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REV. DIONYSIUS LARDNER, LL.D. F.R.S. L. & E.
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BY
HENRY ROSCOE, ESQ.
BARRISTER AT LAW.

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LORD MANSFIELD.

1704—1793.

THE Honourable William Murray, the fourth son of Andrew, Viscount Stormont, was born at Perth, on the 2d of March, 1704, O.S. At the early age of three years he was removed to London, and in 1719 was admitted a king's scholar at Westminster. At the election, in 1723, he stood the first on the list of those destined to be sent to Oxford, and was entered of Christ Church on the 18th of June in that year. Both at Westminster and at Oxford he distinguished himself by his classical attainments, and after taking his degree of M. A., he left the university in the year 1730, and spent some months in travelling abroad. On his return, he was called to the bar in Michaelmas term 1731. It does not appear that at this period of his life he devoted much of his time to the study of his profession, though while a student he was in the habit of attending the meetings of a society of young men, who assembled for the purpose of discussing legal questions. The classical tastes and literary attainments of Mr. Murray led him to prefer the society of scholars and men of genius to that of his professional brethren. "When he first came to town," says Johnson, "he drank champagne with the wits."

The rank, the personal character, and the reputation which he had acquired at the university, all contributed to Mr. Murray's success. It has been said, that for some time after he was called to the bar he was without any practice, and that he had been heard to say, that he never knew the difference between a total want of employment and an income of 3000*l.* a year.* It appears, however, that in 1732, the year after his being called, he was engaged in an important appeal case, in which the attorney and solicitor-general were employed, and

* Character of Lord Mansfield, by Mr. Butler, Seward's Anecdotes, vol. iv. p. 492.

that in the two following years he was very frequently retained in similar cases before the house of lords.*

The frequent appearance of Mr. Murray in cases of appeal has been alluded to by Pope. The particular period at which the poet and Mr. Murray became acquainted does not appear, but it is probable that it was soon after the return of the latter from his travels. One of his biographers tells us, that "one day he was surprised by a gentleman of Lincoln's Inn, who took the liberty of entering his room without the ceremonious introduction of a servant, in the singular act of practising the graces of a speaker at a glass, while Pope sate by in the character of a friendly preceptor."† Of the friendship of Pope and Murray, Warburton has said, "Mr. Pope had all the warmth of affection for this great lawyer; and indeed no man ever more deserved to have a poet for his friend, in the obtaining of which, as neither vanity, party, nor fear had a share, so he supported his title to it by all the offices of a generous and true friendship."‡ In the year 1737, Pope published his imitation of the sixth epistle of the first book of Horace, which he dedicated to Mr. Murray, and in which he introduced him in the following flattering lines:—

"Go then, and if you can admire the state
Of beaming diamonds and reflected plate,
Procure a taste to double the surprise,
And gaze on Parian charms with learned eyes;
Be struck with bright brocade or Tyrian dye,
Our birth-day nobles' splendid livery.
If not so pleased, at council-board rejoice
To see their judgments hang upon thy voice;
From morn to night, at Senate, Rolls and Hall.
Plead much, read more, dine late, or not at all.
But wherefore all this labour, all this strife,
For fame, for riches, for a noble wife?
Shall one whom native learning, birth conspired
To form, not to admire, but be admired,
Sigh while his Chloe, blind to wit and worth,
Weds the rich dulness of some son of earth?
Yet time ennobles or degrades each line;
It brighten'd Craggs's, and may darken thine.
And what is fame? the meanest have their day;
The greatest can but blaze and pass away.
Graced as thou art with all the power of words,
So known, so honour'd, in the house of lords—

* Holliday's Life, p. 28. † Id. p. 24. ‡ Notes on Imitations of Horace.

Conspicuous scene! another yet is nigh
 More silent far, where kings and poets lie;
 Where Murray (long enough his country's pride)
 Shall be no more than Tully or than Hyde!"

In the course of the same year Pope published his imitation of Horace's Ode to Venus, in which he again introduces his friend Murray.

"Again? new tumults in my breast?
 Ah, spare me, Venus! let me, let me rest!
 I am not now, alas! the man,
 As in the gentle reign of my Queen Anne.
 Ah sound no more thy soft alarms,
 Nor circle sober fifty with thy charms.
 Mother too fierce of dear desires,
 Turn, turn to willing hearts your wanton fires;
 To *number five** direct your doves,
 There spread round MURRAY all your blooming loves;
 Noble and young, who strikes the heart
 With every sprightly, every decent part;
 Equal the injured to defend,
 To charm the mistress or to fix the friend;
 He, with a hundred arts refined,
 Shall stretch thy conquests over half the kind.
 To him each rival shall submit,
 Make but his riches equal to his wit."

It is said that at this period of his life Mr. Murray unsuccessfully addressed a lady of great wealth, to which allusion is made in both of the poems above mentioned.

The celebrated conveyancer Mr. Booth [Note 44.] was amongst the most valued of his early friends. The following affectionate letter, addressed to him in 1735, is a pleasing specimen of Mr. Murray's epistolary style:—

"My dear friend,

"I received yours last night. I cannot but applaud the protection you give a sister, whom I know you love tenderly; yet it seems a little rash to carry your beneficence so far as to dry up the source of all future generosity; and I am sure it is greatly against the interest of every one, who has the least dependence upon you, that you should do any thing which makes it at all difficult for you to persevere in a way where you must at last succeed. Of this I have no doubt: and, therefore, it is as superfluous to add my advice for your coming to town immediately, as it would be to tell you that I omit no opportunity of mentioning your name, and promoting your

* No. 5. King's Bench Walk.

interest. You cannot fail but by staying in the country, and suffering people who have not half your merit to step in before you. With regard to every thing you say of Mr. Pigot, we will talk more at large hereafter: I as little think he will bring you into his business while he lives, as that you can be kept out of a great part of it when he dies. I am at present consulted upon a devise settlement of his, whereby a great estate is left to a noble Roman Catholic family, which I am very clear is good for nothing. Can you contrive a way by which an estate can be left to a papist? Though I have no more doubt of the case put to me, than whether the sun shines at noon, I told the gentleman who consulted me I would willingly stay to talk with a Roman Catholic conveyancer, &c., whom I expected soon in town, and named you to him.

“ I own I am desirous you should come to town, and be assured the best service you can do your friends is, to put yourself in a way to serve them effectually. As to any present occasions you have, you know where to command while I have a shilling.

“ I am, I do assure you, with great cordiality and esteem,

“ Dear Booth,

“ Your affectionate friend and faithful servant,

“ W. MURRAY.”

The first cause in the common law courts in which Mr. Murray distinguished himself was an action for criminal conversation brought by Theophilus Cibber against Mr. Sloper. Mr. Murray was junior counsel for the defendant, and in consequence of a sudden attack of illness, by which his leader was prevented from appearing in court, the duty of conducting the defence devolved upon him. At his request the cause was postponed for an hour, at the expiration of which time he again appeared in court, and conducted himself so ably, and made so forcible an address to the jury, that his client escaped with a very small penalty. From this time business poured in upon him from all sides, and an

income of a few hundreds was swelled at once to thousands. In after-life he frequently referred, with expressions of lively pleasure, to the event of this cause.

In the proceedings in parliament which took place subsequently to the celebrated Porteous riots in Edinburgh, Mr. Murray was employed to oppose the bill for incapacitating the provost, and fining the city; and, in consequence of his great exertions on this occasion, was presented with the freedom of the city of Edinburgh in a gold box.

In the year 1743, Mr. Murray was appointed solicitor-general, and was returned to parliament. In the house of commons his eloquence, and the respect with which he was regarded, soon rendered him a very efficient supporter of the administration.

At the trial of the rebel lords in 1746, Mr. Murray assisted in his character of solicitor-general. His speech on the trial of Lord Lovat is said to be one of the few of his speeches which have been authentically given.* It consists, indeed, of little more than a concise and lucid statement of the evidence. "Every gentleman," said the solicitor-general, "who has spoken in this trial has made it a rule to himself to urge nothing against the prisoner but plain facts and positive evidence without aggravation." The prisoner himself made some singular observations on the address of Mr. Murray. "My lords, I am very sorry I gave your lordships so much trouble on my trial, and I give you a million of thanks for being so good in your patience and attention whilst it lasted. I thought myself very much loaded by one Murray, who, your lordships know, was the bitterest enemy there was against me. I have since suffered by another Mr. Murray, who, I must say with pleasure, is an honour to his country, and whose eloquence and learning are much beyond what is to be expressed by an ignorant man like me. I heard him with pleasure, though it was against me. I have the honour to be his relation, though perhaps he neither knows it nor values it. I wish that his being born in the north may not

* Boswell's Johnson, vol. i. p. 158. 2d ed

hinder him from the preferment that his merit and learning deserve. 'Till that gentleman spoke, your lordships were inclined to grant my earnest request, and to allow me further time to bring up my witnesses to prove my innocence; but it seems that has been overruled." * In concluding his defence, Lord Lovat added, "I have said all I have to say; and beg your lordships' pardon for the rude, long discourse I made to your lordships. I had great need of my cousin Murray's eloquence for half an hour, and then it would have been more agreeable." †

While Mr. Murray filled the office of solicitor-general, his attachment to the reigning family was called in question, but the charge was never substantiated. In his early life, he had been intimately acquainted with two gentlemen of the names of Fawcett and Stone, and with Dr. Johnson, afterwards bishop of Gloucester. Fawcett had become a provincial barrister, and recorder of Newcastle, and Stone had been appointed sub-governor of the young prince. At a dinner given by the dean of Durham, at which Fawcett, Lord Ravensworth, and other persons, were present, the preferment of Dr. Johnson being spoken of, Fawcett observed that "he was glad Johnson was so well off, for he remembered him a jacobite several years ago, and that he used to be with a relation of his who was very disaffected, one Vernon, a mercer, where the pretender's health was frequently drunk." This conversation having been repeated to Mr. Pelham, the minister, an enquiry was instituted into the facts; in the course of which, Fawcett stated, that though he could not recollect positively whether Johnson drank those healths, yet that Murray and Stone had done so several times. The delinquency of the bishop was now forgotten in the accusation against persons of such consideration in the state as the solicitor-general and the preceptor of the prince. Both the king and the minister were inclined to treat the charge slightly; but Stone, for his own justification, insisted on an enquiry. The matter was accordingly referred to the cabinet council, before whom Stone appeared and entered on his de-

* State Trials, vol. xviii. p. 827.

