THE QUEEN *against* FUSSELL.

TRIAL OF JOHN JOSEPH IRENÆUS FUSSELL FOR SEDITION, UNLAWFUL ASSEMBLY, AND RIOT, AT THE CENTRAL CRIMINAL COURT,(*a*) BEFORE WILDE, C.J.,(*b*) PARKE, B.,(*c*) AND MAULE, J., JULY 5, 1848.

In July 1848, John Joseph Irenæus Fussell was indicted for making a seditious speech at a Chartist(*d*) meeting at Clerkenwell Green, on Monday, May 29 1848, and for unlawful assembly and riot. Evidence was given that he denounced the conviction of John Mitchel, and said that if Mitchel were sent out of the country, every Irishman must rise to avenge the insult; that there was one safe way of getting rid of bad rulers—private assassination, &c. The meeting was followed by a procession through the streets, which was dispersed at a late hour by the police. Verdict, guilty of sedition and unlawful assembly.

1. *Seditious Words.*(*e*)
   Expressions intended and tending under the circumstances of the time to produce hatred and contempt of the institutions of the country and to induce unlawful resistance, are seditious.
   On an indictment for uttering seditious words, all the words set out need not be proved, but only so many of them as are in themselves sufficient to constitute the crime.
2. *Unlawful Assembly.*(*f*)
   A meeting summoned for the purpose of uttering and listening to seditious language, exciting to violence and resistance to law, is an illegal meeting, and those who call such a meeting and partake in proceedings with such a tendency are guilty of attending an illegal public meeting.
3. *Indictment. Joinder of several offences in different counts.*
   The Court will not quash an indictment containing counts for seditious words, unlawful assembly, and riot, or put the Crown to its election, unless it appear that the form of the indictment is likely to embarrass the defendant in his defence.

(*a*) See note on the Central Criminal Court, below, p. 1133.
(*b*) Afterwards Lord Truro, L.C. (*c*) Afterwards Lord Wensleydale.
(*d*) See Gammage's "History of the Chartist Movement," and 4 St. Tr. N.S. App. G. 1427.
(*e*) See *Reg.* v. *Sullivan*, 11 Cox C.C. 50.
(*f*) The authorities on unlawful assembly are collected in a note to *Rex* v. *Hunt*, 1 St. Tr. N.S. 434*n*.

The prisoner was indicted for sedition, unlawful assembly, and riot.

Counsel for the Crown: The *Attorney-General*, Sir *John Jervis*,(*a*) *Welsby*, *Bodkin*, and *Clerk*.

Counsel for the prisoner: Serjeant *Allen* and *Huddleston*.(*b*)

INDICTMENT.

Central Criminal Court, to wit. } The jurors for our Lady the Queen upon their oaths present, that heretofore, and before, and at the time of the committing of the offence hereinafter mentioned, one John Mitchel [had been indicted, tried, and convicted for felonious compassing to depose the Queen, and to levy war against the Queen, to force her to change her measures, and feloniously expressing, uttering, and declaring such compassings by publishing certain printings against the form of the statute]. And the jurors aforesaid, &c., that John Joseph Irenæus Fussell, late of the parish of St. James', Clerkenwell, labourer, being a wicked, malicious, seditious, and evil-disposed person, and unlawfully, wickedly, maliciously, and seditiously contriving and intending the peace of our Lady the Queen and this realm, to disquiet and disturb, and the liege subjects of our said Lady the Queen, to incite and move to hatred and dislike of the person of our said Lady the Queen, and of the Government by law established within this realm, and to incite, move, and persuade great numbers of the liege subjects of our said Lady the Queen to insurrections, murders, assassinations, riots, tumults, and unlawful assemblies, and to obstruct by force and arms the execution of the laws of the realm heretofore, to wit, on the 29th day May 1848, with force and arms at the parish aforesaid, and within the jurisdiction of the said court, to wit, the Central Criminal Court, in the presence and hearing of divers, to wit, 3,000 of the liege subjects of the Queen then and there assembled, in a certain speech by him, the said, &c., addressed to the said liege subjects, &c., unlawfully, wickedly, maliciously, and seditiously did publish, utter, pronounce, and declare with a loud voice of and concerning our said Lady the Queen, and of and concerning the Government by law established within this realm, and of and concerning the trial and conviction of the said John Mitchel as aforesaid, amongst other words and matter the false, seditious, and inflammatory matter following (setting out the speech with innuendoes) in contempt of our said Lady the Queen, in violation of the laws of this realm, to the evil and pernicious example of all others in the like case offending, and against the peace of our Lady the Queen, her Crown and dignity.

(*a*) Afterwards Chief Justice of C. P.
(*b*) Afterwards a Baron of the Exchequer.

The 2nd, 3rd, 4th, 5th, and 6th counts were in similar form, but set out the alleged speech variously. The seventh count was for unlawful assembly and charged that—

the said, &c., together with divers other evil-disposed persons to the number of 3,000 and more, to the jurors aforesaid unknown . . . unlawfully and riotously did assemble and gather together to disquiet and disturb by force and arms the execution of the laws of the realm, to the great disturbance and terror, not only of the liege subjects of our said Lady the Queen, then and there being and residing, but of all other the subjects of our said Lady the Queen passing and repassing in and along the Queen's common highway there, in contempt, &c.

The eighth count was the common count for riot, and charged that the defendant with other persons

unlawfully, riotously, and routously did assemble and gather together to disquiet and disturb the peace of our said Lady the Queen, and being so assembled and gathered together did then and there unlawfully, riotously, and routously, and tumultuously make a great noise, riot, tumult, and disturbance, and did then and there remain and continue so assembled and gathered together, and making such noise, riot, tumult, and disturbance, as aforesaid, for a long space of time, to wit, for the space of two hours then next following, to the great disturbance and terror, not only of the liege subjects there being and residing, but also of the other liege subjects . . . then passing and repassing in and along the Queen's common highway, in contempt, &c.

The prisoner having been called upon to plead, *Allen* and *Huddleston* moved to quash the indictment or that the Crown should be put to its election as to which of the three charges in the indictment, sedition, unlawful assembly, and riot, they would proceed with. They cited *Young* v. *Rex in error*,(*a*) *Rex* v. *Towle*,(*b*) *Rex* v. *Johnson*,(*c*) *Rex* v. *Kingston*,(*d*) and referred to 3 *Geo.* 4. c. 114. empowering the Court to pass a sentence of hard labour in the case of riot.

WILDE, C.J.: It does not appear to me that this is a case which calls for the exercise of that discretion which has been appealed to. It would be the duty of the judge, in every case, to see that a criminal trial was so conducted as not to embarrass the defendant in his defence. Whether any particular form of indictment will or will not have that effect, must be judged of from the nature of the charges contained in the different counts. On the present occasion, supposing there be any legal objection to the indictment, it would be competent for the defendant to demur to it, or to take such other remedy as by law may be open to him. Now it cannot, I apprehend, for a moment be contended that there is any such a legal objection as can be made the foundation of a demurrer to this indictment. These counts appear to charge the seditious speaking of words, attendance at an illegal meeting, and a riot. Now that may be all one transaction; the meeting may have been illegal; there may have been seditious speaking at that meeting; and the meeting may have gone far enough to be a riot. Therefore the case may well be such as to produce no embarrassment. One of my learned brethren has mentioned a case which was before him, which will illustrate the meaning of that. A man had wounded nine cows at one and the same time, and in one and the same stable, and he was charged with these offences in nine different counts. It was therefore contended that there were nine different offences, but the learned judge in that case refused to interfere, because it was all part of one and the same transaction, and had no tendency therefore to embarrass the defendant. We do not see that this indictment has any tendency to embarrass the defendant in his defence; and upon that ground, fully admitting the propriety of the objection where an indictment has that effect, we do not see that we can either quash the indictment upon any legal ground, or call upon the *Attorney-General* to elect which of these counts he will go upon.

