

Paper to this effect, That in this Conjunction they would condescend to strike to Us, if We would assist them against the French: But upon condition, that it should never be taken for a Precedent hereafter to their prejudice.

festo; or that Sir William Temple had already made his Complaints upon the business of the Flag, without receiving any answer to't. As to the first we have already made it appear how far the same is from being true. And as to

Sir William Temple, it would have been hard for him to complain to us of what did not happen, but very near a year after he had left us. But to insist no longer upon the Contradictions, which will be found in more than one place in this *Manifesto*, and to give an answer to what they do alledg; it is true we did not send first into *England* upon the Dispute of the Flag. And as we were not satisfy'd our Admiral had violated the 19th Article of the Treaty of *Breda*, we thought it fit to stay for the Complaint of the King of *Great Britain*, in case he did conceive we had not paid him what respect was due to him; The rather because the Proposal which the *Sieur Boreel*, our Ambassador, had made to his Majesty and to his Ministers, (very little after the Accident of the Flag) to enter into Conference with them upon the same, was rejected, under pretence that an Ambassador should be sent to us. And when at last Sir *George Downing* came from his said Majesty, we declar'd, in answer to the Memorial he deliver'd us the 7th of *January*, that all our Admirals and other Sea-Commanders had a strict Order from us, to observe punctually and regulate themselves by the 19th Article of the Treaty concluded at *Breda*, with his Majesty of *Great Britain*; and that our Intention was to have it as a standing Rule to us, in all its Circumstances: But that since the matter in question related to the Execution of an Article, upon which the Complaints made were grounded, it was to be observ'd, 1. That it did not appear to us, that general Fleets were comprehended in it, and that nothing else was mention'd therein but *Ships* and *Vessels* indefinitely. And 2. that it was to be done *eo modo quo ullis retro temporibus unquam observatum fuit*, in the same manner it had ever been prattis'd.

Upon the first Point, to shew the true Sense of the said Article, we used part of the Arguments above-mention'd. And as to the second, we offer'd again to the said Ambassador to enter with him, if the King his Master pleas'd, into a strict Inquiry of the usual Practice concerning the Flag; and that in case it were found that our Fleets had ever struck to a single *English Ship*, we should acknowledg the thing to be due, and would dispute it no further: our
Intention

Intention being not to recede from what had been formerly practis'd.

Thus far our Answer related to the matter in debate, and evidenced with how little reason we were accused of having violated the Treaty of *Breda*. But we went further than this: And tho we knew very well that in the Examination which we did propose, it would never be found that our general Fleets had struck to a single Ship; yet insisting no further upon the said Inquiry (which could not but have prov'd much to our advantage) we declar'd that upon the Confidence we had in the true and solid Friendship of the King of *Great Britain*, and in hopes he would perform what he was bound to, by the fifth Article of the *Triple Alliance*, in case *France* made war upon us; we readily consented that our whole Fleets, as well as our particular Ships, should strike to any single Man of War, that carry'd the Flag of his Majesty of *Great Britain*: thereby to give his said Majesty the highest proof of the Respect and Honour we would at all times endeavour to pay so great a Monarch: Proffering withal to his Majesty, to agree with him upon a certain Regulation concerning the same, to prevent all future Disputes and Controversies.

This, in short, is the Substance of the Answer we gave to the Memorial of *Sir George Downing*; which the Compilers of the *Manifesto* are pleas'd to turn into *Ridicule*, whilst they knew they were not able to object any thing rational against it: As tho to justify their War, they had nothing to do but to introduce us speaking impertinently, and to make us say what we never so much as thought on.

But these Gentlemen do not tell us that, lest the thing should be thoroughly examin'd, and to avoid serious Debates, which undoubtedly would have taken off the pretence they did seek, and which they had need of, to keep their word to the *French*, the said Ambassador *Downing* was order'd to receive nothing from us after a certain number of Days that were prescrib'd to him, and which they knew to be too short a time to have an Answer of so high an importance ready, under such a Form of Government as ours, where the Remoteness of the Members that have a decisive Voice, doth much retard the Resolutions that are taken. So that when our Answer was brought to him, he would not receive it, under pretence it came too late: And whilst they extol so much in this *Manifesto* their great Patience, we could not so much as be heard, merely because we had not spoken some few hours sooner. And therefore upon the denial of the Ambassador, we were forc'd to send our said Answer directly to the King his Master; tho with little better success.

SINCE the return of our said Ambassador, they have sent an Extraordinary one to Us, who in a most extraordinary manner has given Us to understand, That he can offer us no Satisfaction till he hath sent back to his Masters.

THEY still make themselves merry, and do fancy a cold Allusion to the Character of our Ambassador, will justify their Carriage, and their invincible Obstinacy, in refusing to enter with him into regular Conferences upon

what he was to offer them from us; as will best appear by what followeth.

Our Answer to the Memorial of Sir George Downing (which he refus'd to receive) having been deliver'd to his Majesty of Great Britain by our Ambassador, he receiv'd a Reply from the Court of England, wherein they complain'd, our said Answer was nothing less than satisfactory, and was full of dark and ambiguous words; with some other Objections of the like nature. Whereupon we thought fit to send an Extraordinary Ambassador into England, with full power to clear what might be doubtful or dark, and to add (in order to it) what would be necessary to express our true Intention and Meaning; which was to go much beyond what had till then been agreed upon, in relation to the Flag. In the first Conference, which the said Extraordinary Ambassador, together with our Legier, had with the English Ministers, they acquainted them with the Orders they had receiv'd from Us; and having assur'd them they were ready to clear in our Name what might be dark or ambiguous in our Answer (without being able to bring the said Ministers to instance in what they found amiss therein) they offer'd them a Project of an Article, or Declaration more ample in writing, upon the business of the Flag; wherein it was expressly said, That our Fleets in a Body, as well as our single Ships, meeting with any of the Ships of War that had the Flag of his Majesty of Great Britain, should strike their Flag and lower their Top-sail (which one would think was the fullest and strongest explanatory Clause, that could be added to the 19th Article of Breda) without annexing the same, or making it depend upon any Condition or Demand whatsoever from England. Whereupon our said Ambassadors desir'd to know of the English Commissioners, whether such a Declaration would satisfy his Majesty? and if so, they were ready to sign it. But the English Commissioners answer'd, they expected an Answer to the King's above-mention'd Memorial (or Reply) dated the 3^d of February, and could receive no Papers that were not sign'd. And our Ambassadors refusing then to sign it, before they

they knew whether the same should be satisfactory, the Conference thus broke off without any further discourse. But afterwards our said Embassadors reflecting upon the strictness of the Orders they had from us, to omit nothing of what might demonstrate the Sincerity of our Intentions, and the respect we did bear to the Person of his Majesty of *Great Britain*, resolved to pass by all other Considerations; and having drawn up and signed a Memorial (wherem the aforesaid Declaration was comprehended, with a Promise of clearing it yet further, in case they should think it still ambiguous or dark) they demanded a new Conference to deliver it to the Commissioners: But these foreseeing that such a Condescension in our Embassadors might be a great Obstacle to their Designs, and prevent the Breach, if it came to be publickly known, and they had free Conferences upon it; They had the Skill to cause their Declaration of War to be read and approv'd in the King's Council, which was extraordinarily call'd for that End, and with great Precipitation, an hour before the time they had appointed to our Embassadors, for the Conference which was granted them. So that when our said Embassadors came to the place of the Conference, they were told they came too late, and that the War had been just then resolv'd upon, and decreed in his Majesty's Council. Upon which ground, the *English* Commissioners refused to receive the Paper our Embassadors had written, and which they still were willing to deliver, tho they were told the War was declared,

It is easy to imagine how great the surprizal of our Embassadors was, when they receiv'd this Answer; and we are no less astonish'd to see the Court of *England*, after all the Endeavours of our Extraordinary Embassador to prevent the Breach, to accuse him now so groundlessly to have declar'd to them, he could offer no satisfaction to his Majesty of *Great Britain*, till he had sent back to us.

W Herefore, despairing now of any good Effect of a further Treaty, We are compell'd to take up Arms in Defence of the Ancient Privilege of Our Crowns, and the Glory and Safety of Our Kingdoms; And We put Our trust in God, that He will give Us His Assistance in this Our just Undertaking, since We had no way left to defend Our People from the Ar-
tifice

ALL we have said hitherto in general, and in particular the faithful Account of what pass'd in *London*, between our Embassadors and the *English* Ministers, doth sufficiently evidence with what Justice they accuse us here, to have compell'd the King of *Great Britain* to take up Arms, by taking from him (as they pretend)

Justice of that Nation in Peace, but by the Valour of Our Subjects in War.

We have therefore thought fit to Declare, and do hereby Declare, That We will prosecute War both by Sea and Land against the States General of the United Provinces, and all their Subjects and Inhabitants. Hereby enjoying Our most dear and most beloved Brother the Duke of York: Our High Admiral, Our Lieutenants of Our several Counties, Governors of Our Forts and Garisons, and all other Officers and Soldiers under them by Sea and Land, to oppose all the Attempts of the States General of the United Provinces, or their Subjects, and to do and execute all Acts of Hostility in the prosecution of this War against the said States General of the United Provinces, their Vassals, Subjects, and Inhabitants; Willing and Requiring all Our Subjects to take notice of the same, Whom We henceforth straightly forbid, on pain of Death, to hold any Correspondence or Communication with the said States General, or their Subjects, (those only excepted who are necessitated thereunto for the withdrawing their Persons and Estates out of the United Provinces.) And because there are remaining in our Kingdoms many Subjects of the States General of all the United Provinces, We do Declare, and give Our Royal Word, that all such of the Dutch Nation, as shall demean themselves dutifully towards Us, and not correspond with Our Enemies, shall be safe in their Persons and Estates, and free from all Molestation and Trouble of any kind.

tend) all hopes of receiving any satisfaction by a Treaty. After that, it is not to be wonder'd at if they do think themselves so secure of the Divine Assistance in their just Undertakings. So Godly a War could not want a happy Success.

