

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unſufferable Preſſure and Oppreſſions; and therefore this Statute was juſtly, ſoon after the deceaſe of *Hen. 7.* repealed, at the next Parliament after his deceaſe, by the Statute of *1 Hen. 8.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

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

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of the Subject; but to hear and determine the ſame, by their diſcretions; inflicting ſuch Penalty, as the Statute not repealed, impos'd. Theſe and other like Oppreſſions and Exaétions by, or by the means of *Empson and Dudley*, and their Inſtruments, brought infinite Treature to the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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Secondly,

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

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

A Postscript.

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

Die Mercurii, 11. Decembris, 1667.

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

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

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

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

Die Veneris, 13. Decembris, 1667.

Resolved, &c.

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

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

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

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

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

FIAT JUSTITIA.

Phoenix XII.

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

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

The PREFACE to the READER.

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

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

Regis ad exemplum totus componitur Orbis,

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

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

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

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

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

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

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

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

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

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

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

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

And in another place :

Leges fixit pretio atque refixit.

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

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

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

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

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

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

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

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

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

Fol. 29. "The Judges ought not to deliver 1 Hen. 7.
their Opinion before-hand upon a Case put, Fol. 27.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Co. 2 Inst. Fol. 51.
Mag. Char. chap. 14.

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

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

before the Conquest; *In singulis Centuriis comitia sunt, atque libera conditionis viri duodecim atate superiores, una cum preposito sacra tenentes juranto, &c.*
Lambert verb. Centura.

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

*Artic. super
Cart. cap. 9.*

*29 Assize,
pre. 27.*

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

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

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

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

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

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

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

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

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

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

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

20 Edw. 3.
chap. 1.

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

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

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

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

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

Secondly,

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

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

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

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

By the Statute 25 *Edw. 1.* chap. 1. it was accorded, " That the King's Justices, Sheriffs, Mayors, &c. that had the Laws to guide them, &c. *This is a Clause* (saith Cook) *worthy to be written in Letters of GOLD, That the Laws are to be the Judges Guides: And therefore not Judges by their Arbitrary Glosses, to be Guides of the Laws, which never yet misguided any that truly followed them.* *Sub clipeo Legis nemo dicipitur*, as saith Cook 2. the same Author. *Common Right* in 2 *Edw. 3.* is call'd Inst. 55. *Common Law* in 14 *Edw. 3.*, &c. and in this sense it is taken, where it is said, *Ita quod stet recto in curia*, i. e. *Legis in curia*; The Law is called *rectum*, (that is, Right, or a Rule) because
cause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Routa is deriv’d of the French Word Rout, and properly in Law signifieth, When three, or more, do any unlawful Act, for their own, or the common quarrel, &c. As when Commoners break down Hedges, or Pales, or cast down Ditches, or Inhabitants, for a way claimed by them, or the like.

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

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

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

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

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

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

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

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

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

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

Exceptions to the Indictment.

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

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

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

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

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

4. Not sworn he took it out of Court.

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

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

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

8. That

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

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

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

2. Not sworn that the Advice was taken.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Flet. lib. 1. if a Prisoner die in Prison, the Coroner ought to sit upon chap. 26. him. See also the said *Cook*, Fol. 34. *Cap. Petty-Treason*, how Prisoners are to be us'd; wherein is

also an Account of an Indictment of a Goaler for evil Usage of his Prisoner, Fol. 35. in *Trin. Term*, 7 *E. 3. cor. Rege rot.* 44.—

Presentat, quod ubi quidam Robertus Bayhens, de Tavelly captus fuit, & in prisiona Castri Lincoln detentus per quodam debito Statut. mercatorii in Custodia Tho. Boteler, Constabularii Castri de Lincoln *ibid. predict.* Tho. Boteler posuit ipsum Robertum in pro-

fundo Gaole inter Felones, ubi Prisiona, contra formam Sta-

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

nem. That whereas one *R. B. of T.* was taken and detain'd in the Prison of *Lincoln Castle*, for a certain Debt of Statute-Merchant, in the Custody of *T. B. Constable* of the

Castle of *L.* aforesaid; That the said *T. B.* put the said *R.* into the Common-Goal amongst Thieves, in a filthy Prison, contrary to the Form of the Statute, &c. and there detain'd him,

till he had paid him a Fine of 40 s. Whereupon *Cook* makes this Observation, *So as hereby it appeareth, where the Law requireth that a Prisoner should be kept (in salva & arcta custodia) that is, In safe and sure Custody; yet that must be without any pain or torment to the Prisoner.*

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

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

See also *Cook* 3 *Inst.* 34, 35.

