

Premises, let them well know that they incur the aforesaid Sentence *ipso facto*.

A Confirmation of the Charters and Liberties of England, and of the Forest, made the twenty fifth Year of Edward the First.

EDward, by Grace of God, King of *England*, Lord of *Ireland*, Duke of *Guyen*; To all those that these present Letters shall hear or see, greeting. Know ye that we, to the Honour of God, and to the Profit of our Realm, have granted for us, and our Heirs, and the Charter of Liberties, and the Charter of Forest, which were made by common Assent of all the Realm, in the time of King *Henry* our Father, shall be kept in every point without breach. And we will that the same Charters shall be sent under our Seal, as well to our Justices of the Forreſt, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs; in the which it shall be contain'd, that they cause the aforesaid Charters to be publish'd, and to declare to the People, that we have confirm'd them in all points: And that our Justices, Sheriffs, Mayors, and other Ministers, which under us have the Laws of our Land to guide, shall allow the same Charters pleaded before them in Judgment, in all their points; that is, to wit, the Great Charter, as the Common Law; and the Charter of our Forest, for the *Welch* of our Realm.

And we will, that if any Judgment be given from henceforth contrary to the Points of the Charter aforesaid, by the Justices, or by any other of our Ministers that hold Plea before them, against the Points of the Charters, it shall be undone, and holden for nought.

And we will that the same Charters shall be sent under our Seal to Cathedral Churches throughout our Realm, there to remain; and shall be read before the People two times by the year.

And that all Archbishops and Bishops shall pronounce the Sentence of Excommunication against all those that by word, deed, or counsel do contrary to the foresaid Charters, or that in any point do break or undo them; and that the said Curſes be twice a year denounc'd and publish'd by the Prelates

lates aforeſaid ; and if the ſame Prelates, or any of them be remiſs in the Denunciation of the ſaid Sentences; the Arch-biſhops of *Canterbury* and *York*, for the time being, ſhall compel and diſtrain them to the Execution of their Duties in form aforeſaid.

The Sentence of the Clergy againſt the Breakers of the Articles above-mentioned.

IN the Name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King; to the honour of God, and of Holy Church, and for the common profit of the Realm, hath granted for him, and his Heirs for ever, theſe Articles above-written: Robert Archbiſhop of *Canterbury*, Primate of all England, admoniſh'd all his Province once, twice and thrice, becauſe that ſhortneſs will not ſuffer ſo much delay, as to give knowledg to all the People of England of theſe Preſents in writing: We therefore enjoin all Perſons, of what eſtate ſoever they be, that they and every of them, as much as in them is, ſhall uphold and maintain theſe Articles granted by our Sovereign Lord the King in all points: And all thoſe that in any point do reſiſt, or break, or in any manner hereafter procure, counſel; or in any wiſe aſſent to, teſtify, or break thoſe Ordinances, or go about it by word or deed, openly or privily; by any manner of pretence or colour; we, the aforeſaid Archbiſhop, by our Authority in this writing expreſſed, do excommunicate and accuſe, and from the Body of our Lord Jeſus Chriſt, and from all the Company of Heaven; and from all the Sacraments of Holy Church do ſequeſter and exclude.

We may here ſee, that in the obſcureſt times of ſottiſh Popery, they were not left without a ſenſe of Juſtice, and the neceſſity of *Liberty* and *Property* to be inviolably enjoy'd; which brings us to the Cauſe of it:

Fiſt, The Cauſe of this famous Charter was, as we have already ſaid, the Incroachments that were made by ſeveral Miniſters of precedent Kings, that almoſt became cuſtomary; and which had near extinguiſh'd the free Cuſtoms due to *Engliſh-men*: How great care it coſt our Anceſtors, it unbecomes us to ignore, or by our ſilence to neglect. It was that *Yoke* and *Muzzle*, which fail'd not to diſable many raging Bears from entering the pleaſant *Vineyard* of *Engliſh Freedoms*, that otherwiſe would not have left a fruitful Vine in being. Anon we may give the Reader an account of ſome, with their Wages as well as Works.

Secondly;

Secondly, The Reason of it is so great, that it seems to be its own. It is the very *Image* and *Expression* of *Justice*, *Liberty*, and *Property*; Points of such eminent Importance, as without which no Government can be said to be Reasonable, but Arbitrary and Tyrannical. It allows every Man that Liberty God and Nature have given him, and the secure Possession of his Property, from the In-road or Invasion of his Neighbour, or any else of that Constitution. It justifies no Man in a fault, only it provides equal and just Ways to have the Offender try'd; considering the Malice of many Prosecutors, and the great Value of Liberty and Life.

Thirdly, The End of it was the most noble of any Earthly projection; to wit, *The re-fixing of those shaken Laws*, held for many hundred years, by constant Claim, that they living might be re-instated in their primitive Liberty, and their Posterity secured in the possession of so great a happiness.

Amongst those many rich Advantages, that accrew to the free People of *England*, from this great Charter; and those many confirmatory Statutes of the same, we shall present the Reader with the sight of some few, that may most properly fall under the Consideration and Inquiry of these present Times, as found in our Common Law-Books.

First, *That every English-man is born free.*

Secondly, *That no such Free-man shall be taken, attached, assessed, or imprisoned, by any Petition or Suggestion to the King or his Council, unless by the Indictment or Presentment of good and lawful Men where such Deeds be done.* 5 Edw. 3. Chap. 9. 25 Edw. 3. Chap. 4. 17 R. 2. Chap. 6. Rot. Parl. 42 Edw. 3. Cook 2 Inst. 46.

Thirdly, *That no Free-man shall be disseiz'd of his Free-hold or Liberties, or free Customs, &c.* Hereby is intended, saith Cook, *That Lands, Tenements, Goods and Chattels, shall not be seiz'd into the King's hands contrary to this great Charter, &c.* 43 Ass. pag. 12. 43 Edw. 3. Cook 2. Inst. 32. Neither shall any such Free-man be put from his Livelihood without answer, Cook 2. Inst. 47.

Fourthly, *That no Free-man shall be Out-law'd, unless he shroud and hide himself voluntarily from the Justice of the Law.* 2 & 3 Phil. & Mar. Dier. 114. 145.

Fifthly, *No Free-man shall be exil'd.* Cook says there are but two Grounds upon which any Man may be exil'd. One by Act of Parliament (supposing it not contrary to the great Charter.) — The other in case of Abjuration, for Felony by the Common Law, &c. Cook 2. Inst. 47.

Sixthly, *No Free-man shall be destroy'd; that is, he shall not be fore-judg'd of Life, Limb, Disinherited, or put to Torture, or Death.* Every Oppression against Law, by colour of any usurp'd Authority.

thority, is a kind of Destruction, and 'tis the worst Oppression that is done by colour of Justice. *Cook Instit.* 2. 48.

Seventhly, *That no Free-man shall be thus taken, or imprison'd, dis-seiz'd, Out-law'd, exil'd, or destroy'd of his Liberties, Free-holds, and free Customs, but BY THE LAWFUL JUDGMENT OF HIS PEERS, (vulgarly call'd Jury.)* So that the Judgment of any Fact or Person is, by this Fundamental Law, refer'd to the Breasts and Consciences of the Jury: it's rendred in Latin *PER LEGALE JUDICIUM*; that is, Lawful Judgment. From whence it is to be observ'd, that the Judgment must have Law in it, and be according to Law, which cannot be where they are not Judges, how far the Fact is legal, or the contrary; *Judicium quasi Juris Dictum, The Voice of Law and Right.* And therefore is their Verdict not to be rejected, because it is suppos'd to be the Truth, according to their Consciences: For *Ver dictis* from *vere dictum* is, *quasi dictum veritatis*, or a true Saying or Judgment, 9 *Hen.* 3. 29. *Cook Inst.* 1. 39. *Inst.* 4. 207. *Cook* says, that by the word *LEGALE*, three Things are imply'd.

First, *That this was by Law before the Statute; and therefore this Statute but Declaratory of the antient Law.*

2dly, That their Verdict must be legally given. Wherein is to be observ'd, (1st.) *The Jury ought to hear no Evidence, but in the hearing and presence of the Prisoner.* (2dly.) *That they cannot send to ask any Question in Law of the Judges, but in the presence of the Prisoner: for, de facto Jus oritur.*

3dly, The Evidence produc'd by the King's Counsel, being given, *the Judges cannot collect the Evidence, nor urge it by way of Charge to the Jury; nor yet confer with the Jury about the Evidence, but in the presence of the Prisoner.* *Cook Inst.* 2. 49.

Eighthly, *Or by the Law of the Land.* It is a *Synonymous* Expression, importing no more than *by a Tryal of Peers, or a Jury*: For it is sometimes rendred not (*or*) disjunctively, but (*and*) which is connectively; however, it can never signify any thing contrary to the Old way of Trying by Peers, for then it would be connected to a contradiction.

Besides, *Cook* well observes, that in the 4th Chapter of the 25th *Edw.* 3. *Per Legem Terræ*, imports no more than a Tryal by due Process, and Writ Original at Common Law, which cannot be without a Jury; therefore, *Per Judicium Parum, & per Legem Terræ*, signify the same Privilege unto the **People**: *Cook Inst.* 2. pag. 50.

Thus

Thus have we presented you with some of those Maxims of Law, dearer to our Ancestors than Life; *Because they are the Defence of the Lives and Liberties of the People of England*: It is from this 29th Chapter of the Great Charter, (*Great*, not for its Bulk, but the Privileges in it) as from a spacious Root, that so many fruitful Branches of the Law of *England* springs, if *Cook* may be credited. But how *sacred* soever they have been esteem'd, and still are by noble and just Minds; yet so degenerate are some in their Proceedings, that conscious to themselves of their baseness, they will not dare stand the Touch of this Great Charter, and those just Laws grounded upon it; of which number we may truly rank the Mayor and Recorder of *London*, with the rest of their wise Companions, in their late Sessions at the *Old-Baily*, upon the occasion of the Prisoners.

First, The Prisoners were taken, and imprison'd without Presentment of good and lawful Men of the Vicinage, or the Neighbourhood, *but after a military and tumultuous manner, contrary to the Grand Charter.*

2dly, *They refused to produce the Law upon which they proceeded; leaving thereby the Prisoners, Jury, and whole Assembly in the dark.*

3dly, *They refused the Prisoners to plead, and directly withstood that great Privilege, mention'd in the first Chapter, 25 Edw. 1. Where all Justices, Mayors, Sheriffs, and other Ministers, that have the Laws of the Land to guide them, are required to allow the said Charter to be pleaded in all its Points, and in all Causes that shall come before them in Judgment.* For no sooner did *William Penn*, or his Fellow Prisoner, urge upon them the great Charter, and other good Laws, but the Recorder cry'd, Take him away, take him away, put him into the Bale-dock or Hole: From which the Recorder can never deliver himself, unless it be by avowing, *the Laws are not his Guide, and therefore does not suffer them to be pleaded before him in Judgment.*

4thly, *They gave the Jury their Charge in the Prisoner's absence, endeavouring highly to incense the Jury against them.*

5thly, The Verdict being given, which is in Law *DICTUM VERITATIS*, *The Voice of Truth her self*, (because not suitable to their humour) *They did five times reject it, with many abusive, imperious and menacing Expressions to the Jury*, (such as no Precedent can afford us) as if they were not the only constituted Judges by the Fundamental Laws of the Land, *but mere Cyphers only, to signify something behind their Figures.*

6thly, Tho the Prisoners were clear'd by their Jury, yet were they continued for the non-payment of their Fines laid upon them, for not pulling off their Hats; in which the Law is notoriously broken.

(1st.) In that no Man shall be amerced, but according to the Offence; and they have fined each forty Marks.

(2.) They were not merced by any Jury, but at the Will of an incens'd Bench.

Besides, there is no Law against the Hat; and where there is no Law, there can be no Transgression, and consequently no legal Amercement or Fine, 9 H. 3. Chap. 14. But how the Prisoners were trapanned into it, is most ridiculous on the side of the Contrivers, that finding their Hats off, would have them put on again by their Officers, to fool the Prisoners; with a trial of putting them off again; which childish Conceit not being gratified, they Fined them the Forty Marks a-piece.

7thly, Instead of accepting their Verdict as good in Law, and for the true decision of the matter, according to the Great Charter (that constitutes them proper Judges, and which bears them out, with many other good Laws, in what they agreed to, as a Verdict) the Court did most illegally and tyrannically Fine and Imprison them, as in the Tryal was express'd: And that notwithstanding the late just Resentment of the House of Commons, in Judg Keeling's Case, where they resolv'd, that the precedent and practice of Fining and Imprisoning of Juries, for their Verdicts, were illegal. And here we must needs observe two Things.

First, That the Fundamental Laws of England cannot be more slighted and contradicted in any thing (next Englishmen's being quite destroy'd) than in not suffering them to have that equal medium, or just way of tryal, that the same Law has provided, which is by a Jury.

Secondly, That the late Proceeding of the Court at the Old-Baily, is an evident Demonstration, that Juries are now but mere Formality, and that the partial Charge of the Bench must be the Verdict of the Jury; for if ever a Rape were attempted on the Consciences of any Jury, it was there. And indeed the Ignorance of Jurors of their Authority by Law, is the only Reason of their unhappy cringing to the Court, and being scared into an Anti-Conscience Verdict, by their lawless Threats.

But we have lived to an Age, so devoid of all Humanity and Reason, as well as Faith and Religion, that some stick not to turn Butchers to their own Privileges, and Conspirators against their own Liberties. For however, Magna Charta had once the Reputation of a sacred unalterable Law, and few hardned enough to incur and bear the long Curse that attended the Violaters of it; yet it is frequently objected now, that the Benefits there design'd are but Temporary, and therefore liable to alteration, as other Statutes are. What Game such Persons play at, may be lively

read,

read, in the attempts of Dionysius, Phalaris, &c. which would have Will and Power be the People's Law.

But that the Privileges due to *English-men* by the Great Charter of *England*, have their Foundation in Reason and Law; and that those new *Cassandrian* ways, to introduce *Will and Power*, deserve to be detested by all Persons professing Sense and Honesty, and the least Allegiance to our *English* Government; we shall make appear from a sober Consideration of the Nature of those Privileges contain'd in that *Charter*.

1. The Ground of Alteration of any Law in Government (where there is no Invasion) should arise from the universal *discommodity of its continuance*; but there can be no disprofit in the discontinuance of *Liberty and Property*, therefore there can be no just ground of alteration.

