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# G U I D E

To the KNOWLEDGE of the

## RIGHTS and PRIVILEGES

O F

## ENGLISHMEN.

C O N T A I N I N G,

- I. MAGNA CHARTA, with Remarks thereon;
- II. The BISHOPS CURSES;
- III. The HABEAS CORPUS ACT;
- IV. The BILL OF RIGHTS; and,
- V. The ACT OF SETTLEMENT:

W I T H

An EXHORTATION to the Christian and Independent CLERGY, the GENTRY, FREEHOLDERS, and other ELECTORS of Members to serve in PARLIAMENT. *sa*

To which is added,

The Security of *Englishmens* Lives; or, the Trust, Power, and Duty of the GRAND JURIES of ENGLAND.

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*Published in consequence of the Recommendation of the AUTHOR of, ADVICE TO POSTERITY, in his SEQUEL thereof. With a short Prefatory Address to the Public by the EDITOR.*

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L O N D O N:

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M D C C L V I I.

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T O T H E  
P U B L I C .

**A**S the *English* Constitution was founded in Liberty, by our great and generous Forefathers, who took Care to have such Laws established for the good Government of the Kingdom, as secured every Man in the quiet Possession of his Rights, Liberties and Properties; I think it incumbent upon us, who are their Successors, to be very watchful over so precious a Jewel, and to take Care that so glorious an Inheritance may descend whole, and intire to our Posterity.

Since the Foundation of our Government, many have been the Attempts to break in upon its Constitution; and with various Success. More than once it has, seemingly, been quite

overturned and destroyed, either by the open Attacks of Violence, or by the more sure Ways of undermining, sapping, and corrupting; and sometimes by all together: But such has been our Happiness, that divine Providence has, hitherto, been so benign, as, upon all such Occasions, to stretch forth the Almighty Arm in our Defence, never failing to animate some great and good Men to undertake the Recovery of our Civil and Religious Rights; and, as Blazing-Stars do the Firmament, to enlighten the Minds of the People, and provoke them to a noble Imitation of their Virtue and Courage.

One of which was the great Author of *The Security of Englishmens Lives*; who, at a Time when Despotism had taken long Strides towards, and very near had broke down all the Fences of Liberty, sent forth this small Treatise into the World; which, together with some other excellent Things published about the same Time, convinced the Generality of the People of the inestimable Value of those Birth-rights, which were then going to be taken from them; and raised that Spirit throughout the Kingdom, which was at last productive of the great and happy REVOLUTION; which restored our antient Rights and Privileges, and confirmed



firm'd them to us so strongly, that nothing less than a general Luxury and Depravity of Manners, and their natural and inseparable Concomitant, an universal Corruption, can ever deprive us of them.

One of the great Outworks of Liberty is a *Grand Jury*; which by our old Constitution, was the principal Guard of every Man's Life, Liberty and Estate; for by our known Laws no Subject of this Realm could be brought to the Bar of Justice, without having his Case first inquired into by a Grand Jury; who are in the first Place to examine whether the Charge be in its own Nature criminal or indictable; and secondly, whether the Person so charged be guilty of the Fact for which he stands accused. If in the first Instance they don't find the Charge to be in its own Nature criminal or indictable; then they have nothing more to do than to discharge the Bill as insufficient; and in the second Instance, if the Accusation be not properly supported by Evidence, they must by their Oaths throw out the Indictment, to the great Relief of the unhappy Person so accused; And that this is a principal Part of a Grand Jury's Office, appears not only from legal Reason, but by express Statutes, *viz.* 25 *Edw.* 3. 4, and 42 *Edw.* 3. 3, which say, " that

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" for

“ for preventing Mischiefs done by FALSE  
 “ ACCUSERS, none shall be put to answer,  
 “ unless it be by Indictment, or Presentment  
 “ of good and lawful Men of the same  
 “ Neighbourhood where such Deeds be  
 “ done;” which can be meant of no other  
 than a Grand Jury.

But alas! how often has this well-contrived Barrier of Liberty been broke in upon; by the unconstitutional Method of bringing or filing Informations in the Court of King's-Bench, and obliging many of the best Subjects of this Realm, to answer at that or some other awful Tribunal, for no other Crimes but bravely endeavouring to support the Rights and Privileges of *Englishmen*, without so much as suffering a *Grand Jury* to inquire whether the Case be criminal or not? This unconstitutional Method of bringing Informations, and charging the Subjects of this Realm, by the crafty and devilish way of Innuendo, with the most flagitious Crimes, deserves the strictest Attention of the Legislature, and calls aloud upon the Great Council of the Nation for Redress: But until that can be effected, it should be recommended to all Petty Juries to find no Man Guilty that does not legally and regularly

larly come before them by a Bill of Indictment, or Presentment found by a Grand Jury.

In the SEQUEL of *Advice to Posterity*, you will find the Reprinting this little Treatise strongly recommended, together with Three of the *essential Laws* mentioned in the Title Page; to which is added a fourth, intitled, *The Habeas Corpus Act*; all which ought to be the daily Study of every Man in the Kingdom, whether he be Rich or Poor, in high or low Station; and, to use the Words of the worthy Author of the said SEQUEL, "As *Moses* of old exhorted the Children of *Israel* concerning the Laws of GOD, delivered to that Nation, so I, with all the Warmth and Zeal of a truly *English* Heart, exhort you concerning the Precepts of Christianity, the Liberties and Laws of *England*, especially the *essential Laws* above mentioned, To teach them to thy Children, and talk of them when thou sittest in thine House, and when thou walkest by the Way, and when thou liest down, and when thou risest up. Thou shalt bind them for a Sign upon thine Hand, and they shall be as Frontlets between thine Eyes, and thou shalt write them upon the Posts of thine House, and on thy Gates." *Deut.* vi. 7, 8, 9.

And

And as the Preserving of those Laws already made, and the providing others for the Security of our inestimable Frame of Government, depends upon the Choice of a free and independent HOUSE of COMMONS, the Reader is presented with an EXHORTATION to the Christian and independent *Clergy*, the *Gentry*, *Freeholders*, and other *Electors* of Members to serve in Parliament for *Great Britain*, pressing them all, especially the *Clergy*, in their respective Stations, immediately to use their utmost Endeavours to give a Check to that Torrent of Perjury, Bribery and Corruption, which seems to have overflowed the Land, and will certainly destroy the Constitution of *Britain*, if not timely remedied by putting in Execution what is so earnestly recommended by the Author ; who out of a most passionate Regard for his Country, has favoured the Editor with the said *Exhortation* to be inserted in the following Work, in hopes thereby, to be a Means of opening the Eyes of the People in general, that at the next *General Election* of Members to serve in Parliament, they may be able to discern the Difference between Good and Evil, and that the Corrupting Hands of Ministerial Power, are no other than the beguiling Agents of the infernal Monarch of the dark Regions of Hell,

Hell, to seduce them from the Duty they owe **THEIR GOD, THEIR KING, THEIR COUNTRY AND THEMSELVES**; and make their Memories hateful to Posterity; who sinking under the galling Yoke of Slavery, may Curse their Fate for being descended from such Wicked, Venal, and Pusillanimous Progenitors.



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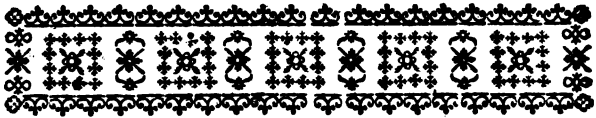
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A  
G U I D E  
TO THE  
K N O W L E D G E  
OF THE  
RIGHTS and PRIVILEGES  
OF  
ENGLISHMEN, &c.

BY the old Constitution of *England*, the  
B Law, saith an Author of the last  
Century, is both the Measure and the  
Bond of every Subject's Duty and Al-  
legiance; each Man having a fixed fundamen-  
tal Right born with him, as to Freedom of his  
Person and Property in his Estate, which he  
cannot be deprived of, but either by his Con-  
sent, or some Crime, for which the Law has  
imposed such a Penalty, or Forfeiture. For all  
our Kings take a solemn Oath to *Observe, and*  
*cause all the Laws to be kept*; and likewise all  
our Judges take an Oath, when they enter into  
B their

2 *A Guide to the Knowledge of the*  
their high and sacred Office, wherein amongst  
other Things they swear, *to do equal Law and  
Right to all the King's Subjects, rich and poor,  
and not to delay any Person of common Right for  
the Letters of the King, or of any other Person,  
or for any other Cause. But if any such Letters  
come to them, they shall proceed to do the Law,  
the same Letters notwithstanding.*

This glorious Privilege may be truly said to  
be the Birth-right of every *Englishman*, as it was  
originally interwoven in our wise and happy  
Frame of Government, brought over into this  
Kingdom by our *Saxon* Ancestors, and thereby  
became the common Law of the Land. A Pri-  
vilege not to exempt from the Law; but to  
be freed in Person and Estate from arbitrary  
Violence and Oppression: *A greater Inheritance*  
(saith Judge *Coke*) *is derived to every one of us  
from our Laws, than from our Parents*; for  
without the former, What would the latter  
signify? And this Birth-right of *Englishmen*  
shines most conspicuously in two Things:

1<sup>st</sup>, Parliaments; 2<sup>dly</sup>, Juries.

By the first the Subject has a Share by his  
chosen Representatives in the legislative (or  
law-making) Power; for no new Laws bind the  
People of England, but such as are by com-  
mon Consent agreed on in that great Council.  
Therefore it is of the utmost Consequence to  
the People of this Land, who it is they chuse  
to represent them; For a weak, venal, and hire-  
ling



ling House of Commons may (and very likely would) by coming into the Measures of a wicked Ministry, undo in one Sessions, all that has been done for Ages past by the most consummate and wisest Heads for the Security of the Lives, Liberties and Properties of *Englishmen*; as did that scandalous and profligate Set of Miscreants, in the Year 1397, who at the Instigation of King *Richard* the Second, and his abandoned Ministers, at one Vote, impudently repealed all the good and wholesome Laws made by their Predecessors, and entirely subverted our Constitution, by declaring the King to be above the Laws; for thereby the limited Monarchy of *England* was changed into an absolute one; and the Lives, Liberties, and Estates of all the free-born Subjects of this Realm, fell, at once, to the Disposal of the arbitrary Will of the King, and his evil and wicked Counsellors, of which some of the bravest and best Men in the Land, very soon felt the dire Effect. Therefore, it is plain of what great Consequence it is to Liberty, the having a just, faithful, and true Representative of the People; and it is earnestly recommended to all the Electors in the Kingdom, into whose Hands this little Treatise may come, as they will answer it to God and their Country, and avoid the Curses of their Children's Children's Children, down to many Generations, to be very careful in the Choice of Members to serve in Parliament; for into their Hands are immediately intrusted, every Thing that is dear, every

Thing that is valuable to us and to our Posterity. The great Lord Treasurer *Burleigh*, has long ago said, which he frequently delivered as a Maxim, or perhaps as a Prophecy, *That England can hardly be ruined, unless it be by her own Parliament*; foreseeing, no Doubt of it, that other illegal Oppressions, as being brought about by Violence, might in all Probability, by Violence be shaken off again in Time; whereas in a parliamentary Way, we are undone by a Law that (probably) can never be reversed, but by a national Convulsion; because the Parties, for whose Advantage that Law was made, will never agree to the repealing of it. Such is the happy Frame of our Constitution, so prudently and so strongly have our wise Fore-fathers secured Property and Liberty, (rescued by Inches out of the Hands of encroaching Violence) that we cannot be enslaved but with Chains of our own forging: For as we are never undone till we are undone by Law, so we can never be undone by a Law till we chuse the undoing Law-makers; and then may not our Enemies add *Scorn* to their Cruelty, and pretend Justice for both, when they can plead, they had never trampled on our Heads, our Rights and Liberties, had we not meanly laid them at their Feet.

