference directly contrary to that which he set out with; and you must infer, that so far from being so self-evident, and so clear, that no one could doubt about it, it is a question of great doubt, of great difficulty, and a question, that requires all the evidence that can be ransacked from every corner.*

Gentlemen, that it is a question of great magnitude, and of great importance, I readily concede to my learned friend. But as it strikes my mind, it is a question in which I am not standing here for Mr. W. as a private individual, but that in his name and person, I represent *all the trading interest in this kingdom*—a weight infinitely too heavy perhaps for me to support. I stand here for a trading interest that has brought this country to the state in which it is,—for a trading interest, which it has been the policy of

* There are several parts of the indictment, which no one person was bold enough to swear to; these, though they will occur to every attentive reader of the trial, shall be pointed out in future notes.

the law to attend to and to favour *—for a trading interest, by which we exist as a nation. Whatever we are—whatever we shall be—every thing must arise from that source, of which the great point is *freedom of trade*, by which alone we are supported, and which my friend in this instance endeavours to check, conceiving (and which ought to be checked, if he is right in that conception) that freedom does not apply to this case; and that in this instance Mr. W. as an individual has broken the laws of his country. It does not stand there only. As far as he is concerned for the crime, of which he is accused, it is treated not as an error of judgment, not as a fault, which any fair trader might commit, but *as a crime of deep malignity*. Such is the charge, which he is to answer, and to answer because he has done it openly, and in the face of all the

* As the lord chief justice has thought proper to quote *Dr. Adam Smith's Wealth of Nations*, relative to forestalling, &c. Another passage in the same book may be here quoted, at least, as aptly as in the former instance.

“In all countries, where there is tolerable security, every man of common understanding will endeavour to employ whatever stock he can command, in procuring either present enjoyment, or future profit. If it is employed in procuring present enjoyment, it is a stock reserved for immediate consumption. If it is employed in procuring future profit, it must procure this profit, either by staying with him, or by going from him. In the one case, it is a fixed; in the other, a circulating capital. A man must be perfectly crazy, who, where there is tolerable security, does not employ all the stock which he commands, whether it be his own, or borrowed of the people, in some other of these three ways.”—*A. Smith*, vol. I. p. 411. Whether the result of this trial has conducted to the advancement of this grand object, we leave the impartial public to judge!

world,

world, which no *guilty* man ever yet did. Was it ever heard, that a man with deep malignity in his mind, and with a determined purpose to contravene the laws of his country, went openly into the face of the sun, and called round him a great number of persons, who might afterwards be examined in a court of justice as witnesses of his guilt: "Take notice, I am about to break the law,"—whether he has broken the law does not apply to this part of the question. When he is charged with that deep malignity, his actions say that charge is unfounded. His actions say he was doing a thing he conceived he was justified in doing, supposing he did no more than come into a market-overt, and buy a quantity of that commodity for the purpose of selling it again, not to make an unreasonable or extraordinary profit, but to sell it in the same way in which the prosecutors of this information sell it, and those persons who have been called against him to day. It is no secret in this case *who the prosecutors are* *. But the public have a right to see (no matter who they are), the public have a right to see this business examined and sifted; the public, as represented by his lordship, have a right to see whether the party is guilty or not of the charge alledged against him by this information. Whatever may be the secret springs, and lurking motives, good, bad, or indifferent, of those who bring forward this pro-

* It is notorious, that a *conspiracy* existed, and does *still* exist, and an *immense* subscription has been entered into, for the purpose of ruining the defendant by whatever means. It may seem extraordinary what could urge men to such infamous proceedings. *It was the interruption of their hitherto rapacious traffic*, and the viewing that trade which they had once completely engrossed, conducted on a more liberal plan, by one, *not of their own cabal*.

secution,

secution, the public have a right to see it fully examined, and the defendant's guilt or innocence clearly ascertained, I admit it, and I wish to treat the public with that reverence, which is due to them, on this, and all other occasions. I dare say, whether such laws ought to exist is so clear, that they that run may read. Or, on the contrary, whether the wisdom of such laws was doubtful? The wisest and the greatest statesmen have doubted, *doubted* did I say? The wisest heads have *disapproved* of them, and it is to what they have said and done on that head, that I wish to appeal.

Gentlemen, having said to you then, that this is a question of importance as affecting the public, and also from the manner in which it is put, as affecting the private character of Mr. W. let me ask you, whether in a case where the public was concerned, it was necessary in a speech of such length, and such ability, to inflame the minds of the people (who are in such a ferment already) in order to obtain a verdict? A verdict you must give; but be it for me, or for my friend, that verdict will be improperly given, though on the right side, if passion or prejudice unite at all with it. I do not say "give your verdict to me." But give a right verdict on wrong motives, and you do not discharge your duty. Let no man among you think, that I suppose that will be the case. God forbid! But I am driven to make such observations from the turn this cause has taken. My friend has been instructed to bring it forward, mixed with prejudice, and it is my duty to do away that prejudice. I am sure this will meet with your attention, and you will assist me in freeing your own minds from prejudice. You do not know how it got in there; but you must endeavour to get rid of it. Gentlemen, in order to try this question properly, you must try it coolly and dispassionately. Was
it

it necessary for my friend to state to you what large burdens were borne by the public at large; what credit they had for the manner in which they had borne them; and then glancing indirectly, as if part of those burdens had arisen from something Mr. W. had done, though what he did, in fact, had not the least tendency towards it? Mr. W. has been described as *pauperum depressor*, &c. because he has bought some hops. Is an article of that description similar to that to which it has been compared; and was it fit that it should be so brought forward in the present situation of the country? Am I standing in the situation of those who, with much more abilities in other respects, defended men who had bought *corn*, and not *hops*, and sold it again in less than half an hour afterwards in the same market, at a price greatly advanced, and so bereaved the poor of their earnings? Am I standing here for a man of that description? Gentlemen, I am not. That is a subject, therefore, which in fairness and candour ought not to weigh in your minds. You will recollect the poor have been supported by your own bounty. If that be so, you will free your minds from that, and say we will not mix any indignation in that cause, which ought not to take place in the cause.

Gentlemen, as to the *law* of the land upon the subject, my friend says there can be no possible doubt*, let us see

* The learned counsel, both for the prosecution and for the defendant, might have saved themselves the trouble of discussing what the *law* was upon that subject, had they known, that the Judge would deny the Jury the right of considering the law at all; as will be seen by the Learned Judge's charge.

a little

a little what he states the charges to be against us, and then let us see whether or not there is any doubt on the subject, in *law*, or *fact*: for if the facts you are to judge of. Let us see whether there are any doubts on the case. —He says, there are two charges against Mr. W. one of which is for endeavouring to enhance the price of hops. That is the main ingredient in this business. The first charge is, that by spreading rumours, and addressing arguments to the sellers to withdraw their commodity from the market, he endeavoured to enhance the price.

The second charge is, that by getting into his own possession a large quantity of hops, to *resell at an unreasonable and extraordinary profit, and to prevent them coming to market*, he also endeavoured to raise the price. And my friend says, that in both these another ingredient must be found, namely, that such was his intention throughout. Then it is a question of *fact*, indeed, but of *fact* coupled with intention.

Such is the case that is laid before you, and I think you have it before you truly. Gentlemen, on this subject the law being too clear to need any mention, my learned friend mentions that law. I need not, says he, say any thing of the law. It is too clear, and therefore, perhaps, *not with much consistency*, he tells you, that Lord Coke said so and so; and also refers you to Mr. Serjeant Hawkins's Pleas of the Crown, on this subject, a book, I admit, of high authority. Such is the law, he says, which I need not mention to you.—It is not usual for my friend to introduce something into a cause, which needs not be mentioned, but to produce some effect. He stated just as much of it as was necessary to meet the occasion, and then proceeded to detail that evidence, I was going to say, which he afterwards proved at length. But, Gentlemen, recollect a little, after

after you have compared the evidence with the opening, recollect a little, whether my friend's instructions were correct, for I am sure he would not mention a word to you, that was not stated to him. Mr. W. he tells you, came down to Worcester on the 29th of March. Being a dealer in hops, he was guilty of a great crime—of a crime of *deep malignity*, by coming to a place, where that commodity was sold. I should suppose it could excite no great surprise to find a person, who dealt in this commodity, going to the market, where it was sold. He goes through the market openly, as a stranger there. The planters came round him, and are desirous that he should buy their hops. Now, observe the charges against him, and the consistency of these charges. Mr. W. is charged *with spreading rumours and reports*, to prevent this commodity from coming to market, with an intent to enhance the price: so that this man of great penetration, as my friend describes him, spreads abroad reports among the hop-planters, to induce them to keep back their commodity from the market, and so to raise the price. And what is the next charge against him? he is charged with getting into his own hands, by buying a large quantity of hops for the same purpose, to enhance the price. Am I stating this correctly? Can such conduct be applied to any man of *great penetration, or of deep malignity*? Can you possibly believe that any man, who is not an idiot, a mere dreveller, is capable of two such purposes at one and the same time? This Gentleman stands charged with coming into the Worcester market, meeting all the persons who had hops to sell, which commodity he wished to engross. And this man of deep penetration is described as telling them—I mean

to get up all your commodity—I mean to raise the price of hops.—There is a scarcity among the brewers, and you may make of them £20 *per Cwt.* whereas now the price is only 12l. 10s. I tell you that, and I tell you I wish to buy up the commodity, conceiving that I may afterwards sell it out at an extraordinary profit. Gentlemen, there are some things so glaringly inconsistent, that if they were proved, they could not be believed. As it is a question of intention, can a man intend that, which he takes every possible means to prevent being executed? My friend puts it broadly to you, and with a confidence, that he will receive an answer in the affirmative. It is impossible you can be so duped. It is impossible, that you can so surrender your understandings to him, and believe that, which a man's actions directly contradict. Judge Mr. W. by his actions, and then see if you can make these two charges against him consistent. It is stated, that this intention must pervade the whole, or otherwise he must be acquitted: and when he is acquitted, you are told the prosecutors will rejoice. Will they? Will the joy of Mr. W.'s acquittal be heard in the Borough? Will it rejoice those gentlemen, in whose hands the market was? I doubt extremely the joy of the *London Factors*, at finding that other people may go to market to buy hops for supplying the public*. I doubt the prosecutors are too much interested in this business, to express any joy at such an event. This a question not between Mr. W. and the

* To destroy the *freedom of trade*, one would imagine was the motive for this action; for which purpose, it is admirably calculated. Whether, however, even the verdict here given, can *totally* prevent persons from *buying and selling* on a free principle, is yet to be determined.

public, but between him and the London factors. It is, whether he may go to market, and buy this commodity at a fair price, or whether the planters shall be obliged to sell their commodity to the factors, who are to sell it themselves again to the brewers. This prosecution was commenced by *these public spirited beneficent gentlemen*, on the ground, that if Mr. W. had not gone into the market, this commodity would have come, at a lower price, into the hands of the ultimate consumer. But you see it is a joke to suppose that. I would go back to London, from whence I see a gentleman has come, and I would ask him whether it would have that effect there? If Mr. W. had not been a purchaser, some other dealer would, and it would not have made a difference of *one single farthing to the ultimate consumer*. The first charge in the information, that of spreading rumours, &c. to enhance the price of hops, is a charge, as it seems to me, quite distinct from the other, and as it strikes my mind, perfectly inconsistent with it.

