

**REPORT OF THE CASE OF THE QUEEN V.
EDWARD JOHN EYRE: ON HIS PROSECUTION,
IN THE COURT OF QUEEN'S BENCH, FOR HIGH
CRIMES AND MISDEMEANOURS ALLEGED TO
HAVE BEEN COMMITTED BY HIM IN HIS OFFICE
AS GOVERNOR OF JAMAICA, PP. 1-110**

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W. F. FINLASON

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REPORT

OF THE CASE OF

THE QUEEN v. EDWARD JOHN EYRE,

ON HIS PROSECUTION,

In the Court of Queen's Bench,

FOR HIGH CRIMES AND MISDEMEANOURS ALLEGED TO HAVE
BEEN COMMITTED BY HIM IN HIS OFFICE AS

GOVERNOR OF JAMAICA;

CONTAINING

THE EVIDENCE, (TAKEN FROM THE DEPOSITIONS),
THE INDICTMENT,

AND

THE CHARGE OF MR. JUSTICE BLACKBURN.

BY

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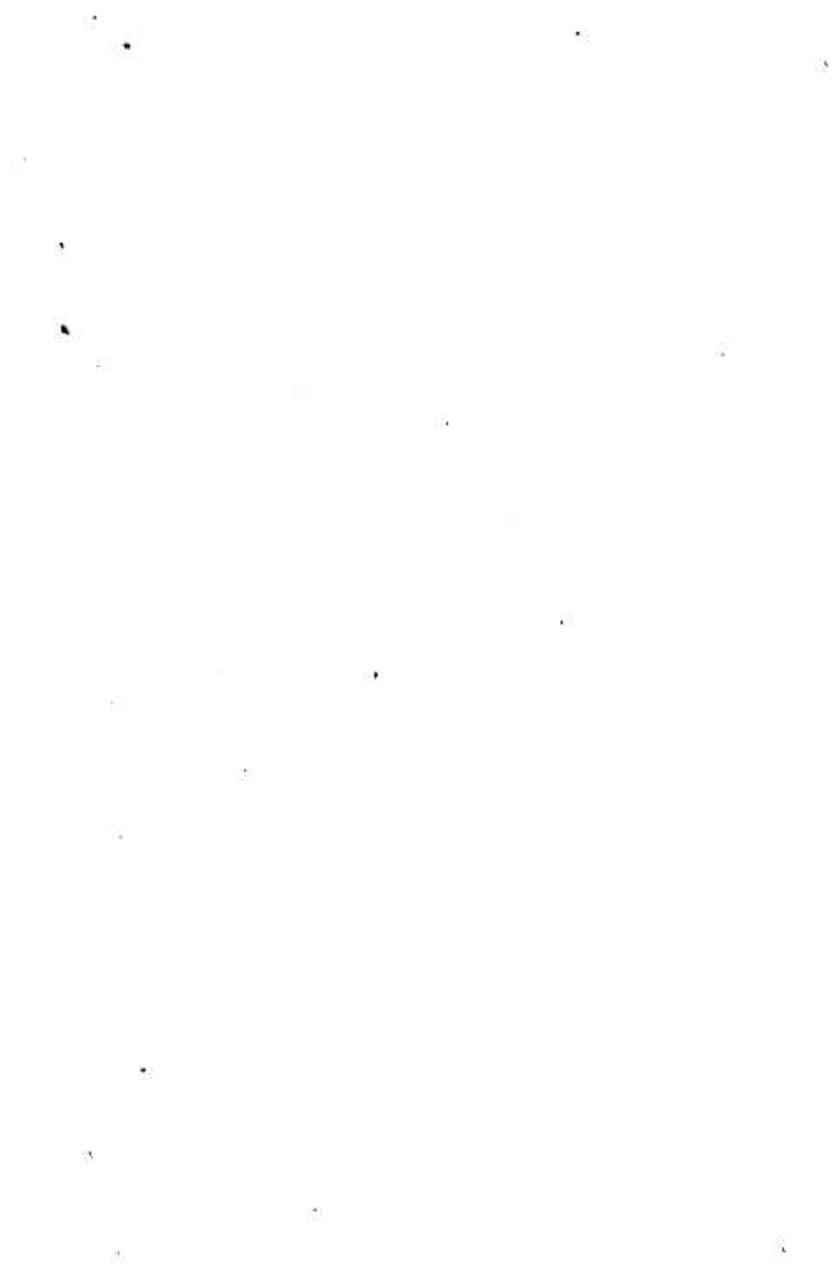
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INTRODUCTION.