By the second, that is Juries, he has a Share, in the executive Part of the Law; no Causes being tried, nor any man adjudged to lose Life, Member, or Estate, but upon the Verdict of his Peers (or Equals) his Neighbours, and of his

his own Condition : These two grand *Pillars* of *English* Liberty are the fundamental vital Privileges, whereby we have been preserved more free and happy than any other People in the World ; for whoever shall Design to impair, pervert, or undermine either of these, will strike at the very Constitution of our Government, and ought to be prosecuted and punished with the utmost Zeal and Vigour. To cut down the Banks and let in the Sea, or poison all the Springs and Rivers in the Kingdom, could not be a greater Mischief ; for this would only affect the present Age ; but the other will ruin and enslave all our Posterity.

So great a Regard had our brave Ancestors to these inestimable Privileges, that they spared neither Blood, nor Treasure in their Defence whenever invaded ; as they too often were by some of our Princes pushed on by their voracious and evil-minded Ministers, who, grasping after lawless Power, pulled down all the Fences of Liberty, and broke in upon the Constitution to that Degree, that the Lives, Liberties, and Properties of the free-born Subjects of this Realm were every Hour in Jeopardy, and frequently fell Sacrifices to regal or ministerial Vengeance. Then it was that our generous Fore-fathers nobly associated themselves in Defence of their native legal Rights, and made an Offering of the best and choicest Blood in the Kingdom to the Shrine of Liberty, that we their Posterity might be free and happy. To them and the glorious

6 *A Guide to the Knowledge of the*

Struggles they made with Power, we owe the Establishment of those Laws which are now the Basis of *English* Liberty; not, but those Rights and Privileges, therein expressed, were inherent in the *English* Constitution, before they were reduced into Form of Law; but as they were so often encroached upon by the Enemies of Liberty, our noble Progenitors found it necessary to have them put into the Order they are now in, that they may be standing Records to Posterity of those Rights and Privileges to which *Englishmen* are intitled by their Birth.

Therefore the surest Guide to the Knowledge of *English* Liberty are those very Laws in which the fundamental Rights and Privileges of *Englishmen* are contained, The first of which is,

*MAGNACHARTA* or the GREAT CHARTER made in the ninth Year of King *Henry* the Third, and confirmed by King *Edward* the First, in the eight and twentieth Year of his Reign. The second is,

The *Habeas Corpus Act*, or an Act for the better Security of the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas, made in the thirty-first Year of King *Charles* the Second. The third is,

The *Bill of Rights*, or an Act declaring the Rights and Liberties of the Subject; and settling the Succession of the Crown, made in the first Year of King *William* and Queen *Mary*, and on the sixteenth Day of *December*, 1689, passed the royal Assent. The fourth is,

The

The *Act of Settlement*, or an Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subject, made the twelfth and thirteenth of King *William* the Third.

There are some other excellent Laws which particularly regard our Liberties, but as they are inconsistent with the Editor's designed Brevity, they are omitted; especially as the four above-mentioned may be said, if well considered, to comprehend the whole; and of them in their Order.

The first of these fundamental Laws stands foremost in our statute Books, and as it is the Foundation of all our other Laws, is here first presented to the Reader. It is called *Magna Charta* or the great Charter, not in Respect of its Bulk, but in Regard of the great Importance and Weight of the Matters therein contained. It is also stiled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and my Lord *Coke* saith, upon good Reason, it is so called from the Effect, which is, that it preserves the People free. There is no doubt but there were Acts of Parliament before this, but there are none of them extant at this Time; by which one would think, that when this great Law was made, all other Laws became obsolete and useless, the whole Body of them being comprized in this one.

It will not be amiss, in this Place to observe, that though the King in the Preamble stiles it a  
Char-

Charter, yet (as my Lord *Coke* very well observes) it appears to have passed in Parliament; and therefore the Act of the People as well as the King's; for, (as you will see in the thirty-seventh Chapter) there was a fifteenth granted to the King, by the Bishops, Earls, Barons, Free-tenants and People, which could be no other than a Parliament; nor was it unusual in those Days, to have Acts of Parliament in the Form of a Charter; as may be seen in the *Prince's Case*. Co. Rep. L. 8.

In the same Preamble, it is likewise said, that the King hath given and granted these Liberties; which must not be understood as meer Emanations of royal Grace and Favour, or new Privileges granted which the People had not a Right unto before; for all our Historians tell us: that our brave Ancestors did challenge them as of Right to them belonging, and obliged their Kings to an Establishment of them; and the Lawyers all know that this Charter is only declaratory of the principal Grounds of the fundamental Laws and Liberties of *England*. No new Freedom is here granted, but a Restitution of such Privileges as had been illegally taken from the People before, and so confirmed to them, as to prevent their being usurped, or encroached upon by any Power whatsoever for the future; which is evident from the Words, Rights, and Liberties being so often mentioned in this Charter, even the first Chapter begins with a Confirmation of them, which could not have

have been, if the People had not been in Possession of them before.

Never was any Act passed with greater Solemnity, so zealous were our Ancestors to preserve their Liberties from all Encroachments, that they employed all the Strength of human Policy, and religious Obligations to secure them entire and inviolable; the Bishops pronounced Sentence of Excommunication against all the Breakers of it, and by Charter in the thirty-fifth Year of *Edward* the First, this Charter was again solemnly confirmed, together with *Charta de Foresta*, in the fourth Chapter of which, all the Arch-bishops and Bishops were ordered to pronounce the dreadful Sentence of Excommunication against all those, that by Word, Deed or *Council* do contrary to the aforesaid Charters, or in any Point break or undo them; and that the said Curse be twice a Year denounced and published by the Prelates aforesaid.

This was surely fixing the Stamp of Perpetuity to this excellent Law; for not only any one Man, but even King, Lords, and Commons in their collective Body, could not break thro' it, without falling under this heavy and dreadful Sentence; and as this Act is now as much in Force as ever and was confirmed by the Act of Settlement, why my Lords the Bishops, our present reverend Prelates, should not hold themselves obliged to accurse the Infringers of it twice a Year, is not very easy to conceive, unless it be for the same Reason, that these Curses are left

left out of the late Editions of the statute Books ; they may be seen at large in those printed in the Reign of Queen *Elizabeth*. However the Editor has thought proper to insert them here, that all People, into whose Hands this little Book shall come, may see what heavy Judgments they lay themselves under, if they presume or endeavour to break through, or take off the Force of any Part of this fundamental Law. Oh ! that the same Provision had been made to some Laws of a much later Date. Happy, thrice happy it would have been for this poor u——e K——m.

In the next Place it may not be improper to give some Account of the Occasion of this Charter. Therefore be pleased to observe, that our Ancestors the *Saxons*, had, with an equal Poise and Temperament, very wisely contrived their Government, made excellent Provisions for their Liberties, and to preserve the People from Oppressions ; and though *William* the *Norman* (vulgarly called the Conqueror, for in truth he was not so) made himself Master of the Land by killing of *Harold* the Usurper, and routing his Army, yet he claimed the Crown as his Right, and in consequence thereof was admitted to it by Compact, and took an Oath to observe the Laws and Customs of the Realm. But in truth, he did not observe that Oath so well as he ought to have done ; neither did *many* of his Successors, for *William Rufus*, King *Stephen*, *Henry* the First, *Richard* the First, and King *John*,



*John*, especially the latter, made such frequent Encroachments upon the Liberties of their People, and used so many illegal Devices to drain their Purses, that at last wearied out with intolerable Oppressions, they resolved to oblige the King to restore them their Liberties, and to confirm the same to them and their Posterity, which King *John* did in *Runny* or *Running Mead* between *Stains* and *Windfor*, by two Charters, the one called the Charter of Liberties, the same in effect with that here recited \*; and the other the Charter of the Forest, Copies of which he sent into every County, and commanded the Sheriffs, &c. to see them fulfilled.

But alas! he was very soon carried away by the Voice of evil Counsellors, and, regardless of the solemn Engagement he had made with his People, began to violate them as much as ever, which brought unspeakable Miseries upon himself and Kingdom, which continued to the End of his Reign.

The Son and Successor of King *John* was *Henry* the Third, who in the ninth Year of his Reign, renewed and confirmed the said Charters as is before related; but within two Years afterwards, at a Council held at *Oxford*, he cancelled them both with his own Hands, by the pernicious Advice of his Favourites, particularly *Hubert de Burgh*, who was the first Witness, of all the temporal Lords, to both the said Charters, and had been of the greatest Service in obtain-  
ing

\* Vide *Matthew Paris*, fol. 246.

ing them; but Ambition and Covetousness getting the better of his Integrity, he basely betrayed his Country by giving this diabolical Counsel, for the Sake of obtaining Honour and Preferment. He was first made Lord Chief Justice, and afterwards created Earl of *Kent*, the highest Dignity that in those Days a Subject could enjoy; but soon, very soon, the Bishops Curse overtaking him, he fell into his Master's heavy Displeasure, and after many fearful and miserable Troubles, he was justly and legally sentenced by his Peers in an open Parliament, and justly degraded of that Dignity, which he had so unjustly obtained, by his wickedly and traiterously advising the cancelling of *Magna Charta*, and *Charta de Foresta*. And how great would be our Happiness, if all future Ministers would take Warning by him?

To *Magna Charta* is subjoined the Bishop's Curse, with my Lord *Coke's* Observations on the twenty-ninth Chapter, which is so essential to the thoroughly understanding of it, and to shew the great Use it is of to the Kingdom, the Editor could not have excused himself, if he had not also inserted them. To which is added a Confirmation of the said Charter, made the thirty-fifth of *Edward* the First, with the Bishop's Curse agreeable to the fourth Chapter of the said Confirmation, fit for any Protestant Bishop to pronounce.



# MAGNA CHARTA OR THE GREAT CHARTER,

Made in the ninth Year of King HENRY the Third, and confirmed by King EDWARD the First, in the eight and twentieth Year of his Reign.

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EDWARD, *by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan; to all Archbishops, Bishops, &c. We have seen the great Charter of the Lord HENRY, sometimes King of England, our Father, of the Liberties of England, in these Words:*

**H**ENRY, by the Grace of God, King of England, Lord of Ireland, &c. To all Archbishops, Bishops, &c. and other our faithful Subjects, which shall see this present Charter, greeting. Know ye that we, unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of England, to the Advancement of holy Church,  
C and

and Amendment of our Realm, of our meer and free Will have given and granted to all Archbishops, Bishops, &c. and to all Freemen of this our Realm, these Liberties following, to be kept in our Kingdom of *England* for ever.