† Id. p. 853.

fence.* The solicitor-general was then heard. He represented that he had been well affected to the present establishment ever since he could think on the subject. That when he went to Oxford he had taken the oath to the government, and that he had done it with seriousness. That when he pleaded at the bar of the commons, he had studiously professed the principles by which the government was supported. That he had determined never to come into parliament but upon Whig principles; and that, with regard to office, it was not to be supposed that a person of Sir John Strange's well-known loyalty would have resigned to him, if he had not been thoroughly convinced of his sincerity. That ever since he had been in the king's service, he had got nothing by his employment (he spoke it not by way of complaint) but the ordinary perquisites of office, and had never recommended any friend of his own to preferment. That he had not been able to learn any objection to his conduct without doors, but the not having loaded the rebels with reproachful epithets, as if epithets would have added to their guilt. That he did not think such sort of language would be agreeable to his royal master; and that had he been employed for the crown against Sir Walter Raleigh, and that unfortunate person had been as guilty of high treason as the rebels, he would not have made Sir Edward Coke's speech against him for his estate. He concluded by acknowledging the indulgence of the lords in hearing him, and the justness and goodness of the king, who would not suffer his servants to be stabbed in the dark, but gave them an opportunity of clearing their innocence. He then took the voluntary oath, as the others had done, and gave a particular answer to every part of the charge, denying that he had ever been present at Mr. Vernon's when treasonable healths were drunk, and stating that he believed that gentleman incapable of such behaviour. Mr. Murray having concluded, the lords came to an unanimous resolution of reporting to the king, that there appeared to

* Doddington's Diary, sub anno 1753.

them no foundation for any part of the charge, and that it ought not to asperse the character of the bishop, or of either of the gentlemen affected by it.* The affair was afterwards brought before the house of lords by the Duke of Bedford, who moved an address to the king, that his majesty would be pleased to suffer the proceedings of the council to be laid before the house; but the motion being lost by a large majority, no further enquiry was made into the circumstances.

Although the imputation of jacobitism was thus indignantly and successfully met by Mr. Murray, yet with many persons he still suffered from suspicions which it was impossible to remove. In the house of commons his political adversaries did not hesitate to affront him with allusions, the application of which could not be misunderstood; and upon one occasion Mr. Pitt, in uttering a vehement invective against the university of Oxford, made an obvious reference to the supposed youthful opinions of Mr. Murray. He said, "that the body he meant (Oxford) was learned and respectable,—so much the more dangerous! He would mention what had happened to himself the last summer on a party of pleasure thither. They were at the window of the Angel Inn; a lady was desired to sing *God save great George our King!* The chorus was re-echoed by a set of young lads drinking at a college over the way, but with additions of rank treason. He hoped, as they were lads, that he should be excused for not having taken more notice of it. After this, walking down the high street, in a bookseller's shop he observed a print of a young Highlander with a blue ribbon. The bookseller, thinking he wanted to buy it, held it out to him. But what was the motto? *Hunc saltem everso juvenem!* This was the prayer of that learned body, for it was in Latin."—"Colours, much less words," adds Horace Walpole, who has reported this speech, "could not paint the confusion and agitation that worked in Murray's face during this almost apostrophe. His counte-

* Holliday.

nance spoke every thing that Fawcett had been terrified to prevaricate away." *

Of the political life of Mr. Murray, while, as solicitor and attorney-general, he supported the measures of government in the house of commons, it is difficult to gather any very accurate account; the debates of that day, where preserved at all, being reported in a manner which renders it impossible to rely upon their authenticity. In the Memoirs of Horace Walpole, at that period himself a member of the house, we find frequent mention of the solicitor-general, and always in language denoting the respect in which his talents were held. We are told that on the question of the Bavarian subsidy he made a very masterly speech, and we find him throughout all the debates on the regency bill distinguishing himself by his skill as a debater. He appears again in the debates on the Saxon treaty, and on various other occasions. Of his style as a parliamentary orator, and of the character which he held in the house, Walpole has spoken in terms of high commendation. "Murray, who at the beginning of the session was awed by Pitt, finding himself supported by Fox, surmounted his fears, and convinced the house, and Pitt too, of his superior abilities. He grew most uneasy to the latter. Pitt could only attack; Murray only defend. Fox, the boldest and ablest champion, was still more formed to worry; but the keenness of his sabre was blunted by the difficulty with which he drew it from the scabbard; I mean the hesitation and ungracefulness of his delivery took off from the force of his arguments. Murray, the brightest genius of the three, had too much and too little of the lawyer: he refined too much, and could wrangle too little, for a popular assembly. Pitt's figure was commanding; Murray's engaging, from a decent openness; Fox's dark and troubled; yet the latter was the only agreeable man. Pitt could not unbend; Murray in private was inelegant; Fox was cheerful, social, communicative. In conversation none of them had wit: Murray never had: Fox

* Memoirs, vol. i. p. 358.

had in his speeches, from clearness of head and asperity of argument. Pitt's wit was genuine; not tortured into the service, like the quintessences of my Lord Chesterfield." *

The latter nobleman, in a letter to his son, has also panegyricised the parliamentary talents of Mr. Murray. "Your fate depends upon your success as a speaker, and take my word for it, that success turns more upon manner than matter. Mr. Pitt, and Mr. Murray the solicitor-general, are, beyond comparison, the best speakers. Why? Only because they are the best orators. They alone can inflame or quiet the house; they alone are attended to in that numerous and noisy assembly, that you might hear a pin fall while either of them is speaking. Is it that their matter is better, or their arguments stronger, than other people's? Does the house expect extraordinary information from them? Not in the least; but the house expects pleasure from them, and therefore attends; finds it, and therefore approves."

Throughout the whole course of Murray's career in the house of commons, he was the invariable object of Pitt's unsparing invective. "Pitt," says Lord Waldegrave†, "undertook the difficult task of silencing Murray, the attorney-general, the ablest man, as well as the ablest debater, in the house of commons." Dissimilarity of character, no less than of political principles, added bitterness to the eloquence of Pitt. Despising the policy and distrusting the principles of Murray, he eagerly availed himself of every occasion which presented itself of expressing his indignant sarcasms. Brilliant and argumentative as was the oratory of Murray, he did not always possess the nerve necessary to ward off or to return assaults so terrible as these, and for the most part he bore, in agitated silence, the attacks to which he did not venture to make any reply. In a letter from Lord Holland‡, describing the speech which has been just given, the writer says, "In both Mr. Pitt's

* *Memoirs*, vol. i. p. 490.

‡ *Memoirs*, p. 31.

† *Appendix to Lord Waldegrave's Mem.* p. 153.

speeches every word was *Murray*, yet so managed that neither he nor any body else could or did take public notice of it, or in any degree reprehend him. I sate near Murray, who suffered for an hour." — "It was, perhaps, on this occasion," observes Mr. Butler *, "that Pitt used an expression that was once in every mouth. After Murray had suffered for some time, Pitt stopped, threw his eyes around, then fixing their whole power on Murray, said, 'I must now address a few words to Mr. Solicitor: they shall be few, but they shall be daggers.' Murray was agitated; the look was continued; the agitation increased. 'Judge Festus trembles,' exclaimed Pitt: 'he shall hear me some other day.' He sate down; Murray made no reply, and a languid debate is said to have shown the paralysis of the house."

On the death of Mr. Pelham, in the month of March, 1754, amongst the persons whose reputation and station in the country rendered it probable that they might be selected to fill the place of premier, Mr. Murray was named †; but various circumstances concurred to prevent such an appointment. The imputation, though unproved, of his youthful predilection for the pretender, rendered him more than suspected by the Whigs. Pitt and Fox were both opposed to his advancement, and even the chancellor regarded him with an eye of jealousy. ‡ In addition to these reasons it appears that he felt a disinclination to accept a place unconnected with his profession; and accordingly, on the formation of the Duke of Newcastle's administration, he was raised to the office of attorney-general, vacant by the promotion of Sir Dudley Ryder to the dignity of lord chief justice of the king's bench. As attorney-general, Mr. Murray continued to be one of the most efficient supporters of government in the house of commons, and in particular rendered himself most useful to the Duke of Newcastle, in supporting his weakness and covering his deficiencies.

When Mr. Murray had filled the office of attorney-gene-

* Reminis. vol. i. p. 154.

† Doddington's Diary, p. 264.

‡ Walpole's Memoirs, vol. i. p. 329.

ed for about the space of two years, Sir Dudley Ryder, the chief justice of the king's bench, died, and the vacant office was immediately supplied by the appointment of Mr. Murray, whose ambition had long been the obtaining of this office, accompanied by a peerage.* No one had pretensions to compete with him, and he succeeded to the dignity with the common assent of the whole country. His high personal character, his extended professional reputation, his discreet conduct in public life, and his suavity of manners, all pointed him out as the fittest person to preside in the first common law court of the kingdom. The resignation of his place in parliament was, however, a most severe and painful inconvenience to the head of the administration, who had relied, in every case of emergency, upon the friendship and abilities of the attorney-general. "I wish you joy," observed Charles Townsend to Murray, on the rumour of his promotion, "or rather myself; for you will ruin the Duke of Newcastle by quitting the house of commons, and the chancellor by going into the house of lords." † If full credit may be given to the narrative of a memoir writer of the day ‡, the most extravagant offers were made to Mr. Murray by administration, in order to induce him to retain, even for a few months, his place in the house of commons. The loss of Minorca, under circumstances little creditable to the nation, had placed the ministers in a position of considerable difficulty, and they anxiously sought to secure the assistance which the talents and character of the attorney-general conferred. The duchy of Lancaster and a pension of 2000*l.*, with the reversion of a valuable post for his nephew, Lord Stormont, were the first offers made to him; and, subsequently, the amount of the proposed pension was increased to 6000*l.*; but Mr. Murray was firm. "He knew," says Walpole, "that it was safer to expound laws than to be exposed to them; and he said peremptorily at last, that if he was not to be chief justice, nei-

* Waldegrave's Memoirs, p. 56. † Walpole's Memoirs, vol. ii. p. 64.
‡ Horace Walpole. *Id.* p. 67. and Waldegrave's Mem. p. 60.

ther would he no longer be attorney-general." He received his appointment of chief justice on the 8th of November, 1756, and was immediately created a peer, by the title of Baron Mansfield, of Mansfield in the county of Nottingham.

On his elevation to the seat of chief justice, Lord Mansfield, contrary to the general usage, became a member of the cabinet; but the length of time during which he continued to sit there has not been very clearly ascertained. In the debates which took place in 1806, on the admission of Lord Ellenborough into the cabinet, the case of Lord Mansfield was insisted on and admitted to be a precedent. It was said by Lord Temple, that "he had that day seen the original writ of summons issued to Lord Mansfield. He could take upon himself to say, that the noble and learned lord attended every council from 1760 to 1763. In 1763 he left off attending the council, not from any sense of its incompatibility with his judicial situation, but, according to a letter of his own, which was in existence, because he would not sit with the Duke of Bedford, whose measures he disapproved of. In 1765 he returned again, and was named as one of the council of regency in the bill framed by Sir Fletcher Norton." * It appears, however, from his own declaration, that he ceased to take any part in the discussions of the cabinet, after the formation of the Rockingham administration in 1765, and that he never resumed his place at the table.†

On occasion of his taking leave of the society of Lincoln's Inn, the usual complimentary speech was delivered by the honourable C. Yorke, the son of Lord Hardwicke, upon whom the chief justice in reply pronounced the following panegyric: —

"I am too sensible, sir, of my being undeserving of the praises which you have so elegantly bestowed upon me, to suffer commendations so delicate as yours to insinuate themselves into my mind; but I have pleasure

* Cobbett's Parl. Debates, vol. vi. p. 307.

† Parl. Hist. vol. xviii. p. 275. post, p. 189.

in that kind of partiality which is the occasion of them. To deserve such praises is a worthy object of ambition ; and from such a tongue flattery itself is pleasing.