2. No one *English-man* is born Slave to another, neither has the one a right to inherit the sweat and benefit of the other's labour (without consent;) therefore the *Liberty and Property* of an *English-man* cannot reasonably be at the Will and Beck of another, let his *Quality and Rank* be never so great.

3. There can be nothing more unreasonable than that which is partial; but to take away the LIBERTY and PROPERTY of any (which are natural Rights) without breaking the Law of Nature (and not of Will and Power) is manifestly partial, and therefore unreasonable.

4. If it be just and reasonable for Men to do as they would be done by, then no sort of Men should invade the Liberties and Properties of other Men, because they would not be served so themselves.

5. Where Liberty and Property are destroy'd, there must always be a State of Force and War; which however pleasing it may be unto the *Invaders*, it will be esteem'd intolerable by the *Invaded*; who will no longer remain subject in all humane Probability, than while they want as much Power to free themselves, as their Adversaries had to enslave them: The troubles, hazards, ill-consequences, and illegality of such Attempts, as they have declined by the most prudent in all Ages; so have they proved most uneasy to the most savage of all Nations, who first or last have by a mighty Torrent freed themselves, to the due punishment and great infamy of their Oppressors: Such being the advantage, such the disadvantage which necessarily do attend the fixation and removal of Liberty and Property.

We shall proceed to make it appear, that *Magna Charta* (as recited by us) imports nothing less than their preservation.

No Free-man shall be taken, or imprisoned, or be disseized of his Freehold, or Liberties, or free Customs, or be Out-law'd, or Exil'd, or any

other ways destroy'd; nor we will not pass upon him, nor condemn him, but by lawful judgment of his Peers, &c.

A Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault, after the greatness thereof; and none of the said Amercement shall be assessed, but by the Oath of good and lawful Men of the Vicinage.

First, It asserts *English-men* to be free; *that's Liberty*.

Secondly, That they have Free-holds; *that's Property*.

Thirdly, That Amercement, or Penalties, should be proportioned to the faults committed; *which is Equity*.

Fourthly, That they shall lose neither, but when they are adjudged to have forfeited them, in the judgment of their honest Neighbours, according to the Law of the Land; *which is lawful Judgment*.

It is easy to discern to what pass the Enemies of the *Great Charter* would bring the People.

First, They are now Free-men; *but they would have them Slaves*.

Secondly, They have now Right unto their *Wives, Children, and Estates*, as their undoubted Property; *but such would rob them of all*.

Thirdly, Now no Man is to be amerc'd, or punish'd, but sutable to his fault; *whilst they would make it sutable to their revengeful minds*.

Fourthly, Whereas the Power of Judgment lies in the Breasts and Consciences of twelve honest Neighbours; *they would have it at the discretion of mercenary Judges*. To which we cannot chuse but add, *That such Discourses manifestly strike at this present Constitution of Government*; for it being founded upon the *Great Charter* (which is the Antient Common Law of the Land) as upon its best Foundation, none can design the cancelling of the *Charter*, but they must necessarily intend the extirpation of the *English Government*: For where the Cause is taken away, the Effect must consequently cease. *And as the Restoration of our antient English Laws, by the Great Charter, was the sovereign Balsam which cured our former Breaches, so doubtless will the continuation of it prove an excellent prevention to any future disturbances*.

But some are ready to object, *That the Great Charter consisting as well of Religious as Civil Rights; the former having receiv'd an Alteration, there is the same reason why the latter may have the like*.

To which we answer, That the reason of Alteration cannot be the same; therefore the Consequence is false: The one being Matter of Opinion, about Faith and Religious Worship, which is as various as the unconstant Apprehensions of Men: but

but the other is Matter of so immutable Right and Justice, that all Generations (however differing in their Religious Opinion) have concenter'd and agreed to the *certainty, equity, and indispensable necessity of preserving these Fundamental Laws*; so that *Magna Charta* hath not risen and fallen with the differing religious Opinions that have been in this Land, but have ever remain'd as *the stable Right of every individual English-man, purely as an English-man*. Otherwise, if the *Civil Privileges* of the People had fallen with the pretended Religious Privileges of the *Popish Tyranny*, at the first Reformation (as must needs be suggested by this Objection) our Case had ended here, *That we had obtain'd a Spiritual Freedom at the cost of a Civil Bondage*; which certainly was far from the intention of the first Reformers, and probably an unseen Consequence, by the Objectors, to their idle Opinion.

In short, there is no time in which any Man may plead the Necessity of such an Action, as is unjust in its own Nature, which he must unavoidably be guilty of, *that doth deface or cancel that Law by which the Justice of Liberty and Property is confirm'd and maintain'd to the People*. And consequently, that no person may legally attempt the Subversion, or Extenuation of the force of the *Great Charter*, we shall proceed to prove from Instances out of both.

1st. *Any Judgment given contrary to the said Charter, is to be undone, and holden for nought.* 25 Edw. 1. Chap. 2.

2dly. *Any that by Word, Deed, or Counsel, go contrary to the said Charter, are to be Excommunicated by the Bishops: And the Archbishops of Canterbury and York, are bound to compel the other Bishops to denounce Sentence accordingly, in case of their remissness, or neglect; which certainly hath relation to the State, rather than the Church; Since there was never any necessity of compelling the Bishops to denounce Sentence in their own Case, tho frequently in the Peoples.* 25 Edw. 1. Chap. 4.

3dly, *That the Great Charter, and Charter of Forest, be holden and kept in all Points; and if any Statute be made to the contrary, that it shall be holden for nought.* 42 Edw. 3. 1. Upon which Cook, that famous English Lawyer, said, *That albeit Judgments in the King's Court are of high regard in Law, and Judicia are accounted as Juris Dicta: Yet it is provided by Act of Parliament, That if any Judgment be given contrary to any of the Points of the Great Charter, it shall be holden for nought.*

He further saith, *That upon the Statute of the 25th Edw. 1. Chap. 1. That this Great Charter, and the Charter of Forest, are properly the Common Law of this Land, or the Law is Common to all the People thereof.*

4thly, Another Statute runs thus: *If any force come to disturb the Execution of the Common Law, ye shall cause their Bodies to be arrested, and put in Prison: Ye shall deny no Man right by the King's Letters, nor counsel the King any thing that may turn to his damage, or disherison, 18 Edw. 3. Chap. 7. Neither to delay Right by the great and little Seal. This is the Judg's Charge and Oath, 2 Edw. 3. Chap. 8. 14 Edw. 3. 14. 11 R. 2. Chap. 10.*

5thly, Such care hath been taken, for the preservation of this Great Charter, that in the 25th of Edw, 1. it was enacted, *That Commissioners should issue forth, that there should be chosen in every Shire-Court, by the Commonalty of the same Shire, three substantial Men, Knights, or other lawful, wise, and well-dispos'd Persons, to be Justices; which shall be assigned by the King's Letters Patents, under the Great Seal, to hear and determine (without any other Writ, but only their Commission) such Plaints as shall be made upon all those that commit, or offend against any Point, contain'd in the aforesaid Charters. 28 Edw. 1. Chap. 1.*

6thly, The Necessity of preserving these *Charters* hath appear'd in nothing more, than in the care they have taken to confirm them; which, as *Cook* observes, hath been by Thirty-two *Parliaments* confirm'd, establish'd, and commanded to be put in execution, with the condign Punishment they had inflicted upon the Offenders. *Cook's Proem* to the second Book of his *Institut*.

7thly, That in the notable *Petition of Right*, many of these great Privileges, and free Customs, contain'd in the aforesaid Charters, and other good Laws, are recited and confirmed, 3 *Car. 1.*

8thly, The late King, in his Declaration at *New-Market*, 1641. acknowledged *the Law to be the Rule of his Power*: By which he doubtless intended *Fundamental Laws*, since it may be the great Advantage of Countries, sometimes to suspend the execution of *Temporary Laws*.

Having so manifestly evidenc'd that *venerable Esteem* our Ancestors had of that *Golden Rule* (the Great Charter) with their deep Solicitude to preserve it from the defacing of Usurpation and Faction; we shall proceed to give an account of their just Resentment and earnest Prosecution against some of those, who in any Age have adventured to undermine that antient Foundation, by introducing an Arbitrary way of Government.

First, As *Judicious Lambard* reports in his *Saxon Translation*; *That the Kings, in those days, were by their Coronation-Oaths obliged to keep the antient Fundamental Laws and Customs of this Land, (of which this Great Charter is but declaratory) so did King Alfred (reputed the most famous Compiler of Laws amongst them)*

them) give this discovery of his Indignation against his own Judges, for Actions contrary to those Fundamental Laws, that he commanded the execution of forty of them; which may be a seasonable Caveat to Judges of our Times.

Secondly, Hubert de Burgo, once Chief Justice of England, (having advised Edw. 1. in the 11th Year of his Reign, in his Council holden at Oxford, to cancel this Great Charter, and that of the Forest) was justly sentenced according to Law, by his Peers, in open Parliament. When the Statute call'd CONFIRMATIONES CHARTARUM was made; in the first Chapter whereof, Magna Charta is peculiarly call'd the Common Law, 25 Edw. 1. Chap. 2.

Thirdly, The Spencers (both Father and Son) for their arbitrary Domination, and rash and evil Counsel to Edward the Second (by which he was seduced to break the Great Charter) were banish'd for their pains, as Cook relates.

Fourthly, The same Fate attended Tresilian and Belknap for their illegal Proceedings.

Fifthly, The Breach of this Great Charter was the ground of that exemplary Justice, done upon Empson and Dudley, whose Case is very memorable in this Point: For tho they gratified Henry the Seventh in what they did, and had an Act of Parliament for their Warrant, made the 11th of his Reign; yet met they with their due Reward from the hands of Justice, that Act being against Equity and Common Reason, and so no justifiable Ground or Apology for those frequent Abuses and Oppressions of the People they were found guilty of. Hear what the Lord Cook further saith concerning the Matter: " There was an Act of Parliament made in the 11th Year of " King Henry the Seventh, which had a fair flattering Preamble, " pretending to avoid divers mischiefs, which were (1st) The " high Displeasure of Almighty God. (2d) The great Let of the Com- " mon Law. And (3d) The great Let of the Wealth of this Land. " And the Purvien of that Act, tended in the Execution con- " trary, EX DIAMETRO, viz. To the high Displeasure of Al- " mighty God, and the great Let, nay the utter Subversion of the Com- " mon Law, and the great Let of the Wealth of this Land, as here- " after shall appear: The substance of which Act, follows in these words:

That from thenceforth, as well Justices of Assize, as Justices of the Peace, in every County, upon Information for the King before them made, without any Finding or Presentment by Twelve Men, shall have full Power and Authority, by their discretion, to hear and determine all Offences, as Riots, unlawful Assemblies, &c. committed and done against any Act or Statute made, and not repeal'd, &c. (a Case that very much resembles this of our own Times.)

“ By pretext of this Law, *Empson and Dudley* did commit
 “ upon the Subjects unsufferable Pressure and Oppressions ;
 “ and therefore this Statute *was justly, soon after the decease of*
 “ *Hen. 7. repealed,* at the next Parliament after his decease, by
 “ the Statute of *1 Hen. 8. Chap. 6.*

“ *A good Caveat to Parliaments, to leave all Causes to be measur'd*
 “ *by the Golden and Streight Metwand of the Law,* and not to the
 “ uncertain and crooked Cord of Discretion.

“ It is almost incredible to foresee, when any *Maxim or Fun-*
 “ *damental Law of this Realm is alter'd* (as elsewhere hath been
 “ observ'd) *what dangerous inconveniences do follow ;* which most
 “ expressly appeareth by this most unjust and strange Act of
 “ the 11th of *Hen. 7.* For hereby, not only *Empson and Dudley*
 “ themselves, but such Justices of Peace (corrupt Men) as
 “ they caused to be authoriz'd, committed most grievous and
 “ heavy Oppressions and Exactions ; grinding the Faces of the
 “ poor Subjects by Penal Laws (be they never so obsolete, or
 “ unfit for the time) by Information only, without any Pre-
 “ sentment or Tryal by Jury, being the antient Birth-right
 “ of the Subject ; but to hear and determine the same, by their
 “ discretions ; inflicting such Penalty, as the Statute not re-
 “ pealed, impos'd. These and other like Oppressions and Ex-
 “ actions by, or by the means of *Empson and Dudley,* and their
 “ Instruments, brought infinite Treasure to the King's Cof-
 “ fers ; whereof the King himself, at the end, with great
 “ grief and compunction, repented, as in another place we
 “ have observ'd.

“ This Statute of the 11th of *Hen. 7.* we have recited, and
 “ shewed the just inconveniences thereof ; to the end, that the
 “ like should never hereafter be attempted in any Court of
 “ Parliament ; and that others might avoid the fearful End of
 “ those two Time-servers, *Empson and Dudley, Qui eorum nequitias*
 “ *insistunt, eorum exitus perhorrescant.*

“ See the Statute of *8 Edw. 4. Chap. 2.* A Statute of Live-
 “ ries, an Information, &c. By the discretion of the Judges,
 “ to stand as an Original, &c. This Act is deservedly repeal'd,
 “ *vide 12 R. 2. Chap. 13.* Punishment by Discretion, &c.
 “ *vide 5th of Hen. 4. Chap. 6, 8.* See the Commission of
 “ Sewers : Discretion ought to be thus describ'd ; *Discretio est*
 “ *discernere per Legem, quid sit justum.* From whence three Things
 “ seem most remarkable.

First, The great Equity and Justice of the Great Charter,
 with the high Value our Ancestors have most deservedly set
 upon it.

Secondly, The dreadful Maledictions, or Curse, they have
 denounc'd upon the Breakers of it ; with those exemplary
 Punish-

Punishments they have not spared to inflict upon such notorious Offenders.

Thirdly, So hainous a thing was it esteem'd of old, to endeavour an Enervation or Subversion of these antient Rights and Privileges, that Acts of Parliaments themselves (otherwise the most sacred with the People) have not been of force enough to secure or defend such persons from condign Punishment, who, in pursuance of them, have acted inconsistent with our Great Charter. Therefore it is that great Lawyer, the Lord Cook, doth once more aggravate the Example of *Empson* and *Dudley* (with persons of the same Rank) into a just Cauti-
 tion, as well to Parliaments as Judges, Justices and inferior Magistrates, to decline making or executing any Act that may in the least seem to reſtringe or confirm this ſo often avowed and confirmed *Great Charter* of the Liberties of *England*, ſince Parliaments are ſaid to err when they croſs it; the Obeyers of their Acts puniſh'd as Time-ſerving Tranſgreſſors; and that Kings themſelves (tho enrich'd by thoſe courſes) have, with great Compuncti-
 on and Repentance, left among their dying Words their Recantations.

