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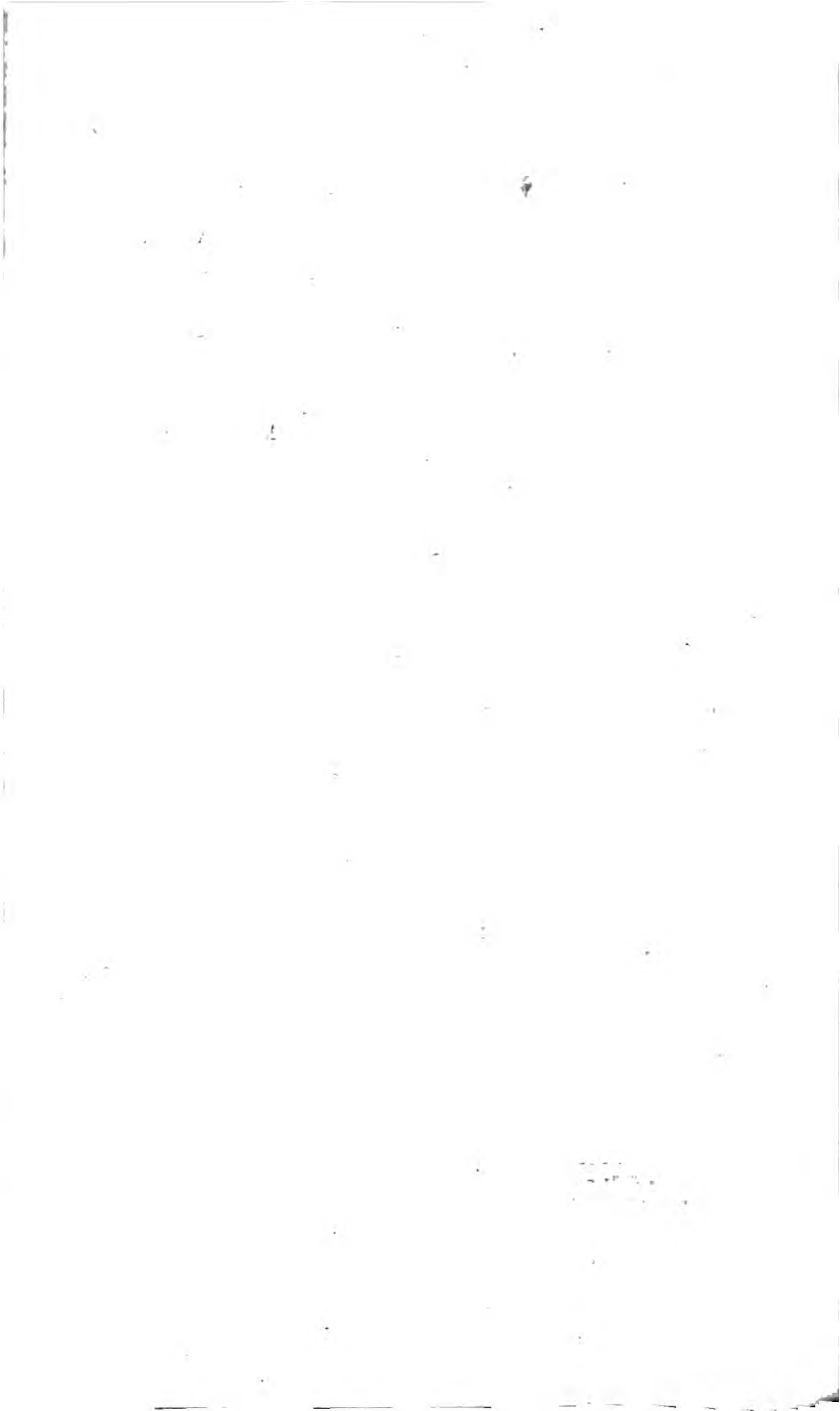
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LETTER

TO

JOHN RALPH FENWICK ESQ.

BY

JOHN DAVISON B. D.

RECTOR OF WASHINGTON.

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*THIRD EDITION.*

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1819.



A  
LETTER  
TO  
JOHN RALPH FENWICK, ESQ.

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DEAR SIR,

I observe that your name is included in the list of those gentlemen, at whose requisition the High Sheriff has called a meeting of the nobility, gentry, clergy, and freeholders of the county, "for the purpose of expressing their conviction of the necessity of a full enquiry taking place into the nature" of the late melancholy transactions at Manchester.