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

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

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

it's

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

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

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

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

Stat. 23 H. 6. chap. 10.

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Stat. 4 H. 4, 5. der-Sheriffs, and their Clerks, Bailiffs, and
 Keepers of Prisons, &c. hath ordain'd by Au-
Rast. predict. thority aforesaid, in eschewing all such Extor-
 tion, Perjury, and Oppression, that no Sheriff
fol. 318. shall let to Farm in any manner his County,
 nor any of his Bailiwicks. Nor that any of
Co. pred. 365. the said Officers and Ministers, by occasion, or
 under colour of their Office, shall take any
21 H. 7. f. 16. other thing by them, nor by any other Person
 to their use, profit, or avail; if any person by
 them or any of them to be arrested or attached, for the omit-
 ting of any Arrest or Attachment to be made by their Body,
 or of any Person by them, or any of them (by force or co-
 lour of their Office arrested or attached) for Fine, Fee, Suit
 of Prison, Mainprise, letting to Bail, or shewing any Ease
 or Favour (to any such Person so arrested or to be attached)
 for their Reward or Profit, but such as follow; that is to say,
 for the Sheriff 20 *d.* the Bailiff which maketh the Arrest or
 Attachment, 4 *d.* and the Goaler of the Pri-
Rast. predict. son, if he be committed to ward, 4 *d.* —
fol. 371. And that all Sheriffs, Bailiffs, Goalers, or
 any other Officer or Ministers, which do con-
Stat. 21 E. 0. trary to this Ordinance, in any point of the
 same, shall lose to the Party in this behalf in-
 damag'd or griev'd, his treble Damages, and shall forfeit
 the Sum of 40 *l.* for every such Offence, the one Moiety to
 the King, the other to the Prosecutor, to be recover'd at Com-
 mon Law, in either of the Courts of *King's-Bench*, or *Common-
 Pleas at Westminster*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Magna Charta c. 29. Persons in Judicature are to do justice to all, and sell or deny it to none. And Bribery is such a Crime, that it's punishable wherever it's found: And it's hoped Justice may reach this Recorder, if it appear that his Fingers have touch'd this forbidden *Babylonish* Garment.

But in order to discourse of this so foul a Crime, first see the mark which such an Action leaves behind it: *Fortescue cap. 51.* "Bribery (saith he) is a great Misprision, when any man in judicial place takes any Fee, or Pension, Roll, or Livery, Gift, Reward, or Brocage of any Person, that hath to do before him any way, for doing his Office, or by colour of his Office, but of the King only, unless it be of Meat and Drink, and that of small value, upon divers and grievous Punishments. Saith *Coke*, 3 *Inst.* 145. "This word *Bribery* cometh of the *French* word *Briber*, which signifieth to *Devour* or *Eat greedily*, applied to the devouring of a corrupt Judg; of whom the *Psalmist*, speaking in the Person of God, saith, *Psalm 13. 4.* *Qui devorat plebem meam sicut escam panis: Qui cognoscit faciem in iudicio, non bene facit, iste pro buccella panis deserit veritatem.* In the 23d *Coke 3. Inst.* 145. "Year of *E. 3.* Sir *William Thorpe*, Chief Justice of the King's Bench, for taking of four *Per-* sons 50 *l.* against his Oath, was tried and judg'd upon his acknowledging the Fact, to be hang'd, &c. *Fol.* 147. *Coke* further sets forth, "That this Offence of Bribery may be committed by any that hath any Judicial Place (or Ministerial Office) either Ecclesiastical or Temporal. *Non accipies personam nec munera* (and the reason is express'd by the Holy Ghost) *quia munera excacant oculos sapientum, & mutant verba iustorum.* If Bribery hath so great force, as to blind the Eyes of the wise Judg, and to change the words of the Just: *Beatus ille qui exiit manus suas ab omni munere, Judex debet habere duos Sales; salem sapientiae, ne sit insipidus, & salem conscientiae, ne sit diabolus.*