Therefore moſt notable and true it was, with which we ſhall conclude this preſent Subject, what the King pleaſed to obſerve in a Speech to the Parliament, about 1662. (*viz.*) *The good old Rules of Law are our beſt Security.*

The manner of the Court's Behaviour towards the Priſoners and Jury, with their many extravagant Expreſſions, muſt not altogether ſlip our Obſervation.

Fiſt, Their Carriage to the Jury out-do's all Precedents; they entertain'd them more like a *Pack of Felons*, than a *Jury of honeſt Men*; as being fitter to be try'd themſelves, than to acquit others. In ſhort; no Jury, for many Ages, receiv'd ſo many Inſtances of Diſpleaſure and Affront; *becauſe they prefer'd not the humour of the Court, before the quiet of their own Conſciences, even to be eſteem'd as perjur'd; tho they had really been ſo, had they not done what they did.*

Secondly, Their Treatment of the Priſoners was not more unchriſtian than inhumane. Hiſtory can ſcarce tell us of one *Heathen Roman* that ever was ſo ignoble to his *Captive*: *What! to accuſe, and not hear them; to threaten to Bore their Tongues, Gag and Stop their Mouths, Fetter their Legs, merely for defending themſelves, and that by the antient Fundamental Laws of England too.* O Barbarous! had they been *Turks* and *Infidels*, that Carriage would have ill become a *Chriſtian Court*; *ſuch Actions proving much ſtronger Diſſuaſives, than Arguments to convince them, how much the Chriſtian Religion inclines Men to Juſtice and Moderation above their dark Idolatry.* It is truly lamentable that ſuch occaſion ſhould

be given for Intelligence to Foreign Parts, where England hath had the Reputation of a Christian Country, by the ill treating of its sober and religious Inhabitants for their conscientious Meetings to worship God. But above all, Dissenters had little reason to have expected this boarish fierceness from the Mayor of London; when they consider his eager prosecution of the King's Party under Cromwell's Government, as thinking he could never give too great a Testimony of his Loyalty to that new Instrument; which makes the old Saying true, *That one Runagade is worse than three Turks.*

9 Alderman *Bludworth*, being conscious to himself of his partial kindness to the *Popish Firers*, hopes to make amends by his zealous Prosecution of the poor *Dissenters*; for at the same Sessions he moved to have an Evidence (of no small quality) against *Harrison* the Friar, sent to *Bridewell* and Whipt; That he was earnest to have the Jury fined and imprisoned, because they brought not the Prisoners guilty for only worshipping their God. Whence it may be easy to observe, *That Popish Friars, and Prelatical Persecutors, are mere Confederates.*

But what others have only adventured to stammer at, the Recorder of *London* has been so ingenuous as to speak most plainly; or else what mean those two fatal Expressions, which are become the talk and terror both of *City* and *Country*?

First, In assuring the Jury, *That there would be a Law next Session of Parliament, That no Man should have the protection of the Law, but such as conformed to the Church?* Which, should it be as true, as we hope it is false (and a dishonourable Prophecy of that great Assembly) the *Papists* may live to see their *Marian* days outdone by profess'd *Protestants*.

But surely no *English-man* can be so sottish, as to conceive that his Right to *Liberty* and *Property* came in with his Profession of the *Protestant Religion*; or that his *natural and humane Rights* are dependant on certain religious Apprehensions; and consequently he must esteem it a Cruelty in the Abstract, that Persons should be deny'd the benefit of those Laws which relate to civil Concerns, who by their deportment in civil Affairs have no ways transgress'd them, but merely upon an Opinion of Faith, and Matter of Conscience.

It is well known, that *Liberty* and *Property, Trade* and *Commerce*, were in the World long before the Points in difference betwixt *Protestants* and *Dissenters*, as the common Privileges of Mankind; and therefore not to be measured out by a conforming to this, or the other religious Persuasion, but purely as *English-men*.

Secondly,

Secondly, But we should rather chuse to esteem this an Expression of *Heat* in the *Recorder*, than that we could believe a *London's Recorder* should say, an *English Parliament* should impose so much Slavery on the present Age, and entail it upon their own Posterity (who, for ought they know, may be reckon'd among the Dissenters of the next Age) did he not encourage us to believe, it was both his Desire and his Judgment, from that deliberate *Elogy* he made on the *Spanish Inquisition*, expressing himself much to this purpose: *Viz.* “ Till now I never understood the Reason of the Policy and “ Prudence of the *Spaniards*, in suffering the *Inquisition* amongst “ them: And certainly it will never be well with us, till “ something like unto the *Spanish Inquisition* be in *England*. The gross Malignity of which Saying, is almost inexpressible. What does this but justify that hellish Design of the *Papists*, to have prevented the first Reformation? If this be good Doctrine, then *Hoggestrant*, the grand *Inquisitor*, was a more venerable Person than *Luther* the Reformer. It was an expression that had better become *Cajetan*, the *Pope's Legate*, than *Howel*, a *Protestant City's Recorder*. This is so far from helping to convert the *Spaniard*, that it is the way to harden him in his Idolatry; when his abominable Cruelty shall be esteem'd Prudence, and his most barbarous and exquisite torturing of Truth, an excellent way to prevent Faction.

If the *Recorder* has spoke for no more than himself, it is well; but certainly he little deserves to be thought a *Protestant*, and a *Lawyer*, that put both *Reformation* and *Law* into the *Inquisition*: There being nothing more destructive of the Fundamental Laws and Liberties of *England*, and that noble Design of Primitive Reformation, than the Arbitrary Power and Terrifying Racks of the *Spanish Inquisition*. And doubtless the supreme Governors of the Land are highly oblig'd in Honour and Conscience (in discharge of their Trust to God and the People) to take these things into their serious Consideration, as what is expected from them by those who earnestly wish Theirs and the Kingdom's Safety and Prosperity.

A Postscript.

The Copy of Judg Keeling's Case, taken out of the Parliament-Journal.

Die Mercurii, 11. Decembris, 1667.

THE House resumed the Hearing of the rest of the Report touching the Matter of Restraints upon Juries; and that upon the Examination of divers Witnesses, in several Clauses of Restraints put upon Juries, by the Lord Chief Justice Keeling: Whereupon the Committee made their Resolutions, which are as followeth.

First, That the Proceedings of the Lord Chief Justice, in the Cases now reported, are Innovations, in the Tryal of Men for their Lives and Liberties; and that he hath used an Arbitrary and Illegal Power, which is of dangerous Consequence to the Lives and Liberties of the People of England, and tends to the introducing of an Arbitrary Government.

Secondly, That in the place of Judicature, the Lord Chief Justice hath undervalued, vilified and contemned Magna Charta, the great Preserver of our Lives, Freedom and Property.

Thirdly, That he be brought to Tryal, in order to condign Punishment, in such manner as the House should judg most fit and requisite.

Die Veneris, 13. Decembris, 1667.

Resolved, &c.

That the Precedents and Practice of Fining or Imprisoning Jurors for Verdicts, is Illegal.

Now whether the Justices of this Court, in their Proceedings (both towards the Prisoners and Jury) have acted according to Law, to their Oaths and Duty, and to do Justice without partiality; whereby Right might be preserv'd, the Peace of the Land secur'd, and our antient Laws establish'd: Or, whether such Actions tend not to deprive us of our Lives and Liberties, to rob us of our Birth-right, the Fundamental Laws of England: And finally, to bring in an Arbitrary and Illegal Power to usurp the Benches of all our Courts of Justice, we leave the *English* Reader to judg.

Certainly there can be no higher Affront offer'd to King and Parliament, than the bringing their Reputations into suspi-

cion

cion with their People, by the irregular Actions of subordinate Judges: And no Age can parallel the Carriage of this *Recorder*, *Mayor*, &c. Nor can we think so ignobly of the Parliament, as that they should do less than call these Persons to account, who fail'd not to do it to one less guilty, and of more repute, (to wit) *Judg Keeling*: For if his Behaviour gave just ground of Jealousy, that he intended an Innovation, and the introducing an Arbitrary Government, This *Recorder* much more. Did Chief Justice *Keeling* say, *Magna Charta* was *Magna facta*? so did this *Recorder* too. And did Justice *Keeling* Fine and Imprison Juries contrary to all Law? so did this *Recorder* also. In short, there is no difference, unless it be, that the one was question'd, and the other deserves it: But we desire in this, they may be said to differ; That tho the former escap'd Punishment, the latter may not; who having a Precedent before, did notwithstanding notoriously transgress.

To conclude: The Law supposes the King can't err, because it is willing to suppose he always acts by Law (*Et Voluntas Legis est Voluntas Regis*, or the King's Will is regulated by the Law) but it says no such thing of his Judges. And since they are oblig'd by Oath to disregard the King's Letters (tho under the Broad and Privy-Seal) if they any wise oppugn or contradict the Laws of the Land; and considering that every singular Action of an inferior Minister, has an ugly Reference to the Supreme Magistrate, where not rebuked; we can't but conclude, that both Judges are answerable for their Irregularities, especially where they had not a Limitation of a King's Letter, or Command; and that the Supreme Magistrate is oblig'd, as in Honour and Safety to himself, *Alfred*-like, to bring such to condign Punishment, lest every Sessions produce the like Tragical Scenes of Usurpation over the Consciences of Juries, to the vilifying and contemning of Justice, and great Detriment and Prejudice of the good and honest Men of this Famous and Free City.

FIAT JUSTITIA.

Phenix XII.

The Second Part of the People's Antient and Just Liberties asserted, in the Proceedings against, and Tryals of Thomas Rudyard, Francis Moor, Richard Mew, Richard Mayfield, Richard Knowlman, Gilbert Hutton, Job Boulton, Richard Thornton, Charles Banister, John Boulton, and William Bayly.

At the Sessions begun and held at the Old-Baily in London the last Day of the 6th Month, and there continued till the 7th Day of the 7th Month next following, in the Year 1670. against the Arbitrary Procedure of that Court, and Justices there.

The PREFACE to the READER.

THAT State which would preserve it self from Ruin and Destruction is ever to keep its Inhabitants pure and clean from Vice and Debauchery, and their Laws from Violation and Corruption; as the first is a way or means to engage a
con-

conscientious Obedience and Observation of the just and upright Law of God; so the second, by reason of their due execution, are the Sinews or Sanctuaries that bind the Inhabitants of such State in a perpetual Bond of Safety and Tranquillity: And it's certainly true, where either of these are violated or neglected, the Ruin of that State is near at hand. There's no better way to incline the Subjects of any State to Morality and Vertue, than that those that sit at the Helm, or have the Government thereof, should hold forth clear Examples and Patterns of Piety and Justice in their Lives and Actions.

Regis ad exemplum totus componitur Orbis,

Saith the Poet, The whole World imitate the Example of their King. And the Divine Historian, Josephus, observes in his Ecclesiastical History, fol. 209. But (saith he) mortal men most usually are corrupted by the un- 2 Chron 13. toward Flatteries of wavering Fortune, as ap- 18, 19, 20. pearèth by King Rehoboam: seeing his Kingdom thus increas'd, he bent himself to all unjust and impious Actions, and contemn'd the Service of God; the People also conform'd themselves to his Impieties; for the Life of the Subjects is oftentimes perverted by reason of the corrupt and dissolute Life of their Princes: And those that are Inferiors beholding the Riot of their Superiors, will easily be withdrawn from all Modesty, and follow those Vices they profess, as if they had been their profess'd Vertues: For should they do the contrary, they should seem to disannul and dislike the Actions of their Princes.—The Subjects addicted themselves to Impiety, and all Errors; for they would not make profession of Honesty, for fear they should seem to study the means to be offensive unto the King.

From this lively Pattern, or Representative of our present Times or State, we must wish that Princes in this Age would consider, and put in practice that Golden Rule of Demosthenes, Bene gubernare, recte judicare, juste facere; to govern well, judg rightly, and do justly; so should their Kingdoms flourish, and they themselves be in high estimation in the eyes of their People. W.H's Epistle in his Translation of Mirror of Justice.

And next the Prince's curious eye over his own personal Actions, & due heed, care and regard is to be had to his Representatives in his Courts of Justice; viz. those Justices whom he constitutes by his Commission to hear and determine betwixt him and his People, that they be such who by their due Administration and faithful dispensing of the Laws, Justice and Right may be done to all men without respect of Persons.

But

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But as Vice and Debauchery have devour'd and eaten up the Nation's Practice of Religion, scarce leaving us the outside shell of Profession: So hath the Corruption of our Laws, and the Violation thereof, turn'd back those wholesome Streams of Justice which should naturally flow from the use of them.

And thou thou, Reader, mayst see that thy self art one, who is in danger of being buried in the Ruins of Religion and Piety, as well as thy Civil Rights and Liberties; which are the two Bases, or Foundations, on which thy temporary here, and future well-being hereafter, consists and stands: Call thy eye upon the Magistrates of the City of London (antiently titled Caput Regni & Legum) in their Court of Judicature at the Old Baily, and behold on the one hand Vertue term'd Vice, Sobriety Debauchery, Religion Faction, Pious and Peaceable Assemblies Riots and Routs, and punish'd as such; on the other hand, the antient written Laws denied, and their not written ones the Court's Authority: Justice turn'd into Quod non le- written ones the Court's Authority: Justice turn'd into go non cre- Gaul, Right and Equity by Will and Power over-ruled. do. August. So that it's now become a Proverb, Tell me thy Judg, and I'll tell thee thy Law.

Said the Learned Coke, Qui non libere veritatem pronunciat, proditor veritas est; He who conceals Truth, is a Betrayer thereof. Therefore for the sake of Truth, and the Reader's Benefit, were these Proceedings made publick, and according to that due Observation and impartial Account, which could be taken and collected of the manner of that Bench's Arraigning and Condemning as well Religion, Piety, Vertue and Sobriety, as Right, Equity, Liberty and Property, with due Comments upon their Procedures from the antient and fundamental Laws of this Land, are laid to thy view.

And had not the Mayor and Recorder, with the rest of the Bench, prohibited many, by severe Threats, from writing down the Court's partial Dealings both towards the Prisoners and Jurors; and also by violence took away what others had adventur'd to collect (commanding some to their Bale-dock) in all probability this ensuing Piece might have been much more enlarg'd to thy satisfaction.