The defendant then pleaded "Not guilty."

OPENING SPEECH FOR THE CROWN.

Attorney-General: May it please your lordships, gentlemen of the jury, I can assure you that I should have been well pleased could I have terminated my official career without appearing before you as a public prosecutor in any matter of a political character. But the circumstances which have given rise to the present prosecution have been such, that I am quite convinced that in the result you will be of opinion that if, preferring my private inclination to my public duty, I had hesitated to assert the law, I should have been open deservedly to great censure. The prosecution has been instituted, not only for the purpose of punishing this misguided man and others, who have taken advantage of what I hope was but a temporary distress, to excite the passions of the people, and not only to warn others who may have been the victims of their delusions, and may have been in-

(*a*) 3 T. R. 98, 106.
(*b*) 2 Marsh, 466.
(*c*) 3 M. & S. 539.
(*d*) 8 East, 41.

fluenced in the consequences of their illegal acts, but, above all, to assure the well-disposed and peaceable loyal subjects of Her Majesty that the law is strong enough, and that the administrators of the law are willing, if necessary, to punish even with severity those who have been guilty of a violation of the public peace.

Gentlemen, you will concur with me in thinking, that it was not to be endured that the country should be kept in a continual state of excitement and alarm; that those who have, greatly to their honour, come forward to assist the Government in the repression of disturbance, should be kept continually in a state of excitement and agitation; and that the defendant and others should do their best to paralyze the trade of the country, from which alone they and their followers could hope for support.

[Explaining the charge of sedition, the *Attorney-General* read the definition of the Commissioners on Criminal Law,(*a*) defining it as

"an offence which, though inferior to treason, is so far similar, that it tends to injure and endanger the political constitution by engendering public dissentions, tumults, and conflicts, by exciting discontent in men's minds against the institutions and laws, or the manner of their administration, or by exposing the Sovereign or public functionaries to hatred and contempt, and thus exciting them to effect certain political changes by unlawful means; such offences, therefore, may be regarded in the light of assaults on the constitution, which, although they do not aim at its destruction, ought, for the sake of its safety and security, to be prohibited under proportionate penalties."

The late Lord Chief Justice *Tindal* also speaks of the offence of sedition, and of the offence of taking part in an unlawful assembly which is consequent upon that crime; because every person who is knowingly present, acting and taking part in a meeting which is made the vehicle or the means of addressing seditious language to the parties so assembled, is guilty of being present and taking part in an unlawful assembly; and even though there be no circumstances of terror and alarm, or violence which would give to that meeting the character of an unlawful assembly, the mere fact of being present at a meeting at which language of that description is addressed to the people assembled constitutes of itself the unlawful assembly which is the subject of the second charge in this indictment; (*b*)

"There is another description of offence which will probably be submitted to your consideration, namely, the exciting and encouraging large masses of the people by means of seditious and inflammatory speeches to commit acts of violence, and to break the peace. If such charges are brought forward, it must be left to your own good sense to distinguish between an honest declaration of the speaker's opinion upon the political subjects on which he treats—a free discussion on matters that concern the public, as to which full allowance should be made for the zeal of the speaker, though he may somewhat exceed the just bounds of moderation, and, on the other hand, a wicked design by inflammatory statement and crafty and subtle arguments to poison the minds of the hearers, and render them the instruments of mischief. He that addresses himself to a crowded auditory of the poorer class, without employment or occupation, and brooding at the time over their wrongs, whether real or imaginary, will not want hearers ready to believe and apt followers of mischievous advice. You will consider, therefore, the language that is employed on such an occasion. If it consists of broad and bold assertion, unfounded in fact; if, in discussing religious topics, you find the speaker endeavouring to be sprightly and facetious on those subjects which make wise and good men serious; if, instead of argument, he deals only in sneers and sarcasm, it will be for yourselves to say whether, under such circumstances, the party charged with the offence is an honest but mistaken man, or whether he is wickedly intending to bring the religion, laws, and government of the country into contempt, and to teach the hearers to despise all those institutions which it is their duty to hold in respect and veneration."

That, I think, is a full and clear exposition, not only of the law applicable to the first charge of sedition, but likewise to what is the consequence of parties designedly attending meetings where seditious words are addressed to the persons so assembled, which constitutes the unlawful assembly which is found charged in this indictment.

But there are other circumstances which constitute an assembly—an unlawful assembly; and those were in a few words described by Mr. Baron *Alderson* in a charge (*a*) which he delivered, I believe, at a special commission held at Monmouth, under circumstances very similar to the present.

"You will investigate the circumstances under which the assembly took place—whether the individuals who presided and were present were so by previous concert, or by accidentally having met,—and if they met by previous concert, you will inquire whether they have met at unreasonable hours of the night—if they have met under circumstances of violence and danger—if they

(*a*) 6th Report, p. 17 (1841).
(*b*) Charge at the Stafford Special Commission, 1842; 4 St. Tr. N.S. 1413.

(*a*) Charge at the Monmouth Summer Assizes, 1839; 3 St. Tr. N.S. 1349; 9 C. & P. 93*n*.

have been armed with offensive weapons, or used violent language—if they have proposed to set the different classes of society at variance the one with the other, and to put to death any part of Her Majesty's subjects. If any, all, or most of these things should appear before you, there will, I think, be little difficulty in saying that an assembly of such persons, under such circumstances, for such purposes, and using such language is a dangerous one, which cannot be tolerated in a country governed by laws; and it is but doing to others as you would they should do unto you, to repress meetings of that description; because what right have any persons to do that which produces terror, inconvenience, and dismay among their fellow subjects?"

There is a further consequence which should be well known by the public of being present at a meeting of this description. I have heard that complaints have been made by some of violence being used towards them, when, they say, they have been innocently present upon occasions of this description. The law well understands that matter. It is the duty of all persons to abstain from being present at meetings of this description; and if they go to such meetings, from idle curiosity, thus swelling the concourse of people, and creating and aggravating alarm, they have no right to complain that in the confusion of repressing disturbance, they, although comparatively innocent, may be sufferers by the act of those who are acting in the repression of that disturbance. But there is a further consequence resulting from the attendance of parties at meetings of this description. If persons go there innocently from idle curiosity, that cannot be justified by the law, they must take the consequence of their presence; but if you should be of opinion that persons meet by previous concert, as it is expressed by Mr. Baron *Alderson*, then the act of one is admissible in evidence to prove the guilt of all; and all who are present by previous concert and with design, have no right to complain that in investigating the parts which they have taken in the transaction, the evidence of the acts of their confederates is brought against them as evidence of their own guilt. I make that observation, not only for the purpose (as far as I can) of announcing what is the doctrine upon that subject openly in this public court, but for the purpose of explaining why it will be my duty to state to you the evidence regarding some who were present upon this occasion, preceding and, I believe, following *Fussell*, the defendant, in their addresses to the people; and why he will be responsible, if he were there by previous concert with others, for everything which was said by those persons in his presence at that meeting so assembled.