## C A P. I.

*A Confirmation of Liberties.*

**F**IRST, we have granted to God, and by this our present Charter have confirmed for us and our Heirs for ever, that the Church of *England* shall be free, and shall have all her whole Rights and Liberties inviolable. We have granted also, and given to all the Freemen of our Realm, for us and our Heirs for ever, these Liberties under written, to have and to hold to them and their Heirs, of us and our Heirs for ever. 42 Ed. 3. cap. 1. & 52 H. 3. c. 5.

## C A P. II.

*The Relief of the King's Tenant of full Age.*

**I**F any of our Earls or Barons, or any other, which hold of us in chief by Knight's Service, die, and at the Time of his Death his Heir be of full Age, and oweth to us Relief, he shall have his Inheritance by the old Relief, that is to say, the Heir or Heirs of an Earl, for a whole Earldom, by one hundred Pounds; the Heir or Heirs of a Baron, for an whole Barony, by one hundred Marks: the Heir or Heirs of a Knight,

Knight, for one whole Knight's Fee, one hundred Shillings at the most. And he that hath less shall give less, according to the old Custom of the Fees. V. N. B. fol. 94. a. 3 Bulstr. 325.

C A P. III.

*The Wardship of an Heir within Age. The Heir a Knight.*

**B**UT if the Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. And after that such an Heir hath been in Ward, (when he is come to full Age) that is to say, to the Age of one and twenty Years, he shall have his Inheritance without Relief, and without Fine: so that if such an Heir being within Age be made Knight, yet nevertheless his Land shall remain in the keeping of his Lord unto the Term aforesaid. F. N. B. fol. 269. Alt. 12 Car. 2 cap. 24.

C A P. IV.

*No Waste shall be made by a Guardian in Ward Lands.*

**T**HE Keeper of the Land of such an Heir being within Age, shall not take of the Lands of the Heir, but reasonable Issues, reasonable Customs, and reasonable Services, and that without Destruction and Waste of his Men and his Goods. And if we commit the Custody of

any such Land to the Sheriff, or to any other, which is answerable unto us for the Issues of the same Land, and he make Destruction or Waste of those Things that he hath in Custody, we will take of him Amends and Recompence therefore, and the Land shall be committed to two lawful and discreet Men of that Fee, which shall answer unto us for the Issues of the same Land, or unto him whom we will assign. And if we give or sell to any Man the Custody of any such Land, and he therein do make Destruction or Waste, he shall lose the same Custody. And it shall be assigned to two lawful and discreet Men of that Fee, which also in like Manner shall be answerable to us, as afore is said. Stat. 6 Ed. 1. 3. St. 28 Ed. 1. 18. St. 14 Ed. 3. 13. St. 36 Ed. 3. 13.

### C A P. V.

*Guardians shall maintain the Inheritance of their Wards: And of Bishopricks, &c.*

**T**HE Keeper, so long as he hath the Custody of the Land of such an Heir, shall keep up the Houses, Parks, Warrens, Ponds, Mills, and other Things pertaining to the same Land, with the Issues of the said Land: and he shall deliver to the Heir when he cometh to his full Age, all his Land stored with Ploughs and all other Things, at the least as he received it. All these Things shall be observed in the Custodies of Archbishopricks, Bishopricks, Abbies, Priories, Churches and Dignities

nities vacant, which appertain to us; except this, that such Custody shall not be sold. St. 3 Ed. 1. 21. Stat. 36 Ed. 3. 13. V. N. B. 37.

C A P. VI.

*Heirs shall be married without Disparagement.*

**H**EIRS shall be married without Disparagement. Stat. 20 H. 3. 6.

C A P. VII.

*A Widow shall have her Marriage, Inheritance, and Quarentine. The King's Widow, &c.*

**A** Widow, after the Death of her Husband, incontinent and without any Difficulty, shall have her Marriage and her Inheritance, and shall give nothing for her Dower, her Marriage or her inheritance, which her Husband and she held the Day of the Death of her Husband. And she shall tarry in the chief House of her Husband by forty Days after the Death of her Husband, within which Days her Dower shall be assigned her (if it were not assigned her before) or that the House be a Castle. And if she depart from the Castle, then a competent House shall be forthwith provided for her, in the which she may honestly dwell, until her Dower be to her assigned, as it is aforesaid. And she shall have in the mean Time her reasonable Estovers of the common. And for her Dower shall

shall be assigned unto her the third Part of all the Lands of her Husband which were his during Coverture, except she were endowed of less at the Church-door. No Widow shall be distrained to marry herself: nevertheless she shall find Surety, that she shall not marry without our Licence and Assent (if she hold of us) nor without the Assent of the Lord, if she hold of another. Stat. 20 H. 3. 1.

## C. A. P. VIII.

*How Sureties shall be charged to the King.*

**WE** or our Bailiffs shall not seize any Land or Rent for any Debt, as long as the present Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfy therefore. Neither shall the Pledges of the Debtor be distrained, as long as the principal Debtor is sufficient for the Payment of the Debt. And if the principal Debtor fail in Payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges shall answer for the Debt. And if they will, they shall have the Lands and Rents of the Debtor until they be satisfied of that which they before paid for him, except that the Debtor can shew himself to be acquitted against the said Sureties. Cap. 18. infra, 33 H. 8. c. 39.

C A P.



C A P. IX.

*The Liberties of LONDON and other Cities and Towns confirmed.*

**T**HE City of *London* shall have all the old Liberties and Customs which it hath been used to have. Moreover we will and grant, that all other Cities, Boroughs, Towns and the Barons of the five Ports, and all other Ports, shall have all their Liberties and free Customs.  
3 Bulstr. 2.

C A P. X.

*None shall distrain for more Service than is due.*

**N**O Man shall be distrained to do more Service for a Knight's Fee nor for any Freehold, than therefore is due. Regist. f. 4. V. N. B. f. 15. F. N. B. f. 10. D. Co. Inst. 2 par. 21.

C A P. XI.

*Common Pleas shall not follow the King's Court.*

**C**OMMON Pleas shall not follow our Court, but shall be holden in some Place certain Regist. fo. 187. V. N. B. fo. 137. Stat. 28 Ed. 1. 4. Co. Inst. 4 par. 99. Mirror, 311. 11 Co. 75. 2 Bulstr. 123.

C A P.

## C A P. XII.

*Where and before whom Assizes shall be taken.  
Adjournment for Difficulty.*

**A**SSIZES of *Novel disseisin* and of *Mortdancestor*, shall not be taken but in the Shires, and after this Manner: If we be out of this Realm, our chief Justicers shall send our Justicers through every County once in the Year, which, with the Knights of the Shires, shall take the said Assizes in those Counties: and those Things that at the coming of our foresaid Justicers, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in some other Place in their Circuit. And those Things which for Difficulty of some Articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there shall be ended. Regist. fo. 197. Stat. 13 Ed. 1. 30.

## C A P. XIII.

*Assizes of Darrein Presentment.*

**A**SSIZES of *Darrein Presentment* shall be always taken before our Justicers of the Bench, and there shall be determined. Regist. fo. 30. Stat. 13 Ed. 1. 30.

C A P.

C A P. XIV.

*How Men of all Sorts shall be amerced, and by whom.*

**A** Free-man shall not be amerced for a small Fault, but after the Manner of the Fault. And for a great Fault after the Greatness thereof, saving to him his Contentment. And a Merchant likewise, saving to him his Merchandize. And any others Villain than ours shall be likewise amerced, saving his Waintage, if he fall into our Mercy. And none of the said Amerciaments shall be assessed, but by the Oath of honest and lawful Men of the Vicinage. Earls and Barons shall not be amerced but by their Peers, and after the Manner of their Offence. No Man of the Church shall be amerced after the Quantity of his spiritual Benefice, but after his Laytenement, and after the Quantity of his Offence.

C A P. XV.

*Making of Bridges and Banks.*

**N**O Town nor Freeman shall be distrained to make Bridges nor Banks, but such as of old Time and of right have been accustomed to make them in the Time of King *Henry* our Grandfather.

C A P.

C A P. XVI.

*Defending of the Banks.*

**N**O Banks shall be defended from henceforth, but such as were in Defence in the Time of King *Henry* our Grandfather, by the same Places and the same Bounds as they were wont to be in his Time.

C A P. XVII.

*Holding Pleas of the Crown.*

**N**O Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs, shall hold Pleas of our Crown. *Mirror*, 313.

C A P. XVIII.

*The King's Debtor dying, the King shall be first paid.*

**I**F any that holdeth of us lay-fee do die, and our Sheriff or Bailiff do shew our Letters Patents of our Summons for Debt, which the dead Man did owe to us: It shall be lawful to our Sheriff or Bailiff to attach and inroll all the Goods and Chattels of the Dead, being found in the said fee, to the Value of the same Debt, by the Sight and Testimony of lawfull Men. So that nothing thereof shall be taken away, until we be clearly paid off the Debt. And the Residue shall remain to the Executors to perform

form the Testament of the Dead. And if nothing be owing unto us, all the Chattels shall go to the Use of the Dead, (saving to his Wife and Children their reasonable Parts.) St. 33. H. 8. 39.

C A P. XIX.

*Purveyance for a Castle.*

**N**O Constable, nor his Bailiff, shall take Corn or other Chattels of any Man, if the Man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the Will of the Seller was to respite the Payment. And if he be of the same Town, the Price shall be paid unto him within forty Days. Stat. 3 Ed. 1. 7. Altered 13 Car. 2. cap. 8.

C A P. XX.

*Doing of Castle-ward.*

**N**O Constable shall distrain any Knight for to give Money for keeping of his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient Man, if he may not do it himself for a reasonable Cause. And if we do lead or send him in an Army, he shall be free from Castle-ward for the Time that he shall be with us in fee in our Host, for the which he hath done Service in our Wars. Co. Inst. 70. a. Co. Inst. 2 par. 34. St. 12 Car. 2. c. 24.

C A P.

## C A P. XXI.

*Taking of Horses, Carts, and Woods.*

**N**O Sheriff nor Bailiff of ours, or any other, shall take the Horses or Carts of any Man to make Carriage, except he pay the old Price limited, that is to say, for Carriage with two Horse, ten Pence a Day; for three Horse, fourteen Pence a Day. No demesne Cart of any spiritual Person or Knight, or any Lord, shall be taken by our Bailiffs; nor we, nor our Bailiffs, nor any other, shall take any Man's Wood for our Castles or other our Necessaries to be done, but by the Licence of him whose the Wood is. Stat. 14 Ed. 3. 19. St. 25 Ed. 3. 6. St. 13 Car. 2. c. 8.

## C A P. XXII.

*How long Felons Lands shall be holden by the King.*

**W**E will not hold the Lands of them that be convict of Felony but one Year and one Day, and then those Lands shall be delivered to the Lords of the Fee. V. N. B. f. 99. Mirror, 313.

C A P.

C A P. XXIII.

*In what Places Wears shall be put down.*

**A**LL Wears from henceforth shall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-coasts. Stat. 12 Ed. 4. 7. Co. Inst. 2. par. 38.

C A P. XXIV.