Now, Gentlemen, the law my friend has thought necessary to lay before you, and one of the authorities from which he has taken it is, HAWKINS'S PLEAS OF THE CROWN. Now, I believe, that author gives another ingredient besides these stated by my friend. My friend said the passage was, "that all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices, which have an apparent tendency thereto, whether by *spreading rumours*," &c. Now, the words of Hawkins are, "*spreading FALSE rumours*," &c. There is no authority that says, *spreading rumours* is an offence. Now, I ask if there is a Count in this information, that charges the defendant with

with *spreading false rumours* *? You must be convinced, not only that he spread the rumours, not only that by these rumours, he endeavoured to enhance the price of hops; not only that such was the whole of his conduct, but that the rumours which he so spread were FALSE. I conceive the rumours so spread should be untrue. Now, Gentlemen, it is also necessary that these rumours should be proved in the manner in which they are laid in the information; and I take the freedom to say, that the evidence on that subject, if I have taken it correctly, does not prove the charge in the information. There are three Counts in the information, (the three first Counts) or three different ways in which the charge is made. The first is, that he wickedly intending to raise the price of hops, did *spread divers rumours and reports* with respect to the hops, by then and there openly and wickedly, in the presence and hearing of hop-planters and dealers in hops, asserting, declaring, and publishing, that the then present stock of hops was

* Notwithstanding the charge of the Judge, which forbade the Jury to intermeddle with the LAW; it is surprising that this *unanswerable* argument should have no weight with them. How could a constitutional Jury pronounce a person guilty, merely because he *spread rumours and reports*, which neither the evidence nor the indictment authorise them to consider false? Is a man to be punished for *spreading rumours*, even if the consequences of them happen to be injurious, when the conversation that gave rise to them, the only part, in which he was an agent, WAS NOT FALSE, AND CONSEQUENTLY NOT CRIMINAL. Is this either law or justice? Where is there a law, or where is there a custom, that makes it criminal, to recount ANY FACTS to any persons? I appeal to the *Gentlemen of the Jury* for a solution to these questions.

nearly exhausted, and that from that time there soon would be a scarcity of hops, and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted, with intent, &c. The second Count is nearly the same as the first. Now, Gentlemen, do you recollect the evidence? It will depend not on what I recollect, but on what his Lordship will read to you from his notes. The evidence is not general as the charge laid in the information. But it is, that the stock of hops *in the hands of the brewers* was nearly exhausted, and that very soon *the brewers, and not the public* in general, would be obliged to come to him, or the planters, and that hops would be at 20l. per hundred weight. If it is necessary to state *rumours*, it is necessary to prove them as laid, and they have NOT been proved, as laid in the information. They are laid, that they were general, whereas the evidence is only qualified. It is, that the stock of hops in the hands of a particular description of people only—the *brewers*, was nearly exhausted. *Surely therefore there is an end of these two Counts.* In order to reach the party on either the one or other of them, the proof must be general, and correspond with the charge as laid in the information—*Dolus versatus in generalibus*. The next inquiry will be, whether if they have failed in proving the reports and rumours as laid in the two first Counts, they can resort to the third, which I conceive to be *bad in law*. But on that you will receive his Lordship's directions*. I say I am relieved from that charge. I contend the two first Counts

* Unfortunately, the defendant was deprived of all assistance he might have derived from having the *law* on his side, by the learned Judge not allowing the Jury an opinion on the subject.

have not been proved, and the third I take to be *bad in law*. But even if that is not so, and suppose the directions you shall receive from his Lordship, are not such, as I flatter myself they will be, still you are to be convinced, that the reports, which Mr. W. spread were false. And you will recollect the evidence that has been given on that subject. You find there had been for four years preceding the year in which this transaction took place, namely, the present, there had been bad crops of hops. Ever since the year 1794, the hops had been bad. The year 1797, which was rather better than some of the others, even it, only produced three-fourths of a good crop. The years 1798 and 1799 had been considerably worse. If then there has not been a good crop of hops in the country since the year 1794, there must of necessity be truth in the observation, that there was a scarcity in the commodity he was talking about. Mr. W. said to the planters, that hops were scarce. Let the prosecutors show that rumour, which he spread, was not true. It is necessary the rumour should be *false*; and, therefore, it is necessary there should be no scarcity at all. And can you convince yourselves on the evidence in the teeth of these bad crops for so many years, that there was not a failure of that commodity? I do not ask whether it was annihilated, whether there were no hops then to be found; but I ask you in the fair language of common sense, whether there was a scarcity of the commodity, and whether the allegation as laid in the information has been proved?

Gentlemen, having said so much on the subject of these three Counts in the information, I come now to the second charge, namely, that he had engrossed, and got

into his hands considerable quantities of this commodity, *to sell it again at an extraordinary price.*

Gentlemen, in this, therefore, my friend, accuses him of the crime of engrossing, and he accuses him of that crime in these general terms, without being kind enough to point out to you or to me, what it is that constitutes that crime. And you are desired to convict a man of a crime, which my friend has not condescended to explain *: that also I suppose is so clear, that it needs no explanation. And you are to find a man guilty of something, that either has a legal meaning, or no meaning at all. Has he told you what the meaning of engrossing is? But I must say something upon it, I must say a word on it. You must be satisfied that *engrossing* is a term of some comparative meaning, or if it be not a word of comparative meaning, it is still more in my favour. If it does not signify a part of a commodity, it must mean the whole of it. Whether he has engrossed the whole of the commodity.—I need not trifle with your understandings, because it is clear, they have not proved that. That he bought a sufficient quantity to constitute him an engrosser, must be proved.—Now, Gentlemen, it is said, that crimes ought to be so clearly and nicely described, that no doubt can be entertained about them by Gentlemen in your situation—by any Gentlemen in the situation of Juries. Has my friend told you, what in law constitutes an engrosser?

* Would not the learned Gentleman, Mr. Plomer, have better discharged his duty, had he explained the nature of the charge laid in the indictment, instead of launching out into a pathetic, though totally irrelevant, harangue on the *high price of provisions?*

But

But I must tell you what my case is, and upon which I am to contend, and with the firmest confidence for your verdict. To constitute an engrosser, a very large quantity must be taken of that commodity, which is said to have been engrossed. If he had bought a pound, would he have engrossed then? I chuse to begin in this way. I must know where to stop, when he has taken enough to constitute him an engrosser, provided he has taken it with the intent alledged. I will not lay down to you such a doctrine as this; that if a man goes to market and buys hops for the common purposes of consumption, but beyond an ordinary or usual quantity, that this is engrossing. There must be some clear, plain, intelligible rule, by which people in trade are to go. Unless you lay down a rule that is obvious to the understanding of every man, you involve every trader in difficulties. The line should be so clearly drawn, that every trader may say to himself, "if I only buy so much, if I only go so far, I am safe, but if I go one inch farther—if I purchase one pocket more, I *am an engrosser*." Suppose this rule is adopted—If a man takes from the market such a quantity, as not to leave enough for the common purposes of those buyers who come after him, that this should be considered to be engrossing in the sense of this information. If they do not adopt that rule, I conceive no fair criterion can be laid down by which the offence of engrossing can be ascertained and established. If this is to be the rule, apply it to the case before you. If I understood my friend right, he said, there were then 4000 pockets of hops on hand, and that this quantity, referred to the Worcester market, without going abroad, without considering what quantity of this commodity might be found in other markets. Of these 4000 pockets, my friend has endeavoured to prove,

that Mr. W. bought 7 or 800, but one of the witnesses said, he bought up about a thousand pockets in the whole. He went through a detail, *which it was fortunate did not set you all to sleep.* One thousand pockets out of four thousand, makes one-fourth part of the existing commodity. And you have it in evidence, that it was quite common to go to market and buy two or three hundred pockets, and some had purchased five hundred, six hundred, and even seven hundred in a day, in some parts of the season. And, therefore, in three days, there was nothing uncommon in purchasing hops to the amount of a thousand pockets. But as that is done, it is for you to consider, whether that does or does not amount to my idea of the crime of engrossing, if that idea is sanctioned by my Lord afterwards. I say, their proof falls short, in carrying it up to such an amount as to constitute a crime. I contend Mr. W. has not taken enough to make him an engrosser.

Gentlemen, there is a case which is reported in Cro. Car. 231, the name of which is, *the King against Maynard.* That was an information for engrossing one hundred bushels of salt, to sell it again, contrary to the statute of the 5th and 6th of Edw. VI. It was there said, that salt was not within the statute, and there is a cause cited in this case, *in which it was decided, that hops were not a victual within the statute.* I am not using this case for that purpose, but for another, which I will presently mention to you. It states the great inconvenience that would ensue, if salt were prohibited to be engrossed, for that it would extend to compel every individual to buy by the bushel at the pits. It says, if I engross all the salt, with an intent to sell it again at my own price, and at an unreasonable price, I may
be

be indicted for an offence at common law. Now, Gentlemen, my friend has told you, you are proceeding by the rules of the common law. He has cited no case, as particularly applicable to this subject. But I shew you a case, in which a distinction is made between part of the commodity and the whole of it. It states a distinction-existing as to the quantity, between a proceeding at statute law, and a proceeding at common law. And it says, but if a man engross all the salt to sell it again at his own price, he may be indicted for an offence against the common law. Does not this afford a fair ground to say, that engrossing means buying up all the commodity? But, if it does not mean that, he must take such a quantity, as does not leave behind enough for the consumption, that may be *necessary* for those persons, who afterwards go to market*. I do not therefore say this, without an authority in my favour. I then say on the authority of the case of the *King v. Goldesborow*, 2 Bulst. 317. that the quantity should be mentioned. It is there stated, that the quantity engrossed ought to appear. If Mr. W. is tried by the rule I mentioned to you, he will be acquitted. There were *four thousand pockets* in the market, and he took *one thousand*, which is *one-fourth of that*. Now, Gentlemen, I have stated that to be the quantity in the Worcester market at that time. But the quantity produced in the country at large is *infinitely greater*. I have taken the commodity as referable to that market only, but if he had swept away the whole market of that day, there was much more to

* Besides the Defendant's purchases, there were not 100 pockets sold on any one of the days, on which he attended the market!

come to market after that day. It happened to me, in my way to this place, to meet with a book, giving a general history of hops for several years past. It contains the duty on hops, which is paid by the lb.; so that from thence you may collect the weight, though not the quality of the hops. It gives the quantity from the year 1787, down to the year 1798, being a period therefore of more than ten years. The quantity given by this statement, which was made for the purpose of making a general survey—the average produce through the county of Worcester at large, is *twenty-three thousand pockets per annum*. The quantity which Mr. W. took, when compared to this, is nothing, and what he took was no more, than one-fourth of what was then to be found in the Worcester market. Why then, Gentlemen, he has not bought any unusual quantity, he has not bought it in a clandestine manner. The whole world was witnesses to what he was doing. He gives what appears from all the evidence, to be the fair and current price of the day. Some of the witnesses were brought up, to shew that Mr. W. was ready to have given any price. But 12l. 10s. was the market price, *and I am not aware that he ever went beyond the market price at all*. He never at least went beyond 13l. 6s. One of the witnesses said, he asked him 13 guineas for his hops. But did Mr. W. give it? Did he leap at this price, in order to engross the commodity? Or did he act like a man, who was a fair *bonâ fide* purchaser in the market, and who did not come to raise the commodity? The seller offers him his hops at 13 guineas. Mr. W. says, I will give you 13l. Mr. Taylor, the seller, then says, you shall have them for 13l. 6s., to which Mr. W. agreed. There was here actually a beating down, to 13l. 6s., from 13 guineas. At this price the commodity

was

was bought. Is that a fair bargain? Has he gone beyond the market price in any of the other instances? No. He comes forward like a man making a fair market, and actually gets the dealer down to the price at which he purchased them.—A man will sometimes sell for a lower price, when he cannot get a greater. Gentlemen, did Mr. W. in fact, produce the effect of increasing—of raising the price. Did Mr. W. raise the price? *I conceive not* *. I am aware, that one or two of the witnesses, in their great zeal and ferment, *swore that he did raise the price of hops*. But they were contradicted by other witnesses, who were called. They state, that no rise of price was created by his coming there, that *no such effect was produced on the market*, and that Mr. W. did not affect the market in any other way, than any other individual would have done, who came and purchased in the market. If, when this commodity comes to market, there are many sellers and few buyers, then the commodity may be purchased somewhat lower; and *vice versa*, when there are but few sellers, and many buyers, the direct reverse will take place. That circumstance will, in some degree, tend to raise the price. But neither the one nor the other of these is a crime in a trading country. I do not know that a man may not go to market, and take advantage of the fair fluctuations of the market.

* The two charges against the Defendant were—that he *endeavoured to raise the price by rumours and by his purchases*. Whatever his commercial views might be, it has been already contended, that they were not matters of consideration for a British court of law; as such views are not illegal. As to his purchases, it was the duty of the Jury, without evidence to the contrary, to conclude that they were innocent. Whether there be *contrary evidence*, the public will determine.

Gentlemen

Gentlemen, I am talking now as to the rise of the price owing to the spreading of these rumours at the moment. Did the market continue to rise, when Mr. W. was supposed to be executing some imaginary plan, in order to produce that effect? According to the evidence of some of the last witnesses, the market still continued to SINK DOWN. How does that affect this case? At first, one would have imagined, the present price of hops was owing to Mr. Waddington, that his *deep malignity* had effected the great scarcity of this commodity. But is it so explained? The cause of the present scarcity is the effect of the seasons. *It is owing to the hand of the Almighty*, that hops are not good. The hops that had existed, *have been blasted*, and in consequence of that, the price has risen. Risen why? because there is a scarcity. If there was an abundance in hand, the same failure of the crop could not have produced that. But couple them, and you may account for it. But accounting for it in this way, neither the one, nor the other of these applies to Mr. Waddington. Dismiss, therefore, from your minds, this amazing oppression, which the poor are at present suffering because they have not enough of these hops, tho' perhaps they might have had enough of them; and try this case fairly, and without prejudice; what then is the result of Mr. Waddington's conduct, to those people, who are talked of as the ultimate consumers of the commodity? I take it, to constitute this offence, the ultimate consumer of the commodity must be injured. See then, whether or not, what Mr. Waddington has done, has in truth affected the ultimate consumer? If he had not been there, what would have become of the commodity? Was it to be given to the poor? certainly not. Was it to be sold immediately to the poor? certainly not. In the regular course of the trade, it would have been
fold

fold to the gentlemen factors, who send it to their customers, and my friend from London (Mr. Counsellor S.) will tell us how it passes through the Borough market, I believe it goes through the hands of a good number of people. How then does it much concern the ultimate consumer, whether Mr. W. had bought these hops or not? But it may concern the factors, and it *must* affect them. If no man can go to market, and buy a considerable quantity of this commodity, he cannot buy any other commodity; for there is no distinction that I am aware of. If no man can buy a considerable quantity to sell again, this commodity must be sold by the person who produces it, to the retail-dealer, or to the consumer. Though the retail-dealer may be said to be the consumer, yet that may be very doubtful. But all factors, if not retailers, must be *considered as engrossers*. And you are called upon to say, whether this man is guilty within the law merely because he has done this, because he has bought a considerable quantity of hops. I ask, what is to become of Mr. TIMOTHY BROWN and his house*, if you should find the defendant guilty? Mr. Brown is very able, if he pleases, to carry on a criminal prosecution. What will become of this man and his house, and a number of other houses, if the buying of a commodity to sell it again is prohibited by law? That indeed makes this a question of considerable importance to these parties, who throw the first stone. But it is not what concerns this or that house. I put it on a broader ground, whether there must not exist some middle men through whose hands the country at last may be supplied with this commodity, and whether it is Mr. Timothy Brown, or any body else, signifies nothing.