But what has been faithfully collected and observed, and whereof there were some hundreds of Witnesses, is presented to the World; the Author (desiring rather to spare their Injustice, than wrong their Judicature) has contracted this Relation to what comes within the limits of his own knowledg and undeniable proofs; but impartially laid Judgment to the Line, and discover'd that which may tend to the Good of his Countrymen, in the Vindication of the Laws, Truth, Innocency, Equity, and Justice.

The Second Part of the People's Antient and Just Liberties asserted, &c.

THE Laws of *England*, by just and upright Ministers and Officers faithfully dispens'd, and impartially administer'd, have ever been the Upholders and Preservers of Right and Liberty, the high esteem'd and precious Jewels of its free-born Inhabitants. But when unlimited Prerogatives have sprung up, like Mushrooms, out of the sappy Apprehensions, aspiring Brains, and heady Humours of inferior Officers and Ministers; then Tyranny and Oppression have, under disguise of Justice and colour of Law, depriv'd the Commonalty of these things, which they have held most precious and dear to them.

The pretended Crimes or Offences laid to the charge of *Thomas Rudyard*, are far different in their kind and nature from those other Persons, who have undergone with him the severe Judgments, or as some call them, the Inquisitory-like Censures of that Court; which were so far from *Juris Dicta*, the Law of Right, or impartial dispensing of Justice, that they are clear contrary and directly opposite unto them. The Justices of that Court, Judge *Coke*, that famous *English* Lawyer, doth well describe in his *2d Inst. fol. 55.* in a Poetical Simile of an unjust Judg:

*Grosius hic Rhadamanthus habet durissima Regna,
Castigatque auditque dolos, subigitque fateri.*

And in another place :

Leges fixit pretio atque refixit.

They punish, then hear, compel to confess, make and mar Laws at pleasure.

The Occasion of *T. R's* being envy'd and prosecuted by these Adversaries of Peace, was because of his faithful defending and constant appearing (when call'd thereto) for his Clients and Retainers, in such Matters and Causes as Will and Power had forged, and daily did put in execution against them. So that the third of the fourth Month, call'd *June*, the Magistrates of the City of *London*, in the name or colour of a Lieutenantcy or Militia, issued out a Warrant, to break open

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his House in the dead of the Night, to apprehend him (when they might have had him at Noon-day, upon the Exchange, about his occasions) and did take and carry away him, and also what Arms they there could find. Which Warrant was executed by the Soldiers of one Captain *Holford*; and the next day he was sent to the Goal of *Newgate*, as a Person suspected and disaffected to the Peace of the Kingdom, as was alledg'd in his *Mittimus*, under the Hands and Seals of *Samuel Starling* Mayor, *W. Peak*, *R. Hanson*, *A. King*, *J. Dawes*, *John Cutler*, *W. Rouswel*, *A. Stanyon*, *J. Trivell*, *W. Allott*, *J. Sheldon*, and *T. Davis*.

The seventh of the fourth Month, the Lieutenancy (so call'd) order'd *T. R.* to be again brought before them, who without alledging any Crime, or certain Matter that was prov'd against him, tho earnestly requested by him that he might hear his Accusation, or see his Accusers face to face, did demand 2000 *l.* Security for his Good Behaviour; which unreasonable Demand being not comply'd withal, *T. R.* was remanded to Goal, with a *Mittimus* under *S. Starling* and *J. Robinson's* Hand and Seal, pretending therein, That *T. R.* did stir up Persons to the Disobedience of Laws, and abetted and encourag'd such as met in unlawful and seditious Conventicles, contrary to the late Act in the 22 *Car. 2.* of which things, they alledg'd, that they found cause to suspect *T. R.* to be guilty.

Which Case being brought before the Justices of the Court of *Common-Pleas* at *Westminster*, by *Habeas Trin. 22. C. 2. Corpus*; that Court, after solemn debate, gave their Judgment, That *T. R.* was unjustly imprison'd, and unlawfully detain'd. And so by them was set at liberty.

His Adversary, viz. *S. Starling* the Mayor, being incens'd at his Deliverance and Discharge, finds out new Stratagems to encompass his ends upon him. So that at a Sessions of the Peace, at the *Old Baily*, the 29th of the fourth Month, an Indictment is fram'd and prefer'd against *T. R.* the Tenor whereof was, " That whereas at a Sessions of the Peace held
 " at *Guildhall* for the City of *London*, the 30th of *May*, the 22d
 " year of the King, before *S. Starling*, &c. and other Justices
 " of the Peace of the said City, assign'd, &c. a certain Bill
 " of Indictment was exhibited and prefer'd against one *Samuel*
 " *Allingbridge*, late of *London*, Stationer, written in Parchment,
 " for speaking these seditious and menacing Words, viz. *The*
 " *first man that shall disturb Mr. Vincent, will never go out of the*
 " *House alive.* And whereas one *N. Grove* and *J. Tillot* were
 " sworn to give Evidence (in behalf of the King) to the
 " grand Inquest, that *T. R.* intending to hinder and pervert
 " Justice

Justice and due course of Law against S. A. for speaking the seditious and menacing words aforesaid, the 30th of May, with Force and Arms, &c. the said Bill of Indictment, before it came to the Grand Inquest, unlawfully, secretly, and subtilly, did get, take; and had in his hands, and unlawfully did conceal and detain from the Jury, in contempt of the King and his Laws, to the hindrance of Justice and due course of Law against *Allingbridge*, unto the evil example of others, and against the King's Peace, Crown and Dignity.

To which Indictment *T. R.* appearing in Court, and pleading not guilty, *John Lee* told the Bench that there was no cause for that Indictment, by reason that *S. A.* was try'd, convicted, and acquitted the same Sessions that the pretended Indictment miscarry'd. Whereupon the Mayor pulling an Affidavit out of his pocket, that bore date the 29th then instant, alledg'd, That the Indictment was not drawn to the Case, and according to the Instructions that he gave to *John Lee*, and shew'd that Affidavit to ——— *Archer*, one of the Justices of the *Common-Pleas*; who when he had perus'd and read it over, acquainted the Mayor, that the matter therein contain'd was no cause for an Indictment. To which the Mayor answer'd; That it is cause, and shall be cause, and he would stand to it; withal affirming, That he had ask'd Chief Justice *Keeling's* Judgment, and he advis'd him to prosecute it. So the Instructions were deliver'd to *John Lee* to draw up another Indictment.

This piece of Practice was in open Court; which manifests their Partiality and unequal Dealings to such whom they convened before them, to receive Justice at their hands. And how little they (who sat there as Judges) regarded their Oaths, and the Duty of that place of so great a Trust, is easily resolved, weighing them in the Ballance of Law and Justice. Said the Learned *Coke* in his 3 *Inst.*

fol. 29. "The Judges ought not to deliver 1 Hen. 7.
 " their Opinion before-hand upon a Case put, Fol. 27.
 " and Proofs urg'd on one side in absence of
 " the Party accus'd: For how (saith he) can they be indif-
 " ferent who have deliver'd their Opinions before-hand,
 " without hearing of the Party accus'd, when a small addi-
 " tion or subtraction may alter the Case? And how doth
 " it stand with their Oaths, that are sworn, That they shall
 " well and lawfully serve our Lord the King, and his People
 " in the Office of a Justice? And they should do equal Law,
 " and execution of Right to all his Subjects. Yea, he saith
 further, " That the King's Council shall not so much as put

“ the Case in absence of the Prisoner, to the Judges. As may be seen at large in 3 *Inst. fol. 30.* And the third Statute of 18 *Edward 3.* in the Judges Oath it's said, “ And that ye give “ no Advice nor Counsel to no man great nor small, in no “ case where the King is Party.

Now if the Mayor's Prosecution, and Justice *Keeling's* Advice, be according to the Law, Justice, their Oaths and Duty, in their respective places, let the World judg.

The Clerk of the Peace drew up another Indictment, by the Mayor's Directions, which contain'd the Substance of the former; and further, “ That the said *T. R.* the said 30th of “ *May*, coming to the aforesaid *Nicholas Grove*, said to him, “ That the Bill against *S. A.* was lost, and that *N. S.* should “ attend next Saturday; and that *T. R.* unlawfully and “ craftily did say to *N. G.* these words, *viz. I will come to you “ some time this week, and we will go and drink a Pint of Wine “ with Mr. Tanner, and contrive to draw up a slight Bill, that “ may not be found, and so make an end of the business: In con- “ tempt of the King and his Laws, to the hindrance of Justice, “ and perverting of due course of Law against S. A. for his “ Offence; to the evil Example of others, and against the “ Peace of the said King, his Crown and Dignity.*

To this Indictment also *T. R.* pleaded, *Not guilty*, and gave security by Recognizance to try them both the next Sessions.

This Prosecution falling short still of the Mayor's purpose, which was to clap *T. R.* up in a Goal, demands of him to give Security, or at least his own Recognizance for his good Behaviour; being the same thing that the Judges lately had given their Opinion against.

Therefore he refus'd that piece of Bondage (yet offering the Court, in case of Health, to appear once every day at the Mayor's House, there to answer any matter that should be justly charg'd against him.) Whereupon he was committed to Prison, and by the Mayor's special Order and Direction kept close Prisoner in *Newgate*.

During the time of this unequal Prosecution of *T. R.* many others felt the weight of the Mayor's Injustice, and were made witnesses of various Stratagems used and practis'd by him and his Brethren, upon several Citizens of *London*; and likewise upon several other innocent peaceable men.

Upon the 19th of the 4th Month, *Francis Moor, Richard Mew, Richard Mayfield, Richard Knowlman, and Gilbert Hutton*, with divers others of their Friends, being (as at other times) met together (to wait upon and worship the living God in Spirit and in Truth) at *Whitehart-Court* in *Grace-Church-Street, London*

London (being forcibly kept out of their own House by Watchmen and Constables) after they had there peaceably continued together, about the space of one hour, the two Sheriffs of London, with their Guard of Officers and Soldiers, came in and made a Proclamation by one of their Servants, That all Persons there present should depart. Which being not regarded by those who peaceably came there, to give to God the things that were God's; they continu'd in peaceable manner together without distraction, not fearing what man's Violence could do unto them, knowing that against the Innocent there was no Law. Yet the Sheriffs singled out of the Assembly the abovesaid Persons, and delivering them into the custody of one *Whiting*, Beadle to the Bridg-Ward (who was a Person very diligent in such Services) and his Watchmen, who carried them by the Sheriffs order to *Bishopsgate* Goal; a Place, who ever has had the experience thereof, can witness its filthy Noisomness: And a horrid shame it is, that the Magistrates of this City should make no better Provision, than to incarcerate peaceable Men, and their Fellow-Creatures, in places as it were on purpose to stifle or poison them, that they might be incapacitated to make a due Defence against their intolerable and arbitrary Oppression.

The day following they were call'd before the Lieutenantcy, or Council of War, at *Guildhall*, who wanting proof and witness of some hostile Action done by them, they were remanded back to Prison.

The 21st of the 4th Month, they being brought before the Mayor, and the Officers swearing that they saw them in *Whitehart-Court* in *Grace-Church-street*, tho peaceable and quiet (as the Sheriffs being then present acknowledg'd) yet because the Sheriffs of London had taken up and apprehended them, as Persons present after their Proclamation made, as may appear by their Commitment; the Mayor made their *Mittimus* to *Newgate*, as Rioters: The Tenor whereof was thus.

Lond. ff. Receive into your custody the Bodies of Francis Moor, Richard Mew, &c. herewith sent you; being apprehended and brought before me, and charged to have made, and to have been present on the last Lord's Day at an unlawful Assembly, Riot and Rout in *Whitehart-yard* in *Grace-Church-street*, London; and for want of Sureties for their Good Behaviour, and personal Appearance at the next Sessions of Goal-Delivery, to be held for the said City and Liberties: And them safely keep in your custody, until they shall be thence legally discharg'd. And this shall be your Warrant, dated the 21st of June, 1670. Samuel Starling Mayor, To the Keepers of His Majesty's Goal of *Newgate*.

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Where they were kept till the Sessions following, with several others of their Friends, which were sent to them as like Offenders.

The Court order'd these, with *Richard Thornton, Charles Banister, Job Boulton, Ezekiel Archer, Margery Fann, and Samuel Slaughter*, whom the Sheriffs had taken up from their Meeting in *Bishopsgate-street*, to be indicted; the Tenor of which Indictment was, " That they together with others were met at *London, &c.* with Force and Arms in a riotous manner, &c. " to the disturbance of the Peace of our Lord the King; and " that they, together with about 200 more unknown, did " assemble in an unlawful manner, riotously, routously, and tumultuously, under colour and pretence of Religious Worship, " in other manner than was practis'd in the Church of *England*; and that after three Proclamations then and there, " in the name of the King, by *John Smith Esquire, and James Edwards Esquire*, then and yet Sheriffs of the City of *London*, were made, That all Persons there present should from " thence depart forthwith, upon their peril; the said *F. M. &c.* together with the other 200 unknown, then and there, " by the space of half a quarter of an hour, did remain and " continue together, riotously, routously, and unlawfully, in " contempt of the King and his Laws, to the disturbance of " his Peace, to the evil example of all others in the like case " Offenders, and against the Peace of the said King, his " Crown and Dignity, &c.

Justice *Moreton* sitting on the Bench, the Prisoners were call'd to the Bar; and as they pass'd along, the Goalers would have taken off their Hats, but Justice *Moreton* commanded they should be let alone, and said he would fine them five Marks a-piece for their Contempt to the Court, and so urg'd them to plead, *Guilty*, or *Not Guilty*; to which they generally answer'd, That they were not Guilty of the breach of any Just Law. So the Court took that for a Plea, as not guilty, and ask'd them whether they would be try'd presently or traverse; to which they answer'd, That if they might have a Copy of their Indictment, they would be try'd next day. The Court reply'd, That they must either try it presently, without a Copy of the Indictment, or traverse till next Sessions, and then they should have a Copy thereof, and Justice done them. To which they agreed, and pass'd their words to appear the next Sessions.

Soon after that Sessions, the Military Forces (who were every First Day order'd by the Lieutenancy to guard as well the publick Meeting-House in *Grace-Church-street*, as their Mercenary

cenary Priests, whom the Bishops sent thither, to read their Church-Homilies and Prayers) apprehended and took into custody *William Bayly*, whom they carry'd before the Mayor; and upon Information of the Priest (who on that day was to have officiated in that place, had he had courage to have perform'd what he had undertook) the Mayor committed *W. B.* to *Newgate*, for opposing the Priest in officiating his Function, as was alledg'd in his Mittimus; whenas the said *W. B.* had not at any time either seen or spoke with the said Priest.