"Tho the Bribe be small, yet the Fault is great; and this appeareth by a Record in the Reign of *Pasc. 17 E. 3.* "E. 3. *Quia diversi iudiciarii ad audiendum & Coram Rege. terminandum assignat, ceperant de Johanne Berners, qui indictatus fuit, 4 l. pro favore habendo die deliberationis suae, sinem fecerant domino Regi per IV. M. Marcas: So as they paid for every Pound a thousand Marks. See before Sir William Thorp's Case, Rot. Par. 7 R. 2. The*

7 *R. 2. num.* 12, 13. "Chan-

“ Chancellor was accused of a Bribe of ten pounds, and
“ his Man four pounds and certain Fish; which tho the
“ things are small, yet it had been punish'd, if it had been
“ proved.

But now to the Fact of the City Recorder, it was observed, That when he gave Judgment against the several Convicts before related, and assess'd the several Fines and Amercements upon the Convicts and others, both for their Hats and pretended Crimes for which they were indicted; that *John Smith*, one of the Sheriffs of *London*, being, as was supposed, overjoy'd to hear the Court's Gratitude in rewarding his pains, for making Proclamations in the Streets, &c. but being somewhat in doubt whether many of the Fines might not fall short, or prove bad Debts, hastily steps out of his Chair, and going to the Recorder, said, *But how shall we come by these Fines?* To which the Recorder answer'd, *Give me one of them, and I will secure you all the rest.* At which answer, with a seeming Joy and Alacrity, *J. Smith* return'd to his Chair, and spoke to some who were supposed his Friends, there present in Court, and audibly declar'd to them, that the Recorder told him, *That if we (meaning the Sheriffs) would give him one of the Fines, he would secure us all the rest of them.*

Surely this was too open and publick a place to make such Bargains as these: But what wonder, when scarce any Passage or Action of theirs, that Sessions, was in Law and Righteousness any more justifiable? What Ratification or Confirmation of this piece of contracted Bribery has been since betwixt them in their private Chambers, we know not; but what's done and acted in publick Courts, we may and can assert, and declare to the world.

Some may conjecture, That the Mony which *J. Howel* the Recorder afterwards receiv'd, was upon the first proposed and offered Contract, made in open Court with *J. Smith* the Sheriff.

Others may imagine, That it was the Mayor's Benevolence, for justifying his dirty and filthy Actions and Prosecutions before the People at the Sessions. But the case is this, That the Mayor, Sheriffs, *J. Robinson*, &c. and other the Justices for that Sessions, being met together at *Guildhall* in a Court of Aldermen, proposed to pay the Recorder for his extraordinary pains, and reward him for his execution of Justice, or sitting in Judgment at the *Old Baily* upon the Quakers. *J. Robinson*, the chief of that Flock, and not the backwardest to give what's not his own, told the Court, *That the Recorder deserved an hundred pounds for his Service done at the Old Baily the last Sessions.* Whereupon the Court consented to pay
him

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him for that service an hundred Pounds, by the Chamberlain of *London*. Who doubts of the truth hereof, are desir'd to repair to the Chamberlain's Office, and they may there find the Order, bearing date the 8th of *October*, 1670. besides other Orders for 200 *l.* more to him, within eight months last past. An excellent way to ease that Treasury of being overburden'd with Orphans Mony! By which sinister Ends and cursed Dispositions of its Cash, the Chamber is run so deeply in debt, that it's almost incredible: And here Modesty engages to conceal, being in hopes that e'er long some more faithful Stewards and Guardians may be appointed to have the Charge and Wardship of it, &c.

So that notwithstanding that large Provision which *England's* Laws have made for the Safety of its Inhabitants (as in Chapter 29. of its Charter of Liberties, *Nulli vendimus*, &c. on which *Coke* observes, That all the King's People, Ecclesiastical and Temporal, Free or Bond, Old or Young, yea, altho he be outlaw'd or excommunicated, or any other without exception, is to have Justice freely without sale, and fully without denial) yet those Prisoners at the hand of this Recorder and Bench, instead of having Justice freely, have been apparently sold into the hands of their cruel Adversaries; and instead of having it fully, they have been unjustly over-ruled by their Arbitrary and Illegal Sentences and Censures against them.