Now the meeting in question took place at Clerkenwell, on Monday the 29th of May, after seven o'clock in the evening, and unquestionably was highly calculated, from the numbers of the persons and the time when it was held, to excite terror in the minds of the inhabitants in the immediate neighbourhood. It was held, I believe, without any previous announcement; and in fact you will hear, from the language of the speakers, that by some secret communication, those speakers and their victims were so organized that by some private arrangement the meeting was held without previous notice. A van was drawn into the middle of the meeting, and two persons, I think, addressed the meeting before the defendant, Mr. *Fussell*, appeared. *Fussell* being there in the van, and the meeting assembled around, a person named *Williams* was the first speaker. His words are not the subject of indictment for sedition against the present defendant, but they are the most important evidence upon the second consideration, namely, the unlawful assembly, at which by previous design unquestionably the defendant was taking a part. At that time *Fussell* was present in the van. [The *Attorney-General* proceeded to read and comment on the speeches of *Williams* and *Fussell* (see below.)] Now, you will remember that the language was addressed to persons of the lower orders of society, persons suffering mayhap unfortunately from the depression of trade at that time, which they considerably aggravated by their conduct, and men, therefore, without employment or occupation, brooding at the time over their wrongs, real or supposed, and therefore ready to do mischief, and to whom as a body it was most dangerous that language of this description should be addressed. It had been intimated to the meeting that upon a given signal they should fall in four abreast, and language of an exciting character had been addressed to them before *Fussell* addressed the meeting. *Fussell* having concluded, *Williams* again addressed the meeting, and he ordered them, as I presume by previous concert had been arranged, to fall in. They fell in four abreast, and paraded through the crowded streets of the metropolis, until a very late hour of the night, exciting and creating, as you must necessarily suppose, the greatest terror and alarm in the breasts of the peaceable inhabitants.

Gentlemen, it was not of course to be endured that the Government should have this matter brought to their attention (and it was first brought to their attention, I believe, by the public press), without at once endeavouring to ascertain how the case was to be proved by evidence, and

how the defendant (as he deserved most justly) was to be punished for his offence. The Government and the police, I believe, had received no previous notice of this meeting, and the only course that could be taken by the Government was to ascertain from the public press, where the reports were seen, the names of the gentlemen who had furnished those reports as being present at that meeting. A further question will be, whether the defendant took a part in the subsequent proceedings, or whether the meeting was of a character to amount legally to a riot, of which he may be convicted, and which will subject him to the same punishment as the other offence, with the addition, if my lords in their discretion should think fit to add it, of hard labour.

I am convinced likewise that my learned friend will not contend or suggest that I am here attempting to stifle what I deem to be the highest privilege of the British constitution—open and public discussion. Calm, fair, and legitimate discussion, I (as every Englishmen ought), decidedly advocate; but there is no class of persons who can calmly consider what has recently occurred in this metropolis, without expressing against it the strongest condemnation. Those who are anxious to preserve the constitution must censure it; those who are anxious not to retard improvement must censure it; those who are anxious for free and fair discussion, and fair progression, must condemn it; for there is nothing which so greatly impedes the progress of just and fair and proper reform as an attempt by violence to wrest from any constituted authority that which their calm and honest judgment will not sanction.

EVIDENCE FOR THE CROWN.

Richard Kemmis—Examined by *Welsby*.

I am the son of the Crown Solicitor in Ireland. I produce a copy of the record of the conviction of *John Mitchel*, for felony, at the Commission Court at Dublin. I have examined it with the record.(*a*)

Frederick Town Fowler—Examined by *Bodkin*.

I live at 4, Great Charlotte Street, Blackfriars Road. I am in the habit of reporting for the public press, and have been so employed for five or six years. In the course of my employment, I attended a meeting on Clerkenwell Green, on Monday, 29th May. I got there about half-past six o'clock in the evening. There was a van, on which a platform was placed for the speakers. I saw the defendant, *Fussell*, in the van. There were eighteen or twenty persons in it, and between 2,000 and 3,000 persons were assembled.

What class of persons did they appear to be chiefly?—There were some working men; the others I hardly know how to describe—the lower orders, I suppose; they were very dirty and very ragged. I noticed a person named *Williams* there; he spoke first to the meeting. He was on the van. I took a note of what he said, such as I should take if I gave a newspaper report. I did not take it all, only a portion. This is the note I then made—(*produced*); it is not in shorthand, but in abbreviated longhand—(*reads*):

"My friends, the bloody aristocracy have now done its work at last,"

or,

"at least,"

I am not positive which;

"they have sent John Mitchel from his country. I trust while you remain here you will be peaceable, and obey my injunctions as to the course you shall adopt. All the arrangements have been made; and when you have been addressed by two or three speakers, I shall give you a signal, when you must fall into marching order, four abreast, and follow me where I shall lead you; you will know where when you are there. I shall take you then to a place where you will meet ten times as many as are here, and then you will be told what to do. I have made up my mind on a course of action. I fear banishment no more than that brave patriot and noble man, John Mitchel, who has been *nailed* by these base, bloody and brutal Whigs, by partizan judges, packed juries, and a perjured sheriff."

That was all I took of *Williams's* speech. It was spoken loud, so as to be heard by the people assembled. A man named *M'Carthy* then addressed the meeting. I have a note of portions of his speech. He commenced something about the base, brutal, and bloody Whigs. I did not take that; but he continued:

"If John Mitchel is allowed to leave his country, other brave men will fall victims to that bloody Gagging Bill. It is now your time if you value liberty, to strike the blow. Ireland may, for aught I know, at the present time be in arms; but if she is not, she is only remaining quiet in order to recruit her strength the more effectually to strike the blow, and release herself from tyranny and oppression."

That is the whole of his speech. These two speeches were received by the mob with clapping of hands, and apparently with great satisfaction. *Fussell* then

(*a*) See above, p. 599.

proceeded to address the meeting. I did not take all he said, only such parts as struck me—(*reads*):

"The Government have succeeded in convicting honest John Mitchel. How have they accomplished it? Why, by packed juries and partisan judges. I tell Lord John Russell that I have no sympathy with his damnable Government. John Mitchel had asked if the Queen had not forgotten her duty to her country; I now ask the same question, and adopt his views. If the Queen forgets to recognize the people, then the people must forget to recognize the Queen. If John Mitchel is sent out of his country, every Irishman must rise and revenge the insult, or they will no longer be worthy the name."

The next part of his speech consisted of some abuse of the *Times*, and accused the *Times* of being in the pay of the Government, and keeping back the Irish news. I did not take a note of that, not thinking I should be required here, and a newspaper would not require that. He went on:

"The Government is not worthy the support of any honest man, it is too contemptible to be recognized, and you must use your best endeavours to overthrow it. And now I wish to impress upon you that there is one safe way of getting rid of bad rulers who forget their duty to their country: I openly avow that I mean private assassination. What made the Emperor of Austria fly from his country? Why, the fear of assassination; and it is by these means that other bad rulers will soon fly. I have five sons"

(I am not positive whether it is five or four—I suppose I was knocked on the elbow at the time),

"and I now declare that I would disown any one who would refuse to assassinate any person who may be instrumental in banishing me from my country for such an offence as John Mitchel was convicted of."

That is all I took of *Fussell's* speech. *Williams* then said,

"Now, my lads, fall into marching order—four abreast."