“ If I have had, in any measure, success in my profession, it is owing to the great man who has presided in our highest courts of judicature the whole time I attended the bar. It was impossible to attend him, to sit under him every day, without catching some beams from his light. The disciples of Socrates, whom I will take the liberty to call the great lawyer of antiquity, since the first principles of all law are derived from his philosophy, owe their reputation to your having been the reporter of the sayings of their master. If we can arrogate nothing to ourselves, we can boast the school we were brought up in ; the scholar may glory in his master, and we may challenge past ages to show us his equal.

“ My Lord Bacon had the same extent of thought, and the same strength of language and expression ; but his life had a stain.

“ My Lord Clarendon had the same ability and the same zeal for the constitution of his country ; but the civil war prevented his laying *deep* the foundations of law ; and the avocations of politics interrupted the business of the chancellor.

“ My Lord Somers came the nearest to his character ; but his time was short, and envy and faction sullied the lustre of his glory.

“ It is the peculiar felicity of the great man I am speaking of, to have presided very near twenty years, and to have shone with a splendour that has risen superior to faction, and that has subdued envy.

“ I did not intend to have said, I should not have said so much on this occasion, but that in this situation with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric.

“ For you, sir, you have given great pledges to your country ; and large as the expectations of the public are concerning you, I dare say you will answer them.

“ For the society, I shall always think myself honoured by every mark of their esteem, affection, and friendship, and shall desire the continuance of it no longer than while I remain zealous for the constitution of this country, and a friend to the interests of virtue.”

Shortly after Lord Mansfield's promotion he became deeply engaged in the various ministerial arrangements which took place at that period. On the dismissal of Mr. Pitt, and the resignation of Legge, the chancellor of the exchequer, the seals of the latter office were, *pro tempore*, placed in the hands of Lord Mansfield, who, upon Lord Waldegrave being directed to form a new administration, was employed to negotiate with his friend the Duke of Newcastle and his old rival, Mr. Pitt, for their accession to the projected ministry. He was directed to attend the king at Kensington, for the ostensible object of delivering back the exchequer seals; but being admitted into the presence, the king consulted him confidentially on the subject of the administration, and finally intrusted him with full powers to negotiate with Pitt and the Duke of Newcastle. The power thus given him appears, however, to have been soon withdrawn. “ The negotiation,” says Lord Waldegrave*, “ did not remain long in Lord Mansfield's hands; some thinking him too able, others that he was not enough their friend. The Duke of Newcastle, after what had passed, was ashamed and afraid to appear in the king's presence, so the treaty was undertaken and concluded by the Earl of Hardwicke.” Many years afterwards, in one of the debates on the American war, Lord Mansfield alluded to the coalition which took place at this time, in effecting which he stated he had the honour of being an instrument.† The impression which an insight into these negotiations gave him, of the motives and views of the public men of that day, was most unfavourable, though probably most just. “ I have been,” he observes, in a speech delivered many

* Memoirs, p. 133.

† Parl. Hist. vol. xviii. p. 956.

years afterwards", " I have been in cabinets where the great struggle has not been to advance the public interests; not by coalition and mutual assistance to strengthen the hands of government, but, by cabals, jealousy, and mutual distrust, to thwart each other's design, and to circumvent each other, in order to obtain power and preeminence."

Lord Mansfield had now attained the station which, it is very probable, he had always regarded as the summit of his ambition. His temperament, cautious even to timidity, had prevented him from preferring those just pretensions to political offices to which his fame and talents entitled him; the same reasons probably induced him to refuse the office of the great seal, when it was, upon more than one occasion, tendered to him. The resignation of the Duke of Newcastle, at the close of the year 1756, was shortly afterwards followed by that of Lord Hardwicke, the chancellor, and strenuous endeavours were made to induce Lord Mansfield's acceptance of the seals; but his attachment to the Duke of Newcastle, and his disinclination to a political life, led him to decline the office.† The great seal was consequently given in commission to Lord Chief Justice Willes, Mr. Justice Wilmot, and Mr. Baron Smyth. In the following year, it was again offered to Lord Mansfield, upon whose repeated refusal, it was committed to the hands of Sir Robert Henley, afterwards created Lord Northampton.‡

One of the first occasions on which Lord Mansfield distinguished himself in the house of lords, after his elevation to the peerage, was in the debate on the bill for the amendment of the *habeas corpus* act. A gentleman having been impressed and confined in the Savoy, his friends applied for a writ of *habeas corpus*; but as the imprisonment was not for any criminal matter, it was found that the statute of 31 Car. 2. c. 2. did not apply. This palpable deficiency in the law attracted

* Parl. Hist. vol. xviii. p. 279.

† Walpole's Memoirs, vol. ii. p. 106.

‡ Id. p. 226.

the attention of some friends to liberty, who introduced a bill into the house of commons for the purpose of extending the provisions of the statute of Charles II. to cases where the imprisonment was not upon any criminal charge. The bill passed the lower house, but was violently opposed in the house of lords by Lord Mansfield and Lord Hardwicke. The king himself talked openly against the bill at his levee, and the supporters of it were understood to incur his displeasure. The motives which actuated Lord Mansfield in his opposition to a bill so reasonable and so constitutional, are attributed by Horace Walpole to personal feelings ; and such was the earnestness and so great the ingenuity and eloquence which he exerted on the occasion, that the bill was ultimately rejected. "The fate of the bill," says Horace Walpole, "which could not be procured by the sanction of the judges, Lord Mansfield was forced to take upon himself. He spoke for two hours and a half : his voice and manner, composed of harmonious solemnity, were the least graces of his speech. I am not averse to own that I never heard so much argument, so much sense, so much oratory united. His deviations into the abstruse minutiae of the law served but as a foil to the luminous parts of the oration. Perhaps it was the only speech which, in my time at least, had real effect ; that is, convinced many persons ; nor did I ever know how true a votary it was to liberty, till I found that I was not one of the number staggered by that speech. I took as many notes of it as I possibly could ; and, prolix as they would be, I would give them to the reader, if it would not be injustice to Lord Mansfield to curtail and mangle, as I should, by the want of connection, so beautiful a thread of argumentation." * In the year 1816, a bill † passed without opposition, similar in its provisions to that which was rejected by the efforts of Lord Mansfield.

On the occurrence of the disputes between England and her North American colonies, Lord Mansfield sup-

* Memoirs, vol. ii. p. 301.

† 58 G. 3. c. 100.

ported the right of the mother country to tax the colonists, without any assent on their part ; and in the debate which took place in the month of February, 1766, spoke at considerable length on the subject. Of that speech a copy, corrected with his lordship's own hand, has been preserved.* A great portion of it was directed in answer to Lord Camden, who had spoken against the right of taxation without assent. In reply to those arguments, Lord Mansfield insists upon the unintelligible doctrine of virtual representation.

“ There can be no doubt but that the inhabitants of the colonies are represented in parliament, as the greatest part of the people of England are represented ; among nine millions of whom, there are eight who have no votes in electing members of parliament. Every objection, therefore, to the dependency of the colonies upon parliament, which arises to it upon the ground of representation, goes to the whole present constitution of Great Britain ; and I suppose it is not meant to new-model that too. People may form their own speculative ideas of perfection, and indulge their own fancies, or those of other men. Every man in this country has his particular notions of liberty ; but perfection never did, and never can, exist in any human institution. For what purpose, then, are arguments drawn from a distinction in which there is no real difference, of a virtual and actual representation ? A member of parliament, chosen for any borough, represents not only the constituents and inhabitants of that particular place, but he represents the inhabitants of every other borough in Great Britain. He represents the city of London, and all other the commons of this land, and the inhabitants of all the colonies and dominions of Great Britain ; and is in duty and conscience bound to take care of their interests.”

According to another report of his lordship's speech preserved in the Hardwicke Collection†, he advanced in the course of his argument doctrines which in other

* Holliday, p. 242.

† Parl. Hist. vol. xvi. p. 172.

times would have subjected him to the well-merited censure of the commons. "In Great Britain the legislative is in parliament, the executive in the crown. The parliament first depended upon tenures. How did representation by election first arise? *Why, by the favour of the crown.*"

Lord Mansfield thus concluded:—"You may abdicate your right over the colonies. Take care, my lords, how you do so, for such an act will be irrevocable. Proceed then, my lords, with spirit and firmness, and when you shall have established your authority, it will then be a time to shew your lenity. The Americans, as I said before, are a very good people, and I wish them exceeding well; but they are heated and inflamed. The noble lord who spoke before concluded with a prayer; I cannot end better than by saying to it Amen! and in the words of Maurice, prince of Orange, concerning the Hollanders, 'God bless this industrious, frugal, and well-meaning, but easily-deluded people.'"

It may not be improper in this place to notice the part which, at subsequent periods, Lord Mansfield took with regard to the American question. In the stormy debate of the 7th of February, 1775, on the address to the king upon the disturbances in North America, his lordship stated, that this country was reduced to the alternative of adopting coercive measures, or for ever relinquishing her claim of sovereignty and dominion over the colonies. He argued also that the Americans were in a state of actual rebellion, and asserted the right of the mother country to repress them. In answer to some observations of the Duke of Grafton, he explained and defended the part that he had taken as a minister of the crown in the different administrations which had governed the country. "He said he had been a cabinet minister part of the last reign, and the whole of the present; that there was a nominal and an efficient cabinet; that for several years he acted as a member of the latter, and consequently deliberated with the king's minister; that, however, a short time previous to the

administration in which the noble marquis (Rockingham) presided at the head of the treasury, and some considerable time before the noble duke succeeded him in that department, he had prayed his majesty to excuse him, and from that day to the present he had declined to act as an efficient cabinet minister. He said he had lived with every administration on equal good terms, and never refused his advice when applied to; that particularly the noble marquis must recollect his giving him every assistance his poor abilities were capable of affording; nor was it his fault that the noble duke did not experience the same; for had he been applied to, he would have cheerfully rendered him every assistance in his power." The attack made upon Lord Mansfield by the Duke of Grafton was followed up by Lord Shelburne. "The noble and learned lord," said he, "has disclaimed having any direct concern in the present business, and endeavours to strengthen his bare assertions by shewing what little or no temptation he could have to interfere. But the noble lord knows, every noble lord in this house knows, a court has many allurements besides even place or emolument. His lordship denies any obligations or personal favours whatever. I am ready to give his lordship full credit for this declaration; but he will permit me, at the same time, to observe, that smiles may do a great deal; that if he had nothing to ask for himself, he has had friends, relations, and dependents amply provided for; I will not say beyond their deserts, but this I may say, much beyond their most sanguine expectations." In answer to these observations, Lord Mansfield, rising with great passion, said, "He thought it had been the leading characteristic of that assembly, when contrasted with the other house, which too often descended to altercations and personal reflections, always to conduct themselves like gentlemen; but he was sorry to see this rule departed from this evening for the first time. He charged the last noble lord with uttering the most gross falsehoods. He totally denied that he had any hand in framing all the bills of the last session;

and was certain that the law officers of the crown never asserted that they had no hand in them; but whether they had or not was of no consequence to him, for he was clear that the charge, when applied to him, was as unjust as it was maliciously and indecently urged."^{*} In the debate which took place in November, 1778, on the Duke of Grafton's motion respecting the British forces in America, Lord Mansfield again spoke, and opposed all measures of conciliation, as only "furnishing America with grounds to erect new claims on, or to hold out terms of pretended obedience and submission."[†] In the following month, in the debate on the American prohibitory bill, he urged in strong language the necessity of active measures against the colonists. "What a Swedish general said to his men, in the reign of Gustavus Adolphus, is extremely applicable to us at present. Pointing to the enemy, who were marching down to engage them, said he, 'My lads, you see those men yonder: if you do not kill them, they will kill you.' If we do not, my lords, get the better of America, America will get the better of us."[‡] In the following year Lord Mansfield opposed the Duke of Grafton's proposition for conciliation with America as "nugatory, ill-timed, and ineffectual §;" and shortly afterwards he spoke against a similar motion made by Lord Chatham.|| Thus throughout the whole of the great struggle for independence, into which the colonists were driven, Lord Mansfield uniformly opposed every measure which might have prevented the result he so greatly deprecated. It is fortunate that out of the most ill-judged and unjust designs, by the operation of that moral chemistry which is so little understood, the happiest events are not unfrequently found to proceed.