I am one of those who think enquiry into the nature of those transactions most necessary, but differ with you as to the mode of seeking it. The importance of the measure, in its practical bearing, which is proposed to the county, tempts me to a short and hasty statement of my sentiments upon it, and of the grounds of them; and my reliance upon your candour induces me to address that statement to yourself, in the hope that if there be any weight in considerations, which appear to me have the greatest weight, they will have the advantage of receiving your impartial attention.

The measure proposed to the county is to ask enquiry. By all means let there be enquiry. But is not the subject travelling through a regular investigation in the usual channels of public justice? Enquiry is already instituted before the tribunals of the country. Charges have been preferred, bills have been found, and public trials promise to give decisive and authentic information.

Upon what constitutional principle is it proposed to annul the jurisdiction of the courts of the country in this

particular case, by transferring the enquiry instituted in them, but not completed, to another judicature? You must concede to me, I think, that to propose to do so is a strong and questionable measure. What is the adequate reason to be alleged for it? The competency of our courts of justice to questions of right and duty between subject and magistrate, is a public blessing which we have been used to rejoice in. The law of the land is the great authority, the only satisfactory authority to an honest and independent man. Shew me its insufficiency in the present instance to the ends of public justice; shew me that the provisions of the law are so defective, or its administration so vitious, as to make it unfit to be applied to the proceedings in question, and I shall have a reason for seeking the enquiry, which I desire as much as you do, in the way in which you desire it.

But I entreat you to consider whether in obtruding the enquiry, in the present stage of things, upon any extraordinary court of appeal, you ought not at the same time to pray for the suspension of the proceedings which are going on in the regular courts. Why should you tolerate the jurisdiction of tribunals which you pronounce to be inadequate to their duties? The powers and principles of those courts have been so constituted for ages back as to afford a great, but, it seems, illusory satisfaction, to many wise and virtuous men. Some defect inherent in their constitution must warrant the interference which you recommend. But ought not your interference to go to a complete interruption of their authority, in its erroneous operation, if such it be.

If you are not prepared to go so far, I confess myself unable to see the sufficient warrant for your present line of proceeding. With the greatest respect for the just and legitimate power of parliament in the exercise of a general superintendance over the other powers and authorities of the state, I know no principle of the constitution, which would justify me in an address or petition, the practical spirit of which shall have the effect of infringing upon, or superseding the orderly and independent administration of justice in our courts by strict law. For, to take particular cases, important as they may be, out of the hands of law, and carry them to the legislative authority,

is a disturbance of the best and simplest principles of our political system.

Had the whole affair of these unhappy transactions been closed on the day when they occurred, and had no legal proceedings issued from them, in that case I can well imagine the propriety of an address to the Crown or to Parliament to stimulate enquiry.—Or if the legal proceedings which are now in train had been brought to a conclusion, and the evidence elicited by them in open trial, had failed to explain the nature of the transactions in question, then also I could admit the propriety of an address for extra-judicial enquiry.—In the absence of each of these grounds I presume to think that your present measure fails of its adequate vindication.

It certainly gives me some cause to mistrust my own view of this subject, to observe, that an application for enquiry has been recommended and carried in some places, by men who have a received reputation for their constitutional principles. But their high name has led me to expect from them a distinct exposition of their reason and principle in the line which they have taken. There is a difficulty which they would have done well to explain to the judgment of candid men—a difficulty by which they stand committed with the maxims and practice of the constitution.

To say that the subject of the enquiry is of deep importance, and by the importance of it to defend the unusual mode of pursuing it, is to do nothing; unless it can be said also, that the competence of our courts is only for a question of pepper and tobacco, and cannot reach the highest rights and most sacred duties in the relation of magistrate and subject. But will constitutional men defame our most revered establishments at that rate? or will they overlook the immediate evil incurred, and the danger of the precedent given, in shaking the character of those establishments directly, or by a very close implication.

Being a plain man myself, and having no pretensions to any thing but a habit of very sober observation, I am glad to have a point to discuss, when drawn into any discussion at all, with men who profess to uphold the system and to cherish the spirit of the constitution. With such men there are fixed points to which to refer; there is a

standard by which measures can be tried. Innovation and despotism are the only arbitrary things which throw common reason out of the debate.