* Looking at Mr. Counsellor Scott, who is a partner.

I am not well skilled on this subject, and therefore I must proceed implicitly on my instructions. But, I am told, this commodity is very precarious indeed. It is extremely doubtful in every stage of its progress. I am told it is a tender and dangerous cultivation. You know whether that is true or not. It is not enough to see a hop plantation look fair and blooming. There is a particular insect which some times entirely destroys it. The winds of Heaven, and a thousand other causes, till the last moment, may blast a crop of hops in one night, and completely disappoint all the hopes of the planter. Hence the necessity there is to apply to some person, who, by his advances, may enable the planter to support himself in the cultivation of this commodity. *And if the planter is prevented from entering into a contract with the hop-merchant, respecting his future crop, you may grub up every hop plantation in the country.* I am told the cultivation of hops is extremely expensive; that the ground requires to be greatly manured and cleaned; and that the expence amounts to £.25 per acre. Whether I state this accurately or not, I rejoice that you are competent judges*. If that be so, what is to be done, if this man

is.

* As many persons may peruse this trial, who are not sufficiently acquainted with the nature and cultivation of hops, for their information, we shall make the following quotations from an excellent treatise on the subject, written by W. Randall. —

“ The employ afforded by the culture of Hops to the poor is very considerable; twenty thousand families are hereby enabled to inure their children to useful labour, from five years old, in the plantations only, exclusive of the various articles necessary to maintain that cultivation. The proprietors are about seven thousand, and the capital employed

is to be so fettered in his operations? It certainly was not intended, *that the country should be saved by the destruction*

ployed in the Hop plantation, is about three millions sterling."

"The whole progress in the article of the Hop is very hazardous, both as to the produce and to the profits; it is a plant of a very quick growth, and consequently of a tender nature. It is also a favourite residence for an insect called the *Long Tailed Fly*, which was not observed in the Hop countries until the year 1764. Its ravages are dreadful, often destroying plantations apparently the most flourishing; no plan has yet been brought into general practice to prevent its pernicious effects. This insect has seldom failed to visit the plantations once in two years, though rarely for two successive seasons. This may be seen by the duty table, which is higher or lower alternately; and when three good crops have been produced in successive seasons, it has sometimes happened, that from elementary causes, the insect has met with a sudden death just at the moment when the Planter gave up the crop for lost; the plants have then completely recovered themselves, and produced plentifully."

"Allow me to ask the commercial world how the Hop-planter is to sell his commodity at the prices they were formerly sold, particularly when they calculate the additional expences attached to the present times, and possessing the knowledge, *on proof*, of the short crops produced of late years? Is it not notorious, that for these last seven years, land, labour, and every article of animal consumption, has been advancing? And are not these the *essentials* from which the Hop-planter raises his Hops? I am at a loss to account for the meaning of the affidavit of the dealers, published in the London newspapers, where the hops are said to have been sold at a price unparalleled. If you take it in the literal meaning of the word, and put the price on a parallel with the

struction of the man that feeds it! It was not intended that he should be put into this lottery, not for his own benefit, but which, like other lotteries, is supported for the benefit of the public; and the ultimate consumer himself may, perhaps, be found in the situation of the hedge-sparrow, that is eat up by the polecat.

If that be so, let us consider a little whether the other part of this case be so clear as my friend represents it. My friend, near me, here suggests to me the particular necessity there is for these middle-men. It was, in evidence before you, that tho' Hops grow here, they do not grow every where. There are only certain parts of the kingdom which grow hops, and therefore there is the more necessity for these middle-men. Every individual cannot come from Yorkshire, and other parts of England, where hops are not produced, to the London, or the Worcester market, for a supply of their wants in this article. I state this for the purpose of shewing, that there is an absolute necessity that such middle-men should exist, and the law in no case prevents that, which is of absolute necessity*.

Gentle-

the expences, even the price of £15. to £16. 16s. per cwt. paid last year to the speculator, compared with the present expences of land, labour, and materials, it does not, in fact, exceed the £10. or £12. per cwt. paid for Hops many years ago. The difference of the nominal price was only in proportion to the nominal expence then incurred by the Hop-planter, arising from the circumstances of the times. For it is needless to say £10. forty years ago, would purchase more of every necessary of life, than £16. nominal money of this day."

* Upon this subject, Mr. Randall thus expresses himself.—

In the present age, and in our circumstances, being at this moment the leading nation in Europe, and supporting
many

£.1,146,000

. 900,000
. 75,000
. 150,000
ear 1795 358,800
. 17,940

£.1,501,740

. 900,000
. 157,000
. 314,000
ear 1796 871,740
. 43,587

£.2,286,327

. 900,000
. 56,000
. 112,000
ear 1797 881,177
. 44,058

£.1,993,235

. 900,000
. 73,000
. 146,000

the former years 10
the expences on land

104,600

Sale of 150,000 cwt. at

Loss to be carried to ne

Sale of 314,000 cwt. of

Loss to be carried to ne

Sale of 112,000 cwt. c

Loss to be carried to r

Sale of 146,000 cwt. of

Loss remaining to plan

Gentlemen, it has been stated to you, that the law upon this subject is so exceedingly clear, that there can be no doubt upon it. There happened to be a meeting of the parliament of this kingdom, for the purpose of enquiring what the common law upon this subject was. Gentlemen, I hold in my hand a copy of a report taken from the journals of the House of Commons, 12 *Geo.* 3. Such then were the doubts who were engrossers, that the House met on the subject, to ascertain that which the common Law had not made sufficiently clear. They enquired, and found a great many statutes existing, which had been made in furtherance of the common law. The 5 & 6 of *Edw.* 6. c. 14. recites these words "Albeit" says the statute, "divers good statutes heretofore have been made against Foretallers of merchandizes and victuals, yet for that good laws and statutes against regraters and engrossers of the same things have not been heretofore sufficiently made and provided, and also for

many others against the common enemy, by loans and subsidies of British gold, extracted from British genius, industry, and enterprize, our immediate safety seems to require the lesser evil of speculation, in order to counteract the greater evils of public distress and public danger. If any individual, or any association of Britons, contemplating the state of national commerce, were to observe one part of their fellow subjects bearing hard on another, endangering the existence of one of the fairest articles produced in this country, and were they to step forward, and by an extensive commercial speculation pursue the true method of relieving them, I would ask even those gentlemen whose profits are thus curtailed (that if the question was abstracted from the case) whether they would not be the first persons to pay a just encomium to the enterprising spirit of such an individual, or of such an association?

D

that

that it hath not been perfectly known what person should be taken for a Forestaller, Regrater, and Engrosser (and who was so at common law) the said statutes have not taken good effect according to the minds of the makers thereof. Therefore be it enacted, and declared, &c. "That whatsoever person or persons, that after the 1st day of May next coming, shall buy, or cause to be bought, any merchandize, victual, or any other thing whatsoever coming by land or by water, towards any market or fair to be sold in the same, or coming toward any city, port, haven, creek, or road, of this realm, or Wales, from any parts beyond the sea to be sold, or make any bargain, contract, or promise, for the having or buying of the same, or any part thereof so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person or persons for the enhancing of the price, or dearer selling of any thing or things above mentioned, or else dissuade, move, or stir, any person or persons coming to the market, or the fair, to abstain or forbear to bring or convey any of the things above rehearsed to any market, fair, city, port, haven, creek, or road, to be sold, as is aforesaid, shall be deemed taken, and adjudged a Forestaller." Doubts, therefore, did exist, and our ancestors had been able to ascertain this offence, and therefore enacted, what should be considered the offence in future. Cases arose on these statutes, and when these cases were decided, it was declared, *that hops were not among the number.** These statutes were

* Were the law laid down more perspicuously, the Defendant might have been saved from this prosecution, and the commercial

were made in furtherance of the common law, and the statutes themselves declare, that *hops were not a commodity within the view of the Statute Law, and they declare what was the Common Law.* When these statutes existed, hops were not the subject matter of engrossing within these statutes. And these statutes were made for the purpose of collecting what was the common law prior to that period. They were followed up by other statutes. The consequence was, they were the subject of frequent discussions in the different courts of justice. That was not the only consequence. There was another circumstance of a very serious nature, and that was the anxiety of mind, and the expence, that was necessarily incurred by such prosecutions. Gentlemen, as men get wiser, the wisdom of these laws began to be doubted. Some of our greatest and wisest statesmen doubted whether they ought to exist any longer upon the Statute Book. In the reign of his present Majesty, this transaction took place. A committee was appointed for the purpose of considering the statutes, that then existed on this subject.—Resolutions were entered into respecting Foretallers, and the committee were directed to report their opinion to the House, which of these laws were fit to be continued, and which of them ought to be repealed. Their report was as follows: “Resolved, that it is the opinion of this committee, that the several laws relating to Badgers, Engrossers, Foretallers, and Regraters, by preventing the circulation of a free trade in corn and other provisions, have been

commercial world from the fetters thrown upon it by this verdict. “To make any thing the *lex terræ*, there must be ancient and continual usage: no new practice can make a law.” Shower’s Parl. Cases, 124.

the means of raising the price thereof in many parts of the kingdom*.”

“ Resolved, That it is the opinion of this committee, that the House be moved for leave to bring in a bill to remedy the acts occasioned by the said laws.

Ordered, *nemine contradicente*—That leave be given to bring in a bill, for removing the evils occasioned by the Laws now in being, relating to Badgers, Engrossers, Forefallers, and Regraters.”

Gentlemen, my friend says, no doubt can be entertained by any man existing, nor ever could be concerning this offence. Let us see, who the legislators were, who doubted on this subject. They were certainly some of the wisest and greatest men in this country. Mr. Alderman Harley, was a man well known in the commercial world, and was a man capable of understanding this subject. Mr. Morton, Mr. Dyson, Mr. Fuller, are persons, whose names are all well known. I come now to a man of the most distinguished talents, who spent his life in studying the trade and commerce of this country, and understood it equal to any, whose works I have had an opportunity of reading—I mean, Mr. EDMUND BURKE. He also made a part of that committee. Mr. Cornwall, Mr. Gilbert, Sir George Saville, Mr. Dowdeswell, Mr. Cooper, Mr. Lewis, Mr. Pownall, Mr. Dundas, Mr. Hussey, and Mr. Wilbraham Bootle, all men of business. The next day, Lord Folkestone was added to the committee. On mature deliberation given to this subject,

* How surprisingly is this truth demonstrated by the present state of the markets! Almost every buyer and seller now finds himself liable to a prosecution. Consequently trade is parallized, and prices rise prodigiously. This may be exemplified, “ not by a treatise written in a closet.”

they

they reported, among other things, that the price of corn was enhanced—by what? By the then present system of laws relating to Foresters and Engrossers. It was, on mature deliberation, an act was passed, and now exists. (12 Geo. 3. c. 71). by which all the antecedent laws on that subject were done away, and done away by a preamble of this kind.—“Whereas it hath been found by experience, that the restraints laid by several statutes upon the dealing in Corn, Meal, Flour, Cattle, and sundry other sorts of victuals, by preventing free trade in the said commodities, have a tendency to discourage the growth, and to enhance the price of the same, which statutes, if put in execution, would bring a great distress upon the inhabitants of many parts of this kingdom, and in particular upon those of the cities of London and Westminster; be it therefore enacted, &c.”: then follow the enactments by which that act of parliament was to repeal, as I conceive all, that, which was antecedently an offence at common law*. They are all done away, because they are contrary to that spirit of trade, which was the first thing to be taken care of in this kingdom, because they promoted the very evils they were intended to remedy. That was their ten-

* Had the *common law* been sufficient to convict any persons of the *supposed* offences, the statutes alluded to, *would never have been enacted*. And, supposing the *common law* sufficient of itself to take cognizance of these offences, the repealing the statutes only made the subject *more liable to prosecutions on this head*, BY TAKING AWAY THE RESTRICTIONS UPON THE DECISIONS OF THE COURTS, and committing *more than ever* to the discretion of the Judges. Besides, was not *common law* ANTECEDENT to the FIRST CULTURE of Hops?

dency in the judgment of the first statesmen in the country. My friend tells you, you are not to attend to the speculative opinions of men, as to the wisdom and policy of the law, *but to decide according to the law**. I ADMIT IT: But the opinions of some speculative men deserve some regard. I would ask my friend, whether the speculations of Dr. Adam Smith are, in his opinion, the subject of ridicule? I well know why my friend made that allusion. I will not repeat it. It would not become me to state the reason why he made that glance at Dr. Adam Smith. But when great names are to be referred to, and opinions are to be given on this subject, I have the opinions of the two first men in this kingdom—men opposed to each other, but agreeing in this point. I mean the opinions of Mr. Pitt and Mr. Fox; namely, that the trade of this country would be injured by the destruction of these middle-men. And if so, then, I conceive, it follows, that the law does not intend they should be destroyed. But if it does, destroyed they must be.—*Fiat justitia, ruat cælum*. If all the hop-fields in the country are grubbed up, if the public are no longer to have this commodity, if laws are to be enacted, they must be obeyed. If these statutes were declaratory of the common law, when the judges gave their opinion on these laws, *that hops are not a commodity within these statutes*, and they meant to declare only who are offenders at *common law*, I conceive, these statutes being now all repealed, there is no law existing on the subject. Gentlemen, if that be so, and if I am right in the points I have made, I need not, I think, detain you by reading over to you, and commenting to you on the evidence of each particular witness. You will have all the evidence

* Unfortunately, both the learned counsel were mistaken.

of these witnesses detailed to you by his lordship. You will have his lordship's directions on the points I have mentioned, and to them, with the greatest respect, I refer you.