While, in politics, Lord Mansfield was thus adverse to those liberal principles which might have taught him to view the resistance of the colonists in another light, in matters of religion his opinions were fortunately of

^{*} Parl. Hist. vol. xviii. p. 265. et seq. [†] Id. p. 955. [‡] Id. p. 1102.
[§] Id. 1284. ^{||} Id. vol. xix. p. 351.

a much more tolerant character. In the earlier part of his judicial life several cases came before him in which he had occasion to express these opinions, which he did with a candour and openness highly creditable to his fame. One of the first of these cases was a question of evidence --- the admissibility of a quaker's affirmation in an action of debt on the statute against bribery, 2 Geo. 2. c. 24. In delivering his judgment in this case, Lord Mansfield, in the first instance, laid down the following liberal rule for the construction of the act of toleration: — "I think it of the utmost importance, that all the consequences of the act of toleration should be pursued with the greatest liberality, in ease of the scrupulous consciences of dissenters on the one hand; but so as those scruples of conscience should not be prejudicial to the rest of the king's subjects: for a scruple of conscience entitles a party to indulgence and protection, so far as not to suffer for it; but it is of consequence that the subject should not suffer too." He then traces the history of the disabilities of the quakers: — "This sect sprang up during the troubles, and was found at the Restoration, with many other sects of non-conformists, equally scrupulous. At that time the law considered their scruples of conscience as a crime; and, therefore, they were not allowed to be set up as an excuse or justification of another offence. Therefore, when a quaker who was subpoenaed to give evidence absented himself, and an attachment issued in consequence of it, he could not, in excuse, say that his conscience prevented him from giving evidence, for that was a crime. So in the case of interrogatories, the consequence was, that he was obliged to answer or be committed to prison; and, if his obstinacy continued, he lay there for life.

"The experience of eight-and-twenty years, from the Restoration to the time of the Revolution, shewed that this obstinacy was not merely a pretence or colour given to right or wrong, but that it was a *scruple*, and that the sect was ready to go through all kinds of suffering in the pertinacious adherence to it.

“ A more liberal way of thinking prevailed after the Revolution. The principles of toleration were explained and justified in consequence of the writings of Mr. Locke, Lord Somers, and other great men of those times; and a statute passed which, though not general, was very extensive in the relief it afforded to scrupulous consciences. The statute was 1 W. & M. c 18. commonly called the *Toleration Act*.”

In the course of his judgment, Lord Mansfield noticed the singular and unreasonable exemption in the statute 7 & 8 W. 3. c. 34., which prohibited the reception of a quaker's affirmation in criminal cases; an exception occasioned, as he said, “ by a strong prejudice in the minds of the great men who passed the statute.” Amongst the judicious improvements which have taken place in the criminal law in our own day, this extraordinary anomaly has been abolished.

In the year 1767, the Rev. James Webb, a catholic priest, was tried before Lord Mansfield on the prosecution of one Payne, a common informer, for saying mass, contrary to the provisions of the statute of William. In summing up to the jury, Lord Mansfield was almost unjustifiably astute in favour of the prisoner. Of the penal laws against the catholics he thus spoke: “ In the beginning of the protestant religion, in order to establish it, they thought it in some manner necessary to enact those penal laws; for then the pope had great power, and they thought that they could not take too effectual means to prevent him exercising any part of it in these dominions; and the jesuits were then a very formidable body; and, apprehending great danger from them, knowing their close connections with the pope, the penal laws were chiefly designed against them. But now the case is quite altered: the pope has very little power, and seems to grow less and less daily. As for the jesuits, they are now banished out of most kingdoms in Europe, so that there is now nothing to fear from either of those quarters; neither was it ever the

design of the legislators to have these laws enforced by every common informer, but only at proper times and seasons, when they saw a necessity for it, and by proper persons appointed by themselves for that purpose ; and yet, more properly speaking, they were never designed to be enforced at all, but were only made in *terrorem*.*

In the year 1767, an opportunity was again afforded Lord Mansfield of expressing his liberal sentiments in matters of religion. By a by-law of the corporation of London, a fine was imposed upon those persons who refused to serve the office of sheriff ; and several dissenters having been elected, and declining to accept the office because they could not conscientiously take the sacrament, pursuant to the directions of the corporation act, were fined. At length, a gentleman of the name of Evans, a dissenter, having been elected, refused either to serve or to pay the fine ; upon which, an action was brought for the amount by the chamberlain of London in the sheriff's court, and judgment was given for the plaintiff. The defendant having appealed to the court of hustings, the judgment was affirmed ; but upon an appeal to the court of the judges delegates, the judgments of the inferior courts were reversed. Upon this the city brought a writ of error in the house of lords, and the judges were directed to give their opinions. Lord Mansfield then, rising in his place as a peer, addressed the house in support of the judgment of the judges delegates. Of this speech, so honourable to the enlightened intellect and liberal views of Lord Mansfield, a full note was taken by Dr. Philip Furneaux, who was present at the delivery, and who afterwards submitted it to his lordship, by whom it was returned with a few alterations, and with an express consent to make it public as a genuine document.† In the course of this admirable speech his lordship laid down, in bold and broad terms, the great principle of religious liberty.

“ The defendant in the present case pleads that he is a dissenter within the description of the toleration act ;

* Holliday, p. 179.

† Id. p. 251. Belsham's Life of Lindsay.

that he hath not taken the sacrament in the church of England within one year preceeding the time of his supposed election, nor even in his whole life, and that he cannot in conscience do it.

“ Conscience is not contrrollable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.

“ My lords, there never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions concerning rites or modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no persecution for mere opinions. For atheism, blasphemy, and reviling the Christian religion, there have been instances of persons prosecuted and punished upon the common law; but bare nonconformity is no sin by the common law; and all positive laws, inflicting any pains or penalties for nonconformity to the established rites or modes, are repealed by the act of toleration, and dissenters are thereby exempted from all ecclesiastical censures.

“ What bloodshed and confusion have been occasioned from the reign of Henry IV., when the first penal statutes were enacted, down to the revolution in this kingdom, by laws made to force conscience! There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic, than persecution. It is against natural religion, revealed religion, and sound policy.

“ Sad experience and a large mind taught that great man, the President De Thou, this doctrine. Let any man read the many admirable things which, though a papist, he hath dared to advance on this subject, in the dedication of his history to Henry IV. of France (which I never read without rapture), and he will be fully con-

vinced, not only how cruel but how impolitic it is to prosecute for religious opinions. * * *

“ There was no occasion to revoke the edict of Nantes; the jesuits needed only to have advised a plan similar to that which is contended for in the present case: make a law to render them incapable of office; make another to punish them for not serving. If they accept, punish them (for it is admitted on all hands, that the defendant, in the cause before your lordships, is prosecutable for taking the office upon him)—If they accept, punish them; if they refuse, punish them: if they say yes, punish them; if they say no, punish them. My lords, this is a most exquisite dilemma, from which there is no escaping; it is a trap a man cannot get out of; it is as bad persecution as that of Procrustes: if they are too short, stretch them; if they are too long, lop them.” *

The lords immediately affirmed the judgment of the delegates, reversing the judgment of the sheriff's court and of the court of hustings.

In the year 1770, Lord Mansfield supported the bill for preventing delays of justice by reason of privilege of parliament, upon which he spoke at considerable length. In the course of his speech, he took occasion to express a sentiment, which formed a remarkable feature of his character—his contempt of popularity. “ It has been said by a noble lord on my left hand, that I likewise am running the race of popularity. If the noble lord means by popularity that applause bestowed by after-times on good and virtuous actions, I have long been struggling in that race, to what purpose all-trying time can alone determine; but if the noble lord means that mushroom popularity, that is raised without merit, and lost without a crime, he is much mistaken in his opinion. I defy the noble lord to point out a single action in my life, where the popularity of the times ever had the smallest influence on my determinations. I thank God, I have a more permanent and steady rule for my conduct—the dictates of my own breast. Those that have

* Holliday, p. 260. Parl. Hist. vol. xvi. p. 316.

foregone that pleasing adviser, and given up their minds to be the slaves of every popular impulse, I sincerely pity ; I pity them still more, if their vanity leads them to mistake the shouts of a mob for the trumpet of fame. Experience might inform them, that many, who have been saluted with the huzzas of a crowd one day, have received their execrations the next ; and many who, by the popularity of their times, have been held up as spotless patriots, have nevertheless appeared upon the historian's page, when truth has triumphed over delusion, the assassins of liberty. Why, then, can the noble lord think that I am ambitious of present popularity, that relic of folly and shadow of renown, I am at a loss to determine." *

Had Lord Mansfield wished to adopt the surest mode of avoiding the popularity he so earnestly deprecated, he could not have found a more favourable opportunity than was afforded him in the course of the year 1770. The public mind had been excited and irritated, in an unusual degree, by the events attending the celebrated Middlesex election, and the expulsion of Wilkes from the house of commons. A general dissatisfaction had pervaded the nation, and the metropolis had been the scene of very serious riots. In the midst of these discontents appeared "The Letters of Junius," the most remarkable and effective work in the political literature of England. It was obvious that government could not suffer a production like this to pass unnoticed. Accordingly, on the appearance of the celebrated letter to the king, informations were filed by the attorney-general against Woodfall, the original printer and publisher, Almon, Miller, Say, Robinson, and Baldwin, who had republished it in various forms. The first case brought to trial was that against Mr. Almon, before Lord Mansfield and a special jury, on the 2d of June, 1770, when it was proved for the crown, that a copy of the libel had been bought at the shop of the defendant, from a person acting there as his servant. Mr. Serjeant Glynn, for the defendant,

* Parl. Hist. vol. xvi. p. 977.

insisted that a man could not be made a criminal by the act of his servant ; but Lord Mansfield having directed the jury, that a sale by the servant was evidence, when not contradicted or explained, of a publication by the master, on the principle that whatever a man does by another he does himself, the jury found a general verdict of *guilty*.*

In the ensuing term, Almon's counsel moved for a new trial, contending that there was no proof whatever of a *criminal intention* in his client, or even the least knowledge by him of the libel having been sold in his shop. A new trial was refused, on the ground that the publication at the shop of the defendant was *prima facie* evidence of a guilty publication *by him*. The rule was thus stated by Lord Mansfield : — “ The buying the pamphlet in the public open shop of a known professed bookseller and publisher of pamphlets, of a person acting in the shop, *prima facie* is evidence of a publication by the master himself ; but it is liable to be contradicted, where the fact will bear it, by contrary evidence tending to exculpate the master, and to show that he was not privy nor assenting to it, nor encouraging it ; and this being *prima facie* evidence of a publication by the master himself, stands good till answered by him ; and if not answered at all, becomes *conclusive* so far as to be sufficient to convict him.” The other judges of the king's bench concurred in opinion with Lord Mansfield. The judgment of the court in this case was made the subject of much severe animadversion, both within and without the walls of parliament, and the conduct of Lord Mansfield upon the trial was commented upon, in the house of commons, in the harshest manner by Mr. Dunning.† This case has frequently been considered as an authority for the broad position, that in prosecutions for libel a man is responsible for the act of his servant ; a position which, in fact, it does not establish.

