From the BALANCE.

LIBERTY OF THE PRESS.

A CORRECT HISTORY OF

HARRY CROSWELL's TRIAL.

[*Continued from Tuesday's Gazette.*]

IT was then contended, that as this was clearly charged on the indictment as a public libel, or a libel on government, attacked in the perſon of its higheſt officer, even by the common law of England *at this day*, the truth might be given in evidence; and that it was a juſtification of the perſon indicted. To this point ſeveral authorities were cited. It was forcibly and lengthily contended; but as this was not the ſtrongeſt ground; and as we are not properly qualified to report it, we proceed to the next point.

They ſaid, let the law of England be what it might; let that *monarchy* have planted millions of iron barriers around the throne, and ſhielded his majeſty from the eye and the animadverſions of the public; let them bow before his throne and acknowledge him their ſovereign, the ſource of all honor, all power; let them think *he can do no wrong*—In this country the ſcene was very different. Here we have a preſident. That preſident is not a monarch. He is not a ſovereign. The people are ſovereign; and the preſident is but their *ſervant*. They are the ſource of power; and he is reſponſible to them. All this—all the power of the government—all the rights of the people—are defined and ſecured by a conſtitution. They are not dependent upon the Engliſh law, any farther than that law is adopted by the conſtitution of this ſtate. They then read the following clauſe from the conſtitution:

"That all ſuch parts of the ſaid common law, and all ſuch of the ſaid ſtatutes, and acts aforeſaid, or parts thereof, as may be conſtrued to eſtabliſh or maintain any particular denomination of Chriſtians, or their miniſters, or concern the allegiance heretofore yielded to, and the ſupremacy, ſovereignty, government or prerogatives, claimed or exerciſed by the king of Great Britain and his predeceſſors, over the colony of New-York and its inhabitants, OR ARE REPUGNANT TO THIS CONSTITUTION, be, and they hereby are ABROGATAD AND REJECTED."

The queſtion, then, they ſaid, was reduced to this point. Admitting that the law of England prohibits the giving of the truth in evidence, is that law repugnant to the ſpirit of the conſtitution of this ſtate, and the genius of a republican government? If it is, the conſtitution declares it not the law of this ſtate in theſe emphatic words—"IT IS HEREBY ABROGATED AND REJECTED."

The grand principle upon which every republican government is founded; and that, indeed, which diſtinguiſhes it from all other governments, is a fair and full reſponſibility of officers to the people: or, in other words, that the people are the ſovereign—their officers are their ſervants; and, conſequently, that the latter are dependent upon the former, and accountable them for their conduct. This principle of reſponſibility is a prominent feature in our conſtitution and government. It is this which inſpires the whole maſs, and gives it life, beauty and vigor. In our conſtitution this principle is exerciſed by the people and felt by the officer in two ways. Firſt, the people have here the right of impeaching; and, ſecond, they have the right of election. And by the full and free exerciſe of theſe two rights, the people can always preſerve themſelves from ſlavery. They can always keep the ambitious in awe. They can carry to the ſoul of the tyrant, a conviction of his weakneſs; and they can ſtrip the canting demagogue of his brief authority. But of theſe two rights—the right of impeachment and the right of election—the latter is infinitely more important than the former. The former, it is true, may graſp the ſturdy criminal—it may, ſometimes, arreſt the traitor in the midſt of his career. But the man who can pronounce that the right of impeachment is ſufficient to preſerve the people from the arts of the crafty—the efforts of the hypocritical, and the bold attempts of the tyrant, will, at the ſame time, pronounce his ignorance of hiſtory, and total inattention to the precepts of experience. How frequent have public crimes tranſpired! Ho few have been puniſhed by impeachment!

Thoſe venerable patriots who framed our conſtitution, well knew the inefficiency of ſuch a power. They, therefore, ſecured to the people the right of periodical election. They plainly ſaw that ſuch a weapon, in the hands of the people, was neceſſary to their defence againſt the ambition of the great, and the treachery of rulers. By this right, they placed the whole government in the hands of the people. They gave them power to remove thoſe who ſhould diſplay principles hoſtile to the conſtitution—hoſtile to liberty, or inconſiſtent with the public good. In ſhort, by this right of election, they made the people ſovereign—ſecured to them the power of calling their ſervants periodically and frequently to anſwer for their conduct, that if they were found honeſt and capable, and faithful to the conſtitution, they might be honored and advanced—if the reverſe, that they might be conſigned to private infamy.