My friend suggests there was one point, which I have omitted. There was some difference of price between what was offered for some hops by Mr. Hodges, and what they were purchased at on the same day by Mr. W. You will observe, that Mr. Hodges meant to purchase them for ready money, and therefore, only offered a ready-money price. Whereas, Mr. W. contracted, that they should not be delivered till the 26th of July. Some reliance seemed to be placed on this, though no reliance can fairly be put on it. "At present, the commodity is worth so much. I am not made of money." (They were flocking round him, and *urging him to buy, instead of him urging them to sell**) "I cannot buy now, but I will buy at a future period, and I will advance the price according to what in my conception it ought to be, considering the time you have to keep your commodity." In proportion to the time they were to keep them, he advances the price he gives. It is not the market price of the day; I do not put it so. It is not so. "You shall deliver to me at a future period at an higher price; I contract to pay you more, as something in the shape of interest for your money, and as an allowance for the loss in weight." Now, suppose he buys an hundred weight of hops to day.—Suppose he buys the produce of one man, and they are to be delivered to day;

* Does this seem as if the Defendant was desirous of making purchases in order to enhance the price? Is buying under these circumstances criminal? The judgment of a candid public will be in favour of the Defendant.

if these hops stand, particularly in warm weather, they will not weigh so much. They lose considerably in their weight. What is the consequence? The quantity of hops being smaller, you must deliver more of them. You must offer a greater quantity of the commodity at a future period. That is the necessary consequence. Mark this in your own minds, and give it that weight, which you think justly belongs to it. The buyer, by not being obliged to take the commodity till a future day, saves something, and gets it more compact, and fit for use; but for the reason I have mentioned, the planter cannot part with it, but at an advanced price*.

Gentlemen, I was led back to this, by the recollection of my learned friend.

I have stated to you my ideas on this subject, and I have stated them undoubtedly with earnestness, because I feel on account of Mr. W. I feel to be called on to defend a man of this enormous crime—of a crime of this deep malignity. It is trying to a man, not much in the habits of making such defences. The anxiety I feel, may have led me to take up more time than you may think necessary. And besides, I feel for myself, that if he does indeed escape, he would have been acquitted more easily, had his counsel done his duty. I am bound to state such suggestions as I am able.

Having done that, let me request of you, not to be drawn away by any thing my friend has laid before you. I am not on the popular side. He has the advantage ground—The public expectation is awake. They look to your verdict. This prosecution is supposed to be commenced for the *benefit of the whole*

* The hops purchased for *time*, had actually lost in weight, when delivered, equal to 5os. per Cwt!—

kingdom. But who cares for my client? You have not before you that *conspiracy* that was hinted at by my friend. Nor, (give me leave to say) will you suffer yourselves to be seduced by any eloquence my friend may have displayed on the occasion—and not even by that earnestness to which he has been able to work himself up. I can conceive he may have brought himself to believe a part of that, which he stated to you with so much ability; but, I think, it is impossible that he can have worked up his mind to believe the whole of that which he has mixed in this prosecution. You will therefore correct these prejudices; and, as this is an UNUSUAL PROSECUTION, as this is a case which is not frequently heard of, you will give me leave to ask, in the language of the Poet,

————— “ Who is this new prosecutor,
 “ Awakes me all the enrolled penalties,
 “ Which have, like unscoured armour, hung by the wall,
 “ So long, that nineteen zodiacks have gone round,
 “ And none of them been worn; and for a name,
 “ Now puts the drowsy and neglected act
 “ Freshly on me?—’tis surely, for a name.”

It is for the sake of *popularity* that the prosecutors have roused these drowsy and neglected acts, and have endeavoured, by their counsel, to excite your indignation, and to fix it on the Gentleman, whom I represent.

Gentlemen, get rid of these prejudices; consider the question as it is in itself, stripped of every extraneous circumstance. It is a question of great and infinite importance to the public—to the interests of the commercial world, as well as to Mr. W. Consider the effect of your verdict against him, in as much as punishment must follow.

low. But I must admit, that if he is guilty, your verdict must follow. But you will examine the ground I have mentioned, to shew you that middle men are not within the law, because they are **INDISPENSIBLY NECESSARY** for the benefit and ease of the public.

Discard from your minds, all but the question itself. Do not consider the present times and scarcity at all. Forget them altogether, and ask yourselves, with respect to this particular inquiry alone, whether he is guilty of the charges laid against him in this information. The two charges, as they strike my mind, are completely inconsistent with each other. *And if the one of them be true, the other cannot* *. And, if you cannot tell which of them is true, I hope and trust, and I confess with confidence, that you will acquit the Defendant.

* The Jury either forgot this, or did not conceive themselves competent to consider it.—— Thus do we close our comments, on this most excellent speech : But if *man's free agency in trade* should still be doubted, it will oft times be resorted to by the commercial world.

MR. JUSTICE LE BLANC'S CHARGE TO THE JURY.

Gentlemen of the Jury,

THIS is an information, which comes down for trial, in consequence of the permission of the Court of King's Bench, to file such information against Samuel F. Waddington, containing several charges; but I think they may be divided into two classes: The one class contained in this information, charges him with an intention to enhance the price of hops, and for that purpose, that he spread divers rumours and reports with respect to hops, by asserting, in the presence of a number of hop planters, that the then present stock of hops was nearly exhausted, that there would soon be a scarcity of hops; and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted, with intent to persuade such persons not to send their hops to any market, and to abstain from selling them, and thereby to enhance the price of hops.—That is the first charge which is contained in the three first Counts of the information. They charge him with an intention to enhance the price of hops, and using *certain means* to persuade the hop-planters to keep back their hops from the market, for the purpose of enhancing the price.

The second class of Counts contained in the information, charges him with an offence of a different nature, namely, with getting into his hands, by purchasing, large quantities of hops, *to resell for an unreasonable and extraordinary profit, and by so doing, to enhance the price of hops.*

The

The object, therefore, throughout the whole of this information, is to charge him with this intention of enhancing the price of hops; and of doing it in the first instance, by using means with the planters, to prevail on them to keep back their hops from the market, and thereby to raise the price of the hops; and in the second case, by buying of different persons large quantities of hops, with an intention to reduce their quantity; and by so doing, to enhance the price of the commodity.

Gentlemen, the question for your determination is, whether in fact, Mr. W. has done what is charged on him by this information. *Whether these facts amount in point of law to an offence*, or what will be the consequence, supposing him to be found guilty, are matters *with which we at present have nothing to do**. If all the facts do

* Our comments upon this extraordinary part of the charge, to which, in a great degree, the verdict of "Guilty" must be attributed, shall be preceded by a quotation from that spirited, that FIRST of political writers, JUNIUS, upon a similar charge given by Lord Mansfield —

Junius's Letter to Lord Mansfield, 14th Nov. 1770.—

" But, my Lord, since you have laboured, and not unsuccessfully, to destroy the substance *of the trial*, why
 " should you suffer the form of the *verdict* to remain? Why
 " force twelve honest men, in palpable violation of their
 " oaths, to pronounce their fellow-subject a *guilty* man,
 " when, almost at the same moment, you forbid their in-
 " quiring into the ONLY CIRCUMSTANCE, which, in the eye
 " of law and reason, constitutes guilt—the *malignity or*
 " *innocence of his intentions*.—But I understand your Lord-
 " ship—if you could succeed in making the trial by Jury
 " useless and ridiculous, you might then with greater safety
 " introduce a bill into parliament for enlarging the jurisdic-
 " tion

do not in point of law constitute an offence, supposing your verdict to pass against him, *Mr. W. by a proper application*

“ diction of the court, and extending your favourite trial
 “ by interrogatories to every question, in which the life or
 “ liberty of an Englishman is concerned.—Your charge
 “ to the Jury in the prosecution against Almon and Wood-
 “ fall, contradicts the highest legal authorities, as well as
 “ the plainest dictates of reason. In Miller’s cause, and
 “ still more expressly in that of Baldwin, you have proceeded
 “ a step farther, and grossly contradicted yourself.—You
 “ may know, perhaps, though I do not mean to insult you,
 “ by an appeal to your experience, that the language of
 “ truth is uniform and consistent. To depart from it
 “ safely, requires memory and discretion. In the two last
 “ trials, your charge to the Jury began as usual, with assuring
 “ them, *that they had nothing to do with the law*—that they
 “ were to find the bare fact, and *not concern themselves* about
 “ the legal inferences drawn from it, or the degree of the
 “ Defendant’s guilt. Thus far you were inconsistent with
 “ your former practice.—But how will you account for the
 “ conclusion?—You told the Jury, that, “if after all, they
 “ would take upon themselves to determine the law, *they*
 “ *might do it*, but they must be very sure that they deter-
 “ mined according to law ; for it touched their consciences,
 “ and they acted at their peril.”—If I understand your first
 “ proposition, you mean to affirm, that the Jury were not
 “ competent judges of the law, in the criminal case of a
 “ libel; that it did not fall within *their* jurisdiction; and that,
 “ with respect to *them*, the malice or innocence of the De-
 “ fendant’s intentions, would be a question *coram non judice*.
 “ —But the second proposition clears away your own diffi-
 “ culties, and restores the Jury to all their judicial capa-
 “ cities. You make the competence of the court to depend
 “ upon the legality of the decision. In the first instance you
 “ deny

application will be released from all punishment ; because if the facts stated on this information, do not constitute an offence

“ deny the power absolutely. In the second, you admit the power, provided it be legally exercised. Now, my Lord, without pretending to reconcile the distinctions of Westminster Hall, with the simple informations of common sense, or the integrity of fair argument, I shall be understood by your Lordship, when I assert, that if a Jury, or any other court of judicature (for jurors are judges) have no right to enter into any cause or question of law, it signifies nothing, whether their decision *be or be not according to law*.—Their decision is, in itself, a mere nullity; the parties are not bound to submit to it;—and if the Jury run any risk of punishment, it is not for pronouncing a corrupt or illegal verdict, *but for the illegality of meddling with a point on which they have no legal authority to decide.*”

And Philo Junius to Zeno, 17th Oct. 1771, speaking of Lord Mansfield, says—

“ Nor do I think it necessary to say much to a man, who had the daring confidence to say to a Jury, Gentlemen, you are to bring in a verdict *guilty* or not *guilty*, but, whether the Defendant be *guilty* or *innocent*, is not matter for your consideration.”—

Also, Junius in his preface says, that, “ in the late prosecutions of the printers of my address to a great personage, the Juries were never *fairly dealt with*. Lord Chief Justice Mansfield, conscious that the paper in question contained no treasonable or libellous matter, and that the several parts of it, however painful to the King, or offensive to his servants, were strictly true, would fain have restricted the Jury to the finding of special facts, which, as to *guilty* or not *guilty*, were merely indifferent. This particular motive, combined with his general purpose to contract the power of Juries,

offence at the common law, no punishment can follow, though he is convicted of this offence. And therefore,
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Juries, will account for the charge he delivered in Woodfall's trial. He told the Jury, in so many words, that they had nothing to determine, except the fact of *printing and publishing*, and whether or no the *blanks or innuendoes* were properly filled up in the information; but that, whether the defendant had committed a *crime*, or not, was no matter of consideration to twelve men, who yet, upon their oaths, were to pronounce their peer *guilty or not guilty*. When we hear such nonsense delivered from the bench, and find it supported by a laboured train of sophistry, which a plain understanding is unable to follow, and which an unlettered jury, however it may shock their reason, cannot be supposed qualified to refute, can it be wondered that they should return a verdict, perplexed, absurd, or imperfect? Lord Mansfield has not yet explained to the world why he accepted a verdict, which the court afterwards set aside as illegal; and which, as it took no notice of the innuendoes, did not even correspond with his own charge. If he had known his duty, he should have sent the Jury back. I speak advisedly, and am well assured, that no lawyer of character, in Westminster Hall, will contradict me. To shew the falsehood of Lord Mansfield's doctrine, it is not necessary to enter into the merits of the paper which produced the trial.

If every line of it were treason, his charge to the jury would still be *false, absurd, illegal, and unconstitutional*.

