

RICHARDSON, James

**PROSECUTION FOR LIBEL
UNDER THE EXISTING LAW;**

IN A LETTER ADDRESSED TO

HIS EXCELLENCY SIR H. F. BOUVERIE,

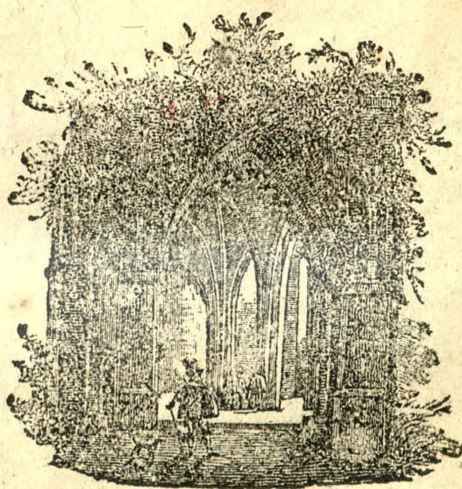
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BY THE

EDITOR OF THE *MALTA TIMES*.



“Pessimum genus inimicorum laudantes.”



MALTA:

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PROSECUTION FOR LIBEL
UNDER THE EXISTING LAW.



Sir,

Believing that a governor of a colony is always accessible to the requests and attentive to the statements of the humblest individual, provided such requests and statements be made in a respectful manner, I had the honour of addressing to Your Excellency a letter which had reference to my *private* affairs in connexion with the prosecution about to take place, at the instance of Dr. Emmanuele Caruara, late joint crown advocate, against me, for publishing what he, together with the **collective** wisdom of the crown advocate's office, is pleased to call a libel on his private character. The request of that letter Your Excellency negatived upon grounds which were not altogether unreasonable, but rather satisfactory than otherwise. I now address Your Excellency *publicly* and solely in connexion with my journal, in order that the public of Malta, and the Mediterranean, may judge between us, "*who has the greater reason.*"

As the law now stands, the sole responsibility of prosecution for libel rests upon the *ipse dixit* of the advocate of the Crown—the verdict of the justice or injustice of such prosecution on the *mere* opinion of a Criminal Court, consisting of a president, and two



other of Her Majesty's judges—the loss always upon the party prosecuted, whether found guilty or not of libel—and the gain is always on the side of the prosecutor, be his complaint just or malicious, reasonable or vexatious.

Your Excellency will not dispute the first proposition. Your Excellency has frankly declared that you cannot in any way interfere with the *legal* matters of the local administration, that you rely entirely upon the opinion of the legal adviser of the Crown. Politicians will differ about this, some will affirm, *that a government has a policy above all law*—I am of this opinion. But Your Excellency, as all men, has an undoubted right to differ from us. With regard to the present prosecution, however, I am bound in justice to myself and my friends to add, that it has been undertaken, not because it was considered just, but to satisfy the *personal* feelings of the advocate of the Crown,—to further his particular views in his *personal situation*,—and not to accomplish the ends of public justice. The proof of this rests upon the public opinion of the island—the universally acknowledged injustice of the prosecution—the exasperation at its intrigue, its frivolousness, its vexatiousness. I pass without comment the publicly expressed opinion of Dr Bruno himself, “that the prosecution will amount to nothing—because there's nothing in it.” But as therefore, “from nothing, nothing should come,” it is both absurd and unjust to prosecute a man for nothing, and the persons ordering such prosecutions, as well as those demanding them, according to the most ordinary rules of public and private right, should indemnify, to say the very least, the

party or parties whom they wantonly or erroneously prosecute, the victim of their malice or inefficiency, as it may be. And be assured, that in case of the failure of the intrigue, the public will expect of Your Excellency's government the granting of some means of redress for the injured party.

The verdict of the justice, or injustice, of the prosecution, rests upon the mere, the absolute opinion of Her Majesty's judges, unfettered, unmodified, uncontrolled by Jury.