I had hoped, therefore, to see the distinguished persons who, elsewhere, have lent their constitutional name to this questionable measure, lay out their strength in defending the step they have taken, by some more luminous view of the doctrines of our public system, and with a closer reference to its best maxims, than hitherto they seem to have furnished. Perhaps the approaching meeting of our own county may supply the defect. But you must grant to me, at least, that there is a very strong case to be made out, a case not to prove the necessity of enquiry, but to prove the necessity of alienating the enquiry from the cognizance of a judge and jury; and to justify resolutions tending to degrade our public law, and the administration of it, by taking from it every question that rises into importance. It is the boast of our law, that political matter is so far fixed and explained by it. The right of petitioning for instance, for the vindication of which popular meetings and county meetings profess to make a stand, is guarded and settled by positive law. If the pure exercise of that right is invaded, or supposed to be invaded, the legislature has decided that such invasion is an offence, and referred the correction of the offence to a known tribunal.

Public feeling on this much agitated question has already made a change in its direction. It began with condemnation; it has advanced a step backwards; and is calling for enquiry. Meetings are not called now to express abhorrence and indignation, but to express a conviction of the necessity of the anterior process. Shall we never travel to the true point of constitutional sobriety, and meet to express our confidence in the recognised administration of public justice, and our satisfaction that a very anxious subject of public feeling is referred to an investigation of law?

You ought not to suppose that I am ready to offer myself as the advocate of the Magistrates of Manchester, to undertake their defence against the charge, which your call for enquiry, tacitly, but to my apprehension, very strongly, implies. I possess no sufficient authentic infor-



mation whereby either to criminate or to defend them. It is true that I have not been able to resist the impression made upon me by various details which have transpired through the ordinary channels of public communication. But I should be sorry to embody the opinion which I have formed upon a view of those details in any public resolution, when we are expecting far better evidence, and more complete information. To prejudice either magistrates, or those whom they have accused, by public and formal resolutions, is equally unreasonable. Why are the ministers of justice to be the only persons incapable of the common rights of justice ?

Perhaps you profess to prejudice neither. A call for enquiry, it may be said, is no prejudication.

But is this the real scope of your intended meeting ? In the demand of enquiry, do you wish it to be distinctly understood, that you convey no imputation ; no suspicion ; no unfair prejudice or surmise ? Public meetings are seldom convened to be the organs of such dispassionate and indifferent counsels. Their whole spirit is of a more decisive nature ; and, therefore, there ought to be very clear and unequivocal matter for them to pronounce upon. It would be a most desirable novelty to see a county meeting call for enquiry, not in the spirit of inculpation.

Is it however alleged that the expected trials will not embrace the whole of the transactions which are viewed with a general anxiety ? Looking at the substance of things, I think this cannot be properly alleged : because the legal character of the transactions in question is closely and intimately connected with the subject matter of the trials : and the evidence to be adduced and examined before a jury, must throw light upon the whole state and posture of things as it stood, when the magistrates had to act. The strict issue of those trials is whether certain persons were engaged in a conspiracy to alter the law by intimidation and force. The conduct of the magistrates therefore, must be judged of with reference to such a conspiracy supposed to exist. It is nugatory to judge of their conduct in reference merely to the unquestionable right of the people to meet and petition in a peaceable way.

The disturbed state of popular feeling at the present mo-

ment, must be a subject of regret to every well-wisher to his country. The first and last thought of every man who has a voice to raise, or a sentiment to express, ought to be how to allay it to a better temper. Nothing can be more easy than to give to the prevailing excitement an impulse in one direction, by goading its violence. But forgive me if I say there is neither wisdom in doing what is so unsafe, nor magnanimity in doing what is so easy. What is it that we have at stake? Our morals and manners, our religion, and our public peace, are all in some danger. The disunion of patriotism from loyalty is the worst presage for their security.

If indeed you deliberately think that the cause of apprehension is from a corrupted magistracy, you do well in lending your influence to their discredit. If the adverse quarter opens to you nothing but visions of hope for the improvement of our country, in any one of its great interests, that is a good reason for the distribution which you seem to make of your confidence and your fears. But unless you are under such convictions, I cannot do otherwise than think that you are misplacing your zeal on this occasion.

I have written to you freely. I feel assured that you will give me credit for the impartiality of my opinions, and if you can shew them no other favour, you will believe that I have formed them without respect to any divisions of local interest or party.

I am, with much personal respect,

Your's truly,

JOHN DAVISON.

20th Oct. 1819.



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