The people obeyed that order, and *Williams* placed himself at their head. As far as I recollect, the three speakers took the lead. After forming in that way, they marched down Aylesbury Street into St John's Street. I left them there, went down Wilderness Row, and met them again in Goswell Street, at the corner of Old Street Road. They went down Old Street into the City Road to Finsbury Square. They walked round Finsbury Square, I suppose, half or three-quarters of an hour, apparently waiting for some other parties; in fact, it was stated that there was some meeting at Stepney, and they expected the parties from Stepney down there. I did not see them joined by any other body of men there. After they left Finsbury Square, they proceeded up Chiswell Street, Beech Street, Barbican, into Long Lane and Smithfield. They then went down Snow Hill, along Holborn to the corner of New Oxford Street, till they came to (*Feargus O'Connor's*) Land and Labour Bank, where there was a stoppage, and three cheers were given. They then went along Broad Street, and turned off one of the streets near Monmouth Street, in the neighbourhood of Seven Dials, down Upper St. Martin's Lane, through Cranbourn Street, into Leicester Square, and up Prince's Street. From there they turned off, I think, by Macclesfield Street; they took the street from the bottom of Dean Street, and went into Soho Square, where I left them. They stopped at the Chartist Assembly Rooms, I think it is called, in Dean Street, and I believe they were addressed from the window. I cannot speak positively. I saw men at the window. I cannot say whether they were addressing them, but it appeared so.

Of about how many persons did this procession consist?—When it started, I should say about 3,000, but it was almost impossible to say the number at the last, you could not see them; it was increased by large numbers at every street. The party said, "Fall in," and the people did fall in as they went along; in fact, there might be 50,000 or 60,000. I could not speak positively. Dean Street was completely filled from one end to the other, and they turned into Oxford Street. It was about a quarter to ten or half-past nine when I left them in Dean Street. They left Clerkenwell Green about a quarter to eight.

Did you notice during their progress what effect was produced upon the inhabitants residing in the line of march?—A great deal of fear, and terror, and surprise, it appeared to me. A number of them shut up their shops and closed their doors.

Cross-examined by Serjeant *Allen*.

It is usual to take reports for the newspapers in abbreviated longhand; this is it (*handing in his note-book*). That is the ordinary way of a reporter—not of every reporter. It is not the way in which a shorthand writer reports. I reported this meeting for the *Times*. I was not employed to do it. I attend any meeting I like, and send my copy to the newspaper, and if they use it, they pay me for it. I did not tell you I had spoken to

the editor of the *Times*. I do not know that I have ever done so. I have seen him dozens of times. I believe he is Mr. *John Delane*. I have taken orders as from him, in acting as a reporter. I have been a reporter six or seven years altogether, not constantly. I have been a newspaper proprietor in the meantime. The paper was called the *Railway Telegraph*. I have not during that period attended the Police offices in any capacity. I have been to a Police Office, thirteen years ago in the capacity of a defendant, for running away from my employer when I was an apprentice. I have also been there as a defendant, but it can have nothing to do with this case. It was on a charge by the *Morning Chronicle*, but it is calculated to do me a serious injury in my profession, these things coming out; but as you ask me the question, I must explain how I was there.

Do you know the distinction between a person charged with a lesser offence, who is called a defendant, and a person charged as a prisoner with a crime?—I know what you are aiming at. I was charged with felony. There is no reason for beating about the bush, if you will allow me to explain it. Six or seven years ago, as I was going home one night with my brother and another person, I knocked a lighted cigar against the door of the *Morning Chronicle* Office. The porter came out and asked, "Why are you knocking the ashes of your cigar into our letter-box?" I said, "I have done nothing of the kind." He said, "You have, and it has been done two or three nights. It is a good job that no policeman is here, or I would give you in charge." The parties with me fetched a policeman from the opposite side, and said, "Here is a policeman, if you have any charge to make." The porter immediately said to the policeman, "I give this person in charge for putting the end of his cigar into our letter-box." The policeman said, "I know nothing of you; I must take the charge from your employer." We went round to the *Chronicle* Office for the purpose of taking the charge, and my brother, who was with me, wished to go into the office. The porter said he could not come in. The policeman said, "Yes, he must; he saw the charge, and he must be present;" but the porter insisted he should not, and he *up* with his fist and knocked my brother down, and the policeman took him in charge for the assault, having witnessed it. Dr. *Black*, who was then the editor of the *Morning Chronicle*, came down, and I was given in charge to the policeman on a charge of arson, taken to Bow Street, and locked up. The porter was given in charge for the assault, and he was bailed. The case came before Mr. *Hall*, at Bow Street next day, and I was dismissed, the magistrate saying there was no ground at all for giving me in charge, and the porter was fined 3*l*. for the assault on my brother. That was the charge of felony. I commenced an action against the proprietor; but the policeman who took the charge had left the force in the meantime, and I could not complete the evidence, and abandoned it; and not proceeding with the action I was *let into* the costs, and had to pay 48*l*.

But there was a case with the Sun Fire Office, where there was really some burning, was there not?—Yes, a house which I held in conjunction with my brother was burnt down. I claimed 410*l*. from the Sun Fire Office. I got none of it. I was insured for 500*l*. The defendant recovered a verdict upon some points. There were six pleas on the record. They got a verdict upon three, and we upon the other three; but I know that our three precluded us from getting any money. I do not know whether one of the pleas was that I had set fire to my own house; I never looked at the pleas, but it is not very likely, or they would not have offered to settle it before we went to trial. They offered to settle it, and to arbitrate. I was at the trial. I did not hear that I was charged with setting fire to my house. There were a great many things said by counsel, but I never pay any attention to those things. I am paid for the reports I take at per line. I report for all the papers—not for any particular one. I send copy on the chance of their inserting it, and if they insert it they pay me per line. I was never in the employ of the Blackwall Railway Company, nor was my brother. I was never charged with robbing them or anybody. I have attended nearly all the Chartist meetings, from the commencement on Kennington Common (*Williams*, by-the-by, was there), up to the present time. I assisted in reporting the proceedings at Kennington Common. *Potter* was with me at this meeting, on the 29th May. He reported the meeting for the *Morning Chronicle* and *Daily News*. He reports for all the papers the same as myself. Mine is a sort of general discursive engagement; it is a toss up whether we get our reports in or not, the same as it is with barristers, whether a solicitor gives them a brief or not. If we do not do our work well, we do not get work again.

And if you do not send in a report with something in it, you are not likely to have it inserted or to be paid?—I see your drift. If there is nothing in it, the editor does not put it in; but he does not find fault with us because there is nothing in it. If there is nothing in our report worthy of

public attention, the chances are that the editor would not put it in. If it was something very attractive, or novel, or extraordinary, most likely I should get it in.

Re-examined by *Bodkin*.

What are the chances of your getting employed again if you send to a paper that which is not true?—Why, you may keep sending copy year after year, and never have a line in. They do not say, "You have sent us a thing that is not true," but it would deprive us entirely of our living; they would cut us off. Whatever we get depends upon our sending the truth.

Henry James Potter—Examined by *Adolphus*.

I live at 4, Great Charlotte Street, Blackfriars Road, and am a reporter. I report for all the daily papers. I report in shorthand. I attended the meeting at Clerkenwell on the 29th May. I got there about seven o'clock. The meeting did not commence till ten minutes after. There was a van in the centre, which served the purpose of a platform. I was on it. There were about 3,000 people assembled round the van when the proceedings commenced. There might have been about thirty on the van, it was full. *Williams*, *M'Carthy*, and *Fussell* were there. I took a note in shorthand of part of the proceedings. I did not take the whole. I took as much as served my purpose. *Williams* addressed the meeting first. These are my original notes, which I took in the van. I did not take all that *Williams* said. I took the salient points for newspaper reporting. He said,

"Friends, the b——y aristocracy has done its work at last; although we have got a Government spy among us, we do not care; that man (I believe alluding to a policeman in the crowd, my impression is that he pointed to somebody in the crowd, but I do not exactly recollect) has transported his own sons; but keep the peace, my friends; but if any man disturbs you, I hope you have sufficient energy to defend yourselves. Now, keep the peace, and I will take you to a place where you will meet five times the number of men that are collected here. I will take you to a certain place, and we will hold a meeting there; when I give you the signal, I want you to fall into marching order, four abreast, and to follow me where I will lead you. I will then take you to a place where you will meet ten times as many persons as are here, and then you will be advised what to do; until then I ask you to be obedient to orders."