Thus are we forced to cast the blame of the Prisoners Sufferings upon the Authors thereof, which we must attribute either sprung from their Falseness to their Trust, or their Incapacity to execute that weight of Authority committed to them: And surely this Nation throughout is made sensible of nothing more, than the daily Breach of their Liberties, and of Violence to the Freedom of their Persons and Estates, by such *hostes humani generis*, as these oppressed Prisoners have had just occasion to complain of.

The Actions of that Sessions were a Riddle to the *Englishman*, beyond all that this latter monstrous Age hath brought forth. It's needless to repeat how much the publick Liberty (in denying the Commonalty that Freedom of Jurors the Law allows, fining and imprisoning Jurors for doing their Duty, imposing Fines arbitrarily without Inquest upon the freeborn men of *England*, denying to produce that Law which is pretended to have been transgress'd) is wounded, and how much the Injuries are doubled and trebled upon their Fellow-members, and the evil Consequence thereof, which if drawn into precedent, who can count himself free either in Person or Estate? The Consequence of a wicked Sentence (said Chan-
cellor

cellor Bacon) was infinitely worse than a wicked Fact, as being held a precedent and pattern whereby Oppression beginning upon one, is extended as warrantable upon all.

And this conclusion he draweth out of this place of Scripture, *Fons turbatus & urina corrupta est justus cadens coram impio*: A just man falling into the hands of the wicked, is like a Fountain troubled with the foot, or the Urine corrupted in the Body.

To the honour of which arbitrary Sentences, Censures and severe *Judgments* have stricken the Commonalty with Amazement, that the Courts of Justice, ordain'd for publick Preservation and Safety, should be wrested to enslave, oppress, ruin and destroy us. How much that Mayor and Recorder have usurp'd upon the Rights and Liberties of these Prisoners, is too apparent in their waving the Rules of Law, and measuring out Justice by their fantastical Discretions and Arbitrary Wills and Power; the consequence of which cannot but be inevitably mischievous and inconvenient to both those that there were censur'd and judg'd evil, and to the People of England. Hence was deriv'd that excellent Maxim; *melius sub iniquissima lege quam sub aequissimo arbitrio vivere*: That is, it's better to live under a hard and harsh known written Law, where every man may read his Duty, and know his Offence and Punishment, than under the mildest Arbitrary Government, where the Subject is condemn'd at the Will of every Bench of Justice before which he shall appear, without any certain or known Rules and Measures for the Offence and Punishment. And how specious soever the pretence for these Proceedings may be, we know that the pretence of Necessity to act contrary to the known written Laws, in the Mayor, Recorder, &c. or any others, is but to usher in Tyranny and Oppression.

There appears no other end that this Bench had in this tortious sort of proceeding, than to fill their Sheriffs Pockets with extorted Gain, or arbitrarily to punish a most innocent and peaceable People, to gratify their Lusts and Malice.

And how many flourishing States have been ruin'd by the Avarices, Cruelty, and Non-observance of the Laws, by the Governours and Magistrates, were tedious to insert. Only take notice what Coke in his 2 *Inst.* 388. declares, *That three things overthrow the flourishing State of the Roman Empire: Latens odium, juvenile consilium, & privatum lucrum*. And observes there, *That it's the greatest Injustice, when the Innocent, under colour of Justice, whereby he ought to be protected, is oppress'd.*

But good Government consisting principally in the execution of their just and known Laws, procures Love from the Subject. It's only their Love which supports a State in adver-

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sity: And our desire that such as *London's* Mayor and Recorder, &c. may not by their Actions sow a jealousy among the Freeborn People of *England*, that it's the intent of our Supreme Magistrates to hold up that common Maxim of all oppressing States, *That their Interest is to maintain the Publick wealthy, and the Particular poor.*