Not long after, *John Boulton* an antient Citizen of *London*, of seventy Years of Age, and very well known to be a quiet and peaceable Person, was sent by the Mayor to *Newgate*, as a riotous Person. And soon after him, *William Penn* and *William Mead*; all which were taken up by arm'd Forces, from their publick and peaceable Assemblies, and committed to the Prison of *Newgate*.

The last of the 6th Month, the Sessions of *Oyer* and *Terminer* beginning at the *Old Baily*, not only such, who the former Sessions had been indicted, but those newly committed, attended the Court; where constantly waiting three days in expectation of being call'd to their Tryals, and according to the Laws of this Land to be condemn'd or acquitted, were never once call'd until the 3d of the 7th Month; at which time the Bench of Justices consisted of *Samuel Starling* Mayor, *John Robinson*, *Richard Ford*, *Joseph Sheldon*, *George Waterman*, *William Peak*, *Thomas Bloodworth*, Aldermen of *London*; *John Howel* the City Recorder; together with *Richard Brown*, who pretending himself to be something learned in the Law, came there to second the Recorder, and with much confidence took upon him to examine Persons according to his Will and Pleasure, as if he had been a Justice in Commission for *London*. *John Smith* and *James Edwards* were Sheriffs. O yes being made, and Silence commanded, *William Penn*, *William Mead*, *John Boulton*, *William Bayly*, *Francis Moor*, *Richard Mew*, *Richard Maysfield*, *Richard Knowlman*, *Gilbert Hutton*, *Richard Thornton*, *Charles Banister*, *Job Boulton*, *Ezekiel Archer*, and *Thomas Rudyard*, were all call'd into the Court; and not giving that Cap-Reverence and Hat Honour to the Place, which the *Haman-like-spirited* there upon the Bench expected, and look'd for, the Mayor with great Indignation, openly amongst his Brethren, first express'd himself against them (calling out to the Officers who attended the Court) saying, *Pox on them, knock them all down*.

Surely such Language as this was very ill becoming that Court of Justice, and especially to proceed from the chief Magistrate of this Imperial City. It's said, *He bears the Sword*.

in vain; that's not a Terror to Evil-doers, and a Praise to them that do well. If in this the Mayor of London has manifested his Christian Behaviour, let him have the Praise thereof. A time has been when such an Expression, for its Prophaneness, should have merited a pair of Stocks, or a Whip; and for its Rashness and Violence to be bound to the Good Behaviour.

But the Misery of our Age is such, That *Judgment is turned back, and Justice standeth afar off: And he alone who turneth himself from Evil, maketh himself a Prey.*

But the Under-Marshals and Goalers manifesting more of Humanity, than to obey the inhumane and unchristian Command of the Mayor, exercis'd no other Violence upon the Prisoners than pulling off their Hats; for which the Recorder rebuk'd them, and bid the Officers put on the Prisoner's Hats upon their Heads again; which was no sooner done, in Obedience to the Court's Command, but presently the Clerk of the Peace requires every of the Prisoners, in Obedience and Reverence to the Court, to pull off their own Hats: the Prisoners not complying with these whimsical Humors, ridiculous Precepts, and antick Acts of Justice, the Recorder gives Order to the Officers a second time to pull off all their Hats, and set Fines upon their Heads, some twenty Marks, some twenty Nobles, using variety of airy Expressions against, and taunting those Prisoners, whom he so illegally fined.

Which piece of ridiculous Pageantry being over, O yes being made, and Silence commanded, (as truly there was need of it) the Cryer call'd over the Jury; who, when they had answer'd to their Names, and taken their Places, were commanded to look upon the Prisoners at the Bar; the Prisoners were also requir'd to look upon the Jurors, and make their Challenge before they were sworn: The Names of the Jury-men were, *Thomas Veer, Edward Bushell, John Hammond, Henry Henley, Henry Michel, Charles Milson, Gregory Walklet, John Brightman, William Plumsted, James Damask, William Lever, John Bailey.* Who all took an Oath, Well and truly to try, and true deliverance make, betwixt the King and the Prisoners at the Bar, according to their Evidence; and so that God should them help. The Prisoners, without objecting against any one Man of the whole Pannel, accepted freely of them, tho they had Liberty by the Law, to have made their Challenge against whom they pleas'd. So now their Country being thus solemnly sworn to Try and Deliver, &c. they were the true and proper Judges, to acquit or condemn, to deliver or judg guilty, the persons that were given them in charge.

In this of the Jury, it's acknowledg'd, the Prisoners had Right and Justice done them: and the Court acted under their
Com.

Commission, according to that Clause, *Facturi quod ad Justitiam pertinet secundum Legem & Consuetudinem Angliæ*; To do Justice according to the Law and Custom of England, contain'd in the Charter of the English-man's Liberties; which declares, *Quod Dominus Rex non capiet, imprisonabit, nec super eum ibit, nec mittet nisi per legale judicium parium suorum*; That the King shall not take, imprison, or pass upon any Free-man, without Tryal by his Equals.

And these are call'd the Good and Lawful Men of the Vicinage, whom the Prisoners had freely accepted and given up Themselves and Causes unto, as to their Judges, to be by them condemned or acquitted, as in their Consciences they should judge Equal, Just and Righteous; according to the Establish'd and Fundamental Laws of England. The Court proceeded to Try William Penn and William Mead; the manner whereof is more largely set forth in a Book call'd, *The Peoples Antient and Just Liberties asserted, in the Tryal of William Penn and William Mead, at the Sessions held at the Old-Baily in London, the first, third, fourth and fifth of the 7th Month, 1670. against the most Arbitrary Procedure of that Court.*

Which was but an Introduction to their after Illegal and Tyrannical Proceedings against the other Prisoners: For when the Court found that all their severe Menaces, scurrilous Invectives, and hard Usage towards the Jury, could nowise avail, to make them alter that Verdict; which, according to their Oaths, they brought in for William Penn and William Mead, they presently consult how they might separate this Jury and the rest of the Prisoners, whom they had sworn to try and deliver, according to Evidence: Thereupon most Arbitrarily and Illegally against our Fundamental Law, *Magna Charta*, the great Preserver of our Lives, Freedom and Property, this Court impos'd Fines of forty Marks apiece upon every of the Jury-men, and committed them to the Goal of *Newgate*, until they should pay the same: "Which Proceedings
 " are Innovations, in the Tryal of Men for their Lives and
 " Liberties; and the Usage of such arbitrary and illegal Power, is of dangerous
 " consequence to the Lives and Liberties
 " of the People of England, and tends to
 " the introducing of an Arbitrary Govern-
 " ment; as was Resolv'd by the High
 Court of Parliament of England, Decemb. 11. 1667. in the Case of Justice Keeling.

Vide Postscript to
*the People's Antient
 and Just Liberties
 asserted.*

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Observe, All Ages have had a venerable Esteem of Juries; and this Tryal of the Fact, *Per duodecim liberos & legales Homines*, by Twelve good and lawful Men, is very antient, saith *Cook*, 1 Inst. Fol. 155. For (saith he) hear what the Law was

before the Conquest; *In singulis Centuriis comitia sunt, atque liberae conditionis viri duodecim etate superiores, una cum praeposito sacra tenentes jurant, &c.*

Twelve just and honest grave Men were to be in every Hundred, to judg their Neighbours. And thereupon in affirmance of this upright Way of Tryals by Twelve Men,

were the Charter of our Liberties made, and from time to time confirm'd; and how this Tryal excels others, and wherefore other Countries have them not, see *Fortescue*, cap. 25. and 29.

And, as one observes, our *English* Laws have taken so great care to find out the true Matter of Fact in issue, That every one of the Jurors agree together in the Matter in issue, before they give their

Verdict, which is the Foundation on which the Judgment of the Court is grounded: for, *Ex facto jus oritur*, as saith *Cook*, 2 Inst. 49.

And in the 29th Chapter of our Great Charter, it's said, *No Man shall be taken, imprisoned, &c. but per legale Judicium—by lawful Judgment of his Equals*; shewing, that antiently the Jurors were sole Judges, to pronounce and give Judgment against their Neighbours, and such whom they had in charge, according unto that *Mirror of Justice*, written by *Andrew Horn*, in the time of *Edw. 1.* Chap. 1. Sect. 3. “It was assented unto, that
“free Tenants should meet together in the Counties, Hundreds, and the Lord's Courts, if they were not especially
“exempted, to do such Suits, and there judg their Neighbours. Hence we may observe, and impartially conclude,

1. That a Jury of Twelve Men are (and antiently were) the proper Judges of their Neighbour's Actions, Misdeeds, or Miscarriages; which is founded on Reason and Equity, because the Neighbourhood is best acquainted with, and has the most certain knowledg both of the Persons and Actions there done and acted.

2. The Law requiring, that Twelve good and honest Men should agree as One, before they determine their Neighbour to be guilty, or not guilty of the Fact or Matter charg'd against him, shews us, not only that the *Fundamental Laws* of this Land have appointed its Inhabitants, merciful Judges; but also such who should be the proper, sole and ultimate Judges (in the Matters charg'd against any Man) to acquit or condemn

denn according to the Laws, as in their Consciences they should find Equitable, Just and Righteous.

3. The high Esteem our Ancestors have ever had of these twelve Righteous Judges in former Ages, bespeaks the little regard and honour that the *Recorder of London*, the *Mayor* and his *Brethren*, have shew'd to their *Predecessors* and *Antiquity*; as also their low Esteem of the *English-man's Liberties*; which, in all Ages and Generations, have been mostly preserv'd and secur'd by weighing mens Actions in the equal Ballance of their *Good and Honest Neighbours* Judgments.

4. We may observe how little regard this Court has had to the performance of such *Oaths*, which they impose upon Men at pleasure: for, notwithstanding they had sworn *Twelve good and lawful Men of the City of London, Well and truly to try, and true deliverance make, between the King and the Prisoners at the Bar*; yet they refuse and deny these Jurors to perform that Oath, which they had so solemnly taken; manifesting to the World, that the Bench assumes a Power and Jurisdiction equal with the Church of *Rome*, to enforce and absolve from Oaths and Covenants at their Wills and Pleasures.

5. It's most apparent how little this Court minded or regarded their own Duty, Oaths and Com- 20 *Edw.* 3.
mission, to do Equal Law, and Execution of Right, chap. 1.
without respect to Persons, according to the Laws of this Land: For when the Prisoners had given their consent to be try'd, and the Jury had sworn to try; without, and against the consent of both, or either of them (or any Act done whereby Common Right should be denied the Prisoners, or Justice to the Jurors) to separate them each from other, is such a piece of *Tortious Justice*, which there is no Law or Custom of *England* can or will justify or maintain.

6. We cannot but own and acknowledg the *Parliament* of the Commons of *England*, their industrious Care and Prudence to preserve our Lives and Liberties from the Violence of Usurpation, and Practice of Arbitrary and Illegal Powers over Jurors, who are sworn to try and deliver their Neighbours, according to Evidence of Fact committed. And since once in their Prudence they thought meet, just and righteous, to check the Author of such *Arbitrary Innovations*, as Fining of Jurors for their Verdicts, we hope they will take occasion, at this time, to manifest their Care and Tenderness of the People of *England* (whose Representatives they are) in bringing these latter Malefactors to condign Punishment, that for the future Justice may run down its proper Channels, and be faithfully executed and equally dispensed according to our *Antient and Fundamental Laws*, and the Laudable Customs of this our Land.

Whilst

Whilst the Recorder thus treated this Jury of the Citizens of London, the Sheriffs had summon'd a new Pannel, to appear at *Justice-Hall* the 5th of the 7th Month; the Prisoners, on whom the former *Jury* had sworn to pass their Verdicts upon, viz. *John Boulton, William Bailey, Francis Moor, Thomas Rudyard, &c.* were call'd again into Court in the Afternoon, and each of them fined as formerly, twenty Nobles apiece for their Hats. A Precedent or Foundation for such Judgments, Fines and Amercements, we challenge the City's Recorder, and the conceitedly-learned Mayor, to shew or make out to the World by the Laws of *England*.

So soon as the Recorder had finish'd or pass'd these new sort of *Judgments*, or rather *Inquisitory Censures* upon or against the Prisoners, he perus'd the Pannel of the last summon'd *Jury*, and gave directions to the Clerk to call them over; who, as it was observ'd, pickt here and there such persons that were judg'd the most likely to answer the malicious Ends and horrid Designs of that Bench, calling not the Jury-men in order and direct course, as is usual in all Courts of *Justice*, where Right is impartially administred; and withal, bidding the Prisoners to look upon the Jurors, and before they were Sworn to make their Challenges.

So now a second *Jury* was going to be sworn upon them for the Tryal of one single Fact, which was a further manifestation of the Court's evil Intentions against them; having now neither Equity, Justice nor Law, for their Boundaries or Guides, it being such a piece of practice that no Age can parallel.

Saith the Learned *Cook* in his 2 *Inst.* 56. *Lex est tutissima Cassis*; The Law is the safest Guard to defend the Innocent from Tort and Wrong; which declares, *That Justice and Right shall be denied to none.* Neither shall any Man be destroy'd by any manner of wise; on which *Cook* observes, *That every Oppression against Law by colour of any usurp'd Authority, is a kind of Destruction:* For, saith he, *Quando aliquod prohibetur, prohibetur & omne per quod devenitur ad illud.* The Law admits not of the least Wrong to be done to any Man. Therefore, saith the same Author, *That it's the worst Oppression which is done by colour of Justice.*

Observe then, First, The Court to swear two several Juries upon one person, to Try one and the same Cause or Fact, upon one and the same Indictment; What is it but under disguise of Justice to commit such Absurdities, that our Laws allow not, or Lawyers ever before heard of?

Secondly,

Secondly, If such Practices as these be allowable, what person shall know when that Jury, whom the Court will permit to try him, is or shall be sworn upon him, to acquit or condemn him, according to his Fact, and the Law of the Land?

Thirdly, What Right and Justice can a Prisoner expect, when his Adversary shall not only summon what Jurors they please, but also in the Court pack together such, whom they judg will answer their *Malicious Designs*, upon those who shall be committed to their charge?