That is all I have on my notes; but I recollect that he advised them to be orderly and steady, and not to be riotous, but to conduct themselves peaceably, to follow him, and place implicit reliance on his directions. I do not recollect that he said anything about *Mitchel*. He did not say much more than I have got down. The speeches were all very short; and *Williams* requested them to be brief. *M'Carthy* spoke next; I beg your pardon, I have taken a large M which I put down for *Mitchel*, as the beginning of *M'Carthy's* speech. *Williams* went on to say:

"I do not fear punishment more than Mitchel; he does not care for his punishment; he feels proud of his punishment, although he is manacled, and although the Whig Government have determined to murder that honest patriot. The *Gagging* Bill was brought in for no other purpose than to murder him; honest John Mitchel has been murdered by these base, bloody, and brutal Whigs, through the instrumentality of packed juries and partizan judges."

Then came the direction of *Williams*, which I before alluded to, and subsequently *M'Carthy's* speech. He agreed with *Williams* in his condemnation of the Whigs:

"Would the people of Ireland allow John Mitchel to be sent away from his native shores? If they allowed John Mitchel to be taken away from his native land, many other brave men would fall victims to the diabolical *Gagging* Bill. It is now the time for all who value liberty to strike the blow, and Ireland will rise in arms; if that country has been quiet, it is only that it might recruit its strength to make a bold effort to release herself at the proper time."

That is all I have of *M'Carthy's* speech. *Fussell* followed; he said,

"The Government has succeeded in obtaining the conviction of honest John Mitchel, by means of subservient judges and packed juries. John Mitchel had asked whether the Queen had not forgotten her duty to her country; and I advocate the same sentiments that John Mitchel has uttered. Government, it has been said, has acted upon expediency; but that is a ridiculous and false plea for so great a crime. I have been told that I must not use such language, because I shall bring the Government into contempt; but that is ridiculous, for the Government is so contemptible at present, that it would be impossible to bring it into greater contempt. I should like to tell the meeting that there is one safe way of getting rid of rulers—those rulers who forget their duty to their country; and that is by private assassination. If my sons were not capable of assassinating any person who sent me out of the country, I should be ashamed of them; these are the means of chastising the most evil nations on the earth. The fear of private assassination made the Emperor of Austria run; and it is the fear of that might make rulers in this country run also. If John Mitchel was sent to Spike Island, then it is quite evident that you may use *spikes* for the Government. I have five sons, and I would disown them if they were not ready to assassinate men who sent me out of the country for such a crime as that of which John Mitchel was said to be guilty."

That is all I have. I have another note here of *Williams's*. He then said, "Now, my friends, fall into marching order." They obeyed his directions, and fell in four abreast, and marched through the streets. *Williams* was in the front rank, and *M'Carthy* and *Fussell*, I think, but I am not quite clear about these two. I went down Red Lion Street, I think it is, and met them again at the corner of Wilderness Row, and then at Finsbury Square. They then marched round the square two or three times. I should think there were 7,000 or 8,000 people then. I then followed them up Holborn, down what used to be Monmouth Street, a street that leads into the neighbourhood of St. Anne's Church, and down a street into Leicester Square, up Prince's Street, Compton Street, and Dean Street, where the Chartist Hall is situate. They there shouted, as they had done on the road previously, and were received by a party, who appeared to address them from the window of the Hall, but on account of the noise I could not distinctly ascertain whether he was addressing them, or whether it was a mere dumb show. I then left them.

Cross-examined by Serjeant *Allen*.

Where do you say you live?—4, Great Charlotte Street, Blackfriars Road. That is the same house as the last witness lives in. We do not live together, but we have both been there six or seven months. My engagement is pretty much the same as his. I have not heard him examined. I send my report to any of the papers. I was not engaged by any paper to attend this meeting; I went voluntarily. I am not aware that there were any but myself and *Fowler*; but among so large a crowd there might have been without my seeing them. I could have done it alone, but we heard of the announcement at the same time, and as it was likely to be a matter of profit, one could not justly take the whole of it, so we agreed to divide it, and take the meeting between us; we were, in fact, partners, and shared the proceeds. We go shares in many things; it is convenient.

I retired with *Fowler* from the meeting. We did not compare our notes. He did not read to me what he should send to the *Times*. I wrote out one portion of the meeting while he wrote the other, so that we had no occasion to compare notes. I do not recollect which portion of the meeting *Fowler* wrote. Sometimes one writes the beginning, and the other the speeches. I recollect writing some of the description of the procession, but whether I wrote it all I do not know. The procession was quite enough. I have an impression that I wrote *Fussell's* speech, but I am not positively certain. There was a great noise at intervals. While *Fussell* was speaking I was in the van, immediately behind him. He spoke for about ten minutes, as near as I can recollect; they all took about the same time. There was a noise, unless there was anything sprightly said. There was nothing very sprightly said, to my mind, but that is a matter of taste; when I say I only took the salient points, I mean the points that I thought most likely to be of use in a newspaper report.

May I take the liberty of supposing that that means, likely to induce the editor to insert it?—Well, you may suppose that. Of course, if it was all nonsense they would not put it in. I think the newspaper did put all in that I sent. *Fowler* and I did not compare our copy before we sent it. We could not compare it, because they were different parts. I wrote a portion and he wrote a portion, there could be no comparison; one was grafted on the other.

Horace Hardy—Examined by *Clerk*.

(Police-sergeant, G 15). I was present at the meeting. I did not report any of it. The meeting was cheering very much. *Williams* came to the front of the van, and put his hand against *Fussell's* leg while he was speaking. I do not think *Fussell* intended to have left off so soon, and *Williams* said, "Now, friends, fall in four deep," and the mob formed into the procession four deep, as he desired, and marched off the Green. I did not see who walked in front of the procession until I got to Compton Street, Clerkenwell, a short distance from the place, and I then saw that *Williams* was in front of the procession. I saw *Williams* leave the front of the procession in Compton Street, and come down the sides. He spoke to the people who were walking on the pavement, and said,

"Now, friends, if you are friends to the cause, you will fall into the procession, and not walk on the pavement."