On the 13th of June, the information against Mr.

* State Trials, vol. xx. p. 803.

† Parl. Hist. vol. xvi. p. 1279, and post, Life of Dunning.

Woodfall came on for trial, and Lord Mansfield, in his summing up, directed the jury, "that the printing and sense of the paper were alone what the jury had to consider of." * The jury, after much deliberation, found the defendant "Guilty of printing and publishing *only*." Upon this, two applications were made to the court of king's bench. The first, by the defendant in arrest of judgment; the second, on behalf of the crown, to enter the verdict according to the legal finding of the jury. In delivering the opinion of the court, which was that a *venire de novo* ought to issue, Lord Mansfield took occasion to justify the direction which he had given to the jury. "That the law," said he, "as to the subject matter of the verdict, is as I have stated, has been so often unanimously agreed by the whole court upon every report I have made of a trial for a libel, that it would be improper to make it a question now in this place. Amongst those that concurred, the bar will recollect the dead and the living not now here. And we all again declare our opinion, that the direction is right and according to law." †

The information against Miller was tried on the 18th July, when Lord Mansfield directed the jury‡ in the following manner: "I have the satisfaction to know, that if I should be mistaken in the direction I am about to give as to your duty on the present occasion, it will not be final and conclusive; but it is under the full conviction of my own mind, that I am warranted by the uniform practice of past ages, and by the law of the land, that I inform you that the question for your determination is, whether the defendant printed and published a paper of such tenor and meaning as is charged by the information. If the tenor had been wrong, the prosecution would at once have fallen to the ground; but that is not objected to, nor is any meaning suggested by the defendant different to that supplied by the filling up the blanks in the information. If you find the defendant *not guilty*, you find that he did not print or publish as set forth:

* State Trials, vol. xx. p. 900.

† Id. p. 920.

‡ Id. p. 869.

if you find him *guilty*, you find that he did print and publish a paper of the tenor and meaning set forth in the indictment. Your verdict finally establishes that fact; but you do not by that verdict find whether that production was legal or illegal: for should the defendant be found guilty, he may arrest the judgment, by insisting there is nothing illegal in this paper, and may carry this matter before the highest court of judicature in the kingdom." The incongruity of this doctrine seems to have forced itself even upon the mind of Lord Mansfield, who at the conclusion of the summing up added, "If you choose to determine the point of law, you should be very sure, for your conscience' sake, that your determination is law; but if the law was in every case to be determined by juries, we should be in a miserable condition, as nothing could be more uncertain, from the different opinions of mankind."

The jury, after consulting together for several hours, delivered a verdict of Not guilty, at the chief justice's house in Bloomsbury Square. They had been followed from Guildhall by a great concourse of people, who, on the announcement of the verdict, testified their satisfaction by loud and repeated acclamations.*

In another case, which occurred in the course of the same year, Lord Mansfield incurred additional, though undeserved, odium. Two informations having been filed against the celebrated Wilkes, for the publication of No. 45 of the *North Briton*, and of another libel, and the cases standing for trial, an application was made to Lord Mansfield, at chambers, for leave to amend the records in a formal point. Leave was given to amend, the causes proceeded, and Mr. Wilkes, not appearing, was outlawed. Some time afterwards, having appeared, he endeavoured to reverse the outlawry, and loud complaints were made by his friends against Lord Mansfield for the part he had taken in allowing the amendments to be made. On delivering his judgment in the writ of error brought by Mr. Wilkes, Lord

* State Trials, vol. xx. p. 896.

Mansfield, after examining the authorities, thus continued: — “ But here let me pause:—it is fit to take some notice of the various terrors hung out; the numerous crowds which have attended, and now attend, in and about the hall, out of all reach of hearing what passes in court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterwards upon the conviction. Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion.

“ Give me leave to take the opportunity of this great and respectable audience, to let the whole world know all such attempts are vain. Unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The constitution does not allow reasons of state to influence our judgments: God forbid it should! We must not regard political consequences, how formidable soever they might be: if rebellion was the certain consequence, we are bound to say, ‘*Fiat justitia, ruat cælum.*’ The constitution trusts the king with reasons of state and policy; he may stop prosecutions; he may pardon offences; it is his, to judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted: none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the address’s for that prosecution. We did not advise or assist the defendant to fly from justice: it was his own act; and he must take the consequences. None of us have been consulted, or had any thing to do with the present prosecution. It is not in our power to stop it: it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be: if we do not speak our real opinions, we prevaricate with God and our own consciences.

“ I pass over many anonymous letters I have received.

Those in print are public, and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? that *mendax infamia* from the press, which daily coins false facts and false motives? The lies of calumny carry no terror to me. I trust, that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I honour the king, and respect the people; but many things, acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say with a great magistrate, upon an occasion and under circumstances not unlike, 'Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, haud infamiam, putarem.'

"The threats go further than abuse: personal violence is denounced. I do not believe it: it is not the genius of the worst men of this country in the worst of times. But I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country (for liberty is synonymous to law and government). Such a shock, too, might be productive of public good: it might awake

the better part of the kingdom out of that lethargy which seems to have benumbed them; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.

“Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here. If they have any effect, it would be contrary to their intent: leaning against their impression, might give a bias the other way. But I hope, and I know, that I have fortitude enough to resist even that weakness. No libels, no threats, nothing that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice, but every benefit from the most critical nicety of form, which any other defendant could claim under the like objection. The only effect I feel, is an anxiety to be able to explain the grounds upon which we proceed, so as to satisfy all mankind, that a flaw of form, given way to in this case, could not have been got over in any other.”*

Wilkes having been imprisoned under the judgment of the court of king’s bench for the publication of these libels, petitioned the house of commons for relief, alleging, amongst other grounds, the alteration of the record by the order of Lord Mansfield. The debate on this petition was one of the few occasions in which Mr. Blackstone appeared as a speaker in the house of commons. He shortly, but strenuously, defended Lord Mansfield, and concluded with moving, “that the complaint of Mr. Wilkes was an audacious aspersion on the chief justice, calculated to convey a gross misrepresentation of the fact, and to prejudice the minds of the people against the administration of public justice.”

In the interminable debates which arose out of the proceedings connected with Mr. Wilkes, the conduct of Lord Mansfield, in matters of libel, became the subject of frequent discussion, and of much censure. In the

* State Trials, vol. xix. p. 1111.

debate on Lord Chatham's motion, of the 5th of December, 1770, declaring the capacity to be chosen a member of parliament an inherent right of the subject, his lordship took occasion to observe upon the modern manner of directing a jury from the bench, and giving judgment upon prosecutions for libel. Lord Mansfield, in reply, defended himself with considerable vigour, concluding his speech in the following words: —

“ Judges, my lords, cannot go astray from the express and known law of the land. They are bound by oath punctually to follow the law. I have ever made it the rule of my conduct to do what was just, and, conscious of my own integrity, am able to look with contempt upon libels and libellers. Before the noble lord, therefore, arraigns my judicial character, he should make himself acquainted with facts. The scurrility of a newspaper may be good information for a coffee-house politician; but a peer of parliament should always speak from higher authority; though, if my noble accuser is no more acquainted with the principles of law in the present point than in what he advanced to support the motion, where he told us an action would lie against the house of commons for expelling Mr. Wilkes, I am fearful the highest authorities will not extend his ideas of jurisprudence nor entitle him to a patient hearing upon a legal question in this assembly.*

Lord Chatham in answer said, “ My lords, if I conceive the noble lord on the woolsack right, or have been rightly informed by the public prints, from which, I candidly confess, I originally derived my information on this subject, the doctrine of the king's bench is, that a libel or not a libel is a question of law to be decided only by the court, and the sole power of the jury is to determine upon the fact of printing and publishing. This, my lords, I understand to be the noble lord's opinion; but this I never understood to be the law of England: on the contrary, I always understood that the jury were competent judges of the law as well as of the fact, and

* Parl. Hist. vol. xvi. p. 1305.

indeed, if they are not, I can see no essential benefit, arising from their institution, to the community.

"I am, therefore, desirous, my lords, I am earnestly desirous, that a day may be appointed for examining into the conduct of such judges as dare to establish this anti-constitutional practice in our courts. I am well assured from the most respectable authority, that the practice is immediately subversive of our dearest rights, our most invaluable liberties; and, profligate as the times may be, these are objects that interest should lead us to defend, even if we are wholly unactuated by principle."

Lord Chatham was followed by Lord Camden, who spoke of the administration of justice in terms calculated to wound the feelings of Lord Mansfield in the deepest manner.

"I am but too sensible, my lords," said he, "of the disreputable state of our law courts at present, and I heartily wish that some effectual method may be taken to recover their former credit, their former dignity. The best method of doing this is, in my opinion, to ascertain the truth or the falsehood of the popular reports, so boldly, so generally propagated against their mode of administering justice. Let us try, my lords, whether they are venal or whether they are otherwise. As a lawyer, I am a friend to the courts; and should be sincerely concerned, if the spirit of the times has fastened any unmerited stigma on their characters. If they are, as they ought to be, immaculate, we cannot do them a more essential service than to fix a day for enquiring into their conduct: we shall then be able to certify in their favour; we shall then give their probity the sanction of our evidence, and restore them to the esteem, to the confidence of their country. On the other hand, should the popular rumours have unhappily any foundation in fact, we owe it to ourselves and to posterity to drive them indignantly from the seats which they dishonour, and to punish them in an exemplary manner for their malversation." Lord Mansfield was then defended by the Duke of Grafton, who moved and carried an adjournment.