Yet we must not forget that (as we have said it already) in the very moment they call God to witness of our Obstinacy, and at the time this *Manifesto* was read and approv'd in the Council, they expected an hour after our Embassadors, from whom they knew beforehand they should receive all the satisfaction they could reasonably expect: And even, that this Council was call'd with so much precipitation, to no other end, but to make the Endeavours of our Ministers fruitless, and to leave no further room to Negotiation.

Besides, if the War, which the Court of *England* is enter'd into against us, be such as they could not avoid, and which they had not design'd themselves; to what end did they (several Months before the Breach) send Ministers to the Court of *Sueden*, and that of *Brandenburgh*? Was it to persuade those Princes to stand faster to us? And do they think we are altogether Strangers to what they negotiated? Would they have us and the World believe, by an implicit Faith, their secret Understanding with *France* began with this War; and that they

they were not bent upon our destruction long before that time? All Europe is sufficiently acquainted with what hath been done in that respect. And without going back to less publick Engagements, and of an antienter date (as might be that of *Dover*) in the very additional Articles which were agreed upon in the *French Camp*, and whereof the *English Plenipotentiaries* themselves sent a Copy to the *Prince of Orange*, they do own they had already concluded a Treaty against us, on the $\frac{2}{7}$ of *February* 1672; that is, near two Months before the Breach, as well as before they knew how far we might comply with them.

Lastly, To evidence that their Declaring War was nothing less than grounded upon the Necessity they speak of; it is observable, they made War upon us, before they declar'd it; and by an unheard-of Proceeding had already fallen upon our Merchant Ships that came from the *Straits*; at the same time we had sent them an Extraordinary Ambassador, to offer them satisfaction upon what they did chiefly complain of, and to let his Majesty of *Great Britain* know, how far we were desirous of preserving his Friendship.

AND further We do Declare, That if any of the Low-Country Subjects, either out of Affection to Us or Our Government, or because of the Oppression they meet with at home, shall come into Our Kingdoms, they shall be by Us protected in their Persons and Estates.

AS to the Protection which is promis'd here to such of our Subjects as shall transport themselves into the Kingdoms of his Majesty of *Great Britain*, 'tis what we do not oppose: And all we can say, is, That we have not been as yet sensible of any great Depopulation in our Provinces,

through the removal of our Inhabitants, nor that they have hitherto prefer'd the Domination of our Neighbours before Ours.

AND whereas We are engag'd by a Treaty to support the Peace made at *Aix la Chapelle*, We do finally Declare, That notwithstanding the prosecution of this War, We will maintain the true Intent and Scope of the said Treaty; and that in all the Alliances, which We have or shall make in the progress of this War, We have and will take care, to preserve the Ends thereof inviolable, unless provok'd to the contrary.

TH E Conclusion of this Manifesto is no less surprizing than all the rest. And if the Compilers of it had had never so little care of their Reputation, they ought much rather to have stilled (if it had been possible) the Memory of the *Triple Alliance*, and of the Treaty of *Aix*, than to have so untimely put us in mind of the little value they have set upon

upon their Promises, and the solemn Engagements they were entred into, both with the Crown of *Spain* and with us. And indeed, it is hard to imagine they are in earnest, when they tell us they will maintain the true Intent and Scope, of the Peace of *Aix la Chapelle*, and preserve the Ends thereof inviolable, whilst they have enter'd into a League with *France* to invade our Provinces, and have kindled a War much more dangerous than that which was compos'd at *Aix*.

But the better to judg of the Sincerity of this Declaration; and to the end it may appear how far the Court of *England* hath preserv'd the Ends of the said Treaty, we desire the Reader to reflect upon the following Hints, which we dare not enlarge upon, for fear of being too tedious. This single Head, to clear it fully, requiring a *Manifesto* by it self.

The first Thing to be observ'd, is, That the Treaty of *Aix la Chapelle* was only the Complement, and perfecting of the *Triple Alliance*; wherein what was executed at *Aix*, had been already design'd and agreed upon: And that consequently those two Treaties cannot be divided, and ought to be look'd upon as one single Treaty, tho' concluded in several places, and at some months distance of one another. So that the Court of *England* cannot pretend to have kept the Treaty of *Aix*, unless at the same time they can make it appear they have not violated the *Triple Alliance*, and that they have on their part answer'd its true end.

2. It is further to be observ'd, it was his Majesty of *Great Britain* who propos'd the said *Alliance*, having sent us in order to it Sir *William Temple*, who did earnestly press us to join with the King his Master, to stop the progress of the *French Arms*; and by re-establishing the Quiet of Christendom, to set bounds to a Power, which gave so much jealousy to all its Neighbours.

3. That being overcome by the powerful Arguments of the aforesaid Sir *William Temple*, we consented to what he desir'd of us. But as we could not but foresee, that such an *Alliance* would exasperate *France*, and might be attended with evil Consequences, we desir'd at the same time, for our greater security, to unite us more strictly with *England*, and concluded with them a *Defensive League*, which till then we could never obtain since the King's Restoration: not thinking that after that there could be any danger in acting jointly with his said Majesty, and complying with his desires.

4. That upon the same grounds, when *Sueden* was admitted into the same *Alliance*, which from thence was call'd *Triple*, it was stipulated in express words in the second and third Articles,

cles, That to establish this Alliance upon a surer Foundation, there should be for ever, between the contracting Parties, a firm and sincere Friendship; and that to cultivate it, and preserve it really and sincerely, each of the said Confederates should heartily endeavour to procure all Good and Advantage to the others, and to preserve them, as far as they were able, from all damage and peril: For which end also, all the Treaties and reciprocal Engagements, that were respectively between them, should be preserv'd entire, and kept inviolable. And in the fifth Article it was added, That in case the aforesaid good Intentions of the Confederates should be ill-rented by any other State or Prince, and that by reason of the same any injury were done to, or War made upon any of the Confederates, the other two should be bound to assist him with all possible vigour both by Sea and Land, and not to call back their Succors before they had procur'd him a reparation, and until the Danger was over.

Now we ask the Compilers of the *Manifesto*, whether it was by their giving leave to the *French*, to make so great Levies in *England*, *Scotland*, and *Ireland* (whilst they knew they were intended against us) they began to promote our Good and our Advantage, as they were bound? Whether their secret Intrigues with the *French*, and the Engagements they had with the said Crown, be what they call to cultivate the sincere Friendship they had promis'd us? How far their Carriage in the Courts of *Sueden* and *Brandenburgh* hath been agreeable to the Obligation they lay under, to preserve us, as far as they were able, from the Danger that did threaten us? And lastly, whether they do persuade themselves, they have honestly perform'd the *Defensive League* they had concluded with us, by their breaking with us, the very first, without any provocation from us?

But it is not only in relation to us, the Court of *England* did not observe the *Triple Alliance*: They have valued it as little both in other respects, and upon other occasions. Thus, altho by the seventh Article of the Treaty of *Aix*, all *Kings*, *Potentates* and *Princes* had a right to give their Guaranty for the performance of the said Treaty, that is, in other words, to come into the *Triple Alliance*, wherein the same thing had already been covenanted; And that pursuant to the said Treaty, the King of *Great Britain* (whilst his Ministers had other thoughts) had solicited several *German Princes* to come into the same *Alliance*: Yet when the Emperor desir'd, a while after, to be admitted into it, the Persuasions of the *French* were so powerful, that it was denied in *England*, after they had promis'd it at first; and the said Court began to fear to see the
Peace

Peace too well settled, far from continuing in their first Zeal, and keeping up the reputation of a League, which ow'd its Being to them:

Lastly, Seeing the chief End of the *Triple Alliance* was to settle the Peace of Christendom; and that the Jealousy, which the Greatness of *France* rais'd in several Princes, had been the occasion of their uniting themselves, and which in particular had mov'd the Court of *England* to make the first Overtures of it: The said Court could not overthrow more openly all that they had done before, nor violate the *Triple Alliance* more directly, than by setting, as they have done, all Christendom in a flame; and by counterancing with so much Zeal, the Arms of a Prince whom they had, for some years, made it their Glory to depress.

And now upon all that has been said (wherein we hope it will appear to every impartial Eye, that we have not us'd the dissingenuous Licence of our Adversaries, in asserting whatsoever may be for their purpose, without the least colour of Truth to support it; but have strictly confin'd our selves to matter of Fact, justified by Authentick Originals, and carrying undeniable Self-demonstration along with it) We appeal to all the World, whether or no there has been any thing done on our part, which may truly be said to be an Infraction of the late Treaty at *Breda*, and of the Sacred *Triple League*, so religiously entred into, for the Common Preservation of the Peace and Safety of all *Europe*. And altho through the Goodness of God, who has miraculously put a stop to the Designs of our Enemies, we are at present in a Condition to defend our selves, (jointly with our Allies, to whom we are strictly united) and have no cause to despair, but that our Arms will still be attended with that success, which the righteous God do's usually give to so just a Cause: yet being always ready to apply our selves to the most hopeful ways of procuring Peace with all our Neighbours; and having more particular Inclinations to do any thing which may be leading to a right Understanding with the Kingdom of *England* (whose Friendship we most earnestly desire, and ever shall esteem as the greatest worldly Blessing) We do here, in the simplicity of our Hearts, and in the confidence of our own Integrity, submit the Sincerity of this our Defence to the Judgment of the *English* Nation in general, and more particularly of the High and Honourable Court of Parliament, as representing the whole Body of the Nation; whom we are not only willing to make the sole Arbitrators of all the unhappy Differences betwixt the Court of *England* and us; but should account it
the

the most prosperous Step to an happy Accommodation, if they (who must be allow'd to be the best Judges of this Controversy) would take the pains rightly to discriminate betwixt the true Interest of the Nation (which they represent) and the Artificial Pretences of some few Evil-minded Men, who (for some sinister Purposes of their own, very little agreeable to the Duty they owe both to God and their Country) have contriv'd this War, in order to Ends equally destructive to *England*, as to this State.

Phenix

Printed by W. B. G. (No. 40) Millgate St. N. 17

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Phenic XI.