I do not know whether any one fell into the procession then. The procession was marching along at the time. They proceeded along Goswell Street, Old Street, and City Road down to Finsbury Square. They cheered several times as they went along. They marched round Finsbury Square two or three times, waiting, I believe, for another party to come up. I did not see whether any other party joined them. I know a person of the name of *Vernon*. I did not see him at the meeting before it started. The first I saw of him was at Finsbury Square; he was then marching with the procession. I cannot call to mind in

what part of the procession he was. After leaving Finsbury Square, they proceeded along Chiswell Street, Beech Street, Barbican, Long Lane, through Smithfield, up Holborn, and turned down, I think, Great St. Andrew's Street, and got into Leicester Square; they then went along the end of Piccadilly, up Princes's Street, Compton Street, and up Dean Street, to No. 83, where there are rooms occupied by the Irish Confederates. A great number of persons came to the windows and the door. The mob did not positively halt, but they moved much slower, and there was a great deal of cheering from the mob and from the house, and several persons from the house came out and joined the procession. After leaving Dean Street they went into Oxford Street and down Regent Street, through the Quadrant, through Whitcomb Street and Pall Mall East, through Trafalgar Square into the Strand. In the Strand I heard some persons in the procession singing to the tune of the "Marseillaise Hymn," and also to the tune of "Rule Britannia." I do not know the words, but I had heard them sing the same at some of their previous meetings, to some words about the Charter. The words they sang to the "Marseillaise Hymn" appeared to be an English version of that which I have read. From the Strand they went to Fleet Street. They halted at the *Dispatch* newspaper-office, and hooted and groaned a very great deal, and some persons who stood near me said, "Let us smash the place in." That was not general, but the hooting and groaning was general. They then passed towards Farringdon Street. They there hesitated, and many of them said, "Let us go to the *Times* office." They did not go, but proceeded up Farringdon Street, and up Skinner Street and Giltspur Street, into Smithfield. *Williams* was then at the head of the procession. He said to the leading section of the procession,

"We will halt here in Smithfield, and I will get up a lamp-post and address them."

He or some one got up a lamp-post. I do not know who it was. I moved away out of the crowd. The City police then interfered, and they moved along Long Lane, and to Redcross Street. They halted at a coffee-shop there. *Williams*, who was at the head of the procession, said,

"Now do not any of you come inside, don't come inside the walls of the house."

Serjeant *Allen* objected to this evidence being given of the acts of the procession, *Fussell* not being proved to be present.

WILDE, C.J.: *Fussell* is not shown to have left the mob. The evidence is that he concurred that they should go somewhere, and do as they were bid by *Williams*. Then, unless he separates himself from them, how can you stop the inquiry?

Witness: *Williams* said he would address them from the window of the coffee-shop. He did so. I did not see whether *Fussell* was there at that time. I have got a copy of my notes. *Williams* said,

"We have had a meeting now in spite of *finality Jack*; he would not let us have a meeting on the 10th April; we have had one now without his leave."

He said they would continue to meet night after night until such time as they had news from Ireland, which the damnable press would not give them.

"I mean,"

he said,

"when our Irish brethren will want us to assist them in obtaining their liberties."

Vernon afterwards addressed them from the window, and *M'Carthy* after him. *M'Carthy* said,

"Not to-night, but to-morrow night"—

that was in answer to some people in the crowd, who said,

"Come down to-night, come down among us to-night, and lead us, and we will do it to-night!"

I cannot say what that referred to; it was while *Vernon* was speaking. *M'Carthy* said,

"No, not to-night, but to-morrow night, and bring your guns and pistols with you."

The City police then interfered, and dispersed the assembly. I was in plain clothes.

Cross-examined by Serjeant *Allen*.

I did not see *Fussell* after the procession started. I heard *Williams* enjoin them to keep the peace and be orderly, perhaps more than once, I will not be quite sure. He said after it started, that if they were friends to the cause they would fall in, and not walk on the pavement. There were a great many private persons, not belonging to the procession, on the pavement. Walking on the pavement would have obstructed the way. That might possibly have been his reason for saying that. I thought at the time it was for the purpose of increasing the procession. It might have been either way. I waited till the meeting dispersed. That was about half-past eleven o'clock. They dispersed in disorder. The police removed them violently rather—I mean the mob dispersed violently. They ran away. I should say there were at least 3,000 persons present before the coffee-shop at that time. That was the greatest number there had

been in the procession. There was at no time as many as 15,000 or 16,000; if I was to include the persons on the pavement, there might have been, but not in the actual procession. It was impossible to estimate the numbers on the pavement. As far as they went all along the streets were generally crowded with persons looking on. Persons kept coming up the by-streets into the thoroughfare where the procession passed along. They were people there who merely came out of curiosity, attracted by the procession, but not in it.

They were not running away in terror and alarm, but coming up to observe it? Yes, there were not 15,000 or 16,000 persons in the procession. I counted them once, and estimated the number in the procession at about 3,000—that was in Oxford Street, while they were coming out of Dean Street. What *Williams* said at the coffee shop was a few minutes before they dispersed. They did not disperse of themselves, they were dispersed by the police. I was in the crowd in plain clothes. I do not know how many policemen there were. The police ordered them to remove, and they began to run, and I ran with the rest; in fact, I was obliged to run—we all went together. I suppose that was upon the order to disperse, I do not know. The police were dispersing them. I could see the police standing across the road, and charging the people forward, and then the mob ran, and I ran too in the midst of them. I heard several of them say, "Don't run like this; let us stay;" but I did not see anybody stay. I did not hear the order to disperse.

Richard Cooke, foreman to Mr. Nott, gunmaker in Regent Circus, stated that he was not present when the procession passed.

James Collins (City-policeman, 150)—Examined by *Welsby*.

My division of police was called out on the night 29th May. We went to Redcross Street, where *Cartwright's* coffee-shop is. There were, I should say, between 3,000 and 4,000 persons there—3,000 at least. The great majority of them consisted of Irish, and boys, and women. Some persons were addressing them from the window. There was very loud cheering in the crowd. I was not near enough to hear what was said. We had orders to disperse the mob. We first tried to do so quietly without drawing our truncheons. We were not able to disperse them. They would not take any notice of what we said. We then proceeded to disperse them with our truncheons drawn, and drove them into the lanes and small streets in the neighbourhood. The great majority of them collected again in Golden Lane. That was between ten and twelve o'clock. We followed, and endeavoured to disperse them, and I received a brickbat in my face. I did not myself see any other missiles thrown, but four of us, I think, were wounded. A body of the Metropolitan police came to our assistance. I was called away between twelve and one o'clock. I left a body of police there then. The mob was then very nearly dispersed, but they were hanging about. Hot water was thrown at my brother officers from the windows and from the courts in Golden Lane. I did not see the hot water, but my brother officers felt it on their faces.

Cross-examined by Serjeant *Allen*.

I am not acquainted with their names, *Tyler* was one who was wounded. He is not here that I know of.

James Terry—Examined by the *Attorney-General*.

I am a glass dealer, at St. John Street, Clerkenwell. I remember the meeting on the 29th May(*a*). They began to assemble about half-past six or seven o'clock. My shop is about four doors from Aylesbury Street, which goes to the Green. I could see the persons as they passed and

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(*a*) The following notice was issued on May 30, 1848:—

CAUTION.

Whereas Meetings have recently been held of large numbers of persons in different places in and near the Metropolis, and whereas on Monday night last (the 29th instant), persons who had been present at several of such meetings, afterwards assembled together in large numbers and walked in procession through some of the principal streets of the Metropolis, under circumstances calculated to excite terror and alarm, and whereas information has been received that such persons have declared their intention of again assembling and proceeding in the same manner through the streets of the Metropolis; and whereas the peaceable subjects of Her Majesty are thereby alarmed and the public peace is thereby endangered: Notice is hereby given that such assemblages and processions are illegal, and will not be allowed, and all well-disposed persons are hereby cautioned to abstain from attending, being present at, joining, or taking any part in such assemblages or processions. And notice is further given that all necessary measures will be adopted to prevent such processions taking place, and effectually to protect the public peace, and to suppress any attempt at the disturbance thereof.