*In what Case a Præcipe in capite is not grantable.*

**T**HE Writ that is called *Præcipe in capite*, shall be from henceforth granted to no Person of any Freehold, whereby any Freeman may lose his Court. V. N. B. fol. 12. F. N. B. fol. 5. f. 39. h. Co. Inst. 2 par. 39.

C A P. XXV.

*There shall be but one Measure throughout the Realm.*

**O**NE Measure of Wine shall be through our Realm, and one Measure of Ale, and one Measure of Corn, that is to say, the Quarter of *London*; and one Breadth of died Cloth, Ruffets and Habergeets, that is to say, two Yards within the Lists. And it shall be of Weights as it is of Measures. St. 14 Ed. 3. 12. St. 27 Ed. 3. 10. St. 8 H. 6. 5. 11 H. 7. 4. 1. St. 17. Car. 1. cap. 19.

D

C A P.

## C A P. XXVI.

*Inquisition of Life and Member.*

**N**OTHING from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life or of Member, but it shall be granted freely, and not denied. St. 3 Ed. 1. 11. St. 13 Ed. 1. 29. Regist. fo. 133, 134. Mirror 314.

## C A P. XXVII.

*Tenure of the King in Socage, and of another by Knights Service. Petit Serjeanty.*

**I**F any do hold of us by Fee-farm, or by Socage or Burgage, and he holdeth Lands of another by Knights Service, we will not have the Custody of his Heir nor of his Land, which is holden of the Fee of another, by Reason of that Fee-farm, Socage or Burgage. Neither will we have the Custody of such Fee-farm, or Socage, or Burgage, except Knights Service be due unto us out of the same Fee-farm. We will not have the Custody of the Heir, or of any Land, by Occasion of any Petit Serjeanty that any Man holdeth of us by Service to pay a Knife, an Arrow, or the like. Rep. 12 Car. 2. cap. 24.

C A P.



C A P. XXVIII.

*Wager of Law shall not be without Witness.*

**N**O Bailiff from henceforth shall put any Man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same. Co. Inst. 2 par. 44.

C A P. XXIX.

*None shall be condemned without Trial. Justice shall not be sold or deferred.*

**N**O Free-man shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will sell to no Man, we will not deny or defer to any Man either Justice or Right. St. 2 Ed. 3: 8. St. 5 Ed. 3. 9. St. 14 Ed. 3. 14. 28 Ed. 3. 3. St. 11. R. 2. 10. 17 Car. 1. cap. 10. St. 37 Ed. 3. cap. 18. St. 4 H. 7. 12. in fine. 1 Roll 208, 209, 225. 12 Co. 50, 63, 93.

## C A P. XXX.

*Merchant Strangers coming into this Realm shall be well used.*

**A**LL Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by Land as by Water, to buy and sell without any manner of evil Tolls by the old and rightful Customs, except in Time of War. And if they be of a Land making War against us, and be found in our Realm at the beginning of the Wars, they shall be attached without Harm of Body or Goods, until it be known unto us, or our chief Justice, how our Merchants be intreated there in the Land making War against us. And if our Merchants be well intreated there, theirs shall be likewise with us. Stat. 9 Ed. 3. 1. 14. Ed. 3. 2. 2 Sess. 25 Ed. 3. 2. 2 R. 2. 1. 11 R. 2. 7.

## C A P. XXXI.

*Tenure of a Barony coming into the King's Hands by Eschete.*

**I**F any Man hold of any Eschete, as of the Honour of *Wallingford*, *Nottingham*, *Boloin*, or of any other Eschetes which be in our Hands,  
and

*Rights and Privileges of Englishmen, &c. 29*

and are Baronies, and die, his Heir shall give none other Relief, nor do none other Service to us then he should to the Baron, if it were in the Baron's Hand. And we in the same wise shall hold it as the Baron held it, neither shall we have by Occasion of any Barony or Eschete, any Eschete or keeping of any of our Men, unless he that held the Barony or Eschete, otherwise held of us in chief. Regist. fo. 184. Stat. 1 Ed. 3. 13. St. 1 Ed. 6. 4. Co. Inst. 2 part.

C A P. XXXII.

*Lands shall not be aliened to the Prejudice of the Lord's Service.*

**N**O Freeman from henceforth shall give or sell any more of his Land, but so that of the Residue of the Lands the Lord of the Fee may have the Services due to him which belongeth to the Fee. St. 18 Ed. 1. Quia emptores terrarum. MIRROR 316.

C A P. XXXIII.

*Patrons of Abbies shall have the Custody of them in the Time of Vacation.*

**A**LL Patrons of Abbies which have the King's Charters of England of Advowson, or have old Tenure or Possession in the same, shall

shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared. Co. Inst. 2 par. 68.

C A P. XXXIV.

*In what only Case a Woman shall have an Appeal of Death.*

**N**O Man shall be taken or imprisoned upon the Appeal of a Woman for the Death of any other than her Husband. Rast. pla. fo. 43. Co. Inst. 2 par. 68.

C A P. XXXV.

*At what Time shall be kept a County-court, Sheriff's Turn, and a Leet.*

**N**O County from henceforth shall be holden, but from Month to Month; and where greater Time hath been used, there shall be greater: nor any Sheriff or his Bailiff shall keep his Turn in the Hundred but twice in the Year: and no where but in due Place and accustomed, that is to say, once after *Easter*, and again after the Feast of *Saint Michael*. And the View of *Frankplege* shall be likewise at the Feast of *Saint Michael* without Occasion. So that every Man may have his Liberties, which he had, or used to have in the Time of King *Henry* our Grandfather, or which he hath purchased

chased since. The View of *Frankplege* shall be so done that our Peace may be kept. And that the Tything be wholly kept as it hath been accustomed. And that the Sheriff seek no Occasions, and that he be content with so much as the Sheriff was wont to have for his View making in the Time of King *Henry* our Grandfather. Regist. fo. 175, 187. F. N. B. fo. 161. St. 31 Ed. 3. 15.

C A P. XXXVI.

*No Land shall be given in Mortmain.*

**I**T shall not be lawful from henceforth to any to give his Lands to any religious House, and to take the same Land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the Lands of any, and to lease the same to him of whom he received it: if any from henceforth give his Lands to any religious House, and thereupon be convict, the Gift shall be utterly void, and the Land shall accrue to the Lord of the Fee.

C A P. XXXVII.

*A Subsidy in respect of this Charter, and the Charter of the Forest, granted to the King.*

**E**SCUAGE from henceforth shall be taken like as it was wont to be in the Time of King *Henry* our Grandfather; Reserving to all Archbishops,

bishops, Bishops, &c. Earls, Barons, and all Persons as well spiritual as temporal, all their free Liberties and free Customs, which they have had in Time passed. And all these Customs and Liberties aforesaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs, we shall observe. And all men of this our Realm, as well spiritual as temporal (as much as in them is) shall observe the same against all Persons in like wise. And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forest, the Archbishops, Bishops, &c. Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto us the fifteenth Part of all their Moveables. And we have granted unto them on the other Part, that neither we nor our Heirs shall procure or doe any Thing, whereby the Liberties in this Charter contained, shall be infringed or broken. And if any Thing be procured by any Person, contrary to the Premises, it shall be had of no Force nor Effect. These being Witnesses, Lord B. Archbishop of *Canterbury*, E. Bishop of *London*, I. Bishop of *Bath*, P. of *Winchester*, H. of *Lincoln*, R. of *Salisbury*, W. of *Rochester*, W. of *Worcester*, J. of *Ely*, H. of *Hereford*, R. of *Chichester*, W. of *Exeter*, Bishops: the Abbot of *St. Edmonds*, the Abbot of *St. Albans*, the Abbot of *Bello*, the Abbot of *St. Augustines in Canterbury*, the Abbot of *Evesham*, the Abbot of *Westminster*, the Abbot of *Bourgh*

*Bourgh St. Peter*, the Abbot of *Reding*, the Abbot of *Abindon*, the Abbot of *Malmsbury*, the Abbot of *Winchcomb*, the Abbot of *Hyde*, the Abbot of *Certesey*, the Abbot of *Sberburn*, the Abbot of *Cerue*, the Abbot of *Abbotebir*, the Abbot of *Middleton*, the Abbot of *Seleby*, the Abbot of *Cirencester*: *H. de Burgh* Justice, *H. Earl of Chester and Lincoln*, *W. Earl of Salisbury*, *W. Earl of Warren*, *G. de Clare* Earl of *Gloucester and Hereford*, *W. de Ferrars* Earl of *Derby*, *W. de Mandeville* Earl of *Essex*, *H. de Bygot* Earl of *Norfolk*, *W. Earl of Albemarle*, *H. Earl of Hereford*, *J. Constable of Chester*, *R. de Ros*, *R. Fitzwalter*, *R. de Vyponde*, *W. de Bruer*, *R. de Muntefchet*, *P. Fitzberbert*, *W. de Aubenie*, *J. Gresly*, *F. de Breus*, *J. de Movenne*, *J. Fitzallen*, *H. de Mortimer*, *W. de Beauchamp*, *W. de St. John*, *P. de Mauly*, *Brian de Lisse*, *Thomas de Multon*, *R. de Argenteyn*, *G. de Nevil*, *W. Manduit*, *J. de Balun*, and others.

II. We, ratifying, and approving these Gifts and Grants afore said, confirm and make strong all the same for us and our Heirs perpetually; And by the Tenor of these Presents do renew the same, willing and granting for us and our Heirs, that this Charter, and all and singular his Articles for ever shall be stedfastly, firmly, and inviolably observed. And if any Article in the same Charter contained yet hitherto peradventure hath not been kept, we will and, by Authority royal, command from henceforth  
firmly

firmly they be observed. In witness whereof we have caused these our Letters Patents to be made. *T. Edward* our Son at *Westminster*, the twenty-eighth Day of *March*, in the twenty-eighth Year of our Reign.