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 Sept. 1670. against the most Arbitrary Procedure of that Court.

To the English Reader.

IF ever it were time to speak, or write, 'tis now, so many strange Occurrences requiring both.

How much thou art concern'd in this ensuing Tryal (where not only the Prisoners, but the Fundamental Laws of England, have been most Arbitrarily Arraigned) read, and thou may'st plainly judg.

Liberty of Conscience is counted a Pretence for Rebellion, and Religious Assemblies, Routs and Riots; and the Defenders of both, are by them, reputed Factionous and Disaffected.

Magna Charta is Magnaf——with the Recorder of London; and to demand Right, an Affront to the Court.

Will and Power are their great Charter; but to call for England's, is a Crime, incurring the Penalty of their Bale-Dock, and Nasty-hole; nay, the Sentence of a Gag, and Iron Shackles too.

The

The Jury (tho' proper Judges of Law and Fact) they would have over-ruled in both, as if their Verdict signified no more, than to eccho back the illegal Charge of the Bench; and because their Courage and Honesty did more than hold pace with the Threat and Abuse of those who fate as Judges, (after two days and two nights Restraint for a Verdict) in the end were Fined and Imprisoned for giving it.

O! what monstrous and illegal Proceedings are these? Who reasonably can call his Coat his own, when Property is made subservient to the Will and Interest of his Judges? Or, who can truly esteem himself a Free-man, when all Pleas for Liberty are esteem'd Sedition, and the Laws that give, and maintain them, so many insignificant pieces of Formality?

And what do they less than plainly tell us so, who at Will and Pleasure break open our Locks, rob our Houses, raze their Foundations, imprison our Persons, and finally deny us Justice to our Relief? as if they then acted most like Christian Men, when they were most barbarous in ruining such as really are so; and that no Sacrifice could be so acceptable to God, as the destruction of those that most fear him.

In short; That the Conscientious should only be obnoxious, and the just Demand of our Religious Liberty, the Reason why we should be denied our civil Freedom. (as if to be a Christian and an English-man were inconsistent) and that so much solicitude and deep contrivance should be employ'd only to ensnare and ruin so many Ten thousand conscientious Families, so eminently industrious, serviceable and exemplary; whilst Murders can so easily obtain Pardons, Rapes be remitted, publick Uncleaness pass unpunish'd, and all manner of Levity, Prodigality, Excess, Prophaneness and Atheism universally conniv'd at, if not in some respect manifestly encourag'd, cannot but be detestably abhorrent to every serious and honest Mind.

Yet that this lamentable State is true, and the present Project in hand, let London's Recorder, and Canterbury's Chaplain be heard.

The first in his publick Panegyrick upon the Spanish Inquisition, highly admiring the Prudence of the Romish Church, in the erection of it, as an excellent way to prevent Schism; which unhappy Expression, at once passeth Sentence, both against our Fundamental Laws, and Protestant Reformation.

The second, in his printed Mercenary Discourse against Toleration, asserting for a main Principle, That it would be less injurious to the Government, to dispense with prophane and loose Persons, than to allow a Toleration to Religious Dissenters. It were to over-do the business, to say any more, where there is so much said already.

And therefore, to conclude, we cannot chuse but admonish all, as well Persecutors, to relinquish their Heady, Partial and Inhumane Prosecutions (as what will certainly issue in disgrace here, and inevitable condign

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condign Punishment hereafter) as those who yet dare express their Moderation (however out of fashion, or made the Brand of Phanaticism) not to be huff'd or menaced out of that excellent Temper, to make their Parts and Persons subservient to the base Humors, and sinister Designs, of the biggest Mortal upon Earth: But to reverence and obey the Eternal just God, before whose great Tribunal all must render their accounts, and where he will recompense to every Person according to his Works.

The T R Y A L of William Penn and William Mead.

AS there can be no Observation, where there is no Action; so it's impossible, there should be a judicious Intelligence, without due Observation.

And since there can be nothing more reasonable than a right Information, especially of *Publick Affairs*; and well knowing, how industrious some will be, to misrepresent this Tryal to the disadvantage of the Cause and Prisoners, it was thought requisite, in defence of both, and for the satisfaction of the People, to make it more publick; not can there be any business wherein the People of *England* are more concern'd, than in that which relates to their Civil and Religious Liberties, question'd in the Persons above-named, at the *Old-Baily*, the first, third, fourth and fifth of *Septemb.* 1670.

There being present,

Sam. Starling, Mayor.	}	Richard Ford, Alderman.	}
Tho. Howel, Recorder.		Joseph Sheldon, Alderman.	
Tho. Bludworth, Alderm.		John Smith,	
William Peak, Alderm.		James Edwards,	
			Sheriffs.

Cryer. O Yes, Thomas Veer, ——— Bushel, John Hammond, Charles Milson, Gregory Walklet, John Brightman, William Plumsted, Henry Henley, Thomas Damask, Henry Michel, William Lever, John Baily.

The Form of the Oath.

You shall well and truly try, and true Deliverance make, betwixt our Sovereign Lord the King, and the Prisoners at the Bar, according to your Evidence: So help you God.

The

That *William Penn* Gent. and *William Mead*, late of *London*, Linen-Draper, with divers other Persons, to the Jurors unknown, to the number of Three hundred, the 14th Day of *August*, in the 22d Year of the King, about Eleven of the Clock in the Forenoon, the same Day, with Force and Arms, &c. in the Parish of *St. Bennet Grace-Church* in *Bridg-ward*, *London*, in the Street called *Grace-Church-Street*, Unlawfully and Tumultuously did Assemble and Congregate themselves together, to the Disturbance of the Peace of the said Lord the King: And the aforesaid *William Penn*, and *William Mead*, together with other Persons, to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid *William Penn*, by agreement between him and *William Mead*, before made; and by Abetment of the aforesaid *William Mead*, then and there, in the open Street, did take upon himself to Preach and Speak, and then and there did Preach and Speak unto the aforesaid *William Mead*, and other Persons there, in the Street aforesaid, being assembled and congregated together; by reason whereof, a great Concourse and Tumult of People in the Street aforesaid, then and there a long time did remain and continue, in contempt of the said Lord the King, and of his Law, to the great Disturbance of his Peace, to the great Terror and Disturbance of many of his Liege People and Subjects, to the ill Example of all others, in the like case Offenders, and against the Peace of the said Lord the King, his Crown and Dignity.

What say you, *William Penn* and *William Mead*? are you guilty as you stand indicted, in manner and form, as aforesaid, or not guilty?

Penn. It is impossible that we should be able to remember the Indictment *verbatim*; and therefore we desire a Copy of it, as is customary in the like occasions.

Rec. You must first plead to the Indictment, before you can have a Copy of it.

Penn. I am unacquainted with the Formality of the Law; and therefore, before I shall answer directly, I request two Things of the Court. First, That no Advantage may be taken against me, nor I deprived of any Benefit, which I might otherwise have received. Secondly, That you will promise me a fair Hearing, and Liberty of making my Defence.

Court. No Advantage shall be taken against you; you shall have liberty; you shall be heard.

Penn. Then I plead Not guilty in manner and form.

Cler. What sayest thou, *William Mead*? art thou guilty in manner and form, as thou standest indicted, or not guilty?

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Mead. I shall desire the same Liberty as is promised *William Penn.*

Court. You shall have it.

Mead. Then I plead Not guilty in manner and form.

The Court adjourned until the Afternoon.

Cryer. O Yes, &c.

Cler. Bring *William Penn* and *William Mead* to the Bar.

Observ. The said Prisoners were brought, but were set aside, and other business prosecuted. Where we cannot chuse but observe, that it was the constant and unkind Practice of the Court to the Prisoners, to make them wait upon the Tryals of Felons and Murderers, thereby designing, in all probability, both to affront and tire them.

After five hours attendance, the Court broke up, and adjourned to the third instant.

The third of *September*, 1670. the Court sate.

Cryer. O yes, &c.

Cler. Bring *William Penn* and *William Mead* before the Bar.

Mayor. Sirrah, who bid you put off their Hats? put on their Hats again.

Observ. Whereupon one of the Officers putting the Prisoners Hats upon their Heads (pursuant to the Order of the Court) brought them to the Bar.

Record. Do you know where you are?

Penn. Yes.

Record. Do not you know it is the King's Court?

Penn. I know it to be a Court, and I suppose it to be the King's Court.

Record. Do you not know there is Respect due to the Court?

Penn. Yes.

Record. Why do you not pay it then?

Penn. I do so.

Record. Why do you not pull off your Hat then?

Penn. Because I do not believe that to be any Respect.

Record. Well, the Court sets forty Marks a piece upon your Heads, as a Fine for your Contempt of the Court.

Penn. I desire it might be observ'd, that we came into the Court with our Hats off, (that is, taken off) and if they have been put on since, it was by Order from the Bench; and therefore not we, but the Bench should be fined.

Mead. I have a Question to ask the Recorder; Am I fined also?

Recor. Yes.

Mead.

Mead. I desire the Jury, and all people, to take notice of this Injustice of the Recorder; who spake to me to pull off my Hat; and yet hath he put a Fine upon my Head. O fear the Lord, and dread his Power, and yield to the guidance of his holy Spirit, for he is not far from every one of you.

The Jury Sworn again.

Obser. *J. Robinson*, Lieutenant of the Tower, disingenuously objected against — *Bushell*, as if he had not kiss'd the Book, and therefore would have him Sworn again; tho indeed, it was on purpose, to have made use of his Tenderness of Conscience in avoiding reiterated Oaths, to have put him by his being a Jury-man, apprehending him to be a person not fit to answer their arbitrary Ends.

The Clerk read the Indictment, as aforesaid.

Cler. Cryer, call *James Cook* into the Court; give him his Oath.

Cler. *James Cook*, lay your Hand upon the Book; the Evidence you shall give to the Court betwixt our Sovereign the King, and the Prisoners at the Bar, shall be the Truth, and the whole Truth, and nothing but the Truth: So help you God, &c.