In the mean time, the opponents of Lord Mansfield in the other house were not idle. Serjeant Glynn having made a motion* for an enquiry into the administration of criminal justice, which was lost, and in the course of which the conduct of Lord Mansfield was severely commented on, his lordship, on the following day, desired that the house of lords might be summoned, he having some matters to communicate to the house. The lords accordingly met on the 10th of December, but instead of entering into any explanations, Lord Mansfield contented himself with informing the house that he had left with the clerk of the house a copy of the judgment of the court of king's bench in the case of *The King against Woodfall*†, and that their lordships might read it and take copies of it, if they pleased. On an enquiry from Lord Camden whether his lordship meant to have the paper entered on the journals, he replied, 'No, only to leave it with the clerk.' On the following day, Lord Camden said, "My lords, I consider the paper delivered in by the noble lord on the woolsack as a challenge directed personally to me, and I accept of it. He has thrown down the glove, and I take it up. In direct contradiction to him, I maintain that his doctrine is not the law of England. I am ready to enter into the debate whenever the noble lord will fix a day for it. I desire and insist that it may be an early one." He then delivered in six questions, founded on the paper deposited by Lord Mansfield with the clerk, desiring to have his lordship's answers thereon. Lord Mansfield replied, that this method of proposing questions was taking him by surprise; that it was unfair, and that he would not answer interrogatories. Lord Camden then pressed him to appoint a day for giving in his answers; and Lord Mansfield, after some hesitation, pledged himself to the house that the matter should be discussed, but ultimately refused to fix any day. In this manner did the discussions in the lords, on this subject, in which Lord Mansfield certainly betrayed his constitutional timidity, and suffered his op-

* Parl. Hist. vol. xvi. p. 1211.

† Ante, p. 199.

ponents to use a tone of undue superiority and arrogance towards him, terminate. His conduct in relation to this charge will be examined hereafter.

In the celebrated riots of 1780, Lord Mansfield was a conspicuous sufferer. Although he had not taken any active part in the measures for the relief of the catholics, he incurred, in common with many other eminent persons, the hostility of the populace. The mob, which assembled round the houses of parliament on the 2d of June, not only assailed the lords and members who were supposed to favour the catholics with the most vehement abuse, but proceeded in many cases to personal violence. The Archbishop of York had his lawn sleeves torn off and flung in his face; the Bishop of Lincoln, after fainting in his carriage, was taken into a gentleman's house, from which he escaped in disguise; Lord Stormont's life was placed in the most imminent danger, and Lord Mansfield, who at that time officiated as speaker in the absence of the lord chancellor, bore upon his person, as he entered the house, evident marks of the ill usage of the rioters. After a debate, disturbed by the violence and vociferations of those without, the lords gradually retired, retreating through the darkness of the night, or escaping in hackney coaches, until, to the discredit and disgrace of their lordships' house, the Earl of Mansfield, in his 76th year, was left alone and unprotected, except by the officers of the house and his own servants. The tumults not having been suppressed at their commencement, increased on the second day so fearfully, as not only to strike individuals with dismay, but to threaten even the stability of the government itself. With a confidence in their power which their successes gave them, the rioters did not hesitate to announce publicly the particular mansions which they had devoted to destruction, amongst which was that of Lord Mansfield in Bloomsbury Square. His lordship, being aware of the intended attack, despatched a messenger to Sir John Hawkins, the magistrate, requesting

his immediate attendance.* Sir John, accompanied by a number of constables, proceeded without delay to Bloomsbury Square, where he found Lord Mansfield in a state of great agitation. The Archbishop of York, who resided in one of the adjoining houses, was present, and appeared to be more collected. By the advice of Sir John Hawkins, a detachment of military was sent for, who soon afterwards arrived. A consultation was then held as to the position in which the guards should be placed, when Lord Mansfield, notwithstanding the remonstrances of Hawkins, insisted that they should be stationed in the vestry of St. George's church. The commanding officer endeavoured, in vain, to dissuade him from suffering the troops to leave the house; but his lordship was peremptory, and the guards were marched to their station. The mob soon afterwards arrived, and in an inconceivably short space of time the walls of the house alone remained standing. The whole of the library of printed books and MSS., the private papers, the pictures, furniture, and other valuable effects, were all consumed. In order to show how disinterested was their enthusiasm, a large silver tankard, containing a considerable sum in guineas, was thrown into the blaze.

Sir Nathaniel Wraxall, who was an eye-witness of the conflagration, has left the following account of it:†—
 “I was personally present at many of the most tremendous effects of the popular fury on the memorable 7th of June, the night on which it attained its highest point. About nine o'clock on that evening, accompanied by three other gentlemen, who, as well as myself, were alarmed at the accounts brought in every moment of the outrages committed, and of the still greater acts of violence meditated, as soon as darkness should favour and facilitate their further progress, we set out from Portland Place, in order to view the scene. Having got into a hackney coach, we drove to Bloomsbury Square, attracted to that spot by a rumour generally

* Miss Hawkins's Memoirs, vol. ii. p. 108. † Memoirs, vol. i. p. 319.

spread, that Lord Mansfield's residence, situate at the north-east corner, was either already burnt or destined for destruction. Hart-street and Great Russell-street presented each to the view, as we passed, large fires, composed of furniture taken from the houses of magistrates or other obnoxious individuals. Quitting the coach, we crossed the square, and had scarcely got under the wall of Bedford House, when we heard the door of Lord Mansfield's house burst open with violence. In a few minutes, all the contents of the apartments, being precipitated from the windows, were piled up, and wrapt in flames. A file of foot-soldiers arriving, drew up near the blazing pile ; but without either attempting to quench the fire, or to impede the mob, who were, indeed, far too numerous to admit of their being dispersed, or even intimidated, by a small detachment of infantry. The populace remained masters ; while we, after surveying the spectacle for a short time, moved on into Holborn, where Mr. Langdale's dwelling-house and warehouses afforded a more appalling picture of devastation. They were altogether enveloped in smoke and flame. In front had assembled an immense multitude of both sexes, many of whom were females, and not a few held infants in their arms. All appeared to be, like ourselves, attracted as spectators solely by curiosity, without taking any part in the acts of violence. The kennel of the street ran down with spirituous liquors, and numbers of the populace were already intoxicated with this beverage. So little disposition, however, did they manifest to riot or pillage, that it would have been difficult to conceive who were the authors and perpetrators of such enormous mischief, if we had not distinctly seen at the windows of the house men, who, while the floors and rooms were on fire, calmly tore down the furniture, and threw it into the street, or tossed it into the flames. They experienced no kind of opposition, during a considerable time that we remained at this place ; but, a party of the horse-guards arriving, the terrified crowd instantly began to disperse ; and we, anxious to gratify our farther cu-

riosity, continued our progress on foot, along Holborn, towards Fleet Market. The conduct of the lord chancellor had been more prudent. He admitted a serjeant's guard into his house in Great Ormond-street, and by a judicious display of this small force, which was marched and countermarched, so as to give it the appearance of fresh detachments arriving, he deterred the populace from making an attack."

It was afterwards the subject of regret to Lord Mansfield, that he had not displayed a similar vigour. "I shall never, indeed, forget," says Mr. Erskine *, "what I have heard the late mild and venerable magistrate, Lord Mansfield, say upon this subject, whose house was one of the first attacked in London. I have more than once heard him say, that, perhaps, some blame might have attached upon himself and others in authority, for their forbearance in not having directed force to have been *at the first moment* repelled by force; it being the highest humanity to check the infancy of tumults."

Lord Mansfield narrowly escaped in safety. For a few days he did not appear in court; but on the 14th of June he again took his seat. "The reverential silence," says Mr. Douglas, who at that time reported the decisions of the king's bench, "which was observed when his lordship resumed his place on the bench, was expressive of sentiments of condolence and respect, more affecting than the most eloquent address the occasion could have suggested." † The loss which Lord Mansfield sustained was irreparable. In pursuance of a vote of the house of commons, the Treasury, through the surveyor-general, made an application to his lordship for the particulars and amount, in order to arrange a proper compensation. To this application his lordship returned the following answer:—

"Besides what is irreparable, my pecuniary loss is great. I apprehended no danger, and therefore took no precaution. But how great soever that loss may be, I

* Speeches, vol. iii. p. 33.

† Dougl. Rep. p. 446.

think it does not become me to claim or expect reparation from the state. I have made up my mind to my misfortune as I ought, with this consolation, that it came from those whose object manifestly was general confusion and destruction at home, in addition to a dangerous and complicated war abroad. If I should lay before you any account or computation of the pecuniary damage I have sustained, it might seem a claim or expectation of being indemnified. 'Therefore you will have no further trouble on this subject from,' &c. &c.

“ MANSFIELD.”

On the trial of Lord George Gordon for his participation in these proceedings, Mr. Erskine, in the admirable speech which he delivered on that occasion, alluded with great felicity to the destruction of Lord Mansfield's house, and drew from it an argument in favour of his client. “ Can any man living,” he exclaimed, “ believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this great and high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice; a magistrate, who had always been the friend of the protestant dissenters against the ill-timed jealousies of the establishment;—his countryman too; and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud?—No, gentlemen; it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner,) could possibly consent to this burning of the house of Lord Mansfield.” *

Amongst the poetical effusions which this catastrophe produced, the following verses appeared from the pen of Cowper:—

* Erskine's Speeches, vol. i. p. 112.

" When wit and genius meet their doom
In all-devouring flame,
They tell us of the fate of Rome,
And bid us fear the same.

" O'er Murray's loss the Muses wept :
They felt the rude alarm ;
Yet bless'd the guardian care that kept
His sacred head from harm.

" There memory, like the bee that's fed
From Flora's balmy store,
The quintessence of all he read
Had treasured up before.

" The lawless herd, with fury blind,
Have done him cruel wrong ;
The flowers are gone ; but still we find
The honey on his tongue."

Of Lord Mansfield's political life after the year 1780 little remains to be said. He had long ceased, as he stated himself *, to be one of the efficient advisers of the crown ; and it was only in his place as a peer, or by the exertion of that influence which always waits upon a man of high character in a high station, that he took any part in politics. During the famous coalition administration in 1782, he opposed, in conjunction with the chancellor, Lord Thurlow, the bill for the prevention of contractors sitting in parliament †, and that for excluding officers of the excise and customs from voting ‡. In the latter speech he controverted the then popular doctrine, that the influence of the crown was increasing, and ought to be diminished, and spoke with considerable energy against " the associations and meetings without doors for the express purpose of awing and controlling parliament." He also, in the course of the same year, spoke against the insolvent debtors' bill, considering it as an injury to credit. § One of the latest occasions upon which he addressed the house of peers was upon Lord Effingham's motion relative to the resolutions of the house of commons against Mr. Pitt's administration. His lordship opposed the resolutions moved by Lord Effingham, as tending to produce a breach between the two houses. The speech exhibited even more than

* Ante, p. 183.

† Id. vol. xxiii. p. 95.

‡ Parl. Hist. vol. xxii. p. 1362.

§ Id. p. 1104.

a usual portion of that constitutional timidity by which Lord Mansfield was distinguished: it was almost wholly composed of fears, and prognostications of evil.*

At length, after having presided for upwards of thirty-two years over the court of king's bench, the increasing infirmities of Lord Mansfield induced him to retire from his office. His resignation took place in the year 1788, upon which occasion the counsel practising in his court presented to him the following address, by the hands of Mr. Erskine:—

“ To the Earl of Mansfield.

“ My Lord,

“ It was our wish to have waited personally upon your lordship in a body, to have taken our public leave of you, on your retiring from the office of chief justice of England; but judging of your lordship's feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire, in this manner, affectionately to assure your lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable.

“ But, while we lament our loss, we remember with peculiar satisfaction, that your lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you among men; but that it has pleased God to allow to the evening of a useful and illustrious life the purest enjoyments which Nature has ever allotted to it—the unclouded reflections of a superior and unfading mind over its varied events; and the happy consciousness that it has been faithfully

* Parl. Hist. vol. xxiv. p. 515.

and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth.