A right of ſuch conſequence, ſurely ſhould be held ſacred. A power which ſecures and protects every right and privilege which the people poſſeſs, ought to be watched with a jealous eye: And that principle which invades it, together with its author, ought to be followed by the execration of the people.

Should any man attempt to introduce into this ſtate, a principle of common law, which in plain terms would forbid the right of periodical elections, would he not be arreſted by the court? Would not the court anſwer, "Sir, the right of ſuffrage is ſecured by the conſtitution; this law invades that right, it is, then, repugnant to the conſtitution, and is, therefore, abrogated and rejected."

But, although this part of the common law, which forbids the giving of the truth in evidence, does not, in expreſs terms, forbid the holding of elections; yet it renders them of no effect: It reduces them to mere forms. It deſtroys all the beneficial effects which the conſtitution deſigned ſhould flow from them. For ſurely, if the truth cannot be given in evidence, as a juſtification, no man, no printer will dare to publiſh facts, if thoſe facts impeach the character, expoſe the vices, and reprehend the mal-conduct of a preſident. The truth will be wholly reſtrained. Information of the true character and real conduct of thoſe in power, will never be received by the people. And of what uſe, they aſked, would elections be, if that knowledge, that information, *that truth*, which would enable the people to judge correctly, is thus prohibited? Is it not the very object, the very eſſence of elections, to correct abuſes in government? To cruſh the firſt ſymptoms of treachery or oppreſſion? But if the publication of the truth is prohibited, can this be done? Can the people judge correctly? Will they know who is treacherous and who is faithful? Who deſerves and who betrays their confidence? Will they not come forward at elections, ignorant of the real merit of every candidate? And will they not thus be liable to the impoſition of every influential demagogue? Can it be denied, that theſe will be the legitimate conſequences of prohibiting a publication of truth? And can it be denied, that a law pregnant with ſuch conſequences, is repugnant to the true ſpirit of the conſtitution? Is not one check on power, which the conſtitution has placed in the hands of the people, wholly deſtroyed? It is true, ſuch a law will not prohibit the holding of elections. People may continue to vote: But will they know for whom, or for what, they vote? No! elections will become little better than ridiculous forms. If that correct information, requiſite to render them effectual to the purpoſes deſigned by the conſtitution, is prohibited, the ſpirit of the conſtitution is invaded. Will not, then, the court ſay, "Although this law does not forbid elections, yet it deſtroys their whole benefit. Although it permits the form to remain, it takes away the ſubſtance. If it prohibited elections in expreſs terms, it would clearly be unconſtitutional. As it tends to undermine the right of ſuffrage; as it clearly deſtroys every benefit which the conſtitution deſigned ſhould flow from an exerciſe of that right, it is repugnant to the ſpirit of the conſtitution; and, in the ſtrong language of the conſtitution, "*it is hereby abrogated and rejected.*"

That this law, prohibiting the giving of the truth in evidence, would completely ſhackle the preſs, reſtrain the freedom of public diſcuſſion, and prevent the publication of truth, they contended, could not be doubted. That ſame law of libels, which is now attempted to be eſtabliſhed, declares that any publication, which tends to bring into contempt or diſrepute an officer of government, is a libel.

Can any publication be made, which diſapproves any meaſure of government, without tending to bring ſome officer into diſrepute or contempt? What, then, is meant by "freedom of diſcuſſion"—"Liberty of the preſs?" Is it the liberty of applauding the meaſures of our government, right or wrong—of ſinging hallelujahs, indiſcriminately, to the patriot and the demagogue? Such a *liberty*, would be the very *ſecurity* which the demagogue and the ambitious would deſire. Under the influence of ſuch a *liberty*, the preſs would be converted into an efficient engine of tyranny. No longer, with that boldneſs and energy which has hitherto attended it, would it unmaſk treachery and artifice. All its energy would be exerted to ſhield from public inſpection the conduct of our rulers. It would finally ſucceed; and we might blindly be led victims to the altar of tyranny, before we ſhould hear one whiſper of danger.