The Prisoners taking notice of the Court's partial *Prosecution*, and *unequal distribution of Justice*, and bold Attempts to commit such *horrid Rapes* upon their Liberties, made an unanimous *Protestation* against the 2d Jury. First, Desiring to know by what Law or just Precedent they practised such sort of Justice upon them; and how the Recorder could Swear two Juries to try one and the same Fact, &c. The Recorder answer'd, *That the first Jury was imprisoned for their Misdemeanor*, (meaning the not finding *William Penn* and *William Mead* guilty) and the Prisoners must take that for an Answer: Which being far short of the Question, the Prisoners still persisted to know what Law or Custom justified their Proceedings. The Recorder reply'd, *That the Court had over-ruled them*: The Prisoners told him, That the Law should be, and ought to be, the *Rule and Guide* of all Courts of Justice, and that such Answers as (*The Court over-ruled you*) was not sufficient to satisfy their reasonable and just Demands.

Whereupon the Recorder, with great Indignation and Rage, told one of the Prisoners, *That he should be Gagg'd, and deserv'd to have his Tongue bored through with a Hot Iron, and his Mouth Nail'd to the Dust*; with many other inveterate, opprobrious, and taunting Expressions; telling him, That he was not bound to produce Precedents, but it should satisfy, *That the Court was of another Opinion against them, and had over-ruled them*. To which the Mayor joyn'd his consent, saying also, *We will over-rule you*.

By the Statute 25 *Edw. 1. chap. 1.* it was accorded, "That the King's Justices, Sheriffs, Mayors, &c. that had the Laws to guide them, &c. *This is a Clause* (saith Cook) *worthy to be written in Letters of GOLD, That the Laws are to be the Judges Guides: And therefore not Judges by their Arbitrary Glosses, to be Guides of the Laws, which never yet misguided any that truly followed them. Sub clipeo Legis nemo dicitur*, as saith Cook 2. the same Author. *Common Right* in 2 *Edw. 2.* is call'd Inst. 56. *Common Law* in 14 *Edw. 3.* &c. and in this sense it is taken, where it is said, *Ita quod stet recto in curia, i. e. Legis in curia*; The Law is called *rectum*, (that is, Right, or a Rule) because

cause it discovereth that which is tort, crooked, or wrong; so as *Right* signifieth *Law*, so *Tort*, *Crooked* or *Wrong*, signifieth *Injury*; and *Injuria est contra jus*, against *Right*. Hereby (saith *Cook*) the crooked Cord of that which is called *Discretion* appeareth to be unlawful.

So that (First) it's plain, The Law rules and guides, but *Discretion*, *Force* and *Violence*, over-rule.

Secondly, The Just Judg makes the Law his Rule and Guide; but the Unjust over-rules the Law: So that it's apparent, that this Over-ruling is no other than by *Discretion* (which is tort, crooked and rough) to oppose with *Violence* that *Justice* and *Right*, which the Laws allow and afford every Free-man of *England*; then there's no Defence to be made against the Recorder's Over-ruling, that is gone beyond the Law's Rule, to his own Over-ruling Will and *Discretion*.

The Clerk of the Peace, in obedience to the Court's Command, proceeds to swear the second Jury upon the Prisoners; upon which some of the Prisoners objected against several of them, as one *Steed* the Fore-man, and several others: The Recorder denied them their Challenges, telling them still, that the Court over-rul'd them. And altho Judg *Cook* in his 3 Inst. fol. 27. saith, *That the end of Challenge is to have an indifferent Tryal, and which is required by Law; and to bar the Party indicted of his lawful Challenge, is to bar him of a principal concern in his Tryal*: Yet this Recorder, who doth, or should know the Law, and those Rights and Privileges which it affords the Prisoners (both in the Challenge of the Array of the Pannel, and also of the Poles) admitted their Challenges to neither, but cried out still, *The Court over-rules you*; that as well the Spectators, as Prisoners, were fully satisfied, that the Purpose and Resolution of the Bench was, to make them subject and slaves to their Injustice, and most Tyrannical Will and Pleasure, in despite of the Laws, and that undoubted Right and Liberty, which is the best Birth-right the Free-men of *England* have.

The Names of the Jury were, *Henry Steed*, Fore-man; *Edward Dermer*, *Thomas Wosse*, *John Ashborne*, *Edward Langton*, *Henry Offley*, *Edward Hanney*, *Walter Hungerford*, *Thomas Pendleton*, *Robert Twiford*, *Robert Cooper*, and *Daniel Walton*.

As it's most certainly true, that every Free-man of *England* may, and doth challenge the benefit of *Antient Fundamental Laws* to protect and defend his *Life* and *Liberty* against *Violence* and *Oppression*, most especially that which is contain'd in the 29th Chapter of the *Charter of Liberties*, viz. *Not to be taken, imprisoned, &c. but by Judgment of his Equals*, (which *Cook* calls in his

Expo-

Exposition, Twelve of his good and honest Neighbours) and to have equal *Justice* and *Right* done him, according to that Charter, as by the first Statute of 20 *Edw.* 1. So it's as true, that by the *Recorder* of London, the *Mayor* and his *Brethren*, those Rights and Privileges have been denied; those *Laws*, and such who claim a benefit from them, have been contemned and over-ruled by the Censures and Judgments which they passed upon, and Carriages and Usages which they practised toward both Prisoners and Jurors; so that this Consequence will follow.

First, Altho a Jury of good and honest Men shall be sworn well and truly to Try, and true Deliverance make between, &c. according to their Evidence; yet if the Verdict that is confirm'd by the Oaths of Twelve Men (agreed together as one) be not congruous to the Will and Humour of one Person sitting on the Bench (as the *Recorder*) these Twelve Judges shall be Fined and Imprisoned as *perjur'd Persons*, and as such who are guilty of as high *Misdemeanors* as any they came to Judg and Try.

Secondly, When Twelve good and lawful Men shall be so impanel'd and sworn to try, &c. and the Prisoners shall accept of them without Challenge (except after this the Court also approves of them) these first sworn shall be imprisoned, and another Jury summoned, and packed together, to serve and answer the Ends of the *Informers* and *Prosecutors* upon the *Prisoners*, contrary to Law, any Usage or Custom whatsoever.

And now we dare put those *Questions* to be resolv'd by the very Enemies of these Prisoners that were so try'd by that Court, Whether this Bench (and the Sheriffs of London, who from the beginning were either Prosecutors or Informers against these Prisoners) First, so Menacing and Threatning, and afterwards Fining and Imprisoning one Jury; Secondly, Summoning, Packing and Enforcing another Jury upon Prisoners, (to try that Fact which a former Jury were sworn to determine) against the Law, Usages and Practices of all Courts of Judicature; have not with *Violence* oppressed the *Free-men* of this Land, and denied them that *Justice* and *Right*, which by the *Fundamental Laws* they ought freely to have and enjoy, and which also these Justices (by their Commissions, Oaths and Duty of their Places) ought to allow, *yea or nay?*

The second Jury being thus sworn, the Clerk of the Peace read over the Indictment against *Francis Moor*, *Richard Mew*, *Richard Mayfeild*, *Richard Knowlman*, and *Gilbert Hutton*; as also that against *Richard Thornton*, *Charles Banister*, and *Job Boulton*, (the substance whereof is before set down) and their *Indictment*

ments for Form and Matter being alike, they were try'd together.

The Cryer calling the Witnesses, the Court proceeded to Tryal. The Prosecutors and Witnesses were one *Whiting*, the Beadle of *Bridg-Ward*; and the rest were the Sheriff's Officers, whom the Mayor had bound over to prosecute the Prisoners. Whence it may be observ'd, That either the Sheriffs themselves, or their Servants, were the Informers in this Work; from which so many large Perquisites have fallen to them, as hereafter shall be mention'd.

The Substance of the Witnesses Evidence was, *That they saw the Prisoners in Grace-Church-street, in Whitehart-Court, amongst the Assembly of People there met together; and that they stay'd there till after Proclamation was made, That all persons there present should depart.*

The Prisoners being ask'd what they could say for themselves? they answer'd, That they own'd that they were at *Gracious-street*, met together to worship the true and living God in Spirit and in Truth; against which there is no Law; And further said, That the *Indictment* consisted of much Matter, as meeting with Force and Arms to disturb the Peace, and continuing there Riotously, Routously and Tumultuously, in contempt of the King and his Laws, and against the King's Crown and Dignity, which none of the Witnesses had sworn; therefore they desir'd to know upon what Law they were Indicted, and that the Law might be produc'd, and read to the Jury, that thereby they might know whether they had made a Breach of any just Law. The Recorder answer'd, That he was not bound to produce the Law, for it was *Lex non scripta*. Then, reply'd the Prisoners, How shall the Jury know whether we are guilty of the Breach thereof? Said the Recorder, It is the *Common Law*, which you have broken in your tumultuous Assemblies, and staying there after Proclamations were made to depart. The Prisoners objected, That the Indictment alledgeth three several Proclamations were made, whenas but one was made that day. Whereupon the Witnesses were again examin'd, Whether there were not three Proclamations made? Who answer'd, That there was but one made. Upon which the Mayor demanded of one of the Witnesses, whether *O Yes* was not said thrice? Who answer'd, That the Officer who made Proclamation said *O Yes* three times, before he commanded the People in the King's Name to depart: Then, said the Mayor, that was three Proclamations. Such a piece of Violence in the explanation of a Word, that has not been known in a Court of Justice.

The Prisoners further urg'd, That they were always quiet and peaceable in their Assemblies; That the Law against Riots was never intended against them, but *Popish*, or such like Disturbers of the Peace. To which the Recorder answer'd, That the *Papists* were better Subjects to the King than they were, and that they were a stubborn and a dangerous People, and must either be brought under, or there were no safe living by them.

The Prisoners offer'd to vindicate themselves from those foul Aspersions laid upon them by the Recorder; telling him, That they had broken no just Law to their knowledg, and that they never had been guilty of being Rioters and Routers, as was pretended; which they desir'd the Jury to take notice of, and that there had not any such Proof been offer'd by the Witnesses.

Whereupon the *Mayor* and *Recorder* commanded the Goalers to thrust them into the Bale-dock, and in their absence the Recorder gave his Charge to the Jury, not so much as summing up the Evidence (which truly prov'd not the tenth part of the Indictment) as giving in Matter of his own, of foul *Criminations*, telling the Jury, that they were a Refractory People, such who delighted in Deeds of Darkness, and that they must be crush'd, or there would be no living by them; so that upon the *Indictment* they must find them Guilty.

Now surely there never was greater Oppression and Violence manifested in a Court of Justice, either upon the just and righteous Law, or a quiet and peaceable People, as has been acted by the Lieutenancy (it's pity to say Magistrates) of the famous City of *London*. Had there been colour for their Proceedings by any Statute-Law of the Land, pointing out the Offenders and their Punishment, these several Actings of theirs might have been in some measure tolerable. But when Men dare at once, against the very face of *Law, Justice, Equity, Reason, Right* and *Liberty*, commit such Oppressions upon their Fellow-Creatures; yea, on a People too, who never yet could be justly charg'd for using Violence, Force or Arms against any Man; no, not so much as to defend themselves against such, who have violently and inhumanly abused and tortured their Bodies, without the least colour of Warrant or Authority from the Civil Magistrate: we cannot but stand in admiration of this Court of Judicature. Let us a little see the Judgments of our Sages of the Law, touching the matter of Riots, in former and latter Times; not only Statute-Law, but also the Opinion of the Learned.

First see the Statute of 17 R. 2. chap. 8. (1393.) It was Enacted, "That the Sheriffs, and all other the King's Officers,

“cers, should suppress Rioters, and imprison them. 13 H. 4.
 “chap. 7. (*An. 1411.*) If any Assembly or Rout of People
 “against the Law be made, that three or two Justices of the
 “Peace and Sheriff, or Under-Sheriffs, shall come with the
 “Power of the County (if need be) to Arrest them, and shall
 “record what is done against the Law; and that the persons
 “by that Record shall be convict in manner, as inforceable
 “Entries. 2 H. 5. 8. The King’s Liege People, that were
 “Travellers, should be assistant to the Justices, &c. when
 “warned to ride with them in Aid to resist Riots, Routs, &c.
 “upon pain of Imprisonment.

The *Riotors* and *Routers*, mention’d in these Statutes, were certainly such persons, who did really meet with Force and Arms; else, what need was there of the Power of the County, as is directed, to quiet, appease, and arrest them? or else, what need of engaging Travellers to assist them, notwithstanding they may have the Power of the County to apprehend them?

2dly, Read the *Judgment* of the Oracle of our Laws: Cook in his 3 Inst. c. 79. title Riots, Routs, and unlawful Assemblies, Forces, &c. saith thus: *Riotum cometh of the French Word Rioter, i. e. Rixari; and in the Common Law signifieth, When three, or more, do any unlawful Act, as to beat any Man, or hunt in his Park, Chase, or Warren, or to enter or take possession of another man’s Land, or to cut or destroy his Corn, Grass, or other profit, &c.*

Routa is deriv’d of the French Word Rout, and Lamb. intr. Le- properly in Law signifieth, When three, or more, do gib. Inst. ch. 13, any unlawful Act, for their own, or the common 14, 15. vide Abu. quarrel, &c. As when Commoners break down chap. 26. Hedges, or Pales, or cast down Ditches, or Inhabitants, for a way claimed by them, or the like.

An unlawful Assembly is, When three, or more, assemble themselves together, to commit a Riot or Rout, and do it not.

So that it’s most plain and evident, That a Quiet, Religious, and Peaceable Assembly of People, were never intended by our Predecessors, to be punish’d as Rioters, Routers, and unlawful Assemblies, as our Law-Executioners now-a-days would have it.

The Lord Cook said, *Interest regi habere subditos pacatos*, That the King’s Interest was to have his Subjects peaceable. And what, must it be the inferior Officer’s Interest to have them accounted otherwise, and that for filthy Lucre-sake?

A new Contrivance to advance the Sheriff’s Perquisites, which our Fore-fathers were ignorant of, (*viz.*) The Sheriffs to ride to an Assembly of People, whom they, or their Confederates, against all Law, had forceably kept out of their House
 and

and Free-hold; and because (upon *Proclamation* by them made, for which they have no Ground or Authority by the Law) the People presently departed not from their *own Ground*, and before the Door of their *own House*, they shall be committed to Goal as Rioters, condemned as such, and the Sheriffs shall have 400, or 500 *l.* for their day's work out of these Innocent persons Fines.

This new construction of Religious Assemblies seems the more strange, by reason there cannot be one Precedent produced, to back this upstart Opinion, that Religious Meetings deserve of late years that ignominious term of Riots or Routs.