But can it be necessary that I should express the mistrust, the misgivings of Her Britannic Majesty's subjects of Malta on this part of the subject of the prosecution? It is most painful for an Englishman to write, and to publish to the world, that not only the English residents of Malta, to a man, but a very large number of the Maltese cannot repose that confidence in the decisions of the present judges of the island, which a people ought to do in judges solemnly set over them, with all the might and sanctity of oaths, by the Imperial Government! And this want of confidence does not arise from ill-feeling, or anti-liberal opinions, but from a most religious consciousness of the fact, that the judges of Malta are destitute of all experience in cases of written libel, and totally strangers to the thoughts, feelings and sentiments which form the common staple of *English* journalism. This, however, is not the fault of the judges, but the crime of those who appointed such inefficient persons. Moreover, the English residents of Malta, so numerous, amounting to many thousands, cannot understand by what system of policy they are to be deprived of the grand and cardinal

law of Jury in such cases—a couple of thousand miles cannot alter the nature of law and legislation, and justify the abandonment of all those free institutions and noble maxims of government, which distinguish the mother-country from the nations of the earth, and place the political condition of her children above that of all other people. I protest to Your Excellency, that I cannot enter the hall of justice without feeling myself condemned *beforehand*, however innocent my cause, however righteous my defence, by those personages who sit to administer BY OATH the eternal principles of right! In this protestation I feel confident I have the deepest sympathy of the majority of Englishmen in Malta. They do not forget, nor I, nor shall I ever, the last time I was before these same judges

The loss always falls upon the party prosecuted whilst he that prosecutes has nothing to pay, and nothing to lose, whatever may be the result of the prosecution. In vain, you plead your private affairs,—your public engagements,—with the accompanying insult and odium which such prosecutions may bring upon you, if especially, you be unfortunate enough (*and who can save himself from misfortune!*) to compromise yourself with an ignorant ill-thinking, papistical, or any other public.

In very deed, such a system of the law of libel opens the field to private and personal vengeance; here all the dark passions of mankind may find their unchecked and rampant developement, and hate and spite, intrigue and hypocrisy, cold-blooded villany and undying vengeance, may concoct all their tortuous schemes, and carry out all their diabolical plots to

ruin the innocent man! And a public writer, and a newspaper-writer, of all persons the most exposed to personal violence, and the public indignation, may by this atrocious system of the law of libel be reduced to beggary or tormented to death,—*though his innocence be ever so apparent.*

I anticipate Your Excellency, in exclaiming:—
 “This is the law which Her Majesty’s Commissioners of Inquiry in the affairs of Malta, proposed and prepared for us, and which was sanctioned by the then Colonial Minister! What can I do with it?” Every Englishman in Malta will sympathise with Your Excellency in this hard case. But, at the same time, Your Excellency must be reminded that this law,—
 “so full of iniquity and all uncleanness,” so full of every species of absurdity, which was made the laughingstock of legislation before the Imperial Parliament, not long ago,—was passed by Your Excellency in Council, though certainly I have it from unquestionable authority—*that that Council was by no means unanimous.*

Besides, Your Excellency should consider, that every government, colonial or otherwise, has a policy, must have a policy, and there may be occasions, and frequent, when things may not, cannot be granted, not because they are illegal, that is contrary to existing law, but on account of their *real injustice*, or for the great inconvenience, often amounting to positive evil, of granting them. Law is not right, or justice in the proper sense of the term; if it were so, legislation would be begun and ended in a day. We annul and abolish laws because they are unjust, because their time is past, because they are either the

offspring of some remote and barbarous periods of the history of the human species, or the result of haste, carelessness, or defective judgment in modern legislation.