"If an honest man should still be inclined to leave the *construction* of libels to the *court*, I would intreat him to consider what a dreadful complication of hardships he imposes upon his fellow subjects. In the first place, the prosecution commences by *information* of an officer of the crown, not by the regular constitutional mode of *indictment* before a grand jury. As the fact is usually admitted, or in general
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at present, it is necessary to dismiss from your consideration a variety of those topics, which have been urged, and

can easily be proved, the office of the petty jury is nugatory. The court then judges of the nature and extent of the offence, and determines, *ad arbitrium*, the *quantum* of the punishment, from a small fine to a heavy one, to repeated whipping, to pillory, and unlimited imprisonment. Cutting off ears and noses, might still be inflicted by a resolute judge; but I will be candid enough to suppose, that penalties, so apparently shocking to humanity, would not be hazarded in these times.

“ In all other criminal prosecutions, the jury decides upon the fact and the crime in one word; and the court pronounces a certain sentence, which is the sentence of the law, not of the judge.” (This preface was written in the year 1773.)

“ If Lord Mansfield’s doctrine be received, the jury must either find a verdict of acquittal, contrary to evidence, (which I can conceive, might be done by very conscientious men, rather than trust a fellow creature to Lord Mansfield’s mercy;) or they must leave to the court two offices, never but in this instance omitted, of finding guilty and awarding punishment. But, says this honest Lord Chief Justice, “ if “ the paper be not *criminal*, the defendant (though found “ GUILTY by his peers) is in no danger, for he may move “ the court in arrest of judgment ” True, my good Lord, but who is to determine upon the motion? Is not the court still to decide, whether judgment shall be entered upon or not? And is not the defendant this way as effectually deprived of judgment by his peers, as if he were tried in a court of civil law, or in the chambers of the inquisition?—It is you, my Lord, who then try the crime,—not the jury. As to the probable effect of the motion in arrest of judgment, I shall only observe, that no reasonable man would be so eager to possess himself of the invidious power of inflicting

and very ingeniously urged by the learned counsel for the Defendant, with respect to the policy of the law, as well as with regard to the law itself. I should think myself guilty of a neglect in the discharge of my duty, if I were to permit this Court to go from hence, entertaining the least doubt on the subject, that by the common law this is a misdemeanor. *There is no doubt, that to enhance the price of a commodity in the market, it is an offence at the common law.* And therefore it is, I think it my duty to state, that at the same time it is not a thing for your consideration on the present occasion: but you are only to try whether he is guilty of the facts charged by the present information. I have little difficulty in stating, that if any person, for the purpose of enhancing the price of A COMMODITY in the market, spreads *various rumours and reports*.* or if he gets

inflicting punishment, *if he were not predetermined to make use of it.*

Again:—We are told, that Judge and Jury have a distinct office—that the Jury is to find the *fact*, and the Judge to deliver the *law*. *De jure respondent judices, de facto jurati.* The *dictum* is true, though not in the sense given to it by Lord Mansfield. The Jury are undoubtedly to undetermine the fact, that is, whether the Defendant did or did not commit the crime charged against him.” So far Junius.

After this, one remark only is necessary; viz. — that the impartial public who peruse this trial, being under no such interdict, will decide upon both *law* and *fact*.

* Pray, if a man relates any simple facts to his friends, and if it is conjectured that he does so, for the purpose of raising the price of a commodity, is he guilty of a *misdemeanor*?—If this maxim is to be established, a person who does the most innocent action in the world, *if it has an injurious termination*, may be supposed to have had a bad

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intention ;

gets into his hands large quantities of that commodity, to sell it again at an unreasonable and extraordinary price, and thereby to enhance the price of the commodity, that is an offence at the common law. And, therefore, you will take it for granted it is such, at the same time bearing in your minds, that you, by finding *Mr. W.* guilty, (if he is guilty on the evidence) do not determine that he is guilty in law, and liable to punishment, unless the law is against him. And that question is open to be litigated, if

intention; so, found guilty, and punished for the offence. But the Jury are sworn to decide by the evidence, not by suppositions that enter into their own heads. In this case, however, it is not even proved, that the innocent action had an evil consequence. It is neither law nor equity to suppose the intention EVIL.

Junius's Letter to Lord Mansfield, 21st January 1772.

“The discretion of an English judge is not of mere will and pleasure; it is not arbitrary—it is not capricious; but, as that great lawyer (Coke, 4 Inst. 41. 46) truly says,—“Discretion taken as it ought to be is, *discernere per legem quid sit justum*.—If it be not directed by the right line of the law, it is a crooked cord, and appeareth to be unlawful.” If discretion were arbitrary in the judge, he might introduce whatsoever novelties he thought proper. But says Lord Coke — “Novelties without warrant of precedents are not to be allowed; some certain rules are to be followed.”

Next, 'tis said, that if a person gets into his hands large quantities of a commodity, to sell it again at an unreasonable and extraordinary price, and thereby to enhance the price of a commodity, he is guilty of an offence at common law.

This might be true, if he thus sold it. But was this the Defendant's case—He is charged with buying

if there is any doubt what the law is.—Now, Gentlemen, that being the case, consider what the facts are, to which you will have to apply the evidence, and which I shall state to you as accurately as I can. In the first Count of this information, Mr. W. is charged with spreading reports with respect to hops, by asserting in the presence of a number of hop-planters, and dealers in hops, that the present stock was nearly exhausted, with intent to persuade those persons not to bring their hops to market, and to abstain from selling them, and thereby to enhance the price. Nearly to the same effect is the charge in the second Count. And the third Count is more general—that he attempted to persuade divers persons, who were dealers in hops, to keep certain quantities back from the market, and to abstain from selling such hops, for a long time, for the purpose of enhancing the price.—And the other Counts all charge him, with getting into his hands, by buying, large quantities of hops from different persons, for the purpose of *selling them again for an unreasonable and extraordinary profit*, and thereby to enhance the price—some of the Counts, naming the persons from whom he purchased them, and the last Count, stating divers persons, without naming particular persons.

large quantities of hops, in order to sell again at an *extraordinary profit*, and thus enhance the price of the commodity.

The buying a large quantity in itself can never be an offence: and, was there any evidence to countenance the charge of intending to sell at an exorbitant profit? It is a **FACT**, that *one-third* of such hops, were then sold again at a *loss*! Nay, such was the alarm, when the Rule Nisi was granted—that the Defendant's stock, *depreciated forty per cent. below the cost price*! and might have produced bankruptcy, even to a royal merchant.

In order to support these charges, the first witness called, is William Penn, who is clerk to Mr. Hodges, a hop-merchant in Worcester. He describes himself as attending at the Worcester market, and as having lived twelve months with Mr. Hodges, his master. He had lived three years in Worcester before that. During the time he has lived with Mr. Hodges, unless when otherwise employed, he attends the market, which is weekly on a Saturday, and supplies the north—Liverpool, Manchester, and other considerable towns in the north, that do not grow hops. In March, 1800, hops fell from 11l. to 13l. per hundred.—That on the 29th of March the market was very flat, and there was every prospect of the price being lower. The stock of hops at that time was very considerable, that they were more than sufficient for the demand. He himself had never seen the defendant in Worcester as a dealer, nor did he himself know that he dealt by any agents here. On the 29th of March, he saw him in the market. Market hours are between ten in the morning and two. After Mr. W. came into the market, he heard him say to a great number of persons, that owing to the prosecution (not that which we are now trying in this city) that had been commenced against him, the price of hops was lower. But he could assure them from very high authority that prosecution was dropped*, and that therefore the price of hops would rise. He said the stock of hops in *the hands of the brewers* was nearly exhausted, and that very soon they must come to him, or to the planters, and hops would be 20l. per hundred weight, and they might depend on his assistance to keep up the price. This is the substance of what he said.

* It is too improbable that the defendant should propagate such a flagrant lie.

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He says, he heard him use *the same words several times.* *He does not pretend to use the words,* but he is able to say, that he used the same words, or words to the same effect several times. That he saw several persons offering him samples. He told them if they did not want the money, they had better not sell, for that they would be a great deal dearer. But *some of them urging him to buy, he complied.* This was on Saturday the 29th of March. The next Saturday, when Mr. W. was not down, the samples were fewer in the market, and the planters not inclined to sell. This is the first account on the first day. Gentlemen, your attention will be called to two other days, the 19th of April, and the 3d of May. On the 19th of April, which was three weeks after the 29th of March, and also a market day, he saw Mr. W. again about half after one o'clock. Before Mr. W. came, there were many planters and many samples, but they were not disposed to sell, till Mr. W. came; till that time very little was doing. He (Mr. W.) went into the warehouse of Messrs. Yarranton and Phillips, and soon after the hop-planters followed him. He said, he was sorry that so many samples were reserved for him. He was much obliged to them for the preference they had given him, but that he did *not come with an intention of buying.* He then got upon some sacks in the warehouse. The warehouse was full. It may hold thirty or forty people. He then took out a paper, and said that on that day he would purchase of those who wanted the money, and were desirous to sell 200 pockets at 12l. 10s. a cwt.; and 200 pockets more, each succeeding fortnight, at an advance each fortnight, till the price should rise to 15l. per cwt. He said, he did not know how much the advance was. He went into the counting-house, and desired those who were disposed to sell at any of these different dates, to follow him, and to write down
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their names, the times at which they wished to sell, and the quantity. There was some other conversation, which he does not now recollect.

On cross-examination he says, he himself has been for seven years in the way of the hop trade, but not regularly concerned in it, except for the last twelve months. Mr. Hodges he says is a hop-merchant, who buys in the market, and sells again. He describes the trade of a hop-merchant to be—to buy in large quantities in the market, and to sell in large quantities again. He says, some of them buy to the amount of a thousand pockets in a year, some more and some less.

With respect to the amount of the quantity bought in a year, whether it is one or two thousand pockets it does not apply; for this is not a question, whether Mr. W. has or has not done what others may have done. If what Mr. W. has done is wrong, though ten thousand others had done the same, it does not exculpate him. He cannot vindicate himself against the charges brought against him, by shewing that the offence is common, and that many other persons have been guilty of it.—With that one observation, I shall dismiss the point entirely, and proceed with the evidence*.

The witness says, that in January, they were from £15. to £16. and he believed approaching to 16 guineas; in the beginning of the month of February, they were about the same price. But, towards the latter end of that

* In the case Williams against Watkins, for forestalling cattle at Knightsbridge, Common Pleas, Michaelmas Term, 1797, Mr. Serjeant Le Blanc for the prosecution: We recollect that Chief Justice Eyre decisively pronounced that such causes were useless, because it was obvious that the statute of Edward 3. was erroneously omitted in the sweeping repeal of 13 Geo. 3d.

month they had sunk, he had heard (he was then on a journey). At the beginning of March, by which he means the 8th or the 10th, they were about 13 guineas. He says, the stock at that time was considerable, but the antecedent crops for some years back had not been abundant.—Hops are various and fluctuating. The witness then gives a reason, why hops were flat in the market at that time, and why they did not bring so great a price; because though the season before had not been good, yet, in consequence of the last crop of barley being also bad, the demand for hops on that account was much less. He says, with respect to the sums to be paid on what are called the progressive deliveries, which he describes Mr. W. as having contracted for, these were to be according to the time at which they were delivered. If they were to be delivered at a more distant day, a greater sum was to be paid for them. And that sum was to be paid at the time the hops were delivered, and not when the contract was made.—

Now Gentlemen, with respect to this witness, you will observe that as far as his evidence goes, as to what he heard, he proves the expressions, which are alledged to have been used by Mr. W. to the hop-planters, in representing himself at that time as not wishing to be a buyer, but telling the planters, who had hops to sell, that the stock of hops *in the hands of the brewers* was nearly exhausted, and telling them that hops might be higher, and that they might depend upon his assistance to keep up the price: and then saying, that if they did not want the money, they had better not sell, but if they wanted the money, tho' he thought they had better not sell, yet he would purchase some.

The next witness, was William Harwood, who said, he was a grocer, living at Worcester. He was in the

Hop-market on the 19th of April. The other witness William Penn spoke to the first time Mr. W. came down, which was on the 29th of March, and afterwards to the 19th of April. This witness speaks only to the 19th of April. He says, that at half-past Twelve o'clock on that day, he went to the market, and that Mr. W. came at near one o'clock, that it was an extremely full market; that he never saw so large a one before. This was the second market-day Mr. W. attended at Worcester. He went into the warehouse of Messrs. Phillips and Yarranton, and in a little time raised himself upon a sack, and addressed the persons, who were present, whom he believed to be hop-planters. Some of them he knew, and others he did not. He then gives an account of what he heard, and says that Mr. W. there said to them, he was obliged to them for the compliment they had paid him, by so numerous an attendance—that he was afraid they would be disappointed, as he did not come down that day to buy any hops at all, that he should be very sorry to disappoint them, and he had hit upon a plan, which he hoped would meet their wishes. He said he was willing to buy that day 200 pockets, at £12. 10s. per cwt. which he conceived to be the market price of the day, and 200 pockets each succeeding fortnight, for the space of two months, at an advance of ten shillings, at the end of the first, second and third fortnight, which would raise the price to £14. and at an advance of twenty shillings for the last fortnight, which would make the price £15. per cwt. He then says, he produced a paper writing in different columns, and requested the planters to write down their names, those who were disposed to sell in their respective columns, and the quantities they meant to dispose of. That several of the planters followed him into the adjoining room. He strongly recommended to the
planters

planters to keep their hops as long as they could, for he said he was fully satisfied that hops would be higher—He did not recollect, that he assigned any reason for his opinion—He describes himself as hearing distinctly what passed. He is a grocer in this town, and also sells hops, as a retail dealer—He buys sometimes of hop-planters, and sometimes of hop-merchants. We all know it is of the nature of their business to buy hops to sell them again, in different parts of the country. He describes the 19th of April as a large market, that Mr. W. spoke to several persons before he went into the warehouse of Messrs. Yarranton and Phillips, that he stood at the door of the warehouse, and consequently did not know what passed in the counting-house between Mr. W. and those who were along with him. He did not know whether any hops were offered to Mr. W. that day. But with respect to the question whether hops lose in their weight by standing, he understands that hops do lose in their weight by standing in warm weather, but that he never made the experiment.