Therefore permit not these Persons in their Courts to create the Precedents of Oppression to enslave our Posterity in future times: to that end hath this been made publick, that the Supreme Magistrate and Legislators of this Nation, for the Dignity and Honour of their Rule and Government, and for the Safety of the free-born People of this Land, not only take care to purge the Benches of Justice from that Partiality and Corruption, which hath usurp'd those Places of great Trust, and punish the Offenders who have been guilty of such enormous Crimes with condign Punishment, answerable to their respective Offences and horrid Oppression; but also command the keeping, observing, and executing in all their Courts the known, written, promulg'd, antient, and fundamental Laws of this Land: And that they may, as they have often avow'd, maintain the Liberties of the Freeborn People of *England*, in assuring to them, that *Salus Populi est suprema Lex.* Can it be reasonably thought, that the Impunity of these that have been so faithless to their Oaths and Trusts repos'd in them, shall ever be serviceable to this State or Magistrates under whom they act? No, they'll rather take courage to betray them, when they find the first opportunity. Therefore like our old Proverb, *Tho we love the Treason, yet we hate the Traitor*: So it hath been the prudence of the wisest and best-govern'd States, *Never to pardon any man for a notorious Crime committed against the Commonwealth, for any good Service before done to it.* To which *Clement Edmonds*, upon *Cesar's* Commentaries, well agrees, fol. 174. *It more importeth a Commonwealth to punish an ill Member, than to reward a good Act.* So that State or Commonwealth that will keep it self in good order and free from ruin, must cherish Impeachments and Accusations of the People against those that thro Ambition, Avarice, Pride, Cruelty, or Oppression, seek to destroy the Liberty and Property of the People; so shall they keep the State free from Envy, and secure from Supplantation. And the Free-born People of this Nation being thus preserved and secur'd against Tyranny and Oppression, will never see after other Liberty, but rejoice under their own Governour. For as it never turn'd to any State's advantage to gain the People's Hatred, so it's the most stable lasting Government

and

under which the People rejoice and live cheerfully; according to that Maxim of *Camillus* the Roman, *Firmissimum Imperium quo obedientes gaudent.*

An APPENDIX, by way of Dialogue, in a Plain and Friendly Discourse between a Student in the Laws and Liberties of England, and a true Citizen of London: Whereby is shew'd, That a Jury of twelve Men are the only proper Judges of their Neighbours Actions, and may by the establish'd Laws of England give a Verdict of such Facts, according to their Consciences, without incurring Fine and Imprisonment, &c.

Student. **W**Hither are you hastening out so fast this morning, my Friend?

Cit. Truly, about some earnest Business, that will not admit of delay.

Stud. I know you to be a Man of business; but in my apprehension you seem more than usually in haste, now I am come to give you a visit.

Cit. I acknowledg your kindness; and since you are so opportunely come, I would request your Advice in what I am going about.

Stud. Yea, most freely: But what's the Case?

Cit. I am summon'd to appear to morrow, as a Juryman, at the *Old Baily*, but would willingly get my self excus'd, and was but now going out to one of the Sheriffs, my old Acquaintance, to intreat his Favour, to do me that kindness; but it's probable you know a nearer way to effect such a matter, and may direct me.

Stud. It's very like, did it much concern you, I might get your discharge: But why should not you rather serve your Country in these publick concerns? If all men were of your mind, how should Right be done in Courts of Justice?

Cit. There's many others that are better skill'd in such matters, who are more fit to perform that Office; as for my part, I have ever so loved Peace that I have forborn going to Law, tho it has been much to my loss.

Stud. That's no Excuse; for the more peaceable man you have been, the more fit you are for such Services. The Office of a Jury-man is conscientiously to judg his Neighbour, who needs no more Law than is easily learned to direct him therein.

Cit. I should willingly appear according to this Summon; but that the Mayor's and Recorder's carriage to Juries was such the last Sessions, that I question whether I could undergo so much hardship, and not endanger my Life; so I find that all my Neighbours, as well as I, are endeavouring to get themselves excus'd.

Stud. Then it's a Refraining from your Trade that deters you?

Cit. No truly, that's not all; but to be kept without Meat and Drink two days and nights together, and not to be allow'd the privilege of Nature's easement, and after all, to be cast into *Newgate*, is hard service.