They contended, that the only line which could be drawn between the liberty and the licentiouſneſs of the preſs, was the great line which ſeparates *truth* from *falſehood*. This was the line marked by the law called the ſedition law. And ſuch a line is preſcribed by the true ſpirit of our conſtitution—by every principle of republicaniſm. It is conformable to the great laws of morality and juſtice. No other line can be drawn, which will not invade the liberty of the preſs; which will not invade that reſponſibility of officers to the people, which is ſecured by the conſtitution. If any one publiſhes falſehood, let him be puniſhed. If he publiſhes truth, let him be acquitted. But, let no one be fined and impriſoned, for exerciſing a right ſecured by the conſtitution of this ſtate, and guaranteed by every principle which deſerves the name of republican. At all events, they ſaid, as this was a queſtion of ſuch vaſt importance, not only to Croſwell, but to the whole community; and as it certainly was a queſtion of doubt and difficulty, they truſted that his honor would not, by a haſty deciſion, at *niſi prius*, compel the defendant to trial; but would permit the queſtion to be ſettled by an application to the ſupreme court for a commiſſion, which application they engaged to make at the next term.

Such was the general ſcope of the arguments for the defendant. We pretend not to give the language of the counſel; but we believe we have correctly ſtated the grounds of the application.

Mr. Spencer roſe—but judge Lewis informed him that it was unneceſſary for him to reply. Mr Spencer ſaid, he was not about to anſwer the arguments of the gentlemen; but merely to read a ſtipulation into which the counſel for Mr. Croſwell had entered at the laſt ſeſſions, to try the cauſe at this circuit. The judge told him that as that ſtipulation had not been made a rule of court, he could not notice it—it was of no effect.

His honor then expreſſed his opinion nearly in theſe words:—I am aſtoniſhed at this application. THE LAW IS SETTLED, THAT THE TRUTH OF THE MATTER PUBLISHED CANNOT BE GIVEN IN EVIDENCE BY WAY OF JUSTIFICATION. If, after conviction, ſuch evidence were offered to the court, in mitigation of the puniſhment, it would be received. I am aſtoniſhed that the witneſs upon whom the defendant relies, ſhould be the very man whom one of the defendant's counſel had called an infamous libeller. I am aſtoniſhed, too, that conſiderations of policy are urged, in order to ſubvert a ſettled rule of law. I very much regret that the law is not otherwiſe; but, as I am to declare what the law is, I cannot, on this ground, put off the trial of the cauſe. I therefore pronounce this to be the law—that the defendant, if he thinks proper, may bring up the queſtion before the ſupreme court. I am aſtoniſhed, however, that this application ſhould be made at all, when Mr. Van Neſs, of counſel for the defendant, this morning moved to bring on the trial.

Here Mr. Van Neſs obſerved that his honor had wholly miſunderſtood him.—When the attorney-general moved to bring on the trial, he ſaid he had remarked that he conſidered it the right of the defendant to move to bring on the trial, inaſmuch as he had cauſed the record to be made, and had given notice of the trial to the diſtrict attorney; and that this right would be inſiſted upon whenever the attorney-general was ready to proceed. Beſides, he remarked, it would have been very ſtrange if he had expreſſed himſelf in the manner ſtated by his honor, as he, at that very moment, had in his hands the affidavit, which had been prepared for the expreſs purpoſe of making an application to put off the trial.—The other counſel for the defendant alſo declared that Mr. Van Neſs had been miſunderſtood by his honor. His honor, however, ſaid he could not have miſunderſtood what had been ſaid; and concluded by ſaying, that, however this might be, he would not put off the trial; for, EVEN IF THE WITNESS TO PROVE THE TRUTH OF THE PUBLICATION, WAS IN COURT, HE WOULD NOT SUFFER HIM TO BE EXAMINED ON THAT POINT. He ruled, therefore, that the cauſe proceed to trial.