The next witness was William Taylor, who says he is a grocer. (The last witness spoke to the 19th of April.) He says he was in the market on the 29th of March—he was in the market from ten to one. He had hops for sale, but no Hop-merchants looked at them. Some people out of the country looked at them. He says he heard on that day Mr. W. say to the planters and himself, what the first witness swore he said on the 29th of March, that hops would be dearer; that if they were determined to sell, he would buy them—that he spoke this loud for all the spectators to hear—that the witness offered him his hops upon which Mr. W. asked him if he was a planter. No, he said, he was not. On that he said he did not buy hops of dealers—he had better hold
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the hops, they would be dearer; but that if he was distressed for the money, he would buy them of him, and give him £13. per cwt. Mr. Taylor said he wanted 13 guineas for them. Mr. W. said he would give him £13. 6s. and he sold them to him for that. He says Mr. W. advised the Planters and him to hold their hops, and by holding them, they would pay good interest for their money. *He applied to Mr. W. and Mr. W. did not apply to him for hops.* He at first offered him £13. for his hops, Mr. Taylor asked 13 guineas—Mr. W. then offered him £13. 6s. and then in the end, the witness sold them to him at that price. He took great pains to offer his hops to him as soon as he could.

The next witness *Thomas Weaver*, the master of the Hop-pole Inn*. He describes Mr. W. as coming to him on the 28th of March, and asking him if he could provide a dinner for him and a number of his friends the next day. He told him he could. He said there might be eighty, ninety, or an hundred, but he would undertake at all events to pay Mr. Weaver for fifty. Afterwards the witness went into the market to give them notice of this dinner. He did not understand the exact description of persons Mr. W. meant. He went into the market, and acquainted the Gentlemen in the hop-trade with what Mr. W. had done. But afterwards, Mr. W. desired that none but the Planters might be invited to dine with him, as he had something particular to communicate to them. On this Mr. Weaver told him, he had invited the trade in general, and observes that he proposed to Mr. W. to put a written paper over the door, to give notice that none but Planters should be admitted. Mr. W. approved of it. And the witness's young man was directed to put up such

* This reminds us of *Espions* under the old regime of France.

a paper, that he did not choose to have any but Planters there ; and accordingly, there was written on a paper in large letters " None but Planters admitted," and that was put over the door : Ninety-seven, ninety-five, and afterwards two others, making ninety-seven Planters sat down to dinner. And Mr. W. paid the bill for them all the next day. He describes himself as a good deal in the room, while he was putting the wine on the table. Mr. W. was in the chair. The first toast given was the King. Afterwards this toast was given " Hops at £20. per cwt." That was received with approbation, in the same manner as the former toast*. Mr. W. then had a conversation with the planters. He told them he would convince them, that by coming down to Worcester, he was their friend, and that he had a greater wish to serve them, than to put any money into his own pocket. He would convince them, before he left the room, that they had not had a fair price for their hops. He said, he had no doubt that hops would be at £20. and that, in a very short time, the Brewers would be obliged to come either to him, or to some of his agents. The stock of hops was nearly exhausted. *He seemed to know very well how long it would be, but the witness did not recollect it.* He recommended it to them to hold their hops, but if any gentleman were disposed to sell, he would buy them, and give £12. 10s. per cwt. but recommended it to them to hold them. Mr. W. said, he liked the city of Worcester so well, that he should like to build a warehouse, in which they might deposit their hops, rather than that they should be obliged to sell them at a reduced price. Mr. W. told these gentlemen, that he, Mr. W. had followed the Kentish Planters, and

* The planters did not divine such an action as "*the King v. Waddington.*"

had overtaken them on the road to the Borough market, going to sell their hops to the factors—that from their want of money, they were obliged to sell them, when they were convinced they would be at an higher price.— Upon this Mr. Chambers, who is a very considerable planter in Herefordshire, gave Mr. Waddington as a toast, and invited him to come down to the ensuing election. *The witness was drinking a glass of wine at the time when he heard the particulars which he had related.*

Gentlemen, you will find this a material witness. He only speaks to what Mr. W. said on the 29th of March, but not to what passed on the other two days, the 19th of April, and the 3d of May. Some of the other witnesses, who were in the situation in which he stood, certainly do not recollect, or give any account of what Mr. W. said. You have heard them say, from the situation in which they stood, they took no notice of it, and do not recollect any thing of it at the present time.

The next witness is *William Yarranton*.—He says he knows Mr. W. that he and his partner Mr. Phillips are employed to take in such hops, as Mr. W. bought here, and he began to be connected with him about twelve months ago. He remembers Mr. W. being down on the 29th of March. He saw him on the Friday and Saturday. He staid till the Sunday. He was a great deal with him. He believes he saw him on the Saturday morning. Mr. Phillips, he says, is his partner. Mr. W. told him he intended buying some hops on the market. He said, he thought hops would be dearer; he gave him no other reason for their being dearer, than that he intended to be the buyer of some hops in the market. This was the conversation he had with Mr. Yarranton, and not the conversation he had in the market. To the best of his recollection, Mr. W. did not say any thing to him of what he intended to do to
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the market. This is all he recollects to have passed on the first visit. On the 19th of April Mr. W. came down again. He had heard him say, *the stock of hops was small, and nearly exhausted*. In 1795, 1796, 1797, and 1798 the crops were all bad; there was not a full crop since the year 1794. In the year 1797 there were three-fourths of a crop. He spoke of the country at large. The duty on hops, in 1797, was about 157,000*l*. He bought some hops that day in the market, but he cannot say, whether he bought any of these hops, after the time Mr. W. had addressed the people in the market. But either before or after, he cannot say positively which, but he bought 60 or 70 pockets in the course of that day. He does not recollect hearing any thing Mr. W. said to the planters on that day. He was talking to them about hops. They offered him their hops, and he desired them to stop a little; he was going to speak to him (the witness). He heard him say they would be dearer. He does not recollect that he heard him advise the planters to sell or not to sell on that day. But his advice to him was to buy hops, for that they would be dearer. Mr. Yarranton says, he was at the dinner on the 29th of March. He recollects Mr. W. giving as a toast, "Hops at 20*l*. per hundred." But he cannot charge his memory with what he said to the planters, except that he recollects he told them, *they had been losers by planting hops for several years back* *. He (the witness) was talking with some person about some hops, and he did not pay much attention to what passed in the room. Mr. W. was proposed as a toast by

* As it was not even hinted that any of these rumours were UNTRUE, it is not necessary for us to prove them. This rumour, however, is of infinite importance to the defendant; and the public will find the matter clearly ascertained in Randall's Pamphlet on Hops, lately published.

Mr.

Mr. Chambers, and his health was drank by the company. And he says, he never heard what was alledged to be coupled with that toast, which has not been given by any one of the witnesses, but only stated in the opening of the counsel. When Mr. W. went away, he understood from him he meant to come back in a fortnight or three weeks. And he understands his business there was to come to buy hops. Now, certainly, according to the evidence of the first witness, that was totally contrary to his avowed intention. According to the evidence of that person, Mr. W. did not want to buy hops. But he told those who were anxious to sell, that he would buy some of them.

Mr. Yarranton says, he saw Mr. W. when he came down on the 19th of April; it was near one o'clock, when he came to his warehouse. He shook hands with him, and asked him how the market was going. He said heavily. He had seen him before that day, when he got out of his coach, when the witness told him the market was very heavy. When Mr. W. was in the counting-house, he told Mr. Yarranton he was going to buy hops. When he (the witness) went out of the counting-house, he says, that Mr. W. began to speak to the planters. He had not told him (Mr. Yarranton) what he had done or said. (A paper containing some contracts was here called for, and Mr. Pennethorne, clerk to Messrs Yarranton and Phillips, was examined respecting it). Mr. Yarranton then goes on with his account. He saw Mr. W. again on the 3d of May. He presumed he came for the purpose of buying hops, and paying for the hops he had formerly bought; that Mr. W. was a buyer of hops, because he had a written account with their clerk. He signified an opinion to the witness, *that hops would be dearer, and that was his sole motive for his becoming*

becoming a buyer, and there was no other reason. The witness does not know that he heard from him, what quantity of hops he had on hand, or whether he had any more hops than those he purchased at Worcester. He was not so communicative to him. In the beginning of March last, he was in Mr. W. house in London. He was there selling hops, and he called on Mr. W. to ask him how he did, and to see whether he was a buyer. He then told Mr. W. their market at Worcester was low, and that the prices were lower than they had been, *and lower than the London market*. This was on the 10th and 12th of March. He went up to London to sell 150 pockets of hops. Mr. W. at that time was not a buyer. When the witness told Mr. W. the market at Worcester was falling, he did not learn from him then that he meant to come down to Worcester. He did not learn he was coming down, till a few days before he came, and then he understood he was coming to buy hops. He says, he has been twenty years in the hop trade. The deficiency of the crop cannot be ascertained from the amount of the duty, as of late years hop plantations have increased very much. In the year 1797 the duty amounted to 157,000*l*. though the crop that year was only three-fourths of a full crop, but in consequence of the encrease of plantations, even a bad crop produces a greater duty, than a good crop would produce, if the plantations were not so extensive. The last year the stock had encreased, because the consumption was much less, owing to the high price of malt, and the high price of hops, or *the stock in hand was very small*. The price that Mr. W. gave for hops to come in at a future day, *was no more than the price of that day, because there was a considerable loss in weight*. If hops are to be delivered at the distance of six weeks, or two months, and are kept in warm weather, they will
lose

lose in weight from 3lb. to 7 or 8, and he had even known them lose 10lb. in a pocket. He then describes a pocket to be from an cwt. to an cwt. and an half. The proprietors of the hops keep them till the time of the delivery. They were weighed when delivered at the public scales, and at some parts of the season HE HAS BOUGHT 500, 600, or 700 POCKETS IN A DAY, and some gentlemen MANY MORE. He describes their markets to be greater between September and Christmas, than at other times. On the 29th of March, Mr. Yarranton says, there might be 600 or 700 pockets to sell in the market, either by sample or in bulk; that is, the first day Mr. W. came there, there might be 6 or 700 pockets to be disposed of, either in bulk or by sample. On the 19th of April, he thinks there might be about the same quantity or more. On the 3d of May, there might be the same quantity or less, or more, though he thought there was hardly so much. He describes the price as falling from the latter end of February to the latter end of May. And from that time to the present it has been rising, and is now at 16l. or 17l. a hundred. *In his opinion Mr. W. increased the price of hops NOT SO MUCH AS SOME other persons.* ONE OR TWO HOUSES WOULD ENHANCE THE PRICE MORE THAN WHAT HE DID. Towards the latter end of May there was a rise in the price, because there was then a suspicion entertained respecting the ensuing crop. It was not so usual to buy large quantities of hops near the end of the year. There was not at that time so much to purchase. HE DID NOT THINK THE PURCHASES MR. W. MADE, ENHANCED THE PRICE. Mr. Yarranton is of opinion that the planters THOUGHT THE WORSE of Mr. W. for the speech he made them, *and that it made them more willing to sell than to hold them.* I do not find that Mr. Yarranton recollects any

any part of Mr. W's. address to the planters, or that he has given any account of it, so that we can only take his opinion *that Mr. W. did not enhance the price* by what he said, which he could not now recollect. He then describes 600 or 700 pockets as being the whole produce of the market; 13l. per cwt. is about 2s. 4d. per lb. Now when you attend to the quantity that is supposed to be lost in weight by keeping, and compare it with the increase of price, they do not tally. The price of the number of pounds of hops which are lost by standing, ought to correspond to the increase of the progressive price of hops. He is then asked as to the time bargains, and which some of the witnesses called progressive bargains, and he says, he never made such a bargain, and never knew such bargains made at Worcester, till Mr. W. made them. He said, people in the north made bargains for time, but when he came to be questioned more narrowly as to that, it appeared they only bought upon CREDIT. That does not make a bargain for TIME. This, I think, is the evidence of Mr. Yarranton.