Stud. I must confess this was very hard, yet it should not deter you from doing your Duty: and if those Jurors suffer'd unjustly (which I question not) their Service was the easier to them.

Cit. I am of opinion they were unjustly dealt withal; many of them I know, who had the Repute of Honesty, especially those four, who yet lie in Durance: but I may suffer by reason of my Ignorance of the Duty and Office of a Jury-man; therefore on that account principally I desire to be excus'd my appearance, which if I understood as well as many do, with all my heart I would do my service.

Stud. Now you speak honestly like an *English*-man; and in case that be all your cause of scruple, it may soon be remov'd if you will take my Advice.

Cit. Yes, with all my heart: Then pray let me have your Answer to some Questions, which often of late I have had upon my thoughts to propound to you, or some Practitioner of the Law, that would be plain with me.

Stud. Offer what you think meet, and I will endeavour to give you that Satisfaction you desire.

Cit. Since Jurors are thus of late menaced, threaten'd, fined, and imprison'd by our Recorder at the *Old Baily*; pray wherein lies their Privilege and Safety? What say the Fundamental Laws of *England* to such Practices?

Stud. The Jurors Privileges, and every *English*-man's by them, as they are very considerable, so the Laws have very well guarded them against Usurpation, as I shall shew you.

Cit. But pray first let me know their Antiquity. I have heard it said, That Tryals by Juries have been of long standing in this Nation.

Stud. Their Antiquity no one knows, but all Authors agree that they have been very antient. *Coke*, the Oracle of our *English* Laws, writes, That long *Co. 1 Inst. 155.* before the Conquest it was order'd, that in every Century there should be twelve good and honest men to judg, &c. And *Camden* in his *Britannia* correcteth *Polidore Virgil*, for saying *William* the Conqueror first brought in this way of Tryal; affirming that it was most certain and apparent by the Laws of *Etheldred*, that such Tryals were in use many years before: Which *Horn* in his *Mirror of Justice*, written in the time of *E. 1.* doth well confirm and assure us.

Cit. But what say the Law-Books of later date, and our Predecessors in later years about them?

Stud. When the great Charter of our *English* Liberties, in the 9th year of *H. 3.* was made, and put under the Great Seal of *England*, then were these Tryals by Juries confirm'd down to us; and therein it was stablish'd, That no Amercements should be assess'd upon any man, but by the Oaths of good and lawful Men of the Vicinage: And also that no Freeman of *England* should be imprison'd in his Person, or destroy'd in his Estate and Liberties, without the lawful Judgment of his Equal. Which Charter has been confirm'd by thirty two Parliaments, and now stands firm to justify and maintain the Freedom of this sort of Tryals, which *Coke* calls the Subjects Birthright; and which I must say is the only Preserver of our Lives, Freedom and Property; as you may read in the Book of the Tryal of *W. P.* and *W. M.* last Sessions.

Cit. I am very well satisfy'd in this point; but pray, what says the Law about menacing, threatening, fining and imprisoning of Jurors, as before I mention'd to you?

Stud. As to the menacing and threatening Language which that Bench gave the Jurors, it only evidenced and manifested to the world their Envy and Malice against the Prisoners that the Jury had in charge, and so may be said also of their fining and imprisoning of the Jury afterwards.

Cit. Hath a Court then no power by the Law to fine and imprison a Jury?

Stud. We find in our Law-Books, or Books of Cases, that Jurors have been fined by a Court, for these following matters.

1. If a Jury-man take mony (from the Party to be try'd) before or after he be sworn. *39 Aff. 19. Fitz. Exim.*
2. If they receive any Writings from the Persons they have in tryal. *17. 14/1. 7. 30.*

3. If a Jury-man appear, and then depart before he be sworn, it is a contempt of the Court.

4. If a Juror, after he shall be sworn, depart from his Fellows before they deliver in their Verdict.

5. If Eleven Jurors shall give in their Verdict without, or against the Consent of the Twelfth.

6. If a Jury eat or drink after they are gone from the Bar, and before they bring in their Verdict (This, I suppose, is meant where the Court will accept of the Verdict, when the Jurors tender it.) And for such like Misdemeanors as these, they have been Fined and Imprisoned, but how warrantable, is a Query.