So that this seemly piece of Law, or Wit, must be owned to have had its Rise, Spring, and Original, from the Prerogative Brain of S. S. Mayor of London, and confirm'd by the City-Recorder, who doubtless will not be the last that may repent of his day's work.

The next whom the Court call'd to their Tryal, was *Ezekiel Archer*, and *Margery Fann*; who being indicted for Rioters the Sessions before, and the Evidence being deficient, the Court coveting to come off with credit in all such *Indictments* as were of the new Stamp, order'd an *Indictment* for *Felony* to be read against them, which they had forg'd and fram'd for that purpose, and piece of Iniquity, which well deserves the search, and *condign Punishment* for the Contrivers: so these two were found *Not guilty*.

The same day this Bench call'd *T. Rudyard* into Court. When the Clerk had read over the first *Indictment*, which the Mayor the former Sessions declar'd was not drawn up according to Instructions and Evidence; and also the second, which the Mayor said he would stand by, and prosecute: The Informer's Witnesses were sworn, *viz.* *N. Grove* and *J. Tillot*; *Grove* being first to give in his Testimony, declar'd, *That there was an Indictment drawn against S. Allingbridge, for saying, The first Man that disturb'd Mr. Vincent should never go out of the House alive; and that he saw T. R. take it out of Mr. Lee's hand, and told him that it was lost, and T. R. would go with him to Mr. Tanner, and drink a Pint of Wine with him, and draw up a slight Bill that might not be found.* So (said the Mayor) here's both the *Indictments* prov'd already; which Evidence *Grove* deliver'd, as being one entire Action and Discourse. And being ask'd what time this Discourse was, whether when *T. R.* took the Bill? he answer'd, He did not well know; and *T. R.* asking him some further Questions, the Mayor interrupted him, saying, He was not to examine the King's Witnesses. *J. Tillot* was next call'd, who swore that *T. R.* acknowledg'd to him, that he had the *Indictment*. *T. R.* acquainted the Court, that he own'd that he was at the Sessions

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at *Guildhall*; where *S. Allingbridge* attending, requested him to enquire and know from the Clerk, whether his *Adversaries* had drawn any Bill of Indictment against him, and what the Indictment might be: Thereupon *T. R.* enquir'd of the Clerk, whether he had drawn such a Bill: *Jo. Forman*, an Officer, standing by him, with several Bills in his hand, gave this Bill into *T. R.*'s hand to read; which when he had done, in open Court, return'd the Bill to *Forman*, and immediately went out of Court, ordering *S. A.* to send for his Witnesses to try the Indictment, in case the Grand Inquest should find it *Billa vera*. The Evidence, as it was much contrary to Truth, so it was as far short of proving the Indictments, as by the ensuing Exceptions may appear. But what was deficient in that respect, the Recorder made up in his Charge to the Jury.

Exceptions to the Indictment.

First, It appears not by the Indictment, that the Bill of Indictment against *S. Allingbridge* was cognizable to the Court, it being against the Justices Oath to take notice of it before the Grand Inquest had found it.

Secondly, It appears not, that the Words charg'd against *Allingbridge* were punishable by Law; for the House mention'd in the Indictment might be *Vincent's* Dwelling-house, so Burglary to break into it without lawful Warrant.

Then, as to the Evidence to the first Indictment: 1. No proof that *Grove* ever read the Indictment (which indeed he could not) against *S. A.* so he swore peremptorily upon the Clerk's Information, which was a false Oath.

2. That *T. R.* took the Bill out of *Lee's* hand, could not be, for the Officer keeps the Bills of Indictments when the Witnesses are sworn, and not the Clerk of the Peace.

3. Improbable that *Grove* should know that Bill amongst so many more; but impossible that he should see the Bill taken away (knowing it) and not mention one word of it all that day, no, not when the Bill was pretended to be wanting.

4. Not sworn he took it out of Court.

5. Not sworn that Justice, or that any course of Law was hindered against *S. A.*

6. As to the acknowledging the Indictment to *Tillot*, it was not three hours before the Tryal; who asking *T. R.* whether he ever read the Indictment, *T. R.* answer'd, he did, and left it in *Forman's* hand; Why that's enough, said *Tillot*, the Mayor sent for me to swear it, which I could not do before.

7. If *T. R.* had taken the Bill, it could not benefit *S. A.* or hinder the Prosecutor.

8. That

8. That *T. R.* should hazard his Reputation in a thing of no value, wherein he could neither advantage his Friend, nor prejudice his Enemy, could not stop the Proceedings half an hour, yea in a quarter another might have been written and prefer'd, is very improbable.

9. It's most apparent, that if *Grove* did not perjure himself, in swearing such a Bill was drawn against *S. A.* (he having neither read it, or had a Copy of it) he or the Mayor, or some of the Confederates must themselves have conceal'd the Bill, and kept it in their own Custody, else *N. Grove* could not swear to it; one of which must necessarily be.

As to the second Indictment, the Words there pretended to be spoken, 1. If true, were not advising *Grove* to do an Action, but telling him that we would go, &c. so nothing being done in prosecution of the words, it was only discourse.

2. Not sworn that the Advice was taken.

3. Improbable that *T. R.* should thus discourse to a Stranger, whom before he had never seen.

4. That he should undertake to go to *Tanner*, that was as much a Stranger to him.

5. *T. R.* never came afterward to *Grove*, nor spoke with *Tanner*; but *S. Allingbridge* was try'd and convicted the very same Week, in an Adjournment of the same Sessions.

Now whether there was either sufficient Cause for an Indictment, or apparent Proofs to evidence the Truth of these upon which *T. R.* was try'd; or whether all these pretended Crimes and Misdemeanors, were not the product of the Mayor's malicious, envious, and inveterate Spirit, causlessly carried on against him, (who not only appears to be the first Informer, but the Maintainer and Prosecutor of the Quarrel, as also Evidence and Judg upon) let every unprejudic'd person (seriously considering) give his Judgment.

The Jury was commanded to withdraw, which, for the Formality's sake, they did, and not longer staying than about a quarter of an hour, return'd again, and brought in the nine persons that were try'd, guilty in manner and form as they stood indicted; which some of these Jurors had over their Cups sworn they would do, if ever they came to try the *Quakers*.

John Boulton and *William Bayly* were the last call'd to their Tryal, who were indicted several; For that *they such a day, and year, and place, with Force and Arms, &c. with Two hundred more Persons, were assembled together, to disturb the King's Peace; and be-*

ing so assembled, they unlawfully took upon themselves to Preach and Teach to the People, then and there assembled and congregated; by reason whereof, a great concourse of People did remain together in contempt of the King and his Laws, to the disturbance of his Peace, to the terror and disturbance of his Subjects, unto the evil Example of others, and against the King's Crown and Dignity, &c.

Not guilty being pleaded, the Informer's Evidence being produc'd, swore, That they saw or heard them speak or preach to the People, which was sufficient for the Court to make out the whole Indictments: for the Recorder said, the Jury were only Judges of Matter of Fact; so that if the Jury have Evidence they spoke or preach'd, the Court says that must be with Force and Arms, unlawfully and tumultuously to disturb the King's Peace, and that Tumults of People were occasion'd thereby, and continued together, in contempt of the King and his Laws, to the disturbance of his Peace, terror of his People, evil Example of others, and against the King's Crown and Dignity: A ready way to perjure Jurors, and oppress the Innocent.

These are the Concomitants of Speaking in the Name of the Living God, and worshipping him in the Ways of his own Appointment. And altho the Prisoners desir'd to see the Law that their Adversaries pretend they have broken, they shall have neither that, nor Reason produc'd that might give satisfaction either to the Prisoners or Spectators. The Lord Cook gave this as a Rule, viz. *Incivile est, parte una perspecta, tota re non cognita; de ea judicare*; That it was uncivil, seeing only one part, to give Judgment on the whole matter. Yet how little regarded these Jury-men, or the Court, to know the whole Matter before they gave Judgment upon the whole Charge? Surely this Jury was pack'd to be Cut-throats to their own Liberties, and Reputations also, or else they would have better regarded what they undertook; to find guilty every one in manner and form, and yet not the tenth part of any Indictment prov'd; to be sworn truly to try according to Evidence, and yet to find that for which no Evidence was given. Is it possible that they should commit this horrid Perjury out of a slavish Fear, debauch'd Principle, and horrid Partiality, and yet be quiet from the Terrors of Conscience; nay, for which we are sure they cannot free themselves without serious Repentance?

At the close of the Sessions, all the Prisoners (who had been found guilty by this Jury of the Benches) were call'd down to the Sessions-house, where all day they expected to be call'd in to Court to receive Judgment, being prepar'd also to give in their Exceptions in Arrest of Judgment, purpos'd to be deliver'd

to the Recorder in writing: but of this expected Defence they were all prevented, the Bench giving their Judgments or Censures without calling any of the Prisoners to hear them; the Tenor of which, as appears by the *Newgate-Book*, are in this manner: *John Boulton* fined forty Mark, *William Bayly* fined thirty one pound thirteen shillings four pence, *William Penn* forty Mark, *Francis Moor* fined twenty Mark, *Richard Mew*, *Richard Mayfeild*, *Richard Knowlman*, *Gilbert Hutton*, *Richard Thornton*, *Charles Banister*, *Job Boulton*, *Thomas Rudyard*, every of them fined twenty Mark a-piece; *Ezekiel Archer* fined forty Mark, for divers evil Carriages and Contempts in Words and Deeds by them severally, openly, voluntarily and obstinately committed in and towards the Court. And the Court gave further Judgments or Censures, viz. *Francis Moor*, R. M. R. M. R. K. G. H. R. T. C. B. I. B. *Katherine Everett*, *J. Boulton*, and *W. Bayly*, fined every of them twenty Marks a-piece, and *T. R.* fined a hundred pound, being convicted of several Trespasses and Contempts, and to be committed to Prison until every of them pay their several respective Fines.

The Court understanding that their Goal of *Newgate* was so full of Prisoners, that there could be no tolerable Entertainment for these new Convicts, discours'd with the Keepers where to imprison them: so the Bench having an account, that out of the *Dog*, by *Newgate*, that very Sessions there died two persons of the *Spotted-Fever*, or *Plague*, (one, the Master of the House, the other a Prisoner, whom *Jo. Robinson*, Alderman, had there sent for refusing to take an Oath, prescrib'd in the 3d of *Ja.*) whereupon they were commanded to be imprison'd there, and a Keeper set upon them to prevent their going abroad upon the most urgent occasion. Where through the Goodness of the Almighty, they were preserv'd in Health, beyond the expectation of their Friends, or hopes of their Enemies, who doubtless out of an evil End and Purpose sent them thither, into an infected House.

But that Goalers, of what degree or state soever, may in some measure know the Duties of their respective places, and not through Ignorance abuse such who are committed to their Charge, we have thought it meet at this time to instance and give an account what their duty is to their Prisoners, according to the Laws of this Land, which all Goalers are oblig'd under great Penalties to observe, and the People of this Land to preserve, as their Liberties, lest by such neglect Slavery be insensibly drawn upon them.

By the Common Law we find, *Quod cura ad continendos non ad puniendos haberi debet*, as *Braſton* lib. 3. fol. 105. *Goalers are ordain'd to hold Prisoners, not to punish them.* For Imprisonment by the Law

is (neither ought to be) no more than a bare Restraint of Liberty, without those illegal and unjust Destructions of close and open Prison (as is usual.) See *Stamf. Ple. Cro.* fol. 70.

Therefore Cook in his 3 Inst. 91. saith, *That if the Britton Goaler keep the Prisoners more streightly than he ought of fol. 18. right, whereof the Prisoner dieth, this is Felony in the Goaler by the Common Law. And this is the Cause, That*

Flet. lib. 1. if a Prisoner die in Prison, the Coroner ought to sit upon chap. 26. him. See also the said Cook, Fol. 34. Cap. Petty-

Treason, how Prisoners are to be us'd; wherein is also an Account of an Indictment of a Goaler for evil Usage of his Prisoner, Fol. 35. in Trin. Term, 7 E. 3. cor. Rege rot. 44.—

Presentat, quod ubi quidam Robertus Bayhens, de Tavelly captus fuit, & in prisona Castri Lincoln detentus per quodam debito Statut. mercatorii in Custodia Tho. Boteler, Constabularii Castri de Lincoln ibid. predict. Tho. Boteler posuit ipsum Robertum in profundo Gaole inter Felones, ubi Prisona, contra formam Sta-

1 E. 3. tuti, &c. Et eadem profundo detinuit, quousque idem Robertus fecit finem cum eo de 40 s. quos ei solvit per Extortio-

nem. That whereas one R. B. of T. was taken and detain'd in the Prison of Lincoln Castle, for a certain Debt of Statute-Merchant, in the Custody of T. B. Constable of the Castle of L. aforesaid; That the said T. B. put the said R. into the Common-Goal amongst Thieves, in a filthy Prison, contrary to the Form of the Statute, &c. and there detain'd him, till he had paid him a Fine of 40 s. Whereupon Cook makes this Observation, So as hereby it appeareth, where the Law requireth that a Prisoner should be kept (in salva & arcta custodia) that is, In safe and sure Custody; yet that must be without any pain or torment to the Prisoner.

So Co. 3 Inst. 52. saith, *If a Prisoner by the Duress, that is, Hardusage of the Goaler, cometh to untimely Death, this is Murder in the Goaler: And in the Law implieth Malice, in respect of the Cruelty.*

Horn, in the Mirror of Justice, pag. 288. saith, That it is an Abusion of the Law, that Prisoners are put into Irons, or other pain, before they are Attainted.

See also Cook 3 Inst. 34, 35.

And Horn also, pag. 34, 36. reckons the starving of Prisoners by Famine, to be among the *Vox plebis, par. 1. fol. 55, 56. Crimes of Homicide in a Goaler.*

Which also Cook in his 3 Inst. chap. 29. Title of *Felony in Goalers by Duress of Imprisonment, &c. by Statute and by the Common Law. Fol. 91.*

And next, let us see what the Law saith for the Fees due to Goalers. The Mirror of Justice, pag. 288. tells us, That it's

it's an Abusion of the Law, that Prisoners, or others for them, pay any thing for their Entries into the Goal, or for their going out. This is the Common Law, there is no Fee due to them by the Common Law. See what the Statutes say: The Statute of *Westm.* 1. chap. 26. saith, " That no Sheriff, " or other Minister of the King, shall take Reward for doing " their Offices, but what they take of the King; if they " do, they shall suffer double to the Party aggriev'd, and be " punish'd at the Will of the King. Under this word *Minister of the King*, are included all *Escheators, Coroners, Goalers*, and the like. See *Coke 2 Inst. fol. 209.* affirms. And agreeable is *Stamf. pl. Coron. 49.* Nay by the Statute of 4 *E. 3.* chap. 10. Goalers are to receive Thieves and Felons, taking nothing by way of Fees for the receipt of them. So odious is this Extortion of Goalers, that very Thieves and Felons are exempt from payment of Fees.