Cook. I was sent for from the Exchange, to go and disperse a Meeting in *Grations-street*, where I saw *Mr. Penn* speaking to the People; but I could not hear what he said, because of the noise: I endeavour'd to make way to take him, but I could not get to him for the Croud of People: upon which *Captain Mead* came to me, about the Kennel of the Street, and desired me to let him go on; for when he had done, he would bring *Mr. Penn* to me.

Cour. What number do you think might be there?

Cook. About three or four hundred People.

Cour. Call *Richard Read*: Give him his Oath.

Read being sworn, was ask'd, What do you know concerning the Prisoners at the Bar?

Read. My Lord, I went to *Grations-street*, where I found a great Croud of People, and I heard *Mr. Penn* preach to them; and I saw *Captain Mead* speaking to Lieutenant *Cook*, but what he said, I could not tell.

Mead. What did *William Penn* say?

Read. There was such a great noise, that I could not tell what he said.

Mead. Jury, observe this Evidence; He saith he heard him preach, and yet saith, he doth not know what he said.

Jury, take notice; he swears now a clean contrary thing to what he swore before the Mayor, when we were committed: for now he swears that he saw me in *Grations-street*, and yet

swore before the Mayor, when I was committed, that he did not see me there. I appeal to the Mayor himself, if this be not true; but no Answer was given.

Cour. What number do you think might be there?

Read. About four or five hundred.

Penn. I desire to know of him what day it was?

Read. Answ. the 14th day of August.

Penn. Did he speak to me, or let me know he was there? for I am very sure I never saw him.

Cler. Cryer, call _____ into the Court.

Cour. Give him his Oath.

My Lord, I saw a great number of People, and Mr. Penn I suppose was Speaking; I see him make a motion with his hands, and heard some noise, but could not understand what he said: but for Captain Mead, I did not see him there.

Rec. What say you, Mr. Mead? were you there?

Mead. It is a Maxim in your own Law, *Nemo tenetur accusare seipsum*; which if it be not true Latin, I am sure it is true English, *That no man is bound to accuse himself*: And why dost thou offer to ensnare me with such a Question? Doth not this shew thy Malice? Is this like unto a Judg, that ought to be Counsel for the Prisoner at the Bar?

Record. Sir, Hold your Tongue, I did not go about to ensnare you.

Penn. I desire we may come more close to the Point, and that Silence be commanded in the Court.

Cry. O yes; All manner of Persons keep Silence, upon pain of Imprisonment — Silence in the Court.

Penn. We confess our selves to be so far from recanting, or declining to vindicate the Assembling of our selves to Preach, Pray, or Worship the Eternal, Holy, Just God; that we declare to all the World, that we do believe it to be our indispensable duty, to meet incessantly upon so good an account; nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God, who made us.

Brown. You are not here for worshipping God, but for breaking the Law; you do your selves a great deal of wrong in going on in that discourse.

Penn. I affirm I have broken no Law, nor am I guilty of the Indictment that is laid to my charge; and to the end, the Bench, the Jury, and my self, with these that hear us, may have a more direct understanding of this procedure, I desire you would let me know by what Law it is you prosecute me, and upon what Law you ground my Indictment.

Rec. Upon the Common Law.

Penn. Where is that Common Law?

Rec. You must not think that I am able to run up so many years, and over so many adjudged Cases, which we call Common Law, to answer your curiosity.

Penn. This Answer, I am sure, is very short of my Question; for if it be Common, it should not be so hard to produce.

Rec. Sir, will you plead to your Indictment?

Penn. Shall I plead to an Indictment that hath no Foundation in Law? If it contain that Law you say I have broken, why should you decline to produce that Law, since it will be impossible for the Jury to determine, or agree to bring in their Verdict, who have not the Law produc'd, by which they should measure the Truth of this Indictment, and the Guilt, or contrary of my Fact?

Rec. You are a sawcy Fellow, speak to the Indictment.

Penn. I say, it is my place to speak to Matter of Law; I am arraigned a Prisoner, my Liberty, which is next to Life it self, is now concerned; you are many Mouths and Ears against me, and if I must not be allowed to make the best of my Case, it is hard: I say again, unless you shew me, and the People, the Law you ground your Indictment upon; I shall take it for granted, your Proceedings are merely Arbitrary.

Obfer. At this time several upon the Bench urged hard upon the Prisoner to bear him down.

Rec. The Question is, Whether you are guilty of this Indictment?

Penn. The Question is not, Whether I am guilty of this Indictment, but whether this Indictment be legal; it is too general and imperfect an Answer, to say it is the Common Law, unless we knew both where, and what it is: For where there is no Law, there is no Transgression; and that Law which is not in being, is so far from being Common, that it is no Law at all.

Rec. You are an impertinent Fellow; will you teach the Court what Law is? It's *Lex non scripta*, that which many have studied thirty or forty years to know; and would you have me to tell you in a moment?

Penn. Certainly; If the Common Law be so hard to be understood, it's far from being very Common: But if the Lord Cook, in his Institutes, be of any consideration, he tells us, That Common Law is Common Right, and that Common Right is the great Charter-Privileges, confirm'd 9 Hen. 3. 29. 25 Edw. 1. 1. 2 Edw. 3. 8. Cook Instit. 2. p. 56.

Rec. Sir, you are a troublesome Fellow, and it is not for the Honour of the Court to suffer you to go on.

Penn. I have ask'd but one Question, and you have not answer'd me; tho' the Rights and Privileges of every English-man be concern'd in it.

Rec. If I should suffer you to ask Questions till to-morrow morning; you would be never the wiser.

Penn. That is according as the Answers are.

Rec. Sir, We must not stand to hear you talk all night.

Penn. I design no Affront to the Court, but to be heard in my just Plea; and I must plainly tell you, that if you will deny me Oyer of that Law, which you suggest I have broken, you do at once deny me an acknowledged Right, and evidence to the whole World your resolution to sacrifice the Privileges of English-men to your sinister and arbitrary Designs,

Rec. Take him away: My Lord, if you take not some course with this pestilent Fellow, to stop his mouth, we shall not be able to do any thing to Night.

May. Take him away, Take him away; turn him into the Bale-dock.

Penn. These are but so many vain Exclamations: Is this Justice or true Judgment? Must I therefore be taken away, because I plead for the Fundamental Laws of *England*? However, this I leave upon your Consciences, who are of the Jury (and my sole Judges) that if these Antient Fundamental Laws, which relate to Liberty and Property, (and are not limited to particular Persuasions in Matters of Religion) must not be indispensibly maintain'd and observ'd; Who can say he hath right to the Coat upon his Back? Certainly our Liberties are openly to be invaded, our Wives to be ravished, our Children slaved, our Families ruined, and our Estates led away in Triumph, by every sturdy Beggar and malicious Informer, as their Trophies, but our (pretended) Forfeits for Conscience sake; the Lord of Heaven and Earth will be Judge between us in this matter.

Rec. Be silent there.

Penn. I am not to be silent in a Case wherein I am so much concerned; and not only my self, but many Ten thousand Families besides.

Obser. They having rudely hal'd him into the Bale-dock, *William Mead* they left in Court, who spake as followeth.

Mead. You Men of the Jury, here I do now stand, to answer to an Indictment against me, which is a bundle of Stuff, full of Lies and Falshoods; for therein I am accused, that I met *Vi & armis, illicite & tumultuose*: Time was, when I had freedom to use a carnal Weapon, and then I thought I feared no Man: but now I fear the Living God, and dare not make use thereof, nor hurt any Man; nor do I know I demeaned
my

my self as a tumultuous person: I say, I am a peaceable Man, therefore it is a very proper Question what *William Penn* demanded in this Case, An Oyer of the Law, on which our Indictment is grounded.

Recor. I have made Answer to that already.

Mead, turning his Face to the Jury, saith, You Men of the Jury, who are my Judges, if the *Recorder* will not tell you what makes a Riot, a Rout, or an unlawful Assembly, *Cook*, he that once they called the Lord *Cook*, tells us what makes a Riot, a Rout, and an unlawful Assembly—— A Riot is when three, or more, are met together to beat a Man, or to enter forcibly into another Man's Land, to cut down his Grass, his Wood, or break down his Pales.

Obfer. Here the *Recorder* interrupted him, and said, I thank you Sir, that you will tell me what the Law is, scornfully pulling off his Hat.

Mead. Thou may'st put on thy Hat, I have never a Fee for thee now.

Brown. He talks at random, one while an *Independent*, another while some other Religion, and now a *Quaker*, and next a *Papist*.

Mead. Turpe est doctori cum culpa redarguit ad ipsum.

May. You deserve to have your Tongue cut out.

Rec. If you discourse on this manner, I shall take occasion against you.

Mead. Thou didst promise me I should have fair liberty to be heard; Why may I not have the privilege of an English-man? I am an English-man, and you might be ashamed of this dealing.

Rec. I look upon you to be an Enemy to the Laws of *England*, which ought to be observ'd and kept; nor are you worthy of such Privileges as others have.

Mead. The Lord is Judg between me and thee in this matter.

Obfer. Upon which they took him away into the Bale-dock, and the *Recorder* proceeded to give the Jury their Charge, as followeth.

Rec. You have heard what the Indictment is; It is for preaching to the People, and drawing a tumultuous Company after them, and *Mr. Penn* was speaking; if they should not be disturbed, you see they will go on; there are three or four Witnesses that have proved this, that he did preach there, that *Mr. Mead* did allow of it; after this, you have heard by substantial Witnesses what is said against them. Now we are upon the Matter of Fact, which you are to keep to, and observe, as what hath been fully sworn, at your peril.

Obfer.

Obfer. The Prifoners were put out of the Court, into the Bale-dock, and the Charge given to the Jury in their abfence; at which *W. P.* with a very raifed Voice, it being a confiderable diftance from the Bench, fpake:

Penn. I appeal to the Jury, who are my Judges, and this great Afsembly, whether the Proceedings of the Court are not moft arbitrary, and void of all Law, in offering to give the Jury their Charge in the abfence of the Prifoners; I fay, it is directly oppofite to, and deftructive of, the undoubted Right of every Englifh Prifoner, as *Cook* in the 2 *Inftit.* 29. on the Chap. of *Magna. Charta* fpeaks.

