

The Examiner.

"THIS IS TRUE LIBERTY, WHEN FREEBORN MEN—HAVING TO ADVISE THE PUBLIC, MAY SPEAK FREE."—EURIPIDES.

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MR. WHITESIDE'S DEFENCE OF S. O'BRIEN.

The following closing passages of Mr. Whiteside's Defence of Mr. Smith O'Brien, are taken from Willmer & Smith's Report of the Trial. No journal here would be safe in copying the learned advocate's beautiful peroration, in such a case, did not the example of many British journals of undoubted loyalty justify the step.

Mr. Whiteside continued his review of Mr. S. O'Brien's public career since 1834, showing, in his comments on the several speeches, &c., which he had delivered, that he did not entertain the idea of overthrowing the Queen's authority in Ireland, and arguing that his sole object, as proved by even the crown, was to avoid arrest, and that although the avoidance of arrest was very criminal, it was not treason. In alluding to the celebrated letter of Lord John Russell, of which so much has lately been written, the learned counsel said—Some twelve or fourteen years ago Lord John Russell commenced a course of agitation to carry the Reform Bill in England. In many of the letters, a memorable one, which he addressed on that occasion to the Birmingham Political Union, he spoke 'of the whisper of a faction,' of the national guard, of that national guard composed of 100,000 men marching into London, and he conferred the command of that national guard on a distinguished military gentleman. He wrote to Attwood, a man of great talents and determination. The peers threw out the bill which was then proposed for adoption. It was to overawe and terrify the legislature into the adoption of the Reform Bill that that advice had been given—and he need not say that if that advice were acted upon the Lord Chief Justice would say that it would amount to high treason. The learned gentleman was about reading the letter, when

The Attorney-General interfered and interrupted him.

Mr. Whiteside repudiated the interruption in the strongest possible terms.

The court allowed that, as a matter of statement, the letter might be read.

The learned counsel then read substantially the letter of Lord John Russell to Mr. Attwood, of Birmingham. He did not scoff at the first minister. He had written upon the constitution of England, and he had a right to refer to him as he would to the opinions of Hale. His lordship said in his letter to Mr. Attwood that 'he begged to acknowledge the undeserved honour done him by 150,000 of his countrymen; their prospects were obscured for a moment: it was impossible that the whisper of a faction could prevail against the voice of a nation.' What was that? The deliberate opinion of that house, where the names of Wellington, Nelson, and Marlborough were known. It constituted that branch of the legislature which existed for ages and would continue to exist, founded upon the affections of the discerning people. If 150,000 men marched to London to accomplish the object designed by the Premier, the Lord Chief Justice would tell the jury that such a proceeding would be high treason. He knew the argument used at the other side of the channel. If one admitted to an Englishman in the first instance that he was right in everything, he would reason throughout the rest of the conversation upon the best principles; but he would say that Englishmen were warranted in doing what would be a vulgar thing in Ireland, namely, to attempt by force to obtain a Repeal of the Union.

It was for the jury to say whether the charge against the prisoner had been established. The charge was high treason, and he had shown them that an endeavour to escape arrest did not amount to high treason. He had briefly to submit, in conclusion, that however they might condemn certain acts of his client—however equivocal they might think certain observations made by him in a letter were—yet, if they were satisfied that his guilt fell far short of the tremendous crime of treason, they were bound by the solemn duty they had undertaken, irrespective of every consequence, to acquit the prisoner. Well he knew the weighty difficulties he had to encounter, and how incompetent were his feeble attempts to grapple with and overmaster the case against his client. Well he knew the prejudices that prevailed. Well he knew that calumny had done its work. Well he knew that it had been said by men that the impracticable politician must perish at last! Had he been a hypocrite—had he been a selfish trader in politics—had he said what he did not believe—had he unsaid to-morrow what he had said to-day, he might have enjoyed prosperity after he had traded with tact