✓ The prosecution of a Colonial Governor, in the Court of Queen's Bench, for high crimes and misdemeanours alleged to have been committed, in the exercise of his office, by the abuse of his powers for the purpose of oppression, is an event happily of so rare occurrence in our history, that it deserves some record; and the exposition of the law on the subject, upon such an occasion, by an able and learned judge, must be worth preserving. And as in this instance the alleged abuse had been committed in the course of the execution of measures represented to be required for the suppression of rebellion, the subject has a special interest with reference to its bearing on the powers and responsibilities of magistrates or still higher functionaries in the repression of riot and insurrection; while it has a peculiar interest on this further account, that it laid down the law with results entirely different from those arrived at on the occasion of a former prosecution arising out of the same matters, and on which a charge had been delivered and published by the Lord Chief Justice.

There was a general feeling in the profession that the Charge of Mr. Justice Blackburn ought to be published, and it is here presented exactly as the learned judge delivered it, with the exception of his mere verbal corrections. The writer would have desired to present it by itself with the addition of no other matter than the Evidence and the Indictment presented to the grand jury and upon which the charge was pronounced. And therefore it is in a separate form he has prepared a Review of the Authorities, in which it will be seen how closely the

learned judge has adhered to the law upon the subject: and also a history of the Jamaica case, which has been the subject of so much discussion, and of such repeated prosecutions. Nor would he have added a word more, but for the unfortunate attempt made by the Lord Chief Justice to disparage the authority of the charge of his learned brother and to uphold that of his own, which has made it necessary, in justice not merely to the learned judge, but to the profession and the public (not to say anything of the parties more immediately affected), to consider the grounds on which the present charge is supposed to be impeached, and to point out the considerations with reference to which the comparative weight or authority of the two charges may be appreciated and understood.

Now although in a certain sense a charge to a grand jury is not an authority in the fullest sense of a *judicial decision* of the law, yet on the other hand, a careful exposition of the law, by an able and learned judge on an important subject, and on a great occasion, is not only likely to be valuable, but may have a very large amount of authority in the sense of a well-considered and responsible *declaration* of the law. But then this is subject to two cardinal conditions. The one is, that it applies only to the declaration of *matters of law*: and the other is, that these matters shall be *relevant*. For there is one invariable and essential element of judicial authority: that it attaches only in the discharge of a judicial duty: and therefore it can never attach to what is said beyond the scope of such judicial duty, and of course still less to what is said in *disregard* of it. Now the province of the judge is *matter of law*, and it is especially so in a *criminal case*, and it is so peculiarly in a charge to a grand jury, which is necessarily upon *ex parte* statements and an imperfect case. On such an occasion the judicial duty is clear and simple, and its *limits* plain and strict. It is simply a duty to direct the grand jury upon the matters

of law essential or material for the due discharge of *their* function, which is the *application* of the law to facts. That is to give them clear, plain, positive direction upon the matters of law which appear to be involved in the offences alleged in the indictment presented, and to leave the matters of fact for their determination, on the evidence, by the light of this declaration of the law. It is expected of the judge that he shall fulfil his own function, it is not permitted to him to go beyond it, and encroach upon theirs. He *does* so encroach if he enters into the facts, and seeks to enforce his own impressions of them. It is *unlawful* for him to do so, and if he does so, especially if he does so to the prejudice of the accused he does an act as distinctly *illegal* as any offence with which the accused may be charged. The reason is obvious, that the attempt by a powerful and cultivated mind, to enforce its own views of the facts upon others must necessarily exercise some influence, and that influence, if exercised adversely to the accused, that is to convey a view or impression of the facts unfavourable to him, is an unlawful injury to him, because especially upon this *ex parte* and imperfect statement of the case he is entitled in law to the *unbiased* judgment of the grand jury, and to the extent to which they are influenced by the judge upon the facts, he is illegally injured, and deprived of a legal right. To which it may be added, that if a judge were allowed thus to enter into the facts, then, in any case on which he happened to have formed a strong opinion upon them, there would be great danger of his unconsciously conveying his own view or version of them *instead* of the real and actual facts, and of substituting his own impressions, or even imaginations, for the verities of the *evidence*. And it is manifest that in proportion as the occasion was one which had given rise to much public discussion, and was one which had engaged men's minds and excited opposite opinions and feelings, the danger would be the greater of preconceived views and impressions, and therefore the reason would be stronger for a