The next witness is Thomas Pennethorne, clerk to Messrs. Yarranton and Phillips, and who was first called for the purpose of producing a paper, which was in his hands, but which he had delivered to Mr. Elstob. That paper he received from Mr. Waddington, and was the paper in his hand, (and which has been described by several witnesses) at the time when he was talking to the Planters. He describes himself as clerk to the hop merchants, whom I have just mentioned, and attends the market for them; that is, for their house. On the 29th of March last, that is, on a Saturday, he saw Mr. W. who had come down into the market. He saw him talking to a number of planters, but did not hear what passed. On the 29th of March, he (Mr. W.) bought of the

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planters

planters himself 165 pockets of hops on that day. That number he bought himself, according to the account, which he handed over to the witnesses. Mr. W. also bought, on that day, of Yarranton and Philips, 46 pockets of hops, which were their own, and likewise employed them to buy for him 81 pockets; making, in the whole, 292 pockets, bought on the 29th of March, either by himself, by Messrs. Yarranton and Phillips, or by their clerk. These 292 pockets were the whole quantity purchased for Mr. W. on the 29th of March. Mr. Pennethorne then produces a paper in the hand-writing of Mr. W. which he says he wrote on, though there are some pencil marks not written by him. That paper, he said, did not include the hops he purchased on the 19th of April, and which were to be delivered on that day, but only the hops that were then contracted for, to be delivered at a future day. It is not necessary, in this particular part, that I should give you an account of the names. When it becomes material, I shall mention these names to you. On the 19th of April, Mr. W. enumerates 32 pockets as bought, and which were to be delivered on that day. He describes these as bought on the 2d of May, the 19th of April, for present delivery, and that they were hops of a fair middling quality, and the price at which they were bought was the fair price of the market. But, besides these hops for present delivery, Mr. W. contracted for other hops, to be delivered on future days, and the different prices were also distinctly described. And this was written at the head of the paper:—"We, the undersigned, do hereby engage to sell to Mr. Waddington, mentioning his own name and Co. "to be delivered for them as under:" This paper was divided into three columns; at the head of each column was put the day of the month, at the distance of a fortnight,

night, when the hops were to be delivered, the quantity and quality. The next column was the 17th of May, the first being the 3d of May, the next column is the 31st of May, and the next is the 14th of June. In the first column, were the names of certain persons, at £13. per cwt. so that the price was fixed according to the quality of the hops. At the top of it, was the sum first proposed; but some of the hops being of an inferior quality, some of them, of the 3d of May, are marked at a lower price per cwt. The hops in the next column, were to be delivered on the 17th of May. There were 47 pockets of hops contracted for, to be delivered at that time, all at the price of £13. 10s. except 13 pockets, which, being of inferior quality, are fixed at £12. And the column of the 31st of May, has at the head of it, £14. which is an increase of 10s. more, and these different persons are all of them on the 31st of May. The last column is the 14th of June, at the head of which is £15. per cwt. which is an advance of £1. And that is a much larger quantity, I cannot exactly tell you the quantity, but it is to the amount of near 200 pockets, and though the price is at £15. yet there was one exception or two, where they were lower, in consequence of their being of an inferior quality. These were the contracts made at these progressive dates. On the 19th of April, he says, on that day Mr. W. also contracted for other hops, to be delivered on the 14th of June, which were not in that paper. But he had another paper, from which he stated the names of the persons who sold them, the price, and the quantity. The first paper he had from Mr. W. himself, and the second from Mr. Warwick, his partner. And he received the whole of that quantity on Mr. W's account, and the whole amount of another quantity from other persons.

These are all the contracts on the 19th of April.

He then spoke to the contracts he made on the 3d of May, which was the third day Mr. W. was down at Worcester. He then contracted for other quantities of hops, to be delivered on different days, namely on the 31st of May, and the 26th of July. On the first of these days, only one quantity was delivered. On the 26th of July, there was a much greater quantity, from different persons; and one of them to the amount of 57 pockets. Gentlemen, the whole quantity will be added up if it is material. Some of these last hops, being of an inferior quality, were sold at £12. and £13. These are the different contracts that were made by Mr. W. and which were proved by Mr. Pennethorne. They were all weighed by the public weigher; most of them have been paid for by Mr. W. They were all delivered; some of them were delivered so late as Saturday last, and some of them are not yet paid for; and when the whole quantity purchased on three different days are added together, they amount to somewhat more than a thousand pockets. These are all the purchases that he made on the 29th of March, the 19th of April, and on the 3d of May. And he states, that a quantity of them was delivered as late as last Saturday. He says, the market was extremely well supplied, and there was no scarcity. He judges, that on the 29th of March, there might be in the whole 5000 pockets, as the produce of Worcestershire and Herefordshire: that is his judgment. He says, that, in his judgment, 5000 pockets are the total produce of all the hops in the two counties now mentioned. And he says that, for the purpose of showing that Mr. W. on these three days, bought or contracted for 1000 pockets, out of 5000. He says that, on the 19th of April, he heard Mr. W. say, in the warehouse, to the planters, that
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he was come down that day by invitation, to dine with the hop-planters, and not to buy hops. He then stood on a tub of hops. But if any of them were so pressing to sell, he would buy a few. He named the quantity he would buy on different days, and the price he would give on each day. This is his account. Mr. Yarranton said, Mr. W's sole visits were to buy hops, and to buy hops only. This witness, Mr. Pennethorne, says, Mr. W. told the planters, *that he had come down, by invitation, to dine with them, and not to buy hops, but if they were so pressing, he would buy a few*: and you see, from the evidence given, what that quantity was, and the proportion it bore to the whole produce of the two counties of Worcester and Hereford. He told them he was not made of money, and that he could not buy all their hops. He had not money to buy hops, and that, if he bought, it must be upon credit. He then describes the business of the hop-merchants to be, to buy large quantities of hops here, and to supply the orders of persons in different parts of the country. He saw many of the hop-planters pressing on Mr. W. who then got upon the sacks, that he might be heard, and offered them what he would give. The planters did not ask him a price for their hops, and proposed to him to sell at the price which he himself had fixed, and not at the price they had fixed. The samples were all produced at the time of the contracts made, and when they came to be delivered, some of the hops were rejected, as not proving the sample. A less price was fixed on those hops of inferior quality, and for which they were afterwards taken. *He then describes the markets on the 17th and 24th of May, to be as cheap markets as any they had.* That is for the purpose, I suppose, in the first place, of shewing, that, after Mr. W. had made all his contracts, *the market*

still continued as low as before; and that, therefore, it was not affected by his purchases. THAT IS SAID ON THE PART OF THE DEFENDANT*. On the other hand, they say, though the market on the 17th and 24th of May was flatter than on the 3d of May, when Mr. W. had made all his contracts, that was no answer at all. He describes the unpromising state of the hop-grounds, and states a notorious fact, as I believe it is, that hops, about the end of May, began to put on a very unpromising appearance. That there were two, and sometimes two or three murrain years together. He says, some of these hops, which Mr. W. purchased here, are in warehouses in Worcester, and some of them were sent to London. He says, he heard Mr. W. tell the planters, *that he did not come there as a buyer, and that, if he must buy, it must be on credit.*

Gentlemen, you will of course attend to this part of the evidence, which shews the quantity of hops bought, the manner in which they were bought, and the account which Mr. W. gave on the occasion.

The next witness is John Rafter. He says he is a planter, and sold some hops to Mr. W. He had no more than the market price for them. He sold him 13 pockets, at £13. per cwt. He would not have sold them that day, unless he had got that money for them. He got no more than he thinks was the market price. And, on being asked whether he did not say he had got more, he said he did, but that it was only a joke, and that he did not get more; and that he did it for the purpose of laughing at them. Who would deal, he said to them, with a Wor-

* The reader will observe, however, that this witness was called "on the part of the prosecution." No witnesses were called by the defendant, because that he had determined only to defend himself on the point of law.

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rester man, when he could sell for £60. more to a Londoner. He says, he thought he had got no more for them than the market-price of that day. *He had been in the hop trade thirty-five years, and he says, he hardly ever knew a gentleman come from London to this market, that did not raise the market.* Probably, whenever any demand is made beyond the usual demand, it will happen that the price will rise That is the object of his evidence.

The next witness, is another hop-planter, William Green. He says, that on the 19th of April, or the 3d of May (it was fixed afterwards by Mr. Hodges, a hop-merchant, to have been the 3d of May), he offered Hodges a quantity of hops at £13. which he sold to Mr. W. on the same day, at £15. He at first doubted whether it was on the 19th of April, or the 3d of May, that he had offered these hops to Hodges, but Mr. Hodges makes that matter quite clear that it was on the 3d of May they were offered to him at £13. and they were afterwards, on the same day, sold to Mr. W. at £15. to be delivered on the 26th of July. That it was before Mr. W. came, that he offered these hops to Mr. Hodges. Green did not fix the price of £15. but it was in consequence of Mr. W. himself having declared the prices, which he had fixed at the head of the columns of the paper, which we have before heard of, that Green offered the hops. The price, and the 26th of July, was fixed by Mr. Waddington, as his own price, and his own time. He paid £15. for those hops, which, on the same morning, were offered to Mr. Hodges at £13. per cwt.

Mr. Hodges was next called, and says, that on the 3d of May last, Mr. Green offered him 9 pockets of hops at £13. That was at nine or ten o'clock in the morning. They are the same 9 pockets he afterwards sold to Mr. W. because Mr. Green told the witness he had no more

and indeed, Mr. Green himself said they were the same 9 pockets.

The next witness is Archibald Duncan. He has been twenty-two years in the trade, and *was just returned* from a journey, to Worcester, about that time. There was no scarcity all along in the market. He, at all times, found as many hops as he could advance money for. *Mr. Waddington's coming down, made the market advance; that advance was not less than £1. per cwt.** When he is asked who prosecutes this information, he says he does not know. This is his opinion. He attributes the increase of the price of hops to Mr. W's coming down, and he describes how they were *previous to the time* he did come down.

William Hooper is the last witness called. He says, he is a hop-merchant in Worcester. He went on a journey a fortnight before the 29th of March, and left the market in a falling state. When he returned on the 29th of March, which was the first time Mr. W. visited Worcester, he says, when he returned on the 29th, at 10 in the morning, he found the market very flat. *Hops rose ten shillings* at least per cwt.† which he attributes to Mr. W's coming down; and that, if he had not come down, in

* Never was there a less scrupulous witness than the present. He roundly swears to a *fact* which it was *impossible* for him to know, *as he happened to be in a distant country!*

It is truly surprising, that the jury should not give more credit to *other respectable* witnesses, who gave a contrary opinion, than to a man whose *zeal* and *heat* hurried him on, into a *palpable* absurdity.

† Here is another hop-merchant! whose evidence is almost an *echo* of the last; except that he, with more modesty, fixes the rise of hops at 10s. per cwt. only; but he boldly says,

in his opinion, the market would have been much lower. *He did not know whether he had bought or not on that day.*

Gentlemen, this is the evidence in support of this prosecution. On the part of the defendant no witnesses have been called, and therefore you are to determine on this evidence, as it stands uncontradicted by any body, whether (no witness having been called) this evidence makes out to your satisfaction all or any of the charges in this information. I stated in the outset the different charges it contains. And as to the first, namely, the intention of Mr. W. to enhance the price of hops, by persuading the hop-planters to keep back their hops, and not to bring them to any market, thereby to enhance the price. That will depend on the evidence of those witnesses who have been called, who speak to the language Mr. W. used at the time he came here. These witnesses, with respect to what they say, have not been contradicted by any witness called on the other side, and therefore you can hardly suppose, that what they have said is a falsehood; more especially, when what they heard, and what they have sworn to, was said in a public company, where a great number of other persons were present, and where it is not unfair to presume, that many of them were not so hostile to Mr. W. but that they could have been called, if what has been sworn on the part of the prosecution could be contradicted; and, therefore, I think, it is fair to conclude in favour of those persons, that what they have said may be taken to be true, because what they have sworn was said in the presence of a great number of persons, and says, that it was occasioned by the defendant, although he *does not know whether he purchased hops or not.*

The public may judge upon the credit due to this most *perspicuous* evidence!

none

none of them are called to contradict it. You have one, two, or three witnesses, who do not recollect any thing Mr. W. said at the dinner. Though Mr. Yarranton was in the room, yet he does not recollect what passed. You have Thomas Weaver, the master of the Hop-Pole Inn. While he was in the room, he has given you a distinct account of what passed there; and you have also the evidence of William Penn, clerk to Mr. Hodges, what he heard him say on the 29th of March, and the 19th of April. You likewise have the evidence of William Harwood, who gives an account of what he heard on the 19th of April, and of Mr. Taylor, as to what he said on the 29th of March. Now, you will find, from the testimony of all these witnesses, this evidence, and I think I need not go over it again, as they speak clearly as to the general object of what Mr. W. said to the planters. But it is for you to determine the amount of his advice to them, not to part with their hops. He gave to them his opinion strongly, that hops would rise, and advised them to keep their hops back, saying he did not come as a buyer; but as to those who were very pressing, and wanted their money, and wanted to sell their hops for their money, he was willing to buy of them. Now, if that account is true, you will judge, whether that was or was not an endeavour on his part to enhance the price of hops, by persuading the hop-planters to keep their hops back, and not to bring them to the market. And if, for want of money, they insisted on selling them at that time, he offered himself as a buyer. That is, otherwise he did not wish to become a buyer. That is the construction on the part of the prosecution, which they put on it, and it is for you to say (you have heard that conversation when I went over the evidence) whether that is, or is not, a fair conclusion on his conduct, from the words

words he used. That, I think, Gentlemen, is the evidence of all the witnesses who spoke particularly to the conversation in the market, and which I stated to you. You will then judge likewise from the evidence of Mr. Weaver, particularly the first day (29th of March), whether Mr. W. came here with a view to buy hops, as his agent understood he did, or whether he came for another purpose; and, as Mr. Yarranton's clerk understands, that he did not come then as a buyer, but had come by invitation to dine with the planters. Mr. Weaver, the master of the Hop-pole Inn, in his evidence, says, that Mr. W. applied to him to provide a dinner for a number of the hop-planters, whom he wished to see, (and none of the hop-dealers,) because he had something particular to communicate to them; that Mr. W. dined with them, and, by his desire, other persons were not to come; and, with his approbation, a paper was put over the door, for the purpose. And, according to the account of what passed, he rose and addressed the hop-planters after dinner, and said, he would convince them, that, by coming to Worcester, he was their friend, and that he had a greater wish to serve them, than to put money into his own pocket; and that he would convince them that they had not a fair price for their hops, and that he would convince them, hops would soon be £20. per cwt. Now this observation arises on this part of the evidence, if you believe Mr. Weaver, whether this was the conduct of a man intending to buy hops only; whether it was a natural conduct to persuade the hop-planters they had been selling hops too cheap—that if they would hold their hops, they would be higher; and persuading them to keep them. Does this conduct of his convince you that it was to persuade the planters to keep them back? For what purpose was

was it done? The information charges, it was done to enhance the price of hops. Can you suggest any other purpose, for which a gentleman, in the situation of Mr. W. was likely to address a meeting of hop-planters? If you believe the witnesses, that he took such pains to convince the planters, that they had been selling their hops too cheap, and that they would shortly rise, with any other view but to enhance the price of hops—if there was any other view, you will be good enough to put that construction on his acts and words. If you think they merit a different construction, and that his view was not that alledged in the information, you ought to acquit him; for unless it was done with a view to advance the price of hops, there is no other charge against him. It is for you to make out if he had any other view. I cannot suggest any other to you.