Obfer. The Recorder being thus unexpectedly laft for his extra-judicial procedure, faid with an intraged Smile,

Rec. Why, ye are prefent, you do hear, do you not?

Penn. No Thanks to the Court, that commanded me into the Bale-dock; and you of the Jury take notice, that I have not been heard, neither can you legally depart the Court before I have been fully heard, having at leaft ten or twelve Material Points to offer, in order to invalid their Indictment.

Rec. Pull that Fellow down, pull him down.

Mead. Are thefe according to the Rights and Privileges of Englifh-men, that we fhould not be heard, but turned into the Bale-dock for making our Defence, and the Jury to have their Charge given them in our abfence? I fay, thefe are Barbarous and Unjuft Proceedings.

Rec. Take them away into the Hole; to hear them talk all night, as they would, that I think doth not become the Honour of the Court; and I think you (*i. e.* the Jury) your felves would be tired out, and not have patience to hear them.

Obfer. The Jury were commanded up to agree upon their Verdict, the Prifoners remaining in the ftinking Hole; after an hour and half's time eight came down agreed, but four remain'd above, the Court fent an Officer for them, and they accordingly came down: The Bench ufed many unworthy Threats to the four that diffented; and the Recorder, addreffing himfelf to *Bushell*, faid, ' Sir, You are the caufe of this ' difturbance, and manifefly fhew your felf an Abettor of ' Faction; I fhall fet a Mark upon you, Sir.

J. Robinfon, ' Mr. *Bushell*, I have known you near this fourteen years; you have thruft your felf upon this Jury, becaufe ' you think there is fome fervice for you; I tell you, you ' ferve to be indicted more than any Man that hath been ' brought to the Bar this day.

Bush. No, Sir *John*; there were threescore before me, and I would willingly have got off, but could not.

Bloodw. I said when I saw Mr. *Bushell*, What I see is come to pass, for I knew he would never yield. Mr. *Bushell*, we know what you are.

May. Sirrah, you are an impudent Fellow, I will put a mark upon you.

Obser. They used much menacing Language, and behaved themselves very imperiously to the Jury, as persons not more void of Justice than sober Education. After this Barbarous Usage, they sent them to consider of bringing in their Verdict, and after some considerable time they returned to the Court. Silence was called for, and the Jury called by their Names.

Cler. Are you agreed upon your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. Look upon the Prisoners at the Bar; How say you? Is *William Penn* guilty of the Matter wherefore he stands indicted in Manner and Form, or Not guilty?

Fore-m. Guilty of speaking in *Gracious-street*.

Court. Is that all?

Fore-m. That is all I have in Commission.

Recor. You had as good say nothing.

May. Was it not an unlawful Assembly? you mean he was speaking to a Tumult of People there?

Fore-m. My Lord, this was all I had in Commission.

Obser. Here some of the Jury seem'd to buckle to the Questions of the Court; upon which *Bushell*, *Hammond*, and some others opposed themselves, and said, They allowed of no such word as an unlawful Assembly in their Verdict: At which the *Recorder*, *Mayor*, *Robinson* and *Bloodworth* took great occasion to vilify them with most opprobrious Language; and this Verdict not serving their turns, the *Recorder* expressed himself thus.

Recor. The Law of *England* will not allow you to part till you have given in your Verdict.

Jury. We have given in our Verdict, and we can give in no other.

Recor. Gentlemen, you have not given in your Verdict, and you had as good say nothing; therefore go and consider it once more, that we may make an end of this troublesome business.

Jury. We desire we may have Pen, Ink and Paper.

Obser. The Court adjourned for half an hour; which being expired, the Court returns, and the Jury not long after.

The Prisoners were brought to the Bar, and the Juries Names called over.

Cler.

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Cler. Are you agreed of your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. What say you; look upon the Prisoners; Is *William Penn* guilty in Manner and Form, as he stands indicted, or not guilty?

Fore-m. Here is our Verdict, (holding forth a piece of Paper to the Clerk of the Peace) which follows.

WE the *Jurors*, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Assembly, met together in *Gracious-street*, the 14th of *August* last, 1670. And that *William Mead* is Not guilty of the said Indictment.

Fore-m. *Thomas Veer,*
Edward Bushell,
John Hammond,
Henry Henley.
Henry Michel,
John Brightman,

Charles Milson,
Gregory Walklet,
John Baily,
William Lever,
James Damask,
Will. Plumsted.

Obser. This both *Mayor* and *Recorder* resented at so high a rate, that they exceeded the bounds of all Reason and Civility.

May. What, will you be led by such a silly Fellow as *Bushell*? an impudent canting Fellow; I warrant you, you shall come no more upon Juries in haste: You are a Fore-man indeed, addressing himself to the Fore-man, I thought you had understood your place better.

Recor. Gentlemen, you shall not be dismiss'd till we have a Verdict that the Court will accept; and you shall be lockt up, without Meat, Drink, Fire, and Tobacco; you shall not think thus to abuse the Court; we will have a Verdict, by the help of God, or you shall starve for it.

Penn. My Jury, who are my Judges, ought not to be thus menaced; their Verdict should be free, and not compelled; the Bench ought to wait upon them, but not forestall them. I do desire that Justice may be done me, and that the arbitrary Resolves of the Bench may not be made the measure of my Jury's Verdict.

Recor. Stop that prating Fellow's mouth, or put him out of the Court.

May. You have heard that he preach'd, that he gather'd a Company of tumultuous People, and that they do not only disobey the Martial Power, but Civil also.

Penn.

Pen. It is a great mistake, we did not make the Tumult, but they that interrupted us; the Jury cannot be so ignorant, as to think that we met there with a design to disturb the Civil Peace; since first we were by Force of Arms kept out of our lawful House, and met as near it in the Street, as their Soldiers would give us leave: And secondly, because it was no new thing (nor with the Circumstances express'd in the Indictment) but what was usual and customary with us. 'Tis very well known that we are a peaceable People, and cannot offer violence to any man.

Obser. The Court being ready to break up, and willing to huddle the Prisoners to their Goal, and the Jury to their Chamber, *Penn* spoke as follows.

Pen. The Agreement of twelve men is a Verdict in Law; and such a one being given by the Jury, I require the Clerk of the Peace to record it, as he will answer it at his peril. And if the Jury bring in another Verdict, contradictory to this, I affirm they are perjurd Men in Law. And looking upon the Jury, said, *You are Englishmen, mind your Privilege, give not away your Right.*

Bish. &c. Nor will we ever do it.

Obser. One of the Jury-men pleaded Indisposition of Body, and therefore desir'd to be dismiss'd.

May. You are as strong as any of them; Starve them; and hold your Principles.

Rec. Gentlemen, you must be contented with your hard fate; let your Patience overcome it; for the Court is resolv'd to have a Verdict, and that before you can be dismiss'd.

Jury. We are agreed, we are agreed, we are agreed.

Obser. The Court swore several Persons, to keep the Jury all night without Meat, Drink, Fire, or any other Accommodation: They had not so much as a Chamber-pot, tho desired.

Cry. O yes, &c.

Obser. The Court adjourns till seven of the clock next morning (being the fourth instant, vulgarly call'd *Sunday*) at which time the Prisoners were brought to the Bar; the Court sat, and the Jury call'd to bring in their Verdict.

Cry. O yes, &c.——Silence in the Court, upon pain of Imprisonment.

The Juries Names call'd over.

Clerk. Are you agreed upon your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Clerk.

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Clerk. What say you? Look upon the Prisoner at the Bar; Is he guilty of the matter whereof he stands indicted, in manner and form as aforesaid, or not guilty?

Foreman. *William Penn* is guilty of speaking in *Grace-Church-Street*.

May. To an unlawful Assembly?

Bush. No, my Lord, we give no other Verdict, than what we gave last night; we have no other Verdict to give.

May. You are a factious Fellow, I'll take a course with you.

Blood. I knew Mr. *Bushel* would not yield.

Bush. Sir *Tho.* I have done according to my Conscience.

May. That Conscience of yours would cut my throat.

Bush. No, my Lord, it never shall.

May. But I will cut yours so soon as I can.

Rec. He has inspir'd the Jury, he has the Spirit of Divination, methinks I feel him: I will have a positive Verdict, or you shall starve for it.

Pen. I desire to ask the Recorder one question; Do you allow of the Verdict given of *William Mead*?

Rec. It cannot be a Verdict, because you were indicted for a Conspiracy; and one being found not guilty, and not the other, it could not be a Verdict.

Pen. If *Not Guilty* be not a Verdict, then you make of the Jury and *Magna Charta* but a mere Nose of Wax.

Mead. How! Is *not guilty* no Verdict?

Rec. No, 'tis no Verdict.

Pen. I affirm, that the Consent of a Jury is a Verdict in Law; and if *W. M.* be not guilty, it consequently follows that I am clear; since you have indicted us of a Conspiracy, and I could not possibly conspire alone.

Obser. There were many Passages that could not be taken, which pass between the Jury and the Court. The Jury went up again, having receiv'd a fresh Charge from the Bench, if possible, to extort an unjust Verdict.

Cry. O yes, &c. Silence in the Court.

Court. Call over the Jury. Which was done.

Clerk. What say you? Is *William Penn* guilty of the matter whereof he stands indicted, in manner and form aforesaid, or not guilty?

Foreman. Guilty of speaking in *Grace-Church Street*.

Rec. What is this to the purpose? I say, I will have a Verdict. And speaking to *Edw. Bushel*, said, You are a factious Fellow; I will set a mark upon you; and whilst I have any thing to do in the City, I will have an eye upon you.

May. Have you no more wit than to be led by such a pitiful Fellow? I will cut his Nose.