C. ROWAN, } Commissioners of the
R. MAYNE, } Police of the Metropolis.

Tuesday, May 30, 1848,
Metropolitan Police Office,
Whitehall Place.

repassed to the meeting. I was not alarmed at this meeting; my family were, merely from the excitement of a large body passing similar to what might be expected from the passing of a procession of any other kind. I shut my shop up, and many of my neighbours also. My wife and daughters were a little excited by the number of people. There were 600 or 700. I saw the procession turn out of Aylesbury Street. There might then have been 600. I was not present at the meeting myself.

Joshua Blizzard—Examined by *Welsby*.

I am a hatter, of 1, Aylesbury Street, Clerkenwell. On the evening in question I shut up my shop at five o'clock. I was alarmed in this way: I supposed my windows would be broken, or property destroyed. I did not suppose personal injury. There was a noise. We had the police every night, and were obliged to shut up every evening while it lasted. We had the horse troops one night, and of course we were alarmed.

Cross-examined by Serjeant *Allen*.

You had no personal apprehension?—No, the people were of the worst class you can see in London. I mean persons of bad character. I do not say there were all the worst, but the assemblages had done us a deal of mischief. They were sober as far as my knowledge went, but we had the processions every day in the week.

WILDE, C.J.: Will you state what the general conduct of the people there was?—There was an assemblage; one man stood up to speak—he had 2,000 or 3,000 to talk to. There were about 100 round him who could hear. I did not know any of the speakers so as to be able to name them. They were the worst description we ever had. I have no particular recollection of what occurred on the 29th. I cannot distinguish that night from any other. The procession caused the shops to shut at four or five o'clock. Ten is the usual hour. The meeting began at seven or eight, but there had been an assemblage before that night. The shutting up was general, and many of our customers have had the opinion that Clerkenwell is a very bad neighbourhood. It was fear and alarm that caused me to close so soon.

The case for the Crown having closed, Serjeant *Allen* and *Huddleston* objected that there were certain variances (stated in the ruling of *Wilde*, C.J., below) between the defendant's speech as laid in the indictment and proved in evidence, and were about to cite authorities.

PARKE, B.: It is no use citing cases. It is admitted you must prove some words, as you do in an action of slander prove some of the precise words, and show that these words must be actionable. There may be parts struck out without affecting the remainder. Their lordships having consulted,

WILDE, C.J.: The rule that has been suggested is no doubt correct. If sedition be charged as having been uttered by a statement of a greater quantity of matter than is proved, but so much is proved as will constitute the crime, then it is quite immaterial to prove so much of it as you may abstract, and yet have a perfectly good indictment containing a distinct legal crime.

Now the indictment charges the defendant to have said,

"If the Queen neglects to recognise the people, then the people must neglect to recognise the Queen."

There is scarcely any word in that sentence which you could omit and yet leave the substance of the words upon the face of the indictment. The evidence does not prove the word "neglects" to have been used, but the word "forgets" in that part of the sentence and also in the following part. I apprehend that if I take out the word "neglects" and that I can put in no other word, I have not enough left to give the fair effect of that which the defendant is charged to have said, so as to make it amount to a crime. I therefore conceive that so much of the indictment must be considered as not proved, and be struck out.

Now with respect to the next objection, the passage in the indictment is:

"If John Mitchel is sent out of his country, every Irishman must rise and revenge the insult."

If you stop there, there is enough. If that is proved, then the question will arise, whether the failure to prove what follows:

"or you will no longer be worthy of the name"—

whether you may not abstract that from the indictment and still leave the whole substance of the matter which the defendant is charged with upon the indictment sufficiently sustained by the evidence. Supposing the defendant had never been charged with using either of the words in that part of the alternative which is the subject of objection; supposing he had been solely charged with using the expression,

"If John Mitchel is sent out of his country, every Irishman must rise and revenge the insult,"

would or would not that have been open to the charge of sedition? I apprehend that it would be sufficient to make the matter good upon the indictment, and that it would be just as good without the words which follow as with those words.

Now with regard to the last objection, that the indictment charges the defendant with having said

"there is one safe way of getting rid of rulers who forget their duty to their country,"

and the evidence is that he said

"there was one safe way of getting rid of bad rulers."

It does not appear that the omission in the indictment of that which the prisoner has been proved to have said at all varies the sense of that which he is proved to have said. He is proved to have said all that he is charged with, and something more. If that something either qualified or altered that which remained, it would be a substantive variance.

SPEECH FOR THE DEFENCE.

Serjeant *Allen* in his speech for the defence, referred to the charge of riot.

WILDE, C.J.: You may relieve yourself with regard to the charge of riot; we are all of opinion that there is no evidence to go to the Jury with respect to riot.

Allen: If that falls to the ground, so must necessarily fall to the ground that other charge of an unlawful assembly, because I apprehend as far as I can understand, the distinction which the writers from time to time have endeavoured to draw between these charges, riot, rout and unlawful assembly, where persons meet together tumultuously and riotously for the purpose of carrying out some object of their own, whether legal or otherwise, by violence and tumult, and proceed and actually do commit and carry out the purpose for which they so tumultuously assembled, that would constitute a riot; but if persons assembling with the same view take only one step that falls short of a completion of the act which they assembled thus riotously to commit, then I apprehend, that according to the legal definitions to which I have had access, it would not constitute a riot, but a rout. But if persons assemble with riotous intentions with the purpose by violence and against the law to carry out some specific object, but take no steps whatever in the performance of that object, then I believe that that would constitute an illegal assembly; but the foundation of a charge of an illegal assembly must be this, that if they had proceeded to carry out their purpose it would have constituted riot. Therefore, if there was no intention, no meeting, no purpose of that character, which would in itself, if prosecuted, constitute riot, then I may dismiss the consideration whether this was or was not an illegal assembly; for I apprehend the same deficiency in the evidence which appears here to substantiate the charge of riot, will appear also in the substantiation of that portion of the charge which charges the illegal assembly. If I am relieved from that difficulty I should then have indeed to contend alone with that which I believe is, and ought to be, the gist of this charge, namely, that the defendant at a certain meeting made use of seditious language.

Gentlemen, as regards some of the words which are charged, I would not prostitute the garb which I wear, or the privileges which I enjoy, by attempting to justify them. My defence will be that they were never uttered, and I shall prove on unimpeachable evidence that it is impossible that any such words advocating private assassination could have been uttered.

Gentlemen, we live in times of great excitement. The Continent is in a state of revolution, and has caused men's minds to look to their own safety at home; has created a jealousy which did not previously exist, and a fear lest we should become involved in the disorder and anarchy which reign around us. If therefore words of an exciting nature were uttered at such a moment, they would be estimated very far beyond their natural import. I cannot but see that this prosecution occurs at a time when men's minds are alive to any utterances that may cause excitement similar to that which has created confusion and bloodshed elsewhere. But I implore you, gentlemen, to forget that, to forget all that has passed around you, to look to the evidence alone, not remembering other countries or other times, but suppose, if you please, that these words were uttered when all was tranquil, when there was no fear of uproar, when the laws, as they still are, were respected and observed.

I confess that I feel at a loss for formulating what will, and what will not constitute sedition. It seems to me a word existing by itself, with no positive meaning. That which is seditious in one class of men seems not to be in others. According to the definition that has been given, sedition seems to be any address or words which shall arouse a feeling of contempt against the government, or excite any attack against the constituted authorities. If such a definition as that would do, who of our politicians would be safe? Who amongst our rulers would be otherwise than chargeable with the

offence? All, as I conceive, depends upon the meaning of the word "government," and, gentlemen, it is from a mistake of the meaning of that word, from a misapprehension as I believe on the part of the law officers of the Crown of the extent, purpose and meaning of that expression that this indictment has originated against this man *Fussell*. Does the word "government" mean the whole constituted authorities of this realm? Does it mean the establishment of kings, Lords and Commons and Executive as by law established? Does it mean, in fact, the whole basis and structure of the laws by which we are governed, or does it mean this? Does it mean only those persons who are trusted temporarily with the executive who are, in fact, the masters for the time being, passing in and out of office as different parties shall prevail in the House of Commons?