On this part of the case, an objection has been made on the part of Mr. W. Two Counts of the information state, that Mr. W. to enhance the price of hops, had spread divers rumours and reports, by asserting, in the presence of a number of hop-planters, and dealers in hops, *that the then present stock of hops was nearly exhausted.* And Mr. Dauncey observed correctly, that the witnesses said, *the stock of hops in the hands of the brewers was nearly exhausted.* And, therefore, that did not support these counts, because they charge, that Mr. W. had published, in the presence of a number of hop-planters, and dealers in hops, a report, *that the stock of hops was nearly exhausted, GENERALLY, without saying the stock of hops in the hands of the brewers.*

One of the witnesses, on the part of the prosecution, did not use the term BREWERS, but said he told THEM, the stock of hops was nearly exhausted. *If you shall be of opinion that he did not use the words, "stock of hops,"*
without

without qualifying it with the words, "*in the hands of the brewers*"——

Mr. Plumer, interrupting him.—The evidence of Mr. Yarranton is general, and agrees with the charge in the information.

Mr. J. Le Blanc, turning back to the evidence of Yarranton. —The agent of Mr. W. describes it generally. I think it was the next time he was down, when he said the stock of hops was nearly exhausted. He said nothing about the crop. He, Mr. Yarranton, gave an account of the crops.

You see, that in one of the accounts, the word BREWERS is not mentioned. However, if you think he did not say them generally, you may say that, and you will see what the effect will be. I think the *tenor, the words*, of that count*, are not necessary to be proved. *When Mr. Yarranton's evidence on this point, and that of the other witnesses, are coupled together, it does support the Count, charging him with spreading reports to enhance the price of hops, by representing in the presence of a number of hop-planters, the stock of hops was nearly exhausted†.*

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* Does his Lordship mean to say, that it is not necessary to prove the words of the indictment? In the then Serjeant Rooke's profound speech on the prosecution of Winterbotham, he contended, "*that it is not necessary to prove the exact words.*" "Is this," says Winterbotham, "the language of a lawyer, or is it not language at which a lawyer must blush? If it is not necessary to prove the **EXACT** words, why lay the words at all?"

† It is requested, that the reader will be particularly attentive to this point. The defendant is accused of spreading rumours that the *stock of hops* was nearly exhausted. He appeals to you, Gentlemen of the Jury, to inform him
upon

These, Gentlemen, I think are all the observations on the evidence which arise on the first set of counts, and on the first charge brought against him.

The NEXT CHARGE brought against him is, that he himself did, by buying, get into his hands large quantities of hops, for the purpose of selling them again at an unreasonable and extraordinary profit, thereby to enhance the price of hops.

Mr. DAUNCEY—My Lord, Mr. W's conversation with Mr. Yarranton was a private conversation, whereas the rumours and reports imputed to him by the information are alledged to have been spread in a public conversation.

Mr. J. LE BLANC—You are very right, I believe. I shall read that part of Mr. Yarranton's evidence over again. Mr. W. told him he intended buying some hops in the market. He said he thought hops would be dearer, &c. &c. This was a conversation which he had with

upon what ground you found him *guilty* of this charge? One witness only, said something that countenanced the charge; but it was plain he said this by mistake. Besides, it was in a *private* conversation, whereas the indictment states it to have been in a *public* one: *He*, however, was contradicted by all the other witnesses. Had you only, for a moment, consulted your understandings, you would have seen how improbable, nay, impossible, it was for the defendant to assert, without a qualification, that the stock of hops "was nearly exhausted:" A falsehood that must have been detected by every one to whom he addressed himself. Even the learned judge doubted whether *the evidence did not support this Count*. What then could it be, that induced you to pronounce him guilty upon this Count? But you found him *guilty* upon EVERY charge that was brought against him.

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him (Mr. Yarranton), and not the conversation which he held in the market.

Gentlemen, it will be for you to consider the evidence, and to say upon the evidence, whether, when Mr. W. was addressing the hop-planters, he spoke of hops generally as being nearly exhausted, because if he did, it will amount to the charge brought against him. That will confine itself to that particular count. *Whether that count is good or bad, we have nothing to do.* The other counts are differently constituted. If you are of opinion, that he never said generally to the planters, that the stock of hops was nearly exhausted, perhaps you will observe that in the verdict that you will give.

The next charge against the Defendant is, that of getting into his hands, by buying, large quantities of hops, (stating the names of the different persons from whom he had purchased them) with the intent to sell the same again *at an unreasonable and extraordinary profit*—thereby, likewise to enhance the price of hops. The case stated, on the part of the prosecution was this—that it was the first object of Mr. W. to come down, after being informed by his agent in London of the sinking market, in order, if possible, to persuade the hop-planters, not to bring their hops to market, but to keep them back. That was his intention. But to such as for want of money were obliged to sell, Mr. W. offered himself as a purchaser. He wished to buy as large a quantity as he could, and which were to be afterwards delivered on different days. His first object therefore was, that they should keep them back, but if he could not prevail on them to do that, his intention then was to get as large a quantity as he could into his own hands, in order to keep them out of the market.—Now you will see whether the evidence, which I have stated to you, supports that part of the case or not.

And

And you will recollect the conversation, that has been spoken to, and his consequent proposal at the different times, when he came down to Worcester—when he came down to buy these hops. Some of the counts name the names of particular persons. In the course of my summing up, perhaps, some gentleman has taken the pains to select the names mentioned in these counts, from those which are not mentioned, because if any thing particular arises on this, it is right the defendant should have the benefit of it.

Mr. PLUMER.—Every one of the 37 names have been proved except some little variation in one or two.

Mr. WIGLEY—I have marked them all distinctly into the different days to which they belong. There are names mentioned according to some of the counts of the information. There is a number of persons to the amount in all of upwards of thirty and something short of the 37 names mentioned. But these thirty odd do not certainly embrace the quantity of hops said to be purchased.

Mr. J. LE BLANC.—With regard to the subsequent charge of getting into his hands large quantities of hops, *for the purpose of selling the same again at an unreasonable and extraordinary profit*, and thereby enhancing the price—this charge is proved from the evidence principally of the clerk of Mr. Yarranton*.—You observed the extent to which it has been proved. But many of the names, which were mentioned by him are not names stated in the

* The Defendant trusts, that it was not meant to be said, that there was any evidence to prove that he intended *to sell the hops again at an unreasonable profit*? From the evidence, it must be seen, that this charge was unfounded. But, could not the Jury observe this? or were they listening to the judge's discussion, of a *slight verbal error* in the indictment?

different

different counts of the information. It is not necessary that all the names should be stated in the information provided it does appear from the names which are stated, that he has purchased a large quantity of hops, with a view of selling them again, and of *making an unreasonable profit*, and that his view in so doing, was to enhance the price of hops. And though the names of particular persons are not mentioned in all the counts of the information, yet where he has bought hops, and to the amount of these quantities of all the persons named in the information, the purchasing of other quantities of other persons, and to a greater extent, will be evidence to shew the intent with which the quantity, charged in the information to have been purchased, was purchased. The charge is, that he bought certain large quantities of hops of A, B, C, D, E, F, and G. It is proved that he bought large quantities of A, B, C, D, E, F, and G, and also of M, N, O, P, and Q, which names of M, N, O, P, and Q, are not stated in the information. Now, if you are convinced, that he bought this large quantity of those that are named in the information, *with a view to get an unreasonable and extraordinary profit to himself*, you will take into consideration the quantity he bought of other persons, to shew the intention with which he bought the quantity of the persons whose names are found in the information. You being convinced, as you must, that he bought certain large quantities of persons whose names are mentioned in the information; it is competent to you to take into your consideration, the quantity which he bought of other persons, to shew the intent with which he made his purchases of those, whose names are mentioned in the information.

Now, he did buy of the several persons named in it to a certain amount, on the 29th of March, to the amount of 88 pockets; on the 19th of April to the amount of

252 pockets; and on the 3d of May to the amount of 19 pockets. That is the total number of pockets he bought on the three different days, of those whose names are to be found in the information—359 pockets.

Mr. PLUMER.—The total amount of Mr. W's. purchases, of those whose names are in the information, and also of those, whose names *are not to be found there*, is 1065 pockets—I know that.

Mr. J. LE BLANC.—The total number of pockets purchased of those, whose names are in the information, is ; but it is proved that he bought of other persons also, and that the whole amount of his purchases exceeds 1000 pockets, which is *one-fifth of the whole produce of Worcestershire and Herefordshire**. Now the only question on this part of the case is, whether he did not buy these hops to sell them again for an unreasonable and extraordinary profit. An extraordinary profit on these hops, as stated in this information, must be greater than otherwise, in the fair course of dealing, would have been the profit of dealing, buying in the usual way, and leaving every person to be a fair purchaser in the market. His original object in view, if you believe the evidence, was by his purchases, to prevent them to bring their hops to market to sell at the present current price of the day.

* Mr. Pennethorne gave it as his opinion, that there were that day, viz. the 29th of March, about 5000 pockets in the market *unsold* of such plantation: *This*, however, was *not proved*; it was only *an opinion*. The amount of the Defendant's purchases, viz. about 1000 pockets, upon the three days on which he attended the market, were barely the 23d part of the year's growth of that country, or about the 150th PART OF THAT OF ALL ENGLAND!! This error of his Lordship was certainly *most injurious* to the Defendant. Indeed, Mr. Dauncey had otherwise explained this matter.

And

And if they could be so prevented, if that could be done, it must necessarily raise the price in the hands of every other holder. You will say, therefore, whether his view in purchasing this quantity from them, when he could not control the market, was, or was not, with *a view to his profit and to making a profit greater than he ought to do**, and greater than was reasonable he should do. And if so, whether his ultimate end was to enhance the price of the commodity. That seems to follow, I was going to say, almost as a necessary consequence, that if these purchases of Mr. W. greatly diminished the quantity in the market, the consequence necessarily follows—it necessarily raises the price of the commodity.

That is the nature of this charge, and this is the evidence in support of it. You have heard the observations I have made—I DO NOT SAY A WORD ON THE LAW OF THE CASE.—You must take it at present as settled, that it is an offence, and if it is not, no injurious consequences can follow from it.

You will say, whether the facts support these charges, or either of them, and according as you shall be of opinion that

* His Lordship concludes by telling the Jury, that the point for their consideration was, whether the purchases were made with a view to an unreasonable profit? A matter which required little consideration—As, consistently with their oaths, they could not but acquit the Defendant on this head, being sworn to decide according to the evidence, and there being no evidence that at all countenanced this part of the charge. Upon THIS, however, rests the grand and pervading accusation—“*Of intending to enhance the price of hops.*”

The Jury found the Defendant GUILTY of this charge also. THE PUBLIC MUST JUDGE OF THEM.

Thus

that they support them, or either of them or not, you will either acquit him, or find him guilty of the whole charge, or of a part of the charge.

The Jury retired near half an hour, and then pronounced the Defendant GUILTY.

Mr. J. LE BLANC.—Guilty, GENERALLY, Gentlemen?

Foreman.—Yes, my Lord.

Thus ended this trial, so interesting to commercial men, and the news of the verdict was conveyed by EXPRESS to Chelmsford, and enabled the Lord Chief Justice, (thus said the diurnal prints) to inform the Essex Grand Jury, that a person had been found guilty upon every count, by a most respectable jury of the county. His Lordship could not have recollected, that such a jury was denied the Defendant, altho' on oath he declared, that he could not have a fair trial by one of the city of Worcester. It is sufficient to add, that he has entered into recognizances, to the enormous amount of £12,000, for his appearance in Michaelmas Term; but, convinced that the usages of commerce have been respected by him, he is wholly indifferent as to the "DERNIER RESORT."

THE END.