Now I must candidly state to Your Excellency, as a patriotic Englishman, that the government of England is sufficiently occupied by the prodigious increase of the affairs of the empire, without a colonial governor most unnecessarily adding to its embarrassments. It is a most sacred duty of all colonial administrators to catch their time in all the public events of their local administration, and not too precipitately to engage the government of the mother-country. It is well known to Your Excellency that the Whig government has already felt sufficiently embarrassed by the application of the Malta law of libel, and it is highly indiscreet, to use the mildest terms, to renew this embarrassment without solid and just reasons. The editor of the *Malta Times*, and his friends, whatever else may be laid to their charge, have never been guilty of distressing, or attempting to distress, the parent administration, in what they have written themselves, or published of others; on the contrary, they have done every thing in their power, so far as their humble efforts and limited means permitted them, to uphold the dignity of the present Whig Administration,—not, indeed, because they professed Whig politics, or any shade of the politics of the mother-country, but for the reason “that they have deemed it wise and patriotic to defend and protect, in this central insular position of the Mediterranean, the existing government.” I, therefore, think, and state

to Your Excellency, that the present prosecution, before the law, known to be so defective, is amended, is highly impolitic, first, because it might, and will prove, injurious to the local interests of the island, and then it might again, and there is every probability that it will, prove a source of embarrassment, (and it may be a greater one,) to Her Majesty's Ministers. I feel the greater confidence in making this statement, as I myself, and those patriotic and most disinterested individuals associated with me, in both the literary and pecuniary support of my journal, have the most implicit reliance on the wisdom and justice of the present colonial secretary, Lord John Russell. We feel morally certain, that as soon as his lordship has time to apply himself to the consideration of this iniquitous law of libel, under whose bad auspices, and blasting influence, the Crown Advocate's office has been wont to issue indictments, his lordship, with that legislative prudence and sagacity which so eminently distinguish him, will immediately abolish this law, and consign such an opprobrium to British legislation—to eternal oblivion.

I must, likewise, express to Your Excellency, however embarrassing it may be in myself, that I and my friends feel ourselves aggrieved by the issue of new indictments against us,—nay, I may add, that we feel ourselves *persecuted by the local Government*. We inquire not who instigates? who counsels? who commands? who obeys? we confine ourselves to the fact. We feel, at the same time, perfectly convinced, that it is not the remotest thought of Your Excellency to persecute the *Malta Times*, its editor or collaborators. Notwithstanding, however,

our disbelief of such an intention on the part of Your Excellency—it comes to the same thing. And I may use the current language of the British press in replying to the French press, (“to compare great things with small”, as sayeth the poet,)—“You protest against war, your minister Theirs perpetually talks of peace; but what mean your Royal ordonnances, now calling forth immense military conscriptions, now arming your navy in all possible haste?” The friends of the *Malta Times* are grateful to the Local government for any information which they may be favoured with, for any frank declarations in support of a patriotic English journal in Malta, one which will both advocate the rights and interests of the English and Maltese, and make them one; but they ask, whence these continual indictments issued capriciously against its editor and friends, whence these thousand other covert attacks against the character and independence of the *Malta Times*? Are the other journals of Malta persecuted or indicted? No! Are they, then, more pure, more patriotic? No! Are they less scurrilous, less libellous? No!! I leave these glaring contradictions to be reconciled by those to whom it appertains.

I shall only trouble Your Excellency with one other observation, and that refers, not to the colonial minister, but the *foreign* minister, and the press of Malta in connexion with his policy. Your Excellency must be aware of the declared value of the public press. I give no opinion of its advantage, or disadvantage, I only state the fact. I need also not remind Your Excellency that the present minister of France, on whose will or caprice the present

destinies of Europe and the world are now balancing, and hanging as suspended by a single thread—is a mere journalist, an individual who has been occupied all his life in journalism. Nor is it necessary that I inform you that Lord Palmerston sets a high value upon the press, as a vehicle of advocating certain political opinions thereby assisting the government of the country; and that his lordship has been suspected for many years past to have largely contributed to one of the leading London journals. With these facts before us then, whatever may be Your Excellency's opinion, or mine, as to the real merits of journals, (*I am not over-sanguine in the present system of journalism,*) there cannot be any doubt that Lord Palmerston, attaching so high a value as he does to the influence of the press, will look with real displeasure on the present state of the press of Malta, more especially upon the conduct of the Executive of these islands,—acting under the influence of the intrigues of the present, and *past*, Crown Advocate's Office,—in endeavouring to suppress, and hampering with every species of annoyance and persecution, the only journal in Malta which could paralyse its pernicious and *Anti-British* influences. Now let us look at the facts of the case.