And we find in our Law-Books, That no Fees are due to any Officer, Goaler, or Minister of Justice, but only those which are given by Act of Parliament. For if a Goaler will prescribe for any Fees, the Prescription is void, because against this Act of Parliament, made 3 *E. 1.* being an Act made within time of memory, and takes away all manner of pretended Fees before: and we are sure none can be rais'd by colour of Prescription since. And therefore we find by the Books of 8 *E. 4.* fol. 18. *That a Marshal or Goaler cannot detain any Prisoner after his Discharge from the Court, but only for the Fees of the Court* (the Court being not barred by this Statute of *Westm.* 1. aforementioned) and if he do, he may be indicted for Extortion. And agreeable to this is the Book of 21 *E. 7.* fol. 16. where, amongst other things, it's held for Law, *That if a Goaler or Guardian of a Prison takes his Prisoner's proper Garment, Cloke, or Mony from him, it is a Trespass, and the Goaler shall be answerable for it.* So that we may undeniably conclude, That there is no Fee at all due to any Goaler or Guardian of a Prison from the Prisoner, but what is due unto him by special Act of Parliament.

And if a Goaler or Guardian of a Prisoner, shall take any thing as a Fee of his Prisoner, he may and ought to be indicted of Extortion, and upon conviction to be remov'd from his Office; and if his Prisoner by Constraint, Menace, or Duress be enforc'd to give him Mony, he may recover that Mony against the Goaler again, in an Action of the Case at Common Law.

Item, The King considering the great Perjury, Extortion, and Oppression, which he and have been in this Realm by his Sheriffs, Un-

Stat. 23 H. 6. chap. 10.

Stat. 4 H. 4, 5. der-Sheriffs, and their Clerks, Bailiffs, and
 Keepers of Prisons, &c. hath ordain'd by Au-
Rast. predict. thority afore said, in eschewing all such Extor-
 tion, Perjury, and Oppression, that no Sheriff
fol. 318. shall let to Farm in any manner his County,
 nor any of his Bailiwicks. Nor that any of
Co. pred. 365. the said Officers and Ministers, by occasion, or
 under colour of their Office, shall take any
21 H. 7. f. 16. other thing by them, nor by any other Person
 to their use, profit, or avail; if any person by
 them or any of them to be arrested or attached, for the omit-
 ting of any Arrest or Attachment to be made by their Body,
 or of any Person by them, or any of them (by force or co-
 lour of their Office arrested or attached) for Fine, Fee, Suit
 of Prison, Mainprise, letting to Bail, or shewing any Ease
 or Favour (to any such Person so arrested or to be attached)
 for their Reward or Profit, but such as follow; that is to say,
 for the Sheriff 20 *d.* the Bailiff which maketh the Arrest or
 Attachment, 4 *d.* and the Goaler of the Pri-
Rast. predict. son, if he be committed to ward, 4 *d.*—
fol. 371. And that all Sheriffs, Bailiffs, Goalers, or
 any other Officer or Ministers, which do con-
Stat. 21 E. 6. trary to this Ordinance, in any point of the
 same, shall lose to the Party in this behalf in-
 damag'd or griev'd, his treble Damages, and shall forfeit
 the Sum of 40 *l.* for every such Offence, the one Moiety to
 the King, the other to the Prosecutor, to be recover'd at Com-
 mon Law, in either of the Courts of *King's-Bench*, or *Common-
 Pleas* at *Westminster*.

This is a perfect Account of the Goalers Fees in all cases,
 where Persons are laid in Prison upon Civil Matters and
 Causes; which Fee of 4 *d.* is more than any other Statute or
 Law allows them to take from their Prisoners: But in such
 Cases where the King is Party, it's stablish'd, " That the
 " Prisoners in all the King's Prisons should be maintain'd at
 " the King's Charge and out of the King's Revenues, accor-
 ding to the old Law of the Land; much less to have Money
 extorted from him by the Goaler. But look into the Prisons
 in and about the City of *London*, what horrible Oppressions,
 Extortions, and Cruelties, are exercised upon the Free-born
 People of *England*, yea in most Prisons throughout this King-
 dom.

Which excessive Amercements and Fines (after all their
 other partial Dealings, lawless Proceedings, and arbitrary
 Carriages towards the Prisoners from first to last) do manifest
 and evidence to the World, their Malice and Envy against an
 Inno-

Innocent, Upright, Quiet, and Peaceable People. What proportion is there here betwixt the pretended Fault, and the assessed Fine? Provides not the fourteenth Chapter of the Great Charter against such unjust Judgments and partial Censures, which declares, ‘ A Freeman shall not be amerced
“ for a small Fault, but after the quantity of the Fault; for
“ a great Fault after the manner thereof? And the Amercement shall be assess’d by the Oath of honest Men of the
“ Vicinage.

Here’s Justice and Equity, Righteousness in Judgment, which affords every man common Right, declares, That all Offenders ought to be amerced by their Neighbourhood, according to the quantity of the Trespass. Wherein have these Judges (who are commanded by the Statute of 25 E. 1. confirm’d by *Pet. Right*, 3 *Car.* 1.) allow’d the Charter before them in Judgment, in all its Points, &c.

It may truly be said, that our antient, just, and fundamental Laws, which *Coke* on the 14th Chapter of *Magna Charta* calls a Law of Mercy, are (as the same Author there writes) now turn’d into a shadow. For by the Wisdom of the Law, these Amercements were instituted to deter both Demandants and Plaintiffs from unjust Suits, and Tenants and Defendants from unjust Defences; which was the Cause in antient time of fewer Suits: but now we have but a shadow of them. *Habemus quidem senatusconsultum, Cicero. sed in tabulis reconditum & tanquam gladium in vagina repositum.* Yea, our antient Charters are as a 2 *Inst. f. 28.* Sword in its Sheath, which if drawn, are and will be sufficient to defend us against all Injustice, Tyranny, or Oppression whatsoever.

But it’s often objected by many of their Adversaries, That the Publick Meeting-Houses, wherein the People call’d *Quakers* are, and have been of late accustom’d to meet, and assemble themselves together, and out of which the Military Forces do from time to time hale and expel them, and by force keep and restrain them from entrance, are by Orders of the King and Council, invested and establish’d in the now King, and that he has right to dispose of them, as his own Inheritance; yea, to pull them down, sell and burn the Materials of them, as his inferior Officers have lately done by some about *London*: And thereupon such who come there to assemble together, are Trespassers, Rioters, Routers, and unlawful Assemblers, and as such are rightly and duly punish’d according to the Laws.

To which is answer'd, That by the Antient and Fundamental Laws, which have been already recited, as the 29th of *Magna Charta*, there is no man's Right, Property or Free-hold shall be taken away from him, but by trial of a Jury, and the Law of the Land. Read *Stat. 2 E. 3. 8. 5 E. 3. 9. 14 E. 3. 14. 28 E. 3. 3. Regist. fol. 186. Coke pla. fol. 456. Coke 2 Inst. 45. 3 Inst. 136.*

And see a Statute of latter date, 17 *Car. 1. cap. 10.* entitled, *An Act for Regulating the Privy Council, &c.* which speaks in this wise: *Be it likewise declar'd and enacted by the Authority of this present Parliament, That neither his Majesty, nor his Privy Council, have or ought to have any Jurisdiction, Power, or Authority, by English Bill, Petition, Articles, Libel, or any other Arbitrary way whatsoever, to examine or draw into question; determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels of any of the Subjects of this Kingdom; but that the same ought to be tried and determin'd in the Courts of Justice, and by the ordinary course of Law.*

Also Learned *Coke* in his 2 *Inst. fol. 36.* saith, *The Common Law* (of which the Great Charter is declaratory) *hath so ad-measured the Prerogative of a King, as he cannot take or prejudice the Inheritance of any.*

So that by the Law of the Land these pretended Offenders are still rightfully possess'd of their own Houses and Places of publick Assemblies; and their cruel Adversaries have no more Property, Right, Interest, or due Claim therein or thereto, than a Pirate has to the peaceable Merchantman's Ship, a Robber has to the innocent Traveller's Purse, or the Wolf to the Blood of the harmless Lamb. And in case such Laws as these will not preserve that Interest which those People have to their Inheritances and Properties, we can none of us expect to have our Rights or Liberties, Wives or Children, yea, or our Lives secured unto us longer than pleaseth or liketh the Will and Pleasure of cruel and ravenous Adversaries.

It's worthy taking notice of, that after the Jury had, on so slight ground, brought in *T. R.* amongst others guilty in manner and form, how palpably the Court manifested their Envy and Malice, in the Fines imposed upon him. And tho, as is declar'd by the Statute of 20 *E. 3. cap. 1.* *That Justices shall do even Right to all People, without shewing favour more to one than to another; according to that just Law, Lev. 19. 15. Ye shall do no Unrighteousness in Judgment; thou shalt not respect the Person of the Poor, nor honour the Person of the Mighty, but in Righteousness shalt thou judge thy Neighbour:* Yet for a piece of written Parchment, the Value whereof was not 1 *d.* a thing whereof a Court of Justice could not take cognizance, according to the just Laws of this Land, or Damages in case it had been taken

taken

taken away, or Profit to any man that could have it, not appearing to be any, neither indeed could there be to any Person living; no course of Law obstructed, admitting all to be true of that Fact, which the Mayor gave in, or his Witnesses swore falsely to the Jury; the Cause of Justice against an Offender not a moment prevented; these painted Sepulchers or partial Inquisitors fined or censur'd him an hundred pounds, altho they had before convicted *S. Allingbridge*, and fined him but five marks for being Principal (yet too much for such an offence) and *I. Rudywa* being as an Accessary must be a hundred pounds. Whether this be just and equal, let the World be judg; and to proceed from a Person- (I mean the Recorder) who has had for many years the Reputation of Honesty and Justice, which it's fear'd he carry'd about with him, only as that aspiring Clergyman did his Fishing-Net, which he caus'd to be laid aside, so soon as he had procured a Cardinal's Cap, saying, *The Fish is caught*. And truly so may the City of *London* say of its Recorder, who has not since he came to be Recorder, manifested that candid and equal Justice towards this City, or Citizens in their publick Concerns, as was expected; yea, little but what first passes the Stamp of our Sword-Aldermen, and Classis of the City Lieutenancy: And since he by experience has found, that sowing and dedicating his Law and Endeavours to their Designs, is that which procures him the best, and most fruitful Harvest, he ever has been sedulous to plead and study that cause: whose Actions may be the more clearly manifested to this City and Nation, if weigh'd in the Ballance of Justice and Righteousness.

As God's Indignation rested on the Children of *Israel*, till one *Achan's* Theft was discover'd and punish'd; so this City suffers sore Judgments, till it has purged it self of these many *Achans* that lodg in her Bosom, not only robbing her Inhabitants of their Rights, Liberties, and Properties, but also her Chamber of her Treasure, the poor Orphans Security.

Our Predecessors, out of their prudence and care that equal Justice and Right should be done to all men, by a Statute in the 18 *E. 3. 3.* appointed Judges an Oath, wherein is this Charge; "And that you take not by your self, or any other
 "privily nor apertly, Gift, nor Reward of Gold, nor Silver,
 "nor of any other thing that may turn to your profit, unless
 "it be Meat or Drink, and of small value, of any man that shall
 "have any Plea or Procces hanging before you, as long as the
 "Procces shall be so hanging, nor after the same Cause.

If the City Recorder hath forgotten this Oath, his Crime's not the less in breaking it; the Justice of it remains, and all
 Persons

Persons in Judicature are to do justice to all, and sell or deny it to none. And Bribery is such a Crime, that it's punishable wherever it's found: And it's hoped Justice may reach this Recorder, if it appear that his Fingers have touch'd this forbidden *Babylonish* Garment.

But in order to discourse of this so foul a Crime, first see the mark which such an Action leaves behind it: *Fortescue cap. 51.* "Bribery (saith he) is a great Misprision, when any man in judicial place takes any Fee, or Pension, Roll, or Livery, Gift, Reward, or Brocage of any Person, that hath to do before him any way, for doing his Office, or by colour of his Office, but of the King only, unless it be of Meat and Drink, and that of small value, upon di-

vers and grievous Punishments. Saith *Coke*,
 3 *Inst.* 145. "This word *Bribery* cometh of the French word *Briber*, which signifieth to *Devour* or *Eat greedily*, applied to the devouring of a corrupt Judg; of whom the

Pfalm 13. 4. *Qui devorat plebem meam sicut escam panis: Qui cognoscit faciem in judicio, non bene facit, iste pro*

Coke 3. *Inst.* 145. "buccella panis deserit veritatem. In the 23d Year of *E. 3.* Sir *William Thorpe*, Chief Justice

of the King's Bench, for taking of four Persons 50 *l.* against his Oath, was tried and judg'd upon his acknowledging the Fact, to be hang'd, &c.

Fol. 147. *Coke* further sets forth, "That this Offence of Bribery may be committed by any that hath any Judicial Place (or Ministerial Office) either Ecclesiastical or Temporal. *Non accipies personam nec*

Deut. 16. 19. "munera (and the reason is express'd by the Holy Ghost) *quia munera excacant oculos sapi-*

entum, & mutant verba justorum. If Bribery hath so great force, as to blind the Eyes of the wise Judg, and to change

the words of the Just: *Beatus ille qui exiit manus suas ab omni munere, Judex debet habere duos Sales; salem sapientiae, ne sit insipidus, & salem conscientiae, ne sit diabolus.*

"Tho the Bribe be small, yet the Fault is great; and this appeareth by a Record in the Reign of

Pasc. 17 *E. 3.* "E. 3. *Qui diversi justiciarii ad audiendum & terminandum assignat, ceperant de Johanne Berners, qui indictatus fuit, 4 l. pro favore habendo*

Rot. 139. *Esse* "die deliberationis suae, finem fecerant domino Regi *Jo. Berner's*

Case, *Rot. Pa.* "per *IV. M. Marcas*: So as they paid for every Pound a thousand Marks. See before Sir

7 *R. 2.* num. "William Thorp's Case, *Rot. Par.* 7 *R. 2.* The

"Chan-