[*To be continued.*]

IMPERIAL PARLIAMENT.

HOUSE OF COMMONS.

INTERESTING DEBATE.

Monday, July 18.

(CONTINUED.)

Lord Hawkeſbury conceived what the right honorable gentleman ſaid, to bear ſo looſely on the queſtion, that it did not afford any rational concluſion. He allowed that, with reſpect to the defence of the country, both this and a recent occaſion were proper times for attack on his majeſty's miniſters. But he complained that it was made now, as well as before, by a ſide wind, which afforded no opportunity for defence. The charges made on this hand would be found as ill grounded as any other. He noticed the contraſt between the ſentiments ſupported by his majeſty's miniſters, and the ſentiments of alarm and deſpondency maintained by the honorable gentleman. As to giving the country notice of its danger, he had to ſay that, at a criſis like this, when danger was ſuppoſed to exiſt, the country ſhould be informed of it, but care ſhould be taken that the mode and language, and tone that was held, ſhould prepare them to defend the country, otherwiſe the language may do more miſchief than benefit; and when it became a general queſtion, as to his language, not whether it went to raiſe the ſpirit of the country, he feared the right honorable gentleman's language was calculated to depreſs all language whatſoever. He would not impute to the right honorable gentleman any intention of that kind, for he was ſure he had as much of the ſpirit and courage of an Engliſhman as any other man: but he feared his arguuments tended to diſpirit the country. He would ſay his whole mode of treating the militia arguments, had the effect of crying down that force, and interfered with that ſpirit which it was ſo much deſirable to the country to excite. Whenever there were ſentiments of danger, it was neceſſary to be cautious and mature in the communication, as well as in the meaſures taken upon it. If things were not properly arranged, it was poſſible a meaſure may be too complex and too large, and therefore, though his majeſty's miniſters may be prepared with this, as well as other meaſures, it would be wiſe to proceed gradually.