Cit. As for these Miscarriages you have instanc'd, it seems reasonable they should be punish'd, which no honest Man will be found guilty of; neither do I fear to suffer for such like Misdemeanors. But what say you to the Fining a Jury for giving in a Verdict according to their Consciences, yet pretended by the Court to be contrary to Evidence?

Stud. To Fine them at all is an Abuse, tho' it has been long practis'd; but to Fine them for giving their Verdict according to their Conscience, such Practices are very much against Law and Reason too: For a Jury of twelve Men are by the Laws the only proper Judges of matter in issue before them: As for instance,

First, That Evidence which is deliver'd to induce a Jury to believe, or not to believe the Matter of Fact in issue, is call'd Evidence, because the Jury may out of many Matters of Fact (*videre veritatem*) that is, see clearly the Truth, of which they are proper Judges.

Secondly, When any Matter is sworn, Deed read, or offer'd whether it shall be believ'd, or not; or whether it be true or false in point of Fact, the Jurors are the proper Judges.

Thirdly, Whether such Men met together intentionally to do such an Act or not, the Jurors are Judges; for the Court is not Judg of these Matters, which are Evidence to prove or disprove the thing in issue.

Cit. What then is the Court to take cognizance of in the Tryals of mens Liberties and Properties?

Stud. The Court, as their Duty is, are to do equal Justice and Right: so they in such Tryals do direct, whether such Matter shall be admitted to be given in Evidence, or not; such a Writing read, or not; or such a Man to be admitted a Witness

ness, or not: And this belongs to the Judgment of the Court, as they are upon their Oaths to see Justice done 'twixt Party and Party. Therefore has the Common Law ordain'd, That Matters of Fact (which are drawn to an Issue) shall be try'd by Jurors, and Matters of Law (upon a Demurrer and special Verdict, &c.) by the Justices, according to that Rule or Maxim of Sir *Edm. Cook*; *Ad Questionem facti non respondent Judices, ita ad questionem Legis non respondent Juratores*: The Justices meddle not with Matter of Fact, nor Jurors with Matter of Law. So it's the Juror's Office to find (*veritatem Facti*) the Truth of the Fact in issue, and the Court's to give Judgment accordingly. By which we may see the Wisdom of the Law, in referring Things to Persons, in which they have cognizance, and are most expert, according to that Maxim, *Quod quisque norit, in hoc se exercet*. 11 Co. 10. b. 4 Inst. 84. 4 Inst. 207. 9 Cook 13.

Cit. According to this Account you have given me of the Duty and Office, as well of the Court, as the Jurors; the Law seems to have dealt justly and equally betwixt them both. But one Question further, Pray whence is it that Jurors are summon'd of the Neighbourhood, where the Fact is suppos'd to be done or acted?

Stud. As the Common Law of this Land is nothing else than Common Right, pure and try'd Reason; so it never fails to render a Reason of its own Actions: A *Jury* is therefore summon'd of the Vicinage, because it's always presum'd that the Neighbourhood are best acquainted with the Persons inhabiting, or the Actions and Facts done or acted within their own Limits and Jurisdiction; and that they themselves may know something of the matter in controversy, being (*de Vicineto*) of the Vicinage where such matter was in action. Therefore the *Jury* must be return'd, *de Vicineto*, of the place where the Fact was done, and of Men (*per quos rei veritas melius scire poterit*) by whom the Truth of the matter may be better known: So the *Jury* having some Self-knowledg of the Matters afore-hand, besides hearing the Evidence, may the better pronounce (*veritatis dictum*) or a just Verdict of the Fact.

Cit. But wherein do you conceive a Jury-man may have Self-knowledg of Matter, that may not as fully be evidenc'd by Witnesses?

Stud. It's probable, First, That they may know the Witnesses on the one side, or the other, to be Persons of no Credit; or,

Secondly, They may know the Party accus'd to be a Man otherwise qualify'd or principl'd, than to do such an act or thing that is charg'd against him. As for instance; They may know a Man to be,

1. A quiet peaceable *Quaker*; therefore no Fighter or Rioter, or Routous Person.

2. A *Protestant* of the *Episcopal Church of England*; therefore no House-Preacher.

3. An honest sober Man amongst his Neighbours; therefore probably no Thief or Robber. And many other Instances might be offer'd to this purpose.