Pen. It is intolerable that my Jury should be thus menaced: Is this according to the fundamental Laws? Are not they my proper Judges by the Great Charter of *England*? What hope is there of ever having Justice done, when Juries are threaten'd, and their Verdicts rejected? I am concern'd to speak and grieved to see such arbitrary Proceedings. Did not the Lieutenant of the Tower render one of them worse than a Felon? And do you not plainly seem to condemn such for factious Fellows, who answer not your ends? Unhappy are those Juries, who are threaten'd to be fin'd, and starv'd, and ruin'd, if they give not in Verdicts contrary to their Consciences.

Rec. My Lord, you must take a course with that same Fellow.

May. Stop his mouth; Goaler bring Fetters, and stake him to the ground.

Pen. Do your pleasure, I matter not your Fetters.

Rec. Till now I never understood the reason of the Policy and Prudence of the *Spaniards*, in suffering the Inquisition among them: And certainly it will never be well with us, till something like unto the *Spanish* Inquisition be in *England*.

Obser. The Jury being requir'd to go together to find another Verdict, and stedfastly refusing it (saying they could give no other Verdict, than what was already given) the Recorder in great passion was running off the Bench, with these words in his mouth; *I protest I will sit here no longer to hear these things.* At which the Mayor calling, *Stay, Stay,* he return'd, and directed himself unto the Jury, and spoke as followeth:

Rec. Gentlemen, we shall not be at this trade always with you; you will find the next Sessions of Parliament there will be a Law made, that those that will not conform, shall not have the Protection of the Law. Mr. *Lee* draw up another Verdict, that they may bring it in special.

Lee. I cannot tell how to do it.

Jury. We ought not to be return'd, having all agreed, and set our hands to the Verdict.

Rec. Your Verdict is nothing, you play upon the Court; I say you shall go together, and bring in another Verdict, or you shall starve; and I will have you carted about the City, as in *Edward III's* time.

Foreman. We have given in our Verdict, and all agreed to it; and if we give in another, it will be a force upon us to save our Lives.

May. Take them up.

Offic. My Lord, they will not go up.

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Obfer. The Mayor spoke to the Sheriff, and he came off of his Seat, and said,

Sheriff. Come, Gentlemen, you must go up; you see I am commanded to make you go.

Obfer. Upon which the Jury went up; and several sworn, to keep them without any Accommodation as aforesaid, till they brought in their Verdict.

Cry. O yes, &c. The Court adjourns till to morrow morning, at seven of the clock.

Obfer. The Prisoners were remanded to *Newgate*; where they remain'd till next morning, and then were brought unto the Court; which being late, they proceeded as followeth.

Cry. O yes, &c. Silence in the Court upon pain of Imprisonment.

Clerk. Set *William Pen* and *William Mead* at the Bar. Gentlemen of the Jury, answer to your Names; *Tho. Veer, Edward Bushei, John Hammond, Henry Henly, Henry Michell, John Brightman, Charles Miljon, Gregory Walklet, John Baily, William Lever, James Damask, William Plumstead*: Are you all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Clerk. Look upon the Prisoners. What say you, is *William Penn* guilty of the matter whereof he stands indicted, in manner and form, &c. or not guilty?

Foreman. Here is our Verdict in writing, and our Hands subscrib'd.

Obfer. The Clerk took the Paper, but was stopt by the Recorder from reading of it; and he commanded to ask for a positive Verdict.

Foreman. That is our Verdict; we have subscrib'd it.

Clerk. How say you, is *William Penn* guilty, &c. or not guilty?

Foreman. Not guilty.

Clerk. How say you, is *William Mead* guilty, &c. or not guilty?

Foreman. Not guilty.

Clerk. Then hearken to your Verdict, you say that *William Penn* is not guilty in manner and form as he stands indicted; you say that *William Mead* is not guilty in manner and form as he stands indicted, and so you say all.

Jury. Yes, we do so.

Obfer. The Bench being unsatisfy'd with the Verdict, commanded that every Person should distinctly answer to their Names,

Names, and give in their Verdict, which they unanimously did, in saying, *Not Guilty*; to the great satisfaction of the Assembly.

Rec. I am sorry, Gentlemen, you have follow'd your own Judgments and Opinions, rather than the good and wholsom Advice, which was given you; God keep my Life out of your hands; but for this the Court fines you forty mark a man, and Imprisonment, till paid. At which *Penn* stept up towards the Bench, and said,

Pen. I demand my Liberty, being freed by the Jury:

May. No, you are in for your Fines.

Pen. Fines, for what?

May. For contempt of the Court.

Pen. I ask, if it be according to the fundamental Laws of *England*, that any *English*-man should be fined or amerced, but by the Judgment of his Peers or Jury; since it expressly contradicts the fourteenth and twenty ninth Chapter of the great Charter of *England*, which say, No Freeman ought to be amerced but by the Oath of good and lawful Men of the Vicinage.

Rec. Take him away, take him away, take him out of the Court.

Pen. I can never urge the fundamental Laws of *England*, but you cry, Take him away, take him away. But it is no wonder, since the *Spanish* Inquisition hath so great a place in the Recorder's Heart. God Almighty, who is just, will judg you all for these things.

Obser. They haled the Prisoners into the Bale-dock, and from thence sent them to *Newgate*, for Non-payment of their Fines; and so were their Jury.

An APPENDIX, by way of Defence for the Prisoners, as what might have been offer'd against the Indictment, and illegal Proceedings of the Court thereon, had they not violently over-rul'd and stop'd them.

UPON a sober Disquisition into the several parts of the Indictment, we find it so wretchedly defective, as if it were nothing else but a mere Composition of Error, rather calculated to the malicious Desigus of the Judges, than to the least Verity of Fact committed by the Prisoners.

To prove this, what we say will be a main help to discover the Arbitrary Proceedings of the Bench in their frequent Menaces to the Jury; as if it were not so much their Business to try, as to condemn the Prisoners; and that not so much for any Fact they had committed, as what the Court would have suggested to the Jury to have been their Fact.

Sect. 1. It is the constant Common Law of *England*, that no man should be taken, imprison'd, amerced, disseiz'd of his Freehold, of his Liberties or free Customs, but by the Judgment of his Peers, which are vulgarly call'd a Jury from *Jurare*, because they are sworn to do right.

Sect. 2. The only Assistance that is given the Jury, in order to a Verdict, is;

First, the Evidence given of the Fact committed by the Person indicted.

Secondly, the Knowledg of that Law, Act, or Statute the Indictment is grounded upon, and which the Prisoners are said to have transgress'd.

Sect. 3. We shall neglect to mention here, how much they were depriv'd of that just advantage the antient equal Laws of *England* do allow; designing it for a Conclusion of the whole, and shall only speak here to matter of Fact and Law.

Sect. 4. The Evidence you have read in the Trial, the utmost Import of which is no more than this; That *William Penn* was speaking in *Grace-Church-street* to an Assembly of People, but knew not what he said; which is so great a Contradiction, as he that runs may read it. For no man can see another man preaches, and yet understand not what he saith.

He may conjecture it, but that is a lame Evidence in Law: It might as well have been sworn, That he was speaking of Law, Physick, Trade, or any other matter of Civil Concernment. Besides, There is no Law against Preaching what is Truth, whether it be in the Street, or in any other place: Nor is it possible, that any man can truly swear, That he preach'd Seditious, Heresy, &c. unless he so heard him, that he could tell what he said.

Sect. 5. The Evidence further saith, That *W. Mead* was there; but till being in *Gracechurch-street* be a Fault, and hearing a Man speak the Witness knows not what, be contrary to Law, the whole Evidence is useless and impertinent: but what they want of that, they endeavour to supply with Indictment; whose parts we proceed to consider.

Exceptions against the Indictment.

Sect. 6. It saith, That the Prisoners [*were met upon the 15th Day of August, 1670.*] whereas their own Evidence affirms it to be upon the 14th Day of *August, 70.*

Sect. 7. [*That they met with Force and Arms*] which is so great a Lye, that the Court had no better cover for it, than to tell the Jury, it was only a piece of Form, urging that the man tried for clipping of Mony this present Sessions had the same words used in his Indictment.

But that this Answer is too scanty, as well as it was too weak to prevail with the Jury; we desire it may be consider'd, that the same words may be used more of course, and out of form at one time, than at another. And tho we grant they can have little force with any Jury in a Clipper's case, for mere Clipping; yet they are words that give so just a ground of Jealousy, nay that carry so clear an Evidence of Illegality, where they are truly prov'd and affirm'd of any Meeting, as that they are the proper Roots from whence do spring those Branches which render an Indictment terrible, and an Assembly truly the Terror of the People.

Sect. 8. [*Unlawfully and tumultuously to disturb the Peace*] which is as true as what is said before, that is as false. This will evidently appear to all that consider how lawful it is to assemble with no other design than to worship God: and their calling a lawful Assembly an unlawful one, no more makes it so, than to say Light is Darkness, Black is White, concludes so impudent a Falshy true.

In short, because to worship God can never be a Crime, no Meeting or Assembly designing to worship God, can be unlawful. Such as go about to prove an unlawful Assembly, must

must prove the Assemblers intent not to worship God; but that no man can do, because no man can know another man's Intentions; and therefore it's impossible that any should prove such an Assembly unlawful. That is properly an unlawful Assembly, according to the Definition of the Law, when several Persons are met together, with design to use violence, and to do mischief; but that Dissenters meet with no such Intention, is manifest to the whole World, therefore their Assemblies are not unlawful. He that hath only Right to be worship'd, which is God, hath only Right to institute how he will be worship'd; and such as worship him in that way they apprehend him to have instituted, are so far from being unlawful Assemblers, that therein they do but express the Duty they owe to God.

[*Tumultuously*] imports as much as Disorderly, or an Assembly full of Noise, Bustle, and Confusion, using Force and Violence, to the injury of Persons, Houses, or Grounds. But whether Religious Dissenters, in their peaceable Meetings, therein desiring, and seeking nothing more than to express that Duty they owe to God Almighty, be a tumultuous Action, or Meeting in the Sense express'd (and which is the very Definition of the Law) will be the question. Certainly such as call these Meetings tumultuous, as to break the Peace, offer the greatest violence to common words, that can be well imagin'd; for they may as rightly say, such Persons meet adulterously, thievishly, &c. as to affirm they meet tumultuously, because they are as truly applicable. In short, such Particulars as are required to prove them such Meetings in Law, are wholly wanting.