X *The Sentence or Curse given by the Bishops against the Breakers of the Great Charter.*

**I**N the Year of our Lord one Thousand two Hundred and fifty-three, the third Day of *May*, in the great Hall of the King at *Westminster*, in the Presence, and by the Assent of the Lord *Henry*, by the Grace of God, King of *England*, and the Lord *Richard* Earl of *Cornwal* his Brother, *Roger Bigot* Earl of *Norfolk* and *Suffolk*, Marshal of *England*, *Humphry* Earl of *Hereford*, *Henry* Earl of *Oxford*, *John* Earl *Warren*, and other Estates of the Realm of *England*; *William Boniface*, by the Mercy of God Archbishop of *Canterbury*, Primate of *England*, *F.* of *London*, *H.* of *Ely*, *S.* of *Worcester*, *E.* of *Lincoln*, *W.* of *Norwich*, *G.* of *Hereford*, *W.* of *Salisbury*, *W.* of *Durham*, *R.* of *Exeter*, *M.* of *Carlisle*, *W.* of *Bath*, *E.* of *Rochester*, *T.* of *St. Davids*, Bishops apparelled in Pontificals, with Tapers burning, against the Breakers of the Church's Liberties, or of the Liberties or other Customs of the Realm



Realm of *England*, and namely, of these which are contained in the Charter of the common Liberties of *England*, and Charter of the Forest, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and of the Holy Ghost, and of the glorious Mother of God, and perpetual Virgin *Mary*, of the Blessed Apostles *Peter* and *Paul*, and of all Apostles, and of all Martyrs, of Blessed *Edward* King of *England*, and of all the Saints of Heaven; We excommunicate, accurse, and from the Benefits of our holy Mother Church, we sequester all those that hereafter willingly and maliciously deprive or spoil the Church of her Right: And all those that by any Craft or Wiliness do violate, break, diminish, or change the Church's Liberties, and free Customs contained in the Charters of the common Liberties, and of the Forest, granted by our Lord the King, to Archbishops, Bishops, and other Prelates of *England*; and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly, or openly, by Deed, Word, or Council, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Counsellors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before-mentioned, that wittingly shall commit any of the Preamises, let

let them well know, that they incur the foresaid Sentence, *ipso facto*, [*i.e.* upon the Deed done]. And those that commit ought ignorantly, and be admonished, except they reform themselves within fifteen Days after the Time of their Admonition, and make full Satisfaction for that they have done at the Will of the Ordinary, shall be from that Time forth wrapped in the said Sentence; and with the same Sentence we burden all those that presume to disturb the Peace of our Sovereign Lord the King, and of the Realm. To the perpetual Memory of which Thing, we the foresaid Prelates have put our Seals to these Presents.



*Notes on the 29th Chapter of Magna Charta.*

**T**HE twenty-ninth Chapter beginning with **NO FREEMAN SHALL BE TAKEN, &c.** Deserves to be inscribed in capital Letters of Gold on all our Courts of Justice, Town-Halls, and most public Edifices, as being the Elixir of our English Freedoms, and Store-house of all our Liberties. And because my Lord *Coke* in the second Book of his *Institutes* has many excellent Observations they shall be here recited in his own Words.

1. *That no Man be taken or imprisoned, but per Legem Terræ, that is, by the common Law,*  
Sta-

Statute Law or Custom of *England*: For these Words *Legem Terræ*, being towards the End of the Chapter, do refer to all the precedent Matters in this Chapter; and this hath the first Place, because the Liberty of a Man's Person is more precious to him than all the rest that follow, and therefore it is great Reason that he should, by Law, be relieved therein, if he be wronged, as hereafter shall be shewed.

2. *No Man shall be disseised*, that is, put out of Seisin, or dispossessed of his Freehold, that is, Lands or Livelihood, or of his Liberties or free Customs, that is of such Franchises, and Freedoms, and free Customs, as belong to him by his free Birth-right, unless it be by the lawful Judgment, that is, Verdict of his Equals, that is, of Men of his own Condition, or by the Law of the Land, that is, to speak it once for all, by the due Course and Process of Law.

3. *No Man shall be outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unless he be outlawed according to the Law of the Land.

4. *No Man shall be exiled*, or banished out of his Country, that is, *Nemo perdet Patriam*, no Man shall lose his Country, unless he be exiled according to the Law of the Land.

5. *No Man shall in any Sort be destroyed*, *Destruere id est quod prius structum & factum fuit penitus Evertere & Diruere*, unless it be by the Verdict of his Equals, or according to the Law of the Land.

E

6. No

6. No Man shall be condemned at the King's Suit, either before the King in his Bench, where the Pleas are *Coram Rege*, and so are the Words, *Nec super eum ibimus*, to be understood, nor before any other Commissioner or Judge whatsoever, and so are the Words, *Nec super eum Mittimus*, to be understood, but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We shall sell to no Man Justice or Right.

8. We shall deny to no Man Justice or Right.

9. We shall defer to no Man Justice or Right.

Each of these we shall briefly explain.

1. No Man shall be taken, that is, restrained of Liberty, by Petition, or Suggestion to the King, or his Council, unless it be by Indictment, or Presentment of good and lawful Men where such Deeds be done.

2. No Man shall be disseised, &c. Hereby is intended, that Lands, Tenements, Goods, and Chattels, shall not be seized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Man shall be disseised of his Lands or Tenements, or dispossessed of his Goods and Chattels contrary to the Law of the Land.

A Custom was alledged in the Town of C. that if the Tenant cease by two Years, that the Lord should enter into the Freehold of the Tenement, and hold the same until he were satisfied of the Arrearages: It was adjudged a Custom  
tom

tom against the Law of the Land, to enter into a Man's Freehold in that Case, without Action or Answer.

King *Henry VI.* granted to the Corporation of Dyers within *London*, Power to search, &c. And if they found any Cloth died with Logwood, that the Cloth should be forfeit: And it was adjudged, that this Charter concerning the Forfeiture, was against the Law of the Land, and this Statute; for no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Answer.

3. No Man outlawed.] That is, barred to have the Benefit of the Laws. And note, to this Word *Outlawed*, these Words, *unless by the Law of the Land*, do refer. [*of his Liberties.*] This Word hath three Significations:

1. As it hath been said, it signifieth the Laws of the Realm, in which respect this Charter is called *Charta Libertatum*, as aforesaid.

2. It signifieth the Freedom the Subjects of *England* have: For Example, the Company of Merchant Taylors of *England*, having Power, by their Charter, to make Ordinances, made an Ordinance, that every Brother of the same Society, should put the one Half of his Cloaths to be dressed by some Cloath-workers free of the same Company, upon Pain to forfeit ten Shillings, &c. And it was adjudged, that this Ordinance was against Law, because it was against the Liberty of the Subject, for every Subject

hath Freedom to put his Cloaths to be dressed by whom he will, & *Sic de Similibus*. And so it is, if such or the like Grant had been made by his Letters Patents.

3. *Liberties* signify the Franchises and Privileges which the Subjects have of the Gift of the King, as the Goods and Chattels of Felons, Outlaws, and the like; which the Subject claims by Prescription, as Wreck, Waife, Stray, and the like.

So likewise, and for the same Reason, if a Grant be made to any Man, to have the sole making of Cards, or the sole dealing with any other Trade; that Grant is against the Liberty and Freedom of the Subject, that before did or Lawfully might have used the Trade, and consequently against this great Charter.

Generally all Monopolies are against this great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4. *No Man exiled*, that is, banished, or forced to depart or stay out of *England*, without his Consent. By the Law of the Land, no Man can be exiled or banished out of his native Country, but either by Authority of Parliament, or in Case of Abjuration for Felony by the common Law; and so when our Books, or any Record, speak of Exile, or Banishment, other than in case of Abjuration, it is to be intended to be done by Authority of Parliament, as *Belknap* and

and other Judges, &c. banished into *Ireland*, in the Reign of *Richard* the Second.

This is a beneficial Law, and is construed benignly; and therefore the King cannot send any Subject of *England* against his Will, to serve him out of this Realm, for that would be an Exile, and he should *perdere Patriam*: No, he cannot be sent against his Will into *Ireland*, to serve the King or his Deputy there, because it is out of the Realm of *England*: For if the King might send him out of his Realm to any Place, then under Pretence of Service, as Ambassador, or the like, he might send him into the farthest Part of the World, which being an Exile, is prohibited by this Act.

5. *No Man destroyed*, that is, forejudged of Life or Limb, or put to Torture, or Death, every Oppression against Law, by colour of any usurped Authority, is a kind of Destruction. And the Words *Aliquo Modo*, any otherwise, are added to this Verb, *destroyed*, and to no other Verb in this Chapter; and therefore all Things, by any manner of Means, tending to Destruction are prohibited; as if a Man be accused or indicted of Treason or Felony, his Lands or Goods cannot be granted to any; nor so much as by Promise, nor any of his Lands or Goods seized into the King's Hands before he be attainted: For, when a Subject obtaineth a Promise of the Forfeiture, many times undue Means, and more violent Prosecution is used for private Lucre, tending to

Destruction, than the quiet and just Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.

6. *By lawful Judgment of his Peers.*] That is, by his Equals, Men of his own Rank and Condition. The general Division of Persons, by the Law of *England*, is either one that is noble, and in respect of his Nobility of the Lords House of Parliament, or one of the Commons, and in respect thereof, of the House of Commons in Parliament. And as there be divers Degrees of Nobility, as Dukes, Marquisses, Earls, Viscounts and Barons, and yet all of them are comprehended under this Word, *Peers*, and are Peers of the Realm: So of the Commons, there be Knights, Esquires, Gentlemen, Citizens, and Yeomen (and yet all of them of the Commons of the Realm.) And as every of the Nobles is one a Peer to another, though he be of a several Degree, so it is of the Commons; and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch, as this Judgment by Peers is called lawful, it shews the Antiquity of this manner of Trial: it was the ancient, accustomed legal Course long before this Charter.

*Or by the Law of the Land.*] That is, by due Process of Law, for so the Words are expressly expounded by the Statute of the twenty-third of *Edward* the Third Chap. 8. And these Words are specially to be referred to those foregoing, to whom they relate. As none shall be condemned without a lawful Trial by his Peers, so none shall be



be taken, imprisoned, or put out of his Freehold, without due Process of the Law, that is by Indictment or Presentment of good and lawful Men of the Place, in due Manner, or by Writ original of the common Law.

Now seeing that no Man can be taken, arrested, attached, or imprisoned, but by due Process of Law, and according to the Law of the Land, these Conclusions heretupon do follow.

1. That the Person or Persons which commit any, must have lawful Authority.

2. It is necessary that the Warrant, or *Mittimus*, be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for Treason, Felony, &c. Suspicion of Treason, Felony, or the like particular Crime; for if it do not thus specify the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; nor is it in such Case, any Offence at all, if the Prisoner make his Escape; whereas if the *Mittimus* contain the Cause, the Escape would respectively be Treason or Felony, though in Truth he were not Guilty of the first Offence. And this mentioning the Cause is agreeable to Scripture, *Acts v.*

4. The Warrant, or *Mittimus*, containing a lawful Cause, ought to have a lawful Conclusion, &c. And him safely to keep until he be delivered by Law, &c. and not until the Party committing shall farther Order.

If

If any Man, by Colour of any Authority, where he hath not any in that particular Case, shall presume to arrest, or imprison any Man, or cause him to be arrested or imprisoned, this is against this Act, and it is most hateful, when it is done by Countenance of Justice. King *Edward* the Sixth did incorporate the Town of *St. Albans*, and granted to them to make Ordinances, &c. They made a By-Law upon Pain of Imprisonment, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an Ordinance had been contained in the Patent itself.

*We will sell to no Man, deny to no Man, &c.]* That is spoken in the Person of the King, who in Judgment of Law, in all his Courts of Justice, is present: And therefore every Subject of this Realm, for Injury done to him, *in Bonis, Terris, vel Persona*, in Person, Lands, or Goods, by any other Subject, ecclesiastical or temporal, whatever he be, without Exception, may take his Remedy by the Course of Law, and have Justice and Right for the Injury done him, *freely*, without Sale, *fully*, without Denial; and *speedily*, without Delay; for Justice must have three Qualities, it must be *Libera*, Free; for nothing is more odious than Justice set to sale: *Plena*, full; for Justice ought not to limp, or be granted by Piece Meal: And *Celeris*, speedy; *Quia Dilatio est quaedam negatio*, Delay is a Kind of Denial: And when all these meet, it is both Justice and Right.