Gentlemen, it is the latter construction which I apply to it on all these occasions; it is the latter construction which has ever been given, and in which it is accepted, and I need not appeal to the common parlance of every person who sits in that box, whether in speaking of the officers in power for the time being, he does not use the word "government" generally without intending to mean or to apply one observation in subversion of the constituted law of this realm? We use the word from day to day, and in all our conversation, the government of the day meaning thereby nothing, but the officers who are in truth Her Majesty's ministers, who, having power to-day, may have none, as you have seen, to-morrow.

Gentlemen, it is too much to come down here to-day to ask you to strain the signification of that word into a meaning, which I believe most honestly it was never intended to convey by the speaker and the understanding of the hearers, and to apply it to the whole constituted laws of this realm and the general government of the country. I think I am extremely reasonable in asking you to limit it to the ministers in power for the time being. [Counsel proceeded to argue that the defendant had a right to criticise *Mitchel's* trial and conviction, and that he was only repeating what had been said by others much higher in authority than himself. It was no crime to say that he did not sympathise with "this damnable government," or that "if the Queen neglects to recognise the people, then the people must neglect to recognise the Queen."] Have we not all a right to say that if the sovereign neglects his or her duty to his or her people, if the Parliament goes beyond its province and does acts in opposition to the avowed and known and established interests of the people—is it a new doctrine that the people may expel that sovereign and create a new one? Why, gentlemen, the very authority under which we all sit here to-day arose from the act of the people known to that full extent, the very law and the very liberty of which you boast—the very laws under which you seek protection are the result of an act of the people, who themselves banished from the throne a sovereign who had contravened the law, which he was bound to support, and had obstructed the liberties, and had created the prejudice of the people whom he was bound to protect. Gentlemen, need I refer to the revolution of 1688, Why, it is a proposition, gentlemen, perfectly sustainable; if *Fussell* had said, in other words, whenever a sovereign violates the laws which he is bound as sovereign to protect, whenever he is put in hostility by his own conduct with the happiness and welfare of his people, it is lawful in the people to neglect that sovereign—if it be "forget" or "neglect," I care not, but the practice of the constitution has shewn us that we may go further—that we may expel that sovereign.

[The expression that if *John Mitchel* is sent out of the country, every Irishman must rise and avenge the insult, only means that they must turn out the government.]

We may have a government worthy of the highest admiration. Of that I give no opinion, but I cannot help saying that it is a government that appears very much to me like a lame man upon two crutches, leaning first on one party or on one side and then on another, and managing only to keep its equilibrium by the extreme and positive opposition of the two sticks upon which it stands and sustains itself. If that be so, I do not know whether this gentleman was right or wrong in his expression of contempt.

Gentlemen, I say this because I know, as you know, that this man belongs to a particular party, a party never intending to overthrow the State, or to alter the laws of this land, except in that limited degree which, as they believe would tend to uphold those very laws, which it is here charged as their intention to violate and subvert. It is only because they are the advocates of a particular political movement, it is only because they are the advocates of a particular alteration in the representation of this country, it is only because they seek by another means to get their voices heard in a particular assembly, it is only because they desire to be heard, where they are not heard, that they are thus punished as I will show you by being seized and dragged before you as criminals.

Gentlemen, as to the words about assassination, through me the defendant begs to deny most solemnly that ever such a notion passed even his mind for a moment as that he should recommend assassination to any person under any circumstances whatever, no matter how great the provocation, whether public or private, whether political or otherwise. Gentlemen, through me and through his plea, he denies the use of the language, and it is upon the use of that expression that I believe the whole pith of this charge hangs. Gentlemen, I say the improbability is so gross, that it would require in me the clearest evidence emanating from the purest of all possible sources, before I could believe that a man would be guilty of so great a madness as to avow that which is so monstrous, that which is so uncongenial to every feeling of an Englishman, not to say the feeling of every civilized man. How is that to be sustained? [Counsel referred to *Fowler's* evidence.]

Why, the *Times* newspaper knows not of the existence of the man *Fowler*. Reporter, quotha, a fellow who cannot write shorthand, but who goes about and takes it in longhand! It is in the discretion of the editor of the paper, or some person acting for him, whether they they will insert the communications or not, and it becomes therefore very necessary that those communications should contain something witty, something novel, something startling, something—to use the expression of one of these gentlemen—that would attract the attention of the public. There was the opportunity, there was no other reporter there. Now we must make some speech for Mr. *Fussell*—the whole world is labouring under excitement with respect to these Chartists, it will read with great interest that which they say, I will go and make a speech no matter whether I understand it or not. If I hear the word "assassination" (which I believe he never did hear):

"If ever there was occasion of the danger of reporting words (these are the words of Mr. Justice Forster) this I think is that occasion. Nothing can be more difficult than to report what another says, unless indeed we have mechanical means to take the exact words."

But the exact words are never pretended, and Mr. *Fowler*, who is really the only person upon whose testimony—if supported at all—the speaking of the persons can be supported, says he only took a sketch or entry here and there in longhand. He has to sustain what he writes. So startling, so monstrous, were the expressions, which seemed to be from the nature of the speech wholly isolated from the sense—that they appear in the papers as something to astonish and interest the public. He is bound to sustain that report afterwards; he says that the punishment of having misreported would be that he never again would be employed. Who, gentlemen, is Mr. *Fowler*? Is he a person whose character induces you to place reliance upon what he says, a gentleman who has been sometimes a reporter—who has been sometimes the proprietor of a theatre—who has been a bankrupt—who has paid nothing—a gentleman who is charged one day with setting fire to the *Morning Chronicle* office, on another day, still in the fire line, making a charge against a fire office for 400*l.* in respect of property insured and never obtaining a farthing in satisfaction, who tells you upon his oath here to-day (and test him by that) that he does not know whether there was a plea upon the record at that trial at which he was present, setting forth that he set fire to the dwelling-house; he tells you that upon his oath; he makes a charge of 400*l.* against the Sun Fire Office; and if it were set up as a defence that he had fired his own house with a view of obtaining that sum of money, is it possible that it should have made so little an impression upon his mind that he should appear here before you to-day, and be incapable of saying whether it was so or not. I believe that you will think that all he has said with regard to those words, which are really the pith and gist of this indictment, is untrue, and that it is a fabrication and that there is no confidence to be placed in him.

In regard to the other points, that is the preceding observations, there is not one if taken singly, or all if taken together, that goes one step beyond that which has been considered a legitimate and fair observation to be made upon the Government of the day and in power. What difficulty is there in a meeting of this kind, if indeed Mr. *Fussell* is responsible for what others say, to get a man up to make a speech for the purpose of implicating the whole meeting and of creating a charge against this individual; but if he be responsible for what others uttered, and if that be evidence applicable to him, then we will see that the purpose and meaning of the whole meeting was nothing more than this—that there was a determination to pass in a certain procession, I think they called it, up the streets, but that there was also a manifest disinclination to interfere with any persons, or to create any disorder. There is nothing illegal in taking part in processions.

The *Attorney-General* has only read part of what Baron *Alderson* said at Monmouth. He goes on to say,

"Let me not, however, be misunderstood There is no doubt that the people of this country