The Commissioners of Inquiry established one journal of Malta, and procured for its support a yearly stipend from the local government—the discontent and disaffection of the Maltese established another. The object of the local government was unquestionably good—it was thought a moderate and conciliatory system of politics would have been pursued, and to assist the press in its infant state was

rather a paternal act than a corrupt one on the part of Government. But how vain are the projects of men—how oftener are men betrayed than seconded in their good intentions! Government must have seen with grief and shame, a most potent *Anti-English* journalism spring up *under their own ill-directed* (rather unfortunate) *patronage*, a journalism caressed and supported by all foreigners to the evident damage of the interests of Malta and the mother-country; and, during the late embarrassed state of affairs in the East, most indefatigably and unsparingly attacking the *foreign* policy of England, *publishing the intercepted letters of the agents of this policy*, and calumniating the agents and naval officers, who are appointed by the wisdom of the parent government, to execute the measures of this policy. And to such lengths has this journalism gone—as to render certain the suppression of the liberty of the press in Malta by the home government in the event of a general convulsion, *Malta then becoming a veritable naval arsenal*. In this our bitter experience are verified the words of the Duke of Wellington, “that one might as well give the liberty of the press to a line-of-battle ship as to Malta.” The other journal alluded to is under the *sole* direction of an Italian refugee—it was the offspring of disaffection to the British Crown, and hitherto it has continued *faithful* to its principles.

In this disastrous state of things, what is that which is done by the local government? It continues to issue criminal indictments against the only journal which could remedy this pernicious *Maltese* press, equally injurious to the real interests of the native inhabitants of Malta, as afflictive to the gene-

ral interests of Great Britain in the Mediterranean. The last indictment is issued so late, that were the prosecution to be delayed a few more days, the pretended libel would be beyond the power of prosecution, the year, the legal period for prosecution, having expired.

All this is done, whilst the local government are personally acquainted with those disinterested and truly patriotic Englishmen, who contribute, at great personal sacrifices, to the pecuniary support and literary reputation of the *Malta Times*. This renders the thing the more extraordinary, and must prove to Your Excellency that some foul intrigue is being carried on, of which the respectable *English* officials, by whom Your Excellency is surrounded—*know absolutely nothing*.

But I must repeat, that such vexatious prosecutions—it is not too strong a term to call them, *atrocious*—*against the only English journal in the island*, cannot fail to excite the disgust and indignation of the foreign minister, who is now acting so vital and so tremendous a part in the destinies of Europe! and requires the patriotic assistance of every colony of the mother-country.

This is not, however, a question solely for an humble individual like myself, it comprehends the entire English population of Malta; for Your Excellency must be aware, that a prosecution carried on (under the semblance of legal forms) against me, can be easily extended to every individual in the island, upon whom the vengeance of private hate and spite may fall.

Lest Your Excellency should mistake my mo-

tives, I am anxious to state, that the support of the *Malta Times* is purely gratuitous, that those disinterested gentlemen who are occupied in its literary composition receive no remuneration for their assiduous labours; and therefore I have not taken up my pen to defend our journalism before the world with the view of saving any profits from the rapacity of the prosecutors, but in the hope (though it may be a forlorn one) that the local government will not prevent me by vexatious indictments from availing myself *individually* of those other means of obtaining an honest existence which are within my power.

I have the honor to be,

Your Excellency's

Most humble and obedient servant,

JAMES RICHARDSON.

St. Julian's, 20th October, 1840.

To His Excellency

SIR H. F. BOUVERIE,

etc. etc. etc.