*We*

*We will not deny nor delay any Man, &c.*] These Words have been excellently expounded by latter Acts of Parliament, that by no means common Right, or common Law should be disturbed or delayed; no, though it be commanded under the great Seal, or privy Seal, Order, Writ, Letters, Message, or Commandment whatsoever, from the King, or any other; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them: all our Judges swear to this; for it is Part of their Oaths, so that if any shall be found wresting the Law to serve a Court Turn, they are perjured as well as unjust. The common Laws of the Realm should by no means be delayed; for the Law is the surest Sanctuary that a Man can take, and the strongest Fortres to protect the weakest of all; *Lex est tutissima Cassis*, the Law is a most safe Head-piece, and *sub legis Clypeo Nemo decipitur*, no Man is deceived whilst the Law is his Buckler: but the King may stay his own Suit, as a *Capias pro fine*, for the King may respite his Fine, and the like.

All Protections that are not legal, which appear not in the Register, nor warranted in our Books, are expressly against this Branch, *Nulli deferemus*, we will not delay any Man: as a protection under the great Seal, granted to any Man, directed to the Sheriff, &c. and commanding them that they shall not arrest him, during a certain Time, at any other Man's Suit, which hath Words in it, *Per Prærogativam nostram quam volumus*

*lumus esse Arguendam*; by our Prerogative which we will not have disputed: yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As Mich 11. H. 7. Rot. 124. a Protection granted to *Holmes* a Vintner of London, his Factors, Servants, and Deputies, &c. Resolved to be against Law. Pasch. 7. H. 8. Rot. 66. such a Protection is disallowed, and the Sheriff amerced for not executing the Writ, Mich. 13. and 14. Eliz. in *Hitchcock's* Case, and many other of latter Time: And there is a notable Record of ancient Time, in 22 Ed. 1. *John de Mershal's* Case; *Non pertinet ad Vicecomitem de protectione Regis Judicare, imo ad Curiam.*

*Justice or Right.*] We shall not sell, deny, or delay, Justice and Right; neither the End, which is Justice; nor the mean, whereby we may attain to the End, and that is Law: Right is taken here for Law, in the same Sense that Justice often is so called. 1. Because it is the right Line, whereby Justice distributive is guided and directed; and therefore all the Commissioners of Oyer and Terminer, of Goal-delivery of the Peace, &c. have this Clause, *Facturi quod ad Justitiam pertinet, secundum Legem & Consuetudinem Angliæ*; that is to do Justice and Right, according to the Rule of the Law and Custom of *England*: And that which is called common Right, in 2 E. 3. is called common Law in 14 E. 3, &c. *It a quod stat rectus in Curia, id est Legi in Curia.*

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2. The Law is called *Rectum*, because it discovereth that which is tort, crooked or wrong; for as Right signifieth Law, so tort, crooked, or wrong, signifieth Injuries; and *Injuria est contra Jus*, Injury is against Right: *Recta Linea est Index sui & Obliqui*, a right Line is both declaratory of itself and the oblique. Hereby the crooked Cord of that which is called Discretion, appeareth to be unlawful, unless you take it as it ought to be, *Discretio est discernere per Legem, quid sit justum*, Discretion is to discern by the Law what is just. X

3. It is called Right, because it is the best Birth-right the Subject hath, for thereby his Goods, Lands, Wife, and Children, his Body, Life, Honour and Estimation are protected from Injury and Wrong: *Major Hæreditas venit unicuique nostrum a Jure & Legibus, quam a Parentibus*; A greater Inheritance descends to us from the Laws, than from our Progenitors.

Thus far are the Words of that great Oracle of our Law, the learned Lord Chief Justice *Coke*, which are so full and explicit upon this excellent Chapter, that it would be superfluous, and even too assuming, to say any Thing further upon it.

A

*A Confirmation of the Charters of the Liberties of England, and of the Forest made in the thirty-fifth Year of Edward the First.*

**E**DWARD, by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all those those present Letters shall bear or see, Greeting. Know ye, that we, to the Honour of God, and of Holy Church, and to the Profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and the Charter of the Forest, which were made by common Assent of all the Realm, in the Time of King *Henry* our Father, shall be kept in every Point without Breach. And we will, that the same Charters shall be sent under our Seal, as well to our Justices of the Forest, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that they cause the aforesaid Charters, to be published, and to declare to the People, that we have confirmed them in all Points. And that our Justicers, Sheriffs, Mayors and other Ministers, which under us have the Laws of our Land to guide, shall allow the same Charters pleaded before them in Judgment in all their Points, that is, to wit, the Great Charter as the common Law, and the Charter of the Forest, for the Wealth of our Realm.

Chap.

Chap. 2. And we will, that if any Judgment be given from henceforth, contrary to the Points of the Charters aforesaid, by the Justicers, or by any other our Ministers, that hold Plea before them, against the Points of the Charters, it shall be undone, and holden for nought.

Chap. 3. And we will, that the same Charters shall be sent under our Seal, to Cathedral Churches throughout our Realm, there to remain, and shall be read before the People two times by the Year.

Chap. 4. And that all Archbishops, and Bishops shall pronounce the Sentence of Excommunication against all those, that by Word, Deed or Council, do contrary to the foresaid Charters, or that in any Point, break or undo them. And that the said Curses be twice a Year denounced, and published by the Prelates aforesaid. And if the same Prelates, or any of them, be remiss in the Denunciation of the said Sentences, the Archbishops of *Canterbury*, and *York* for the time being, shall compel and distrain them to the Execution of their Duties in Form aforesaid. X

Chap. 5. And for so much as divers People of our Realm, are in fear that the Aids and Tasks, which they have given to us before time, towards our Wars, and other Businessses of their own Grant, or good Will, (however they were made) might turn to Bondage to them and their Heirs, because they might be at another time found in the Rolls, and likewise for the Prizes taken throughout the Realm by our Ministers:

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We have granted for us, and our Heirs, that we shall not draw such Aids, Tasks, nor Prizes into a Custom, for any that hath been done heretofore, be it by Roll, or any other Precedent that may be founden.

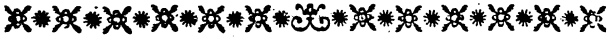
Chap. 6. Moreover, we have granted for us and our Heirs, as well to Archbishops, Bishops, Abbots, Priors, and other Folk of Holy Church as also to Earls, Barons, and to all the Commonalty of the Land, that for no Business from henceforth, we shall take such Manner of Aids, Tasks or Prizes, but by the common Assent of the Realm, and for the common Profit thereof, saving the ancient Aids and Prizes due as accustomed.

Chap. 7. And for so much, as the more Part of the Commonalty of the Realm, find themselves sore grieved with the \* Maletot of Wools, that is, to wit, a Toll of forty Shillings for every Sack of Wool, and have made Petition to us for to release the same: we at their Request, have clearly released it; and have granted for us and our Heirs, that we shall not take such Things, without their common Consent and good Will; saving to us and our Heirs the Custom of Wools, Skins, and Leather, granted before by the Commonalty aforesaid. In witness of which Things, we have caused our Letters to be patent. Witness *Edward* our Son, at *London*, the tenth of *October*, and thirty-fifth Year of our Reign.

*Sen-*

\* Maletot signifies an Evil or unjust Toll, Custom, or Imposition of Money.





*Sententia lata Super Chartas.*

*The Sentence of the CLERGY, against the Breakers of the Articles above-written.*

**I**N the Name of the Father, the Son, and the Holy Ghost, *Amen.* Whereas our sovereign Lord the King, to the Honour of God, and of Holy Church, and for the common Profit of the Realm, hath granted for him and his Heirs for ever, these Articles above-written; *Robert* Archbishop of *Canterbury*, Primate of all *England*, admonished all his Province, once, twice, and thrice; Because that Shortness will not suffer so much Delay, as to give Knowledge to all the People of *England*, of these Presents in Writing. We therefore enjoin all Persons, of what Estate soever they be, that they, and every of them, as much as in them is, shall uphold and maintain these Articles granted by our sovereign Lord the King, in all Points. And all those that in any Point do resist or break, or in any manner hereafter procure, counsel, or any ways assent to resist or break those Ordinances, or go about it, by Word or Deed, openly or privily, by any manner of Pretence or Colour: We the foresaid Archbishop, by our Authority

in this Writing expressed, do excommunicate and accurse, and from the Body of our Lord *Jesus Christ*, and from all the Company of Heaven, and from all the Sacraments of Holy Church, do sequester and exclude.

There was another Charter or Statute made much about the same Time, called *de Tallageo non Concedendo*, which seems to be nearly the same as the above, excepting the fifth Chapter, by which, Pardon is granted to all those Nobles, and others, that refused to obey the King's illegal Commands. — The Curse of the Church was also ordered to be pronounced twice a Year against the Breakers of this Charter.

An excellent Statute was also made the 25th of Edw. III. declaring what Offences shall be adjudged Treason; for before the making of this Act, so many things were charged as High Treason by bloody-minded Ministers, that no Man knew how to behave himself: Now by this Statute the Particulars of that grand Crime are reckoned up, and all others excluded till declared by Parliament; which was thought to be of such Importance to the Public, that the Parliament wherein this Act passed, was long after called the blessed Parliament. Therefore it is here earnestly recommended to the Reader's Perusal, with my Lord *Coke's* Notes upon it, in the third Part of his Institutes, fol. 3.

There

There is another Law well worthy to be known by every *Englishman*, which is the Petition of Right, exhibited by the Lords spiritual and temporal, and Commons, in Parliament assembled, to King *Charles* the First, concerning divers Rights and Liberties of the Subjects, which are there set forth in so plain and succinct a Manner, to be the ancient Rights of the People, that his Majesty was pleased to pass and confirm them in full Parliament, in the third Year of his Reign.

We shall now in course present the Reader, as a farther Guide to the Knowledge of his Rights and Privileges, and to confirm what has been already said, with the *Habeas Corpus Act*, which was made to free the Subject from causeless, tedious, and arbitrary Imprisonments. The Subject, it is true, had a Right, before this Law was made, to a Writ of *Habeas Corpus*, by the common Law of the Land, confirmed and established by *Magna Charta*, to procure his Liberty when unjustly detained: But then it was rendered almost useles, partly by time-serving and corrupt Judges, and partly by the wicked Practices of Sheriffs and Goalers: The first straining the Prerogative so far beyond the Bounds of Law, as to pretend the having a Power, in many Cases, to grant or deny the said Writ at their Pleasure, and sometimes alledging, that they could not take Bail, because the Party,

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truly,

truly, was a Prisoner of State: The second, (Oppression being in all Times their Trade) by putting the unhappy Prisoner to the Charge of an *Alias* and *Pluries*, that is a second and third Writ before they would obey the first, there being no Penalty, unless the third was disobeyed. These, and many other Evasions, were made use of by encroaching Power, to render the Law relating to Imprisonments ineffectual: Therefore to remedy, and put a Stop to such intolerable Mischiefs, this wholesome Statute was provided, which is so plain, that there is little Need of any farther Comment upon it: But as no Man is sure that he may not, at one Time or other, have Occasion to claim the Benefit of this Act, it is thought proper to subjoin some few Observations, in order to reduce the Substance of the whole within the Reach of the meanest Capacity.