Sect. 9. [*To the Disturbance of the Peace.*]

If the Disturbance of the Peace be but matter of form with the rest, as is usually pleaded, leave out this matter of form, and then see what great matter will be left.

Certainly such Assemblies, as are not to the breach and disturbance of the Peace, are far from being unlawful or tumultuary; But if the Peace be broken by them, how comes it the Evidence was so short? We cannot believe it was in favour of the Prisoners. This may shew to all the reasonable World how forward some are, to brand Innocency with hateful Names, to bring a Suspicion, where there was none deserved.

Sect. 10. [*That the said Penn and Mead met by agreement before hand made.*]

But if Persons that never saw each other, nor converse together, neither had Correspondence by any other hand, can not be said to be agreed to any Action, before it be done

the

then the Prisoners were far from an Agreement, for they had never seen, convers'd, nor corresponded, directly nor indirectly, before the Officers came to disturb the Assembly. We well know how far they would have stretch'd the word *Agreement* or *Conspiracy*; but God, who brings to nought the Counsels of the Wicked, prevented their cruel Designs.

Sect. 11. [*That William Mead did abet the said William Penn in Preaching.*]

No man can be said to abet another, whilst they are both unknown to each other, especially in this case, where abetting follows agreeing, and agreeing supposes Foreknowledg. Nay the word *abet* in Law signifies to *command, procure, or counsel* a Person, which *W. Mead* could not be said to do, in reference to *W. Penn*, they being so great Strangers one to another, and at so great a distance: for the Evidence proves that he was with Lieutenant *Cook*; and Lieutenant *Cook* swears he could not make his way to *W. Penn*, for the Croud.

Sect. 12. [*That W. Penn's Preaching and Speaking caused a great Concourse and Tumult of People, to remain and continue a long time in the Street.*]

But this is so improbable to believe, that the very nature of a Tumult admits of no such thing as Preaching; but implies a disorderly Multitude, where all may be said to speak, rather than any to hear.

Sect. 1. [*In contempt of the King and his Laws.*]

They are so far from contemning the King and his Laws, that they are oblig'd and constrain'd by their own Principles, to obey every Ordinance of Man for the Lord's sake, *but not against the Lord for Man's sake*; which is the question in hand. Besides, their continuance there, was not in contempt, but by the permission of the chief Officer present, that came there by the King's Authority; nor is it for the Honour of the King, that such Persons should be said to act in contempt of his Laws, as only meet to honour God and his Laws.

Sect. 2. [*And to the great disturbance of the King's Peace.*]

It is far from disturbing and breaking the King's Peace, for men peaceably to meet to worship God; for it is then properly broken and invaded, when Force and Violence are used, to the hurt and prejudice of Persons and Estates; or when any thing is done that tends to the stirring up of Sedition, and begetting in People a dislike of the Civil Government: But that such things are not practis'd by us' in our Assemblies, either to offer violence to mens Persons and Estates, or to stir up People to Sedition, or dislike to the Civil Government, is obvious to all that visit our Assemblies.

Sect. 3. [To the great terror and disturbance of the King's liege People and Subjects, and to the evil Example of all others in the like case offending, against the King's Peace, his Crown, and Dignity.]

Were these black Criminations as true as they are wretchedly false, we should give as just an occasion to lose our Liberties, as our cruel Adversaries are ready to take any to deprive us unjustly of them. O how notorious is it to all sober People, that our manner of Life is far from terrifying any; and how absurd to think that naked Men (in the generality of their Conversation known to be harmless and quiet) should prove a terror or disturbance to the People? Certainly, if any such thing should be in the time of our Meetings, it is brought with the Cruelty and barbarous Actions of your own Soldiers; they never learnt by our example to beat, hale before Magistrates, fine, and imprison for matters relating to God's Worship; neither can they say, we are their Precedents for all those Adulterous, Prodigal, Lascivious, Drunken, Swearing, and Profane Acts they daily commit, and esteem rather occasion of Brag and Boast, than Sorrow and Repentance; No, they need not go so far, they have too many (God Almighty knows) of their own Superiors for their example.

Sect. 4. But we can never pass over with silence, nor enough observe the detestable juggle of such Indictments, which we require all *English* and conscientious Men to mind, as they value themselves in the like occasions. How little a grain of fact was prov'd, yet how specious an Indictment was made? Had it related to the Evidence, the bulk had been excusable; but when it only swell'd with malicious scaring Phrases, to suggest to the People that they were the merest Villains, the most dangerous Persons, and designing mutually the Subversion of the Laws, and Breach of the Peace, to the terrifying of the People, &c.

Who can chuse but tell them of their Romance-Indictment, that is so forg'd, as it truly merits another against it self. This they childishly call *Form*; but had an *Italian*, or other Stranger been in Court, he would have judg'd it matter of fact, as thinking it unworthy of a King's Court, to accuse men in terms, not legally, truly, or probably due to the Fact they really had committed; as well as that no Court would practise it, but that which lov'd to deprive Men of their Liberties and Lives, rather than to save them; *Nolens Volens*,

Sect. 5. Had their Cruelty and Juggle ended here it self, they would have spar'd us the pains of any further Observation. But that which we have to add, on the Prisoners behalf, renders their Actions so abominable in the sight of Justice,

Justice, that all honest and ingenuous Hearts must needs abhor their base Snares.

They tell the Jury, *That being but Judges of Fact only, they were to bring the Prisoners in guilty* (that is, of the fact) *at their peril; and it was the part of the Bench, to judg what was Law.* So that if the Jury had brought them in *Guilty*, without any further additional Explanation (tho intentionally they meant only of the Fact proved by Evidence) yet the Bench would have extended it to every part of the Indictment; and by this impious Delusion to have perjur'd a well-meaning Jury, and have had their barbarous ends upon the innocent Prisoners. But the Jury better understanding themselves, brought in *Will. Penn* guilty of the Fact proved, namely, *That he was speaking to some People met in Grace-Church-street, but not of an unlawful Assembly, so circumstantiated* (the mention of which stab'd their Design of moulding the general Answer of *Guilty*, to their own ends, to the heart) nor indeed could they do otherwise; for as well the Jury as Prisoners, were deny'd to have any Law produced, by which they might measure the Truth of the Indictment, and Guilt of the Fact. But because the Recorder would or could not (perhaps 'tis so long since he read Law that he may have forgotten it) we shall perform his part, in shewing what is that *Common Law of the Land*, which in general, he said, they were indicted for the Breach of, and which indeed, if rightly understood, is the undoubted Birthright of every *Englishman*; yea, the Inheritance of Inheritances: *Major Hereditas venit unicuique nostrum a Jure & Legibus, quam a Parentibus.* Coke Instit. 2. 56.

Seçt. 6. All the various kinds or models of Government that are in the world, stand either upon *Will* and *Power*, or *Condition* and *Contract*: The first rule by Men, the second by Laws. It is our happiness to be born under such a Constitution, as is most abhorrent in it self of all arbitrary Government, and which is, and ever has been most choice and careful of her Laws, by which all Right is preserv'd.

Seçt. 7. All Laws are either Fundamental, and so immutable; or Superficial, and so alterable. By the first we understand such Laws, as injoin men to be just, honest, vertuous; to do no wrong, to kill, rob, deceive, prejudice none; but to do as one would be done unto; to cherish good, and to terrify wicked Men: In short, universal Reason, which are not subject to any Revolutions, because no Emergency, Time, or Occasion can ever justify a Suspension of their Execution, much less their utter Abrogation.

Seçt. 8. By Superficial Laws, we understand such Acts, Laws, or Statutes, as are sited to present Occurrences; and

which may as well be abrogated, for the good of the Kingdom, as they were first made for it. For instance, those Statutes that relate to Victuals, Clothes, and Places of Trade, &c. which have ever stood whilst the Reason of them was in force; but when that Benefit, which once redounded, fell by cross Occurrences, they ended; according to that old Maxim, *Cessante ratione Legis, cessat Lex*. But this cannot be said of Fundamental Laws, till Houses stand without their Foundations, and English Mankind wholly cease to be; which brings close upon the point.

Sect. 9. There is not any Country, that has more constantly express'd her Care and deep Sollicitude, to the preservation of her fundamental Laws, than the *English* Nation. And tho' the Evil of some particular Times and Persons have endeavour'd an utter Abolition of those excellent Fundamentals, which we have before defined and defended from any just reason of Revolution; yet God Almighty, who is always concern'd to avenge the Cause of Justice, and those excellent good Laws by which it is upheld, has by his Providence befool'd their Contrivances, and baffled their Attempts, by bringing their Designs to nought, and their Persons frequently to condign Punishment and Disgrace. Their Age no Antiquary living can assure us, unless they say, as old as Reason it self; but our own Authors are not lacking to inform us, that the Liberties, Properties, and Privileges of the *English* Nation are very antient.

Sect. 10. For *Horn*, in his *Mirror of Justice*, (writ in *Edward the First's* time) fol. 1. tells us, " That after God had abated
 " the Nobility of the *Britons*, he did deliver the Realm to men
 " more humble and simple, of the Countries adjoining; to
 " wit, the *Saxons*, who came from the parts of *Almain* to
 " conquer this Land; of which Men there were forty Sove-
 " reigns, which did rule as Companions; and those Princes
 " did call this Realm *England*, which before was named the
 " *Greater Britain*. These, after great Wars, Tribulations,
 " and Pains, by long time suffer'd, did chuse a King to
 " reign over them, to govern the People of God, and to
 " maintain and defend their Persons, and their Good in
 " quiet, by the Rules of Right. And at the beginning they
 " did cause him to swear to maintain the Holy Christian
 " Faith, and to guide his People by Right, with all his
 " Power, without respect of Persons, and to observe the
 " Laws. And after, when the Kingdom was turn'd into an
 " Heritage, King *Alfred* that govern'd this Kingdom about
 " an hundred seventy one years before the Conquest, did
 " cause the Great Men of the Kingdom to assemble at
 " *London*."