“ May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength ! ”

To this address Lord Mansfield immediately returned the following answer: —

“ To the Honourable T. Erskine, Serjeants’ Inn.

“ Dear sir,

“ I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

“ If I have given satisfaction, it is owing to the learning and candour of the bar: the liberality and integrity of their practice freed the judicial investigation of truth and justice from difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made upon my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.

“ I am, dear sir,

With gratitude to you and the other gentlemen,

Your most affectionate

And obliged humble servant,

“ MANSFIELD.”

Caen Wood, June 18. 1788.

It was Lord Mansfield’s good fortune to retain, to an extended old age, the use of those faculties by which in early life he had been so much distinguished. In the year 1793, his nephew, Lord Stormont, having occasion to consult him on a cause in the house of lords, in which he was interested, found his mind perfectly clear and collected. A few days after this interview he was seized with an attack which soon terminated fatally:

he became drowsy, and complained of feeling very sleepy: he seemed to suffer no pain, but desired to be put to bed, saying, "Let me sleep; let me sleep:" after which he never spoke. He lay in this state for several days, and died without awaking from it, on the 20th of March, 1793, in the 89th year of his age. According to the directions of his will, he was buried in Westminster Abbey, in the same vault with Lady Mansfield.

Lord Mansfield died without issue; but the earldom, which was granted to him in 1776, descended to his nephew, Viscount Stormont.

Characters drawn by contemporary pens in general present more lively pictures of the individual than those which are only traced from the relation of others. Bishop Hurd has thus sketched Lord Mansfield's: "Mr. Murray, afterwards Earl of Mansfield, and lord chief justice of England, was so extraordinary a person, and made so great a figure in the world, that his name must go down to posterity with distinguished honour in the public records of the nation; for his shining talents displayed themselves in every department of the state, as well as in the supreme court of justice, his peculiar province, which he filled with lustre of reputation not equalled, perhaps, certainly not exceeded, by any of his predecessors. Of his conduct in the house of lords I can speak with the more confidence, because I speak from my own observation. Too good to be the leader, and too able to be the dupe, of any party, he was believed to speak his own sense of public measures; and the authority of his judgment was so high, that, in regular times, the house was usually decided by it. He was no forward or frequent speaker, but reserved himself, as was fit, for occasions worthy of him. In debate he was eloquent as well as wise; or rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candour; but what secured your attention and assent to all he said, was his constant good sense, flowing in apt terms and in

the clearest method. He affected no sallies of the imagination, or bursts of passion ; much less would he condescend to personal abuse, or to petulant altercation. All was clear, candid reason, letting itself so candidly into the minds of his hearers as to carry information and conviction with it. In a word, his public senatorial character very much resembled that of Messala, of whom Cicero says, addressing himself to Brutus, ‘ Do not imagine, Brutus, that for worth, honour, and a warm love of his country, any one is comparable to Messala.’ So that his eloquence, in which he wonderfully excels, is almost eclipsed by those virtues, and even in his display of that faculty his superior good sense shows itself most ; with so much care and skill has he formed himself to the truest manner of speaking ! His powers of genius and invention are confessedly of the first size ; yet he almost owes less to them than to the diligent and studious cultivation of judgment. In the commerce of private life Lord Mansfield was easy, friendly, and very entertaining, extremely sensible of worth in other men, and ready on all occasions to countenance and patronise it.”

The judicial character of Lord Mansfield has been the subject of repeated panegyrics. The very long period during which he presided over the court of king’s bench, his commanding talents, his high personal character, and his eloquence, all contributed to the great reputation which he enjoyed. No judge ever impressed so forcibly upon the jurisprudence of this country the peculiar qualities of his own mind. In scarcely any other instance can the influence of any judge of the courts of common law be traced by any marked improvement in the principles of law, or in the practice of the courts. With Lord Mansfield it was widely different ; and many of the most important branches of modern law derive their character, and almost their existence, from his genius. The law of insurance has been frequently mentioned as an instance of the admirable manner in which his powerful mind created a system of law adapted to all the exigencies of society. When his lordship was raised

to the bench, the contract of insurance was little known, and a few unimportant *nisi prius* decisions were all that were to be found on the subject. Yet this branch of law, so little understood, grew up under his administration into a system, remarkable for the excellence of its principles, and the good sense and simplicity of its practice. In many other branches of law the same mind is visible, governing their principles, and reconciling their incongruities.* It has, indeed, been said, that Lord Mansfield leaned too much in his decisions to equitable principles; and certainly, in some instances, his opinions have been reviewed and overruled on this ground; yet, considering the anomalous scheme of the English law, and the expense and injustice which frequently arise from compelling a party who is clearly entitled to redress to seek it in another form, at the expense of infinite delay and vexation, it is difficult to say whether the preservation of the exact boundaries between the tribunals of the common law and of equity are wisely preserved at such a cost. The learning of Lord Mansfield has also been questioned, and, perhaps, his mind was not deeply imbued with the more recondite knowledge of his profession. So great, however, was the grasp of his intellect, and so lively and quick his powers of apprehension, that, on subjects where abstruse and recondite learning was required, he was always enabled to make, with small preparation, a brilliant display. He excelled particularly in the statement of a case, arranging the facts in an order so lucid, and with so nice a reference to the conclusions to be founded on them, that the hearer felt inclined to be convinced before he was in possession of the arguments.

His eloquence was peculiar; rather subtle and insinuating, than forcible and overpowering. His articulation was slow and distinct, and his voice remarkably sweet in all its tones. In his style of speaking he was often careless, sometimes using low and mean expressions, and he is said not always to have observed the

* See Evans's View of Lord Mansfield's Decisions.

rules of grammar. There was occasionally great confusion in his periods, which were involved in endless parentheses*; but such was the general effect of his eloquence, that these blemishes passed unnoticed.

In his demeanour on the bench he was distinguished at once by the dignity and by the courtesy of his manners. To the junior counsel he was kind and encouraging, and introduced in their favour the practice of *going through the bar*, allowing the senior counsel to make only one motion at a time, while they had previously been in the habit of making all their motions before the juniors could be heard. Occasionally Lord Mansfield indulged in sallies of humour, which were sometimes aimed at the gravity and abstraction of Mr. Serjeant Hill. "I have seen the serjeant," says Mr. Hawkins†, "standing up in the court, immovable as a statue, looking at no object, and arguing in support of his client's cause, so wrapt in the workings of his own mind, as, seemingly at least, to be insensible to any objects around him. In the midst of his argument, which was frequently so perplexed by parenthesis within parenthesis, as to excite the laughter of the whole court, Lord Mansfield would interrupt him with 'Mr. Serjeant! Mr. Serjeant!' He was rather deaf: the words were repeated without effect; at length, the counsel sitting near him would tell him that his lordship spoke to him: this roused him. Lord Mansfield would then address him with, 'The court hopes your cold is better.' All this was done with a tone, and in a manner, which showed that he wished to make the object of his apparent civility in fact an object of ridicule, and so far must be considered as having succeeded. How far it was perfectly decorous in a judge sitting in court to indulge this little mischief, for we do not wish to call it by a harsher name, others may decide; but, certainly, he was very agreeable to the bar in other respects. Indeed, whenever this foible did not show itself, his patient attention, his assisting questions, if

* Butler's Reminiscences.

† Miss Hawkins's Memoirs.

I may be allowed the term, and his intuitive comprehension of what was submitted to his understanding, made him an exceedingly pleasant judge to those who were called to argue deep questions before him."

The judicial character of Lord Mansfield did not escape severe censure. One of the most serious charges against him, so often and so acrimoniously urged in parliament, and repeated by Junius, was his conduct in cases of libel, in which he invariably directed the jury, that it was no part of their province to consider whether the writing in question was or was not libellous, that being a matter of law reserved for the consideration of the court. That this opinion was erroneous cannot now be doubted; and the legislature has, by a declaratory act, pronounced upon its illegality. But, in estimating the culpability of Lord Mansfield in supporting a doctrine which is so decidedly opposed to the interests of freedom, it is necessary to look with accuracy to the circumstances under which that opinion was advanced. There have not been wanting, at any period of our judicial annals, authorities upon which the opinion of Lord Mansfield may be defended. Judges of learning and character have held those opinions to be law; and though, in selecting between opposing authorities, it may well be regretted that Lord Mansfield did not choose those which would have placed the liberty of the subject upon a surer foundation, it is not just to accuse him of a wilful and corrupt misinterpretation of the law. His political opinions did not lean to the extension of popular privileges, and those opinions necessarily governed him in the decision to which he came on this subject. That he himself was satisfied that he had given a correct exposition of the law cannot be doubted. "For twenty-eight years past," says Mr. Justice Buller, speaking of his lordship's directions in cases of libel,— "during which time we have had a vast number of prosecutions, in different shapes, for libels,—the uniform and invariable conduct of that noble judge has been to state the questions as I have just stated them to you ;

and though the cases have been defended by counsel not likely to yield much, yet that point was never found fault with by them; and, often as it has been enforced by the court, they never have attempted yet, by any application, to set it aside. At last it came on in this way: the noble judge himself brought it on by stating to the court what his directions had always been, with a desire to know whether, in their opinions, the direction was right or wrong? The court was unanimously of opinion that it was right, and that the law bore no question or dispute.*" The appeal thus made by Lord Mansfield to the court does not betray any consciousness of having acted wrong; but, on the contrary, manifests an honest desire to examine and correct his opinions. That he was incapable of perverting the power which he thus vindicated, as the province of the court, to purposes injurious to liberty, we may admit with Mr. Erskine, who, in the argument arising out of the trial of the dean of St. Asaph, tendered his testimony to the integrity of the chief justice: "I am one of those," said he, "who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your lordship, if you were always to continue to administer it yourself. I should feel a protection in the gentleness of your character; in the love of justice, which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education; and in that dignity of disposition, which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security. But such a security is a shadow which passeth away. You cannot, my lord, be immortal, and how can you answer for your successor? If you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity." †

* Trial of dean of St. Asaph, Erskine's Speeches, vol. i. p. 219.

† *Id.* p. 261.

The political principles of Lord Mansfield were not strongly marked; but the bias of his mind was decidedly towards Toryism. In the expression of his opinions he was cautious and moderate, and was very unwilling to appear the advocate of strong or violent measures. This irresolute and almost timorous disposition was manifested in his conduct during the riots of 1780. He was the frequent object of popular invective, and fell under the lash of Junius, who has not hesitated to accuse him, not only of an early devotion to the house of Stuart, but of adhering to the principles of that family after deserting their fortunes. The unproved, and probably unfounded, charge of having been in his earlier years a partisan of the pretender, is treated by Junius as a fact too well established to be doubted: "Your zeal in the cause of an unhappy prince was expressed with the sincerity of wine, and some of the solemnities of religion. This, I conceive, is the most amiable point of view in which your character has appeared. Like an honest man, you took that part in politics which might have been expected from your birth, education, country, and connections. There was something generous in your attachment to the banished house of Stuart. We lament the mistake of a good man, and do not begin to detest him until he affects to renounce his principles. Why did you not adhere to that loyalty you once professed? Why did you not follow the example of your worthy brother? With him you might have shared in the honour of the pretender's confidence; with him you might have preserved the integrity of your character, and England, I think, might have spared you without regret. Your friends will say, perhaps, that although you deserted the fortune of your liege lord, you have adhered firmly to the principles which drove his father from the throne; that, without openly supporting the person, you have done essential service to the cause, and consoled yourself for the loss of a favourite family, by reviving and re-establishing the maxims of their government." *

* Letter to Lord Mansfield.