The noble lord proceeded to obſerve upon the charge of the right honorable gentleman, as to what he had called the general remiſſneſs of his majeſty's miniſters, in providing an armament ſufficient to meet the dangers with which the country was menaced, and challenged a minute examination of the meaſures which had been adopted. Upon ſuch an examination he had the fulleſt confidence that it would be found, that a much larger armament had been preſerved, than had ever exiſted in the country at any former period, inſomuch indeed that its extent had excited the diſapprobation of many great authorities in the houſe, on the ground of its expence, although it had been ſtrongly complained of by the right honorable gentleman and his friends, as inadequate. The injuſtice, however, of this complaint, like many other complaints from the ſame quarter, was manifeſt from this circumſtance, that not one ſoldier had been diſbanded from the time peace was concluded, to the recommencement of war, who was not enliſted for a limited period, and the terms of whoſe enliſtment of courſe required his diſcharge, or elſe where troops were only engaged to ſerve during the war. So much as to former cenſures, repeated with ſo much pernacity this evening. As to the preſent ſtate of our military force, he maintained that with reſpect to the quantity or quality of our troops, they were much more formidable than at any period that could be quoted; they were more ſo than at the end of the year 1797, or in the beginning of the year 1798, when the danger of invaſion was not leſs imminent than it could be conſidered at preſent, nor at a time when the country was engaged in war not only with France, Holland and Spain, but with the northern confederacy. It ſhould, in addition to this compariſon, ſo favorable to our preſent ſituation, and ſo demonſtrative of the activity and precaution of his majeſty's miniſters, be taken into account, that we are only in the firſt year of war, and that after any peace, however ſhort or advantageous, it was always found impoſſible for any government immediately to mount up to a ſtate of preparation ſuited to the circumſtances. Making then all the allowances which it was fair and reaſonable to claim, he contended that he had a larger and better diſciplined body of regular troops fit for ſervice, than under ſimilar circumſtances the country had ever witneſſed. He diſdained any wiſh in making this compariſon, to produce a diſcuſſion or detail as to the conduct of miniſters on the ſtate of preparation at particular periods, but merely with the view of replying to the aſſertions of the right honorable gentleman, and of ſhewing that we not only were fully competent to the defence of the country from invaſion, but that, when that danger ſhould ceaſe, our force was alſo competent to foreign operations. The right honorable gentleman, in the courſe of his ſpeech, had taken occaſion to allude to letters which had been addreſſed to lords lieutenants of the ſeveral counties; but the right honorable gentleman's cenſures upon that point would be beſt anſwered, by ſimply ſaying, that thoſe letters were ſent by government, in conſequence of a meaſure ſanctioned by the approbation of parliament; and, that in the preparatory arrangements, theſe letters were deemed eſſentially neceſſary. The right honorable gentleman had objected to the mode of ſelecting officers, which the meaſures before the houſe preſcribed; but he ought to have remembered, that the principle of ſuch appointments were preciſely that which had been adopted and acted upon during the laſt war; and although the officers were to be choſen by the men, yet they were not to receive their commiſſions, unleſs recommended to his majeſty by the lords lieutenants of counties. The objections of the right honorable gentleman to this meaſure, on the ground that it was of a compulſory nature, were rather ſingular, when his former declarations were conſidered, in which he generally called out for compulſory meaſures, if neceſſary, to arm the country; and, indeed, whatever doubts might prevail upon the juſtice or policy of attempting a compulſory levy for any purpoſe of foreign operations, no doubt could exiſt as to the propriety of enforcing it, ſhould neceſſity demand it, for an internal defence. But the right honorable gentleman aſked why not rely on the voluntary offers of the people? although upon every former occaſion he complained that governmeut did not come forward to urge the people to arm, to urge them to exertion. With regard, however, to the meaſure before the houſe, it was not intended to attempt any thing compulſory, unleſs where the voluntary offers were not made, and unleſs they did not promiſe to be effectual towards the object. As to the general principle of this bill, he tho't it the moſt unobjectionable that could be deviſed; the moſt congenial to the ſpirit of the conſtitution; leaſt diſagreeable to the habits and feelings of the people; and the moſt likely to anſwer the purpoſe in view. To the mode of proceeding which government had thought fit to purſue for the purpoſe of putting the country in a formidable poſture, he felt confident that, upon a candid conſideration, no ſound objection could be made. They had bro't their meaſures forward ſeparately, each at the convenient time, and he ſubmitted to the good ſenſe of the houſe, whether a contrary courſe, namely, the propoſition of all of them together, even if matured, might not tend to delay and prejudice the practical accompliſhment of each of them, and endanger the ſucceſs of the general object. He was aware that it was the opinion of ſome very reſpectable members, that the meaſure now under conſideration ought to have been laid before the houſe much ſooner; that it ought to have preceded thoſe which regarded the arrangement of a more regular force, but he firmly believed, that, had this idea been acted upon, it would have been extremely difficult indeed, to proſecute the ballot for the army of reſerve, or to carry into effect, with the neceſſary facilities, the previous ballot for the militia. From theſe conſiderations, he was decidedly of opinion that it was much wiſer the ſeveral meaſures alluded to were not ſuffered to follow each other more rapidly than miniſters contrived. The right honorable gentleman, in the courſe of his ſpeech, ſeemed to argue upon the probability of an invaſion being ſucceſsful; an idea which he could not by any means admit; for, however ſtrongly he might be impreſſed with the conviction that the enemy meditated the attempt, or however much he might feel the opinion that that attempt would be actually made, he was far, very far, from entertaining any the ſlighteſt apprehenſion that the invaſion itſelf would be ultimately ſucceſsful. It was utterly impoſſible, from the known feelings, courage and pride of the country, that it would ever ſubmit to ſubjugation. While there remained a ſpot of Engliſh ground to contend for, it belonged not to the character of Engliſhmen to yield. Even if twenty Londons were captured, ſuppoſing ſuch a thing practicable, the ſafety of the country was ſtill to be looked for. While there was an acre of Britiſh ground unoccupied by the enemy, the triumph of the Britiſh people was not to be deſpaired of. Among the evils conſequent upon invaſion, he was certain that none was greater than this; that perſons who had been in the enjoyment of proſperity, and whoſe career had been marked with glorious exploits, ſhould be reduced to ſubjection. It was obvious that ſuch a thing could not take place without ſinking them to the moſt abject ſpecies of ſlavery. The probability of this circumſtance was apparent from all the experience of hiſtory, which afforded but too many illuſtrations of this fact, that when a great people had bowed to the domination of a foreign yoke, their fate has always been more grievous in proportion to their former importance and glory. With ſuch feelings upon his mind, and he had no doubt they were general in the country, he could not perſuade himſelf to ſuppoſe that an invaſion could be attended with ſucceſs. He did not, however, mean to blame thoſe who over-rated that danger, or who ſaw it beyond the light in which it ought to be viewed. But he highly diſapproved of ſentiments being ſent abroad, which muſt, from their nature and tendency, be productive of conſiderable injury, by the impreſſion which they were calculated to make upon the public mind.—They were, at all events, not the beſt means to be purſued, with the view of giving confidence to the people, or of exciting or encouraging the ſpirit of the country. Such opinions, therefore, as he alluded to, it would be prudent to confine within certain limits. With the ſentiment of the right honorable gentleman, that we ſhould not flatter ourſelves with the idea of complete ſecurity, he moſt perfectly agreed; and that it was right to guard againſt all the chances no man could deny. All the advantages we poſſeſſed, and all the grounds of confidence upon which we were entitled to rely, could not ſet aſide the propriety of attending to that policy which good ſenſe ſo ſtrongly recommended. His lordſhip recapitulated his arguments, particularly againſt the tenor of thoſe obſervations in which the right honorable gentleman and his friends had ſo much dealt, on this and every other occaſion, and which could have no other effect than to damp the ſpirits, and to diſturb the energies of the country, while they muſt have an oppoſite impreſſion on the enemy.