“ London, and there did ordain for a perpetual Usage, That
 “ twice in the Year, or oftner, if need should be, in time of
 “ Peace, they should assemble at London in Parliament, for
 “ the Government of God’s People, that men might live
 “ in quiet, and receive Right by certain Usages and Holy
 “ Judgments.

“ In which Parliament (saith our Author) the Rights and
 “ Prerogatives of the Kings and of the Subjects are distin-
 “ guish’d and set apart; and particularly by him express’d,
 “ too tedious here to insert; amongst which Ordinances we
 “ find, “ That no man should be imprison’d, but for a capital
 “ Offence. And if a man should detain another in Prison,
 “ by colour of Right (where there was none) till the Party
 “ imprison’d dy’d; he that kept him in Prison should be
 “ held guilty of Murder, as you may read page 33. And
 “ pag. 36. “ He is declar’d guilty of Homicide, by whom a
 “ Man shall die in prison, whether it be the Judges, that shall
 “ too long delay to do a Man right, or by Cruelty of Goalers, or
 “ suffering him to die of Famine; or when a Man is adjudg’d
 “ to do penance, and shall be surcharg’d by his Goaler with
 “ Irons, or other pain, whereby he is depriv’d of his life.
 “ And p. 149. “ That by the antient Law of *England*, it was
 “ Felony to detain a man in prison, after sufficient Bail of-
 “ fer’d, where the Party was plevifable; every Person was
 “ plevifable, but he that was appeal’d of Treason, Murder,
 “ Robbery, or Burglary, pag. 35. None ought to be put in
 “ common Prisons, but only such as were *Attainted*, or prin-
 “ cipally *Appealed* or *Indicted* of some capital Offence, or *At-
 “ tainted* of false or wrongful Imprisonment. So tender have
 “ the antient Laws and Constitutions of this Realm been of
 “ the Liberty of their Subjects Persons, that no man ought to
 “ be imprison’d, but for a Capital Offence, as *Treason, Murder,
 “ Robbery, or Burglary.*

Sect. 11. Nor is *Lambard* short, in his excellent Transla-
 tion of the *Saxon* Laws, from King *Ina*’s time 712. to *Henry III.*
 1100. in describing to us the great Obligation, and strong
 Condition the People were wont to put upon their Kings,
 to observe the antient fundamental Laws, and free Customs of this
 Land; which were handed down from one Age to another.
 And in the 17th Chapter of *Edward* the Confessor’s Laws,
 the mention there made of a King’s Duty is very remarkable,
 That if he break his Oath, or perform’d not his Obligation,
nec nomen Regis in eo constabit. The same *Lambard* further tells
 us, That however any may affirm *William* of Normandy to be a
 Conqueror, he was receiv’d by the People as *Edward*’s Suc-
 cessor, and by solemn Oath taken, to maintain unto them the
 same

same Laws, that his Kinsman *Edward* the Confessor did. This Doctrine remain'd in the general unquesti'd, to the Reign of King *John*, who imperiously thought that *Voluntas Regis*, and not *Salus Populi*, was *Suprema Lex*; or the King's Will was the Supreme Law, and not the People's Preservation: till the incens'd Barons of that time betook themselves to a vigorous Defence of their antient Rights and Liberties, and learnt him to keep those Laws by a due Restraint and timely Compulsion, which his former Invasion of them evidenc'd to the World he would never have done willingly.

Sect. 12. The Proposals and Articles of Agreement, with the Pledges given to the Barons, on the behalf of the People by the King, were confirm'd in *Henry III's* time, his Son and Successor; *when the abused, slighted, and disregarded Laws by his Father*, were thought fit to be reduc'd to Record, that the People of England might not for ever after be to seek for a written recorded Law to their Defence and Security: for, *Misera Servitus est ubi Jus est vagum aut incognitum*. And so we enter upon that Grand Charter of Liberty and Privilege, in the Cause, Reason, and End of it.

Sect. 1. We shall first rehearse it, so far as we are concern'd, (with the Formalities of Grant and Curse) and shall then say something as to the Cause, Reason, and End of it.

A Rehearsal of the Material Parts of the Great Charter of England.

HENRY, by the Grace of God, King of *England*, &c. To all Archbishops, or Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and our faithful Subjects, who shall see this present Charter, Greeting. Know ye that we, unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors, and our Successors, Kings of *England*, to the Advancement of Holy Church, and Amendment of our Realm, of our mere and free Will have given and granted to all Archbishops, &c. and to all Freemen of this our Realm, these Liberties under-written, to be holden and kept in this our Realm of *England* for evermore.

Chap. 1. The Form of anti-ent Acts, &c. Coke 2. Inst. fol. 2.

We have granted and given to all Freemen of our Realm, for us and our Heirs for evermore, these Liberties underwritten, to have and to hold, to them and to their Heirs, of us and our Heirs forevermore.

A Freeman shall not be amerced for a small Chap. 14.
Fault, but after the quantity of the Fault.

And for a great Fault, after the manner thereof, saving to him his Contenements or Free-hold. And a Merchant likewise shall be amerced, saving to him his Merchandize; and none of the said Amercements shall be assess'd, but by the Oath of good and honest men of the Vicinage.

No Freeman shall be taken or imprisoned, nor Chap. 29.
be disseized of his Freehold, or Liberties, or free Customs, or be outlaw'd, or exil'd, or any other ways destroy'd; nor we shall not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We shall sell to no man, we shall deny nor defer to no Man either Justice or Right.

And to all these Customs, Liberties aforesaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs, we shall observe; and all Men of this our Realm, as well Spiritual as Temporal (as much as in them is) shall observe the same against all Persons in likewise. And for this our Gift, and Grant of these Liberties, and for other contain'd in our Charter of Liberties of our *Forest*, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto us the fifteenth parts of all their Movables: And we have granted unto them on the other part, That neither We, nor our Heirs shall procure or do any thing whereby the Liberties in this Charter contain'd shall be infring'd or broken; and if any thing be procur'd by any Person contrary to the Premises, shall be had of no force or effect. These being Witnesses, *Boniface* Archbishop of *Canterbury*, &c. We ratifying and approving those Gifts and Grants aforesaid, confirm and make strong all the same, for us and our Heirs perpetually, and by the Tenor of these Presents do renew the same willingly; and granting for us and our Heirs, that this Charter, in all and singular its Articles, for evermore shall be stedfastly, firmly, and inviolably observ'd. And if any Article in the same Charter contain'd, yet hitherto peradventure hath not been observ'd nor kept, we will, and by our Authority Royal command, from henceforth firmly they be observ'd. Witness &c.

The Sentence of Curse given by the Bishops, with the King's Consent, against the Breakers of the Great Charter.

IN the Year of our Lord 1253. the third day of *May*, in the great Hall of the King at *Westminster*, in the presence, and by the Consent of the Lord *Henry*, by the Grace of God, King of *England*, and the Lord *Richard*, Earl of *Cornwal*, his Brother; *Roger Bigot* Earl of *Norfolk*, Marshal of *England*; *Humphry* Earl of *Hereford*; *Henry* Earl of *Oxford*; *John* Earl *Warren*; and other Estates of the Realm of *England*: We *Boniface*, by the mercy of God, Archbishop of *Canterbury*, Primate of *England*, *F.* of *London*, *H.* of *Ely*, *S.* of *Worcester*, *E.* of *Lincoln*, *W.* of *Norwich*, *P.* of *Hereford*, *W.* of *Salisbury*, *W.* of *Durham*, *R.* of *Excester*, *M.* of *Carlisle*, *W.* of *Bath*, *E.* of *Rocheſter*, *T.* of *St. Davids*; Bishops, apparel'd in Pontificals, with Tapers burning, against the Breakers of the Church's Liberties, and of the Liberties and other Customs of this Realm of *England*; and namely these which are contain'd in the Charter of the common Liberties of *England*, and Charter of the *Forest*, have denounc'd Sentence of Excommunication in this form, by the Authority of Almighty God, the Father, the Son, and the Holy Ghost, &c. of the blessed Apostles *Peter* and *Paul*, and of all Apostles, and of all Martyrs, of blessed *Edward King* of *England*, and of all the Saints of Heaven; We excommunicate and accurse, and from the Benefits of our holy Mother the Church we sequester all those that hereafter willingly and maliciously deprive or spoil the Church of her Right; and all those that by any craft or willingness, do violate, break, diminish, or change the Church's Liberties, and free Customs contain'd in the Charters of the common Liberties, and of the *Forest*, granted by our Lord the King to Archbishops, Bishops, and other Prelates of *England*, and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm. And all that secretly and openly, by deed, word, or counsel do make Statutes, or observe them being made, and that bring in Customs to keep them, when they be brought in, against the said Liberties, or any of them, and all those that shall presume to judg against them; and all and every such Person, before-mention'd, that wittingly shall commit any thing of the Premises

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 Forreft, 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 Archbishops 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 accurse, 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.

First, 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 refixing 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 Inst.* 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 Trial 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 Trial 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 Offense; 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 Violation of it; yet it is frequently objected now, that the Benefits there delign'd are but *Temporary*, and therefore liable to alteration, as other Statutes are. *What Game such Persons play at, may be lively*

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 amerced, or punish'd, but suitably to his fault; *whilst they would make it suitable 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 consisteth 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 the other is Matter of so immutable Right and Justice, that all Generations (however differing in their Religious Opinion) have center'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 *Cock*, 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 confirm'd 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 the 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 those 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 Tradition*; *That the Kings, in those days, were by their Coronation-Oath 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 among the

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 Common Law. And (3d) The great Let of the Wealth of this Land. And the Purvien of that Act, tended in the Execution contrary, *EX DIAMETRO*, viz. To the high Displeasure of Almighty God, and the great Let, nay the utter Subversion of the Common Law, and the great Let of the Wealth of this Land, as hereafter 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.)