Lord Mansfield had no predilections that could lead him to look with favour upon popular doctrines. Himself a member of the aristocracy, and of a family which had given to the exiled princes one of their most devoted adherents, though probably in his own person free from the taint of jacobitism, there was nothing in his birth or natural connections to ally him with the people, or with their cause. Educated at Oxford, it was not probable that he should imbibe at that seat of learning any popular doctrines; and, upon his entrance into political life, he found little encouragement to alter the principles which he had always professed. From the earliest period of his parliamentary career, even down to its close, he was the marked object of attack to the popular orators in both houses of parliament. While a member of the commons, he was pursued by Pitt's unsparing invective; and in the lords he was followed, with all the pertinacity of political hatred, by the argumentative eloquence of Lord Camden. In almost every debate in which the name of Lord Mansfield occurs, it is immediately followed by that of Lord Camden. These circumstances must have contributed to fix in the mind of Lord Mansfield those sentiments of opposition to popular principles with which he began life. Upon various occasions, in the course of his judicial duties, he expressed his contempt for popularity and for popular judges, of which some instances have already been given in the course of the present memoirs.

That Lord Mansfield was honest and sincere in the expression of his political opinions there can be no reason to doubt: the circumstances already adverted to, as moulding his principles, are fully sufficient to establish their sincerity. It is to be borne in mind, also, that he frequently refused power, when he might have accepted it without any imputation upon his character; and therefore, if dishonest, his dishonesty must have been without object. If in any case he ever swerved from those principles of action which usually governed him, it is much more probable that such deviation was the

consequence of political timidity than of political dishonesty. He did not possess the bold and vigorous heart of Lord Chatham ; and he was always ready rather to compromise measures than to push them to extremity. Hence his love of coalitions, which in every case of difficulty he was forward to recommend. His character was deficient in the highest of all political virtues—a determined resolution to serve the public without any regard to personal considerations, whether of fear or of favour.

In reviewing the political character of Lord Mansfield, it must not be forgotten that he was the first judge who openly discountenanced prosecutions founded on the harsh and cruel laws against the catholics, and that he boldly advocated the cause of the protestant dissenters. In his speech on the riots of 1780, he professed, in the following terms, the principles of toleration :—

“ My principle of not wishing to disturb any man merely for conscience-sake is pretty well known ; and many of those who are supposed to have formed the late mobs are not ignorant of my general tolerating principles when tolerating sectaries does not portend any mischief to the state. I have held these opinions respecting dissenters from the established church of all denominations ; and the sect in particular who are usually called methodists well know, that, when attempts were repeatedly made to disturb them in the enjoyment of their religious worship, I have always discouraged them as unworthy of the protestant religion, the purity of whose doctrines, and not persecution, should be the only incentive to bring proselytes into her bosom. I was of the same opinion respecting the Roman catholics ; and though, as I observed before, I had no hand, directly or indirectly, in the law, which has furnished a pretext for the late dangerous insurrections, I shall ever be of opinion that they, in common with the rest of his majesty’s subjects, should be allowed every possible indulgence consistent with the safety of the state.” *

* Parl. Hist. vol. xxi. p. 697.

In private life Lord Mansfield appears to have been much and justly beloved. His moral character was blameless. In his friendships he was warm and constant; in his charities judicious and discriminating, not bestowing small sums to relieve himself from present importunities, but assisting in a more substantial manner those who were capable of benefiting by such kindness. In society, and especially at his own table, he was remarkable for the liveliness and intelligence of his conversation, in which, however, he never indulged to the exclusion of others. One of his most distinguishing characteristics was the decorum and propriety that pervaded not only his actions but his manners, his personal appearance, and even his domestic establishment, in every department of which good sense and good taste were seen conjoined. Lord Mansfield's features were regular and expressive, and his presence graceful and dignified. His eye is said to have been remarkable for its intelligence and brilliancy. Cowper, in a letter to Hayley, has playfully but forcibly described the impression made upon him by Lord Mansfield's personal appearance:—"The monument of Lord Mansfield, for which you say Flaxman is engaged, will, I dare say, prove a noble effort of genius. Statuaries, as I have often heard an eminent one say, do not much trouble themselves about likeness, else I would give much to be able to communicate to Flaxman the perfect idea that I have of this subject such as he was forty years ago. He was at that time wonderfully handsome, and would expound the most mysterious intricacies of the law, or recapitulate both matter and evidence of a cause as long as from here to Earham, with an intelligent smile on his features, that bespoke plainly the perfect ease with which he did it. The most abstruse studies, I believe, never cost him any labour."

Cumberland (the author), who had opportunities of seeing Lord Mansfield, has detailed the impression which his manners conveyed. "I was frequently," says he, "in his company; but have no right to think that I was

ever so far in his confidence as to render me a competent delineator of his character. Some few features, as they caught my observation, I may venture to trace out, and can say of him what every body who knew him in his social hours must say, without the risk of a mistake. I cannot recollect the time when, sitting at the table with Lord Mansfield, I ever failed to remark that happy and engaging art which he possessed of putting the company present in good humour with themselves; I am convinced they naturally liked him the more for his seeming to like them so well: this has not been the general property of all the witty, great, and learned men whom I have looked up to in my course of life.

“ He would lend his ear most condescendingly to his company, and cheer the least attempt at humour with the prompt payment of a species of laugh, which cost his muscles no exertion, but was merely a subscription that he readily threw in towards the general hilarity of the table. He would take his share in the small talk of the ladies with all imaginable affability; he was, in fact, like most men, not in the least degree displeased at being incensed by their flattery. He was no great starter of new topics, but easily led into anecdotes of past times: these he detailed with pleasure; but he told them correctly rather than amusingly. I am inclined to think that he did not covet that kind of conversation that gave him any pains to carry on: his professional labours were great, and it was natural that he should resort to society more for relaxation and rest of mind than for any thing that could put him upon fresh exertions. Even dulness, so long as it was accompanied with placidity, was no absolute disrecommenda-
tion of the companion of his private hours; it was a kind of cushion to his understanding.

“ I agree with the general remark, that he had the art of modelling his voice to the room or space in which he was; but I am not one of those who admired its tone: it was of a pitch too sharp to please my ear, and seemed more tuned to argumentation than urbanity

His attentions, whenever he was pleased to bestow them, were not set off with any noble air, and I should rather call them civil than polite ; for the stamp of his profession was upon him, and his deportment wanted gracefulness and ease. Pope, above all the sons of song, was his Apollo ; but I suspect he had no real attachment to the Muses, and was merely civil to them in return for the compliments they had paid to him." *

The same writer has described an interview which took place between Lord Mansfield and Lord Sackville, shortly before the death of the latter nobleman, which may be regarded as characteristic of Lord Mansfield's temperament. " He wished to take his last leave of the Earl of Mansfield, then at Tunbridge Wells : I signified this to the earl, and accompanied him in his chaise to Stoneland. I was present at their interview. Lord Sackville, just dismounted from his horse, came into the room where we had waited a very few minutes, and staggered as he advanced to reach his hand to his respectable visitor. He drew his breath with palpitating quickness, and, if I remember rightly, never rode again. There was a death-like character in his countenance that visibly affected and disturbed Lord Mansfield, in a manner that I did not quite expect, for it had more of horror in it than a firm man ought to have shown, and less perhaps of other feelings than a friend, invited to a meeting of that nature, must have discovered, had he not been frightened from his propriety." †

Some of the opinions of Lord Mansfield, on subjects connected with the law and with legal literature, have been preserved by Mr. Charles Butler. ‡

" His lordship was sometimes charged with not entertaining the high notions which Englishmen feel, and, it is hoped, will ever feel, of the excellence of the trial by jury. Upon what this charge is founded does not appear : between him and his jury there never was the

* *Memoirs*, vol. ii. p. 344.

† *Id.* p. 249.

‡ *Seward's Anecdotes*, vol. iv. p. 498. *Reminis.* vol. i.

slightest difference of opinion. He treated them with unvaried attention and respect ; they always showed him the utmost deference. It is remembered, that no part of his office was so agreeable to him as attending the trials at Guildhall. It was objected to him, that, in matters of libel, he thought the judges were to decide on its criminality. If his opinions on this subject were erroneous, the error was common to him with some of the most eminent among the ancient and modern lawyers. It was also objected to him, that he preferred the civil law to the law of England. His citations from the civilians were brought as a proof of his supposed partiality to that law ; but they were rather occasional than frequent, and he seldom introduced them where the case was not of a new impression, so that the scantiness of home materials necessarily led him to avail himself of foreign ware. Sometimes, however, he intimated an opinion that the modification of real property in England, in wills and settlements, was of too intricate and complex a nature, and, for that reason, inferior to the more simple system of the Roman usufruct. The frequent necessity there is in our law to call in trustees, whenever property is to be transmitted or charged, so as to be taken out of immediate commerce, appeared to him an imperfection ; and he wished the nature of our jurisprudence permitted the adoption of the rule of the civil law, that, when a debt is extinguished, the estate or interest of the creditor, in the lands or other property mortgaged for its security, is extinguished with it. It will be difficult to show any other instance in which he preferred the civil law to the law of England.

“ In a conversation he permitted a student at the English bar to have with him, he expressed himself in terms of great esteem for Littleton, but spoke of Lord Coke, particularly of ‘ his attempting to give reasons for every thing, (that was his phrase,) with great disrespect. He mentioned Lord Hardwicke in terms of admiration, and of the warmest friendship : ‘ When his lordship

pronounced his decrees, wisdom herself,' he said, 'might be supposed to speak.'

"He observed with great satisfaction, that, during the long period of his chief justiceship, there had been but one case in which he had ultimately differed with his brother judges of the same court: that was the case of *Perryn* against *Blake*. He lamented the difference, but declared his conviction that the opinion he delivered upon it was right.

"He recommended *Saunders' Reports*. He observed, that the quantity of professional reading absolutely necessary, or even really useful, to a lawyer, was not so great as was usually imagined; but, he observed, 'that it was essential he should read much,' as he termed it, 'in his own defence; lest, by appearing ignorant on subjects which did not relate to his particular branch of the profession, his ignorance of that particular branch might be inferred.'

"Speaking of the great increase of the number of law books, he remarked that it did not increase the quantity of necessary reading, as the new publications frequently made the reading of the former publications unnecessary. Thus, he said, since *Mr. Justice Blackstone* had published his *Commentaries* no one thought of reading *Wood's Institutes*, or *Finch's Law*, which, till then, were the first books usually put into the hands of students. He said, that, when he was young, few persons would confess they had not read a considerable part at least of the year books: but that, at the time he was then speaking, few persons would pretend to more than an occasional recourse to them in very particular cases. He warmly recommended the part of *Giannone's History of Naples* which gives the history of jurisprudence, and of the disputes between the church and the state. He mentioned *Chillingworth* as a perfect model of argumentation."