Cit. To Fine a Jury then for things, which probably they may know of their own knowledg to be true or false, seems very hard; and surely our Jurors of *London* have met with hard usage, to be fin'd and imprison'd for doing their Duty, in what the Laws of this Land have made them sole and proper Judges.

Stud. Their hard usage and severity to the Jurors is not so much as the ill consequence that such practices will be to every English-man, and their Posterity, if not timely remedied.

Cit. Truly the Citizens of *London*, in general, have much dreaded the late Procedure at the *Old-Baily*, and fear it's a Fore-runner of much Mischief that may be acted in the Country, who generally take *London* for a Precedent in their Courts of Justice. But pray what's your Thoughts about these things?

Stud. The Consequence of such Practices, the Parliament have very well set forth in Chief Justice *Keeling's Case*, 11 Dec. 1667. when they Voted, That Fining *Juries* were not only Innovations, in the Tryals of Men for their Lives and Liberties, but that it was of Dangerous Consequence to the Lives and Liberties of the People of *England*; and tended to the introducing of an Arbitrary Government: And their Reason was very good; for the King sits not in Judgment upon his Subjects, but by his Justices in his Courts: And if the Justices, who are commanded to be guided by the Law, shall, contrary to the Law, fine and imprison *Juries*, for giving Verdicts in such Matters which the Laws allow and appoint them to be proper Judges of, where then is the English-man try'd by his Peers, and by the Law of the Land? To deny us this free Tryal, is to rife us of our Birth-right, Stat.3. 13 E.3. and most arbitrarily and tyrannically to deny us Equal Law, Justice and Right.

Cit. Surely when the Parliament meets again, they will call these illegal Proceedings of that Bench to Question before them, as well as they did *Keeling's*.

Stud. It as much concerns them, in behalf of themselves and Posterity, as any of us, to curb these subordinate Judges, who have broken both their Oaths and the Law, to run into those Arbitrary and Illegal Practices; the consequence of which, if suffer'd, in a short time will be, *Sic volo, sic jubeo, stat pro ratione voluntas.* And it will necessarily follow, That,

First, Every Justice of Peace, Mayor, Bailiffs of Corporations, Stewards of Leets, &c. whatever Matters are try'd before them, shall have Verdicts to their minds, or Fine and Imprison the Jurors till they have; so that such must be either pleas'd, humour'd, or gratify'd, else no Justice or Right to be had before them in their Courts.

Secondly, A further ill consequence will be, That altho a person may challenge a Jury-man, or Sheriffs, if they be of Kin to this Adversary, yet he cannot challenge a Justice, Mayor, &c. who will have a Verdict for their Kinsman, or Fine and Imprison them till they have. So that by this means our Lives, Liberties and Properties shall be solely try'd, and wholly at the Will, and in the power of every mercenary or corrupted Justice, Mayor, Recorder, Bailiff, &c.

Cit. But has it been practicable in former times to fine and imprison Juries, for finding contrary to Evidence, as the Recorder pretends our Jurors have done?

Stud. No surely, we find not one Precedent in all our Books, till *Keeling's*; and he 'scaping that condign Punishment which the Parliament promis'd him, your Recorder and Mayor has trod in his Steps. And pray see how such Judgments on Jurors leave them remediless of relief, which is sufficient ground to conclude such practices to be against the Law.

First, It can never be try'd, whether they found with or against their Evidence, by reason no Writ of Error lies in the Case.

Secondly, They are in worse condition than the Criminals that are try'd by them; for in all civil Actions, Informations, and Indictments, Appeals and Writs of Error, do lie into superior Courts, to try their regular Proceedings of the Inferior: but here can be none.

Thirdly, In the way of an Attaint, the Truth or Falshood of a Juror's Verdict, in Matters of Fact, may be try'd by another Jury: but in this case the Jurors are concluded, by reason that whether they have found with or against their Evidence, can never be try'd. *Litt. Sect. 108.*

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