Mr. Windham in explaining ſtated, that his objections to the meaſure applied rather to the mode propoſed of raiſing the people *en maſſe*, than to the principle of ſuch a propoſition.

Sir Francis Burdett. "The beſt, and in my opinion the only effectual ſcheme of defence which can be devised for the country, at this crisis, may be comprised in one measure, namely, a repeal of all the acts which have been passed ſince the accession of the preſent king to the throne, and then you may rationally hope to rouſe the ancient enthuſiaſm of the people, and furniſh them with real motives to fight for the bleſſings of conſtitutional freedom and perſonal ſecurity."

Mr. Pitt. "I feel ſincerely happy that this meaſure has at length been brought before parliament, as it affords a proſpect of that vigor ſo neceſſary in the preſent important conjuncture. I approve of the principle and object of the meaſure. It, indeed, is founded on the principles of the plan, which, unconcerned as I am with his majeſty's government, I have thought it my duty to ſubmit to miniſters. I have always been decidedly of opinion that ſuch a meaſure was eſſentially neceſſary, in addition to our regular force, that the queſtion as to our domeſtic ſecurity might be put beyond all doubt. I am not now diſpoſed, indeed I do not think it at preſent neceſſary, to enter into any inveſtigation of the degree of danger which the country has to apprehend, tho' I am aware it is material that the danger ſhould not be under-rated. But to return to the meaſure before the houſe. I rejoice in its introduction, as the moſt congenial in its ſpirit to the conſtitution of the country; and, in its execution not at all likely to meet any obſtacle from the character or diſpoſition of the people. In its ſtructure there is nothing new to our hiſtory; in its tendency there is nothing ungrateful to our habits. It embraces the intereſts, it avails itſelf of the energies, and it promiſes to eſtabliſh the ſecurity of the country. It impoſes no burthen, nor does it propoſe any arrangement of which it can be in the power of any claſs of the community to complain. Its object is the ſafety of all, without containing any thing in its proviſions offenſive to any. It is perfectly agreeable to the beſt inſtitutions of civilized ſociety, and has for its baſis the rudiments of our conſtitutional hiſtory. It is obvious, that unleſs we make efforts adequate to the criſis in which we are placed, the country is inſecure; and, if