upon the miseries of his country. Wrong he may have been in his opinions, but he had adhered steadily and consistently to them; and he suffered for being consistent to those principles which he honestly believed to be true. He had been hunted—he had been reviled—he had been slandered—he had been caricatured in his native country; he had been called a traitor, covered with obloquy and calumny. Where had he to look for justice? Where might he expect to find a temperate consideration of his whole political life but in the honour, discernment, and humanity of a jury? and a rampart of defence that jury ought to be between the prisoner and the prosecutor, if the crime which depended upon the intent of the soul had not been sufficiently established. They would cast their shields around the man who, however equivocal might be his conduct, had not in purpose, heart, or soul transgressed the law. He called upon the jury to exercise the high office which they held under the constitution—an office that was founded upon the deepest wisdom, was cemented by the patriot's blood and consecrated by the martyr's fire—and say whether the case of the crown had been established or not? The law, the wise, the merciful law, declared that if there was a doubt it should be given in favour of the prisoner, in favour of him whose life was sought to be affected; therefore, if they had that doubt, he implored of them to stand between the crown and the man whose life was sought to be taken away; if they had that doubt he asked them to give the prisoner the benefit of it, and stand between him and his grave. He had imbibed feelings of patriotism from his mother's breast, and the passion grew by his father's example. His father recounted to him how upon the last memorable night of the existence of the Irish Parliament, Grattan, Plunkett, Bushe, had spoken, he was convinced by the gravity of their arguments—he was enraptured by their eloquence, and borne away by their patriotic ardour. He had caught up those lessons, and was taught to believe that the union had been carried by corruption, and should be repealed. To restore Ireland to its parliamentary existence was the labour of his life. That was a delusion; but was not death upon the scaffold a terrible punishment for believing that Irishmen had capacity and intellect sufficient to rule the affairs of their native land? Would to God that Smith O'Brien was his only client, but the happiness of an honourable, ancient, and loyal family was at stake that day. The church, the bar, the senate, had furnished members, although they differed from him in politics, to give him brotherly consolation upon that melancholy day; and should the jury send him to the scaffold, they must labour on hereafter with broken hearts through a cheerless existence, sorrowing and struggling for the land they loved. A venerable lady, who had spent her income in the midst of an affectionate tenantry, and had lavished on them her fortune and her blessings, awaited with a trembling heart their verdict that day. If they consigned her son to death, that heart would beat no more. There were six innocent children waiting to be told whether they were to be stripped of the inheritance of their father. There was another who would give her heart's blood to save the object of her youthful affection. Do not send her, unless commanded by your consciences, to an untimely grave. Yet even in that case of blood he did not ask for pity in any wailing spirit; he would not blame the jury if they convicted his client; the last accents of his client's lips would breathe a prayer for Ireland, her happiness, and her constitutional freedom, and the moment which preceded his mortal agony would be consoled, if through his sufferings and the sacrifice of his life, some system of government arose, wise, impartial, just, and consistent, which would conduct his country to wealth and prosperity. In the great compact sealed between the Sovereign and her people, justice was to be tempered with, and administered in mercy. Her laws were no cruel, remorseless, and sanguinary code, but were based on justice, and tempered by mercy. A verdict in conformity with those divine principles would not be a triumph over the law but a triumph of the law. If they expected justice in mercy, he called upon them to administer it—in nothing did mortal man resemble the Almighty attribute (though in an immeasurable distance) so much as in extending mercy. If they expected it, let them extend it; let them deal mercifully by the prisoner, for he asked it from them, as they would ask it from their God in the last faint murmurs of prayer and supplication that escaped their quivering lips ere their spirits took their flights to a better and a purer world.

MEETING IN FAVOUR OF MR. O'BRIEN.—The Society of Friends have called a meeting for this day to promote a public expression of feeling in accordance with

the recommendation of the jury in the case of Mr. S. O'Brien.

The Tipperary Vindicator has the following from a correspondent:—'I may state that it is generally believed, and I need not add, as universally hoped, that the government will not only save the life of this mistaken man, but that it will commute the sentence to expatriation, in order that he may leave this land for some other, where he can enjoy those endearments which his family affections ever contributed.'

CASE OF T. F. MEAGHER.

As regards Meagher, the Freeman's Journal of the 12th says:—'The Crown is more perplexed by the case of Meagher, than by any or all of the others. There have been several consultations as to the course to be taken, and I believe you will find at least Meagher's case will be the last on the list, so apprehensive are they of not getting a verdict, and of such a result influencing the subsequent trials. The most active exertions to procure evidence are being made by the Crown—groups of witnesses are being brought in and sent off again as worthless, and up to the hour at which I write, it is felt that it would not be safe to risk a trial as the case now stands. However, no man knows what an hour may bring forth. Some evidence may yet be discovered calculated to ensure a verdict. The present impression is that Meagher will be the last brought up—if he be brought up at all at this commission.'

WHIG TREASON.

The majesty of the law has been vindicated by the conviction of the rebel chief in Ireland, and of the Chartist conspirators in England. But satisfactory as these results may be to the friends of social order and constitutional liberty, it is impossible not to feel that the convictions have lost much of their moral effect, from the manner in which the Whig officials have conducted them and the damaging exposure which the counsel for the accused elicited. Appear in what quarters they may as state prosecutors for political offences, the spectre of their own sedition must always haunt the Whigs; for though they may argue in mitigation of popular censure the non-fulfilment of their designs, "the attempt and not the deed confounds them." In those days of Reform agitation, when the mandates of political terrorism were read by the flames of Nottingham castle, and the blazing ruins of Bristol—when the whole country was heaving with a tumultuous commotion which threatened the subversion of the Crown and Constitution—Whig Ministers patted rebellion on the back, and awoke the thunders of a discontented democracy to overawe that which Lord John Russell styled the "whisper of a faction," the calm decision of the House of Peers; and to coerce the Legislature by the threat of a national convulsion. These are now matters of history; and the secret correspondence exhumed on the trial of Mr. Smith O'Brien has proved that the alleged confederacy of Whig leaders with the revolutionary desperadoes of the provinces is no coinage of fiction; it is recorded in that strange letter from the Home Minister's Private Secretary which the present inquiry has brought to light. He actually gloats over the notion of broken banks and bloody barricades.—*Chester Courant.*

The following is the letter to Major-General Napier, referred to above:—

"H. O., June 25, '32.

"My dear Napier,—Sir H. Bunbury told me of your wise determination not to become 'a Parliament man,' at least for the present. The offer was very tempting, and you have the more merit in declining. I refrained from writing to you while the matter was undecided, for I did not wish to obtrude my opinion, but I felt that reason was against your acceptance, as your health, your purse, and your comfort, would all have suffered by your attendance in the House of Commons. The history must have been laid aside. You could not, moreover, have been a calm and silent member, but would have been exerting yourself to push forward the movement faster than it probably will march, or than, perhaps, all things considered, it is desirable it should march.

"Let us go back a moment.
"The display of energy, and a readiness to act on the part of the people when the Duke of W— was on the eve of coming in, was greater far than I expected. I speak not of the cockneys, but of the men in the north, Glasgow, Newcastle, Birmingham. Are you aware that, in the event of a fight, you were to be invited to take the command at Birmingham. Parkes got a frank from me for you with that view, but had no occasion to send it. Had he written, I should have fired a despatch at you with my friendly and anxious council and entreaty to keep quiet, and not to stir from Fresh-