*Anno*



*Anno Tricesimo Primo* CAROLI II. Regis.

An Act for the better securing the LIBERTY  
of the SUBJECT, and for the Prevention  
of Imprisonments beyond the Seas; com-  
monly called the

## HABEAS CORPUS ACT.

**W**HEREAS great Delays have been used  
by Sheriffs, Goalers, and other Officers  
to whose Custody any of the King's Subjects  
have been committed, for criminal, or supposed  
criminal Matters, in making Return of Writs  
of *Habeas Corpus* to them directed, by standing  
out an *Alias* and *Pluries, Habeas Corpus*, and  
sometimes more, and by other Shifts, to avoid  
their yielding Obedience to such Writs, contrary  
to their Duty, and the known Laws of the Land,  
whereby many of the King's Subjects have been,  
and hereafter may be long detained in Prison,  
in such Cases where by Law they are bailable, to  
their great Charges and Vexation.

II. For the Prevention whereof, and the more  
speedy Relief of all Persons imprisoned for any  
such criminal, or supposed criminal Matters, Be  
it enacted by the King's most excellent Majesty,  
by and with the Advice and Consent of the  
Lords

Lords spiritual and temporal, and Commons in this present Parliament assembled; and by the Authority thereof, That whensoever any Person or Persons shall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Goaler, Minister or other Person whatsoever, for any Person in his or their Custody; and the said Writ shall be served upon the said Officer, or left at the Goal or Prison with any of the Under-Officers, Under-Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers, &c. shall within three Days after the Service thereof, as aforesaid (unless the Commitment aforesaid were for Treason or Felony, plainly and specially expressed in the Warrant of Commitment) upon Payment or Tender of the Charges of bringing the said Prisoner to be ascertained by the Judge or Court that awarded the same, and endorsed upon the said Writ, not exceeding Twelve-pence *per* Mile, and upon Security given by his own Bond to pay the Charges of carrying back the Prisoner, if he shall be remanded by the Court or Judge, to which he shall be brought, according to the true Intent of this present Act, and that he will not make any Escape by the Way, make Return of such Writ, and bring, or cause to be brought the Body of the Party so committed or restrained, unto, or before the Lord Chancellor, or Lord Keeper of the Great Seal of *England*, for the time being, or the Judges or Barons of the said Court from whence the said Writs shall issue, or unto and before

before such other Person or Persons before whom the said Writ is made returnable, according to the Command thereof. And shall then likewise certify the true Cases of his Detainer or Imprisonment, unless the Commitment of the said Party be in any Place beyond the Distance of twenty Miles from the Place or Places where such Court or Person is or shall be residing; and if beyond the Distance of twenty Miles, and not above one hundred Miles, then within the Space of ten Days; and if beyond the Distance of one hundred Miles, then within the Space of twenty Days after such the Delivery aforesaid, and not longer.

III. And to the Intent that no Sheriff, Goaler or other Officer, may pretend Ignorance of the Import of any such Writ, Be it enacted by the Authority aforesaid, That all such Writs shall be marked in this Manner, *Per Statutum Tricesima primo Caroli Secundi Regis*, and shall be signed by the Person that awards the same; And if any Person or Persons shall be, or stand committed or detained as aforesaid, for any Crime unless for Felony or Treason, plainly expressed in the Warrant of Commitment, in the Vacation-time, and out of Term, it shall and may be lawful to and for the Person or Persons so committed or detained (other than Persons convict, or in execution) by legal Process, or any one on his or their Behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his  
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Majesty's Justices, either of the one Bench or of the other, or the Barons of the Exchequer of the Degree of the Coif; and the said Lord Chancellor, &c. or any of them, upon View of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwise upon Oath made, that such Copy or Copies were denied to be given by such Person or Persons in whose Custody the Prisoner or Prisoners is or are detained, are hereby authorized and required, upon Request made in writing by such Person or Persons, or any on his, her, or their Behalf, attested and subscribed by two Witnesses who were present at the Delivery of the same, to award and grant an *Habeas Corpus* under the Seal of such Court whereof he shall then be one of the Judges, to be directed to the Officer or Officers in whose Custody the Party so committed or detained shall be, returnable *immediate* before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron of the Degree of the Coif of any of the said Courts; and upon Service thereof as aforesaid, the Officer or Officers, his or their Under-officer or Under-officers, Under-keeper or Under-keepers, or Deputy in whose Custody the Party is so committed or detained, shall within the Times respectively before limited, bring such Prisoner or Prisoners before the said Lord Chancellor, &c. or one of them, before whom the said Writ is made returnable, and in case of his Absence, before any other of them, with  
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the Return of such Writ, and the true Cases of the Commitment and Detainer; and thereupon within two Days after the Party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such Justice or Baron before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more Surety or Sureties in any Sum, according to their Discretions, having Regard to the Quality of the Prisoner, and Nature of the Offence, for his or their Appearance in the Court of King's Bench the Term following, or at the next Assizes, Sessions, or general Gaol-delivery of and for such County, City, or Place where the Commitment was, or where the Offence was committed, or in such other Court where the said Offence is properly cognizable, as the Case shall require, and then shall certify the said Writ, with the Return thereof, and the said Recognizance or Recognizances, into the said Court where such Appearance is to be made, unless it shall appear unto the said Lord Chancellor, &c. that the Party so committed is detained upon a legal Process, Order, or Warrant, out of some Court that hath Jurisdiction of criminal Matters, or by some Warrant signed and sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace for such Matters or Offences for the which by the Law the Prisoner is notailable.

IV. Provided always, and be it enacted, That if any Person shall have wilfully neglected by the Space of two whole Terms after his Imprisonment, to pray a *Habeas Corpus* for his Enlargement, such Person so wilfully neglecting, shall not have any *Habeas Corpus* to be granted in Vacation-time, in pursuance of this Act.

V. And be it further enacted by the Authority aforesaid, that if any Officer or Officers, his or their under Officer or under Officers, under Keeper or under Keepers, or Deputy, shall neglect or refuse to make the Returns aforesaid, or to bring the Body or Bodies of the Prisoner or Prisoners according to the Command of the said Writ, within the respective Times aforesaid, or upon demand made by the Prisoner or Person in his Behalf, shall refuse to deliver, or within the space of six Hours after demand, shall not deliver to the Person so demanding, a true Copy of the Warrant or Warrants of Commitment and Detainer of such Prisoner, which he and they are hereby required to deliver accordingly, all and every the Head Goalers and Keepers of such Prisons, and such other Person in whose Custody the Prisoner shall be detained, shall for the first Offence forfeit to the Prisoner or Party grieved, the Sum of one hundred Pounds, and for the second Offence, the Sum of two hundred Pounds, and shall and is hereby made incapable to hold or execute his said Office; the said Penalties to be recovered by the Prisoner or Party grieved, his  
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Executors or Administrators, against such Offender, his Executors or Administrators; by any Action of Debt, Suit, Bill, Plaint, or Information, in any of the King's Courts at *Westminster*, wherein no *Essoign*, Protection, Privilege, Injunction, Wager of Law, or Stay of Prosecution by *Non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one *Imparlan*ce; and any Recovery or Judgment at the Suit of any Party grieved, shall be a sufficient Conviction for the first Offence; and any after Recovery or Judgment at the Suit of a Party grieved for any Offence, after the first Judgment, shall be a sufficient Conviction to bring the Officers or Person within the said Penalty for the second Offence.

VI. And for the Prevention of unjust Vexation by reiterated Commitments for the same Offence, Be it enacted by the Authority aforesaid, that no Person or Persons which shall be delivered or set at large upon any *Habeas Corpus*, shall at any Time hereafter be again imprisoned or committed for the same Offence, by any Person or Persons whatsoever, other than by the legal Order and Process of such Court wherein he or they shall be bound by Recognizance to appear, or other Court having Jurisdiction of the Cause; and if any other Person or Persons shall knowingly, contrary to this Act, recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same Offence, or pretended Offence, any

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Person or Persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the Prisoner or Party grieved, the Sum of five hundred Pounds, any colourable Pretence or Variation in the Warrant or Warrants of Commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, That if any Person or Persons shall be committed for high Treason or Felony, plainly and specially expressed in the Warrant of Commitment, upon his Prayer or Petition in open Court the first Week of the Term, or first Day of the Sessions of *Oyer and Terminer*, or general Gaol-delivery, to be brought to his Trial, shall not be indicted some time in the next Term, Sessions of *Oyer and Terminer*, or general Gaol-delivery after such Commitment, it shall and may be lawful to and for the Judges of the Court of King's Bench, and Justices of *Oyer and Terminer*, or general Gaol-delivery, and they are hereby required upon Motion to them made in open Court the last Day of the Term, Sessions or Gaol-delivery, either by the Prisoner, or any one in his Behalf, to set at liberty the Prisoner upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions, or general Gaol-delivery; And if any Person or Persons committed as aforesaid, upon his Prayer or Petition in open Court the first Week of the Term,

Term, or first Day of the Sessions of *Oyer and Terminer*, and general Gaol-delivery, to be brought to his Trial, shall not be indicted and tried the second Term, Sessions of *Oyer and Terminer*, or general Gaol delivery after his Commitment, or upon his Trial shall be acquitted, he shall be discharged from his Imprisonment.

VIII. Provided always, That nothing in this Act shall extend to discharge out of Prison any Person charged in Debt, or other Action, or with Process in any civil Cause, but that after he shall be discharged of his Imprisonment for such his criminal Offence, he shall be kept in Custody according to the Law, for such other Suit.

IX. Provided always, and be it enacted by the Authority aforesaid, That if any Person or Persons Subjects of this Realm, shall be committed to any Prison; or in Custody of any Officer or Officers whatsoever, for any Criminal, or supposed criminal Matter, that the said Person shall not be removed from the said Prison and Custody, into the Custody of any other Officer or Officers, unless it be by *Habeas Corpus*; or some other legal Writ; or where the Prisoner is delivered to the Constable, or other inferior Officer, to carry such Prisoner to some common Gaol; or where any Person is sent by Order of any Judge of Assize, or Justice of Peace, to any common Workhouse, or House of Correction; or where

the Prisoner is removed from one Prison or Place to another within the same County, in order to his or her Trial or Discharge in due Course of Law; or in Case of sudden Fire or Infection, or other Necessity; and if any Person or Persons shall after such Commitment aforesaid, make out and sign, or countersign any Warrant or Warrants for such removal aforesaid contrary to this Act, as well he that makes or signs, or countersigns such Warrant or Warrants, as the Officer or Officers that obey or execute the same, shall suffer and incur the Pains and Forfeitures in this Act before mentioned, both for the first and second Offence respectively, to be recovered, in Manner aforesaid by the Party grieved.

X. Provided also, and be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any Prisoner, and Prisoners as aforesaid, to move and obtain his or their *Habeas Corpus* as well out of the high Court of Chancery, or Court of Exchequer, as out of the Courts of King's Bench, or Common Pleas, or either of them; and if the said Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons for the Time being, of the Degree of the Coif, of any of the Courts aforesaid, in the Vacation Time, upon View of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made that such Copy or Copies were denied as aforesaid, shall deny any Writ of *Habeas Corpus* by this Act.

Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the Prisoner or Party grieved, the Sum of five hundred Pounds, to be recovered in Manner aforesaid.

XI. And be it declared and enacted by the Authority aforesaid, That an *Habeas Corpus* according to the true Intent and Meaning of this Act, may be directed and run into any County Palatine, the Cinque Ports, or other privileged Places within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, and the Isles of *Jersey* or *Guernsey*; any Law or Usage to the contrary notwithstanding.

XII. And for preventing illegal Imprisonments in Prisons beyond the Seas, Be it further enacted by the authority aforesaid, that no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resident of this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, shall or may be sent Prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into Parts, Garrisons, Islands or Places beyond the Seas, which are, or at any Time hereafter, shall be within or without the Dominions of his Majesty, his Heirs or Successors, and that every such Imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said Subjects now is, or hereafter shall be so imprisoned, every such Person or Persons so imprisoned

shall and may for every such Imprisonment, maintain by vertue of this Act, an Action or Actions of false Imprisonment, in any of his Majesty's Courts of Record, against the Person or Persons by whom he or she shall be so committed, detained, imprisoned, sent Prisoner, or transported contrary to the true meaning of this Act, and against all or any Person or Persons that shall frame, contrive, write, seal, or counterfign any Warrant or Writing for such Commitment, Detainer, Imprisonment, or Transportation, or shall be advising, aiding or assisting in the same, or any of them; and the Plaintiff in every such Action shall have Judgment to recover his treble Costs, besides Damages; which Damages so to be given, shall not be less than five hundred Pounds; In which Action, no Delay, Stay or Stop of Proceeding, by Rule, Order, or Command, nor no Injunction, Protection, or Privilege whatsoever, nor any more then one Imparlanee shall be allowed, excepting such Rule of the Court wherein the Action shall depend, made in open Court, as shall be thought in Justice necessary, for special Cause to be expressed in the said Rule; and the Person or Persons who shall knowingly frame, contrive, write, seal, or counterfign any Warrant for such Commitment, Detainer, or Transportation; or shall so commit, detain, imprison, or transport any Person or Persons contrary to this Act, or be any Ways advising, aiding, or assisting therein, being lawfully convicted thereof, shall be disabled from thereafter



*Rights and Privileges of Englishmen, &c.* by  
forth to bear any Office of Trust or Profit within  
the said Realm of *England*, Dominion of *Wales*,  
or Town of *Berwick upon Tweed*, or any of the  
Islands, Territories or Dominions ther-unto be-  
longing, and shall incur and sustain the Pains,  
Penalties and Forfeitures limited, ordained and  
provided in and by the Statute of Provision and  
*Premunire*, made in the sixteenth Year of King  
*Richard the Second*, and be incapable of any  
Pardon from the King, his Heirs or Successors,  
of the said Forfeitures, Losses, or Disabilities,  
or any of them.

XIII. Provided always, That nothing in this  
Act extend to give Benefit to any Person who  
shall by Contract in Writing agree with any Mer-  
chant, or Owner of any Plantation, or other  
Person whatsoever, to be transported to any Parts  
beyond the Seas, and receive Earnest upon such  
Agreement, although that afterwards such Per-  
son shall renounce such Contract.

XIV. Provided always, and be it enacted,  
That if any Person or Persons lawfully convicted  
of any Felony, shall in open Court pray to be  
transported, and the Court shall think fit to leave  
him or them in Prison for that Purpose, such  
Person or Persons may be transported into any  
Parts beyond the Seas; this Act or any Thing  
therein contained to the contrary notwith-  
standing.

XV. Pro-

XV. Provided also, and be it enacted, That nothing herein contained, shall be deemed, construed, or taken to extend to the Imprisonment of any Person before the first Day of *June*, one thousand six hundred seventy and nine, or to any Thing advised, procured, or otherwise done, relating to such Imprisonment; any thing herein contained to the contrary notwithstanding.

XVI. Provided also, That if any Person or Persons at any Time resiant in this Realm, shall have committed any capital Offence in *Scotland* or *Ireland*, or any of the Islands, or foreign Plantations of the King, his Heirs or Successors, where he or she ought to be tried for such Offence, such Person or Persons may be sent to such Place, there to receive such Trial in such Manner as the same might have been used before the making of this Act; Any thing herein contained to the contrary notwithstanding.

XVII. Provided always, and be it enacted, That no Person or Persons shall be sued, impleaded, molested, or troubled for any Offence against this Act, unless the Party offending be sued or impleaded for the same within two Years at the most after such Time wherein the Offence shall be committed, in case the Party grieved shall not be then in Prison, and if he shall be in Prison, then within the Space of two Years after the Decease of the Person imprisoned, or his,  
or

or her Delivery out of Prison, which shall first happen.

XVIII. And to the Intent no Person may avoid his Trial at the Assizes, or general Goal-delivery, by procuring his Removal before the Assizes, at such Time as he cannot be brought back to receive his Trial there, Be it enacted, That after the Assizes proclaimed for that County where the Prisoner is detained, no Person shall be removed from the common Goal upon any *Habeas Corpus* granted in pursuance of this Act, but upon any such *Habeas Corpus*, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall appertain.

XIX. Provided nevertheless, That after the Assizes are ended, any Person or Persons detained, may have his or her *Habeas Corpus* according to the Direction and Intention of this Act.

XX. And be it enacted, That if any Information, Suit, or Action shall be brought or exhibited against any Person or Persons for any Offence committed or to be committed against the Form of this Law, it shall be lawful for such Defendants to plead the general Issue, that they are not guilty, or that they owe nothing, and to give such special Matter in evidence to the Jury that shall try the same, which Matter being pleaded, had been good and sufficient Matter in  
Law

Law to have discharged the said Defendant or Defendants against the said Information, Suit, or Action, and the said Matter shall be then as available to him or them, to all Intents and Purposes, as if he or they had sufficiently pleaded, set forth or alledged the same Matter in Bar or Discharge of such Information, Suit, or Action.

XXI. And because many times Persons charged with petty Treason or Felony, or as Accessaries thereunto, are committed upon Suspicion only, whereupon they areailable or not, according as the Circumstances making out that Suspicion are more or less weighty, which are best known to the Justices of Peace that committed the Persons, and have the Examinations before them, or to other Justices of the Peace in the County, Be it therefore enacted, That where any Person shall appear to be committed by any Judge or Justice of the Peace, and charged as Accessary before the Fact, to any petty Treason or Felony, or upon Suspicion thereof, or with Suspicion of petty Treason or Felony, which petty Treason or Felony shall be plainly and specially expressed in the Warrant of Commitment, that such Person shall not be removed or bailed by Virtue of this Act, or in any other Manner than they might have been before the making of this Act.



## OBSERVATIONS.

**T**HIS Act principally regardeth, either, People committed for some criminal, or supposed criminal Matter that doth not amount to Treason or Felony; or such who in their Warrant of Commitment are charged with those Crimes. The first have a Right to their *Habeas Corpus* directly, and so have the second if the particular Treason or Felony be not plainly, and specially expressed in the *Mittimus*, that is, the particular Fact must be set forth, where and when it was done; but if the Treason or Felony be plainly and specially expressed in the *Mittimus*, then the Prisoner cannot have his *Habeas Corpus*, till he has petitioned in open Court to be brought to his Trial, and then, if he is not tried within the Time limited by the Act, he shall be admitted to Bail, and if not indicted within the same Time, discharged. But if a Prisoner wilfully neglects applying for a *Habeas Corpus* two whole Terms, he may be refused it in Vacation-Time.

With what hath been already remarked, the six following Observations may be said to contain the Substance, or what is most material to be known, of this excellent Law.

1. That

1. That all Goalers are obliged, under very severe Penalties, to deliver to the Prisoner, or any Friend of his, in six Hours after demanded by either, a true Copy of the *Mittimus*.

2. Whatever the Charge be, so that it is not Treason, or Felony expressly set forth, any Person in the Prisoner's Behalf, carrying such true Copy of the Commitment to the Lord Chancellor, or to any one of the Judges, or making Oath that such a Copy was demanded and denied, the said Lord Chancellor or Judge, upon Request being made in Writing, and the Matters therein contained attested by two Witnesses, shall grant an *Habeas Corpus* or forfeit five hundred Pounds to the Prisoner.

3. The Sheriff or Goaler must carry up the Prisoner within the Time limited by the Act, or forfeit five hundred Pounds to the Prisoner, the said Prisoner paying the travelling Charges, which may be settled by the Judge that grants the Writ, and are not to exceed Twelve-pence for each Mile; and if upon return of such *Habeas Corpus*, it shall appear that the Charge is bailable as aforesaid, the Judge shall discharge the Prisoner upon Bail; not excessive Bail; but such as is agreeable to the Quality of the Person, the Nature of the Crime, and to Equity and good Conscience.

4. If a Person once so bailed, shall again be imprisoned for the same Offence, those that do it shall forfeit five hundred Pounds to the injured Prisoner.

5. This

5. This Act extends to all Places within *England*, and *Wales*, the *Town of Berwick* upon *Tweed*, *Jersey* and *Guernsey*, neither can the *Tower*, *Windsor Castle*, or any other Place of Confinement be excepted; especially as there is an Act of parliament which unites the King's Castles to the Counties wherein they stand, to prevent the ill Uses that might be made of them. (*Vide* 13 *Richard* 2.)

6. No Person shall be sent a Prisoner out of *England*, or *Wales*, into *Scotland*, *Ireland*, or any Place beyond the Seas.

As to the Proviso's, they are so very plain, that there is no manner of occasion for any Comment upon them; therefore, having done with this wholesome and necessary Law,

We shall now pass on to the Bill of Rights;— A most excellent Provision made for us at the late happy Revolution. A Time when all our Rights, as well religious as civil, were in the utmost Danger, and our Constitution upon the very Brink of Ruin, just ready to be swallowed up in the all-devouring Gulf of arbitrary Power.

Then it was that *Britons* behaved like *Britons*, and shewed themselves to be the worthy Successors of great and noble-spirited Progenitors, that would not suffer their Birth-rights to be taken from them.

Then it was, that with true Patriot Zeal, with which almost every Breast was fired, they repelled the Yoke, and rejected the Shackles that were prepared for them, letting their King, and his

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Ministers know, in the most respectful and dutiful Manner, that they would not suffer him, or them to dispense with the known Laws of the Land, by which they were resolved to be governed, and not by his Will or any other lawless Power whatsoever; and upon his continuing to exercise the most unconstitutional Acts of Power, they called in the Prince of *Orange* to their Assistance, upon which his Majesty thought proper to abdicate the Throne; which he did by leaving the Kingdom, and putting himself into the Power, and under the Direction of a foreign Prince, whose Interests and Connections were incompatible with the Welfare of this Nation.

This was the Fate of King *James* the Second, a Prince, notwithstanding what has been said, possessed of many excellent Qualities, and might have been as happy as any King that ever swayed the *British* Sceptre, had he not been carried away by the Torrent of evil Council, to dispense with the Laws of his Country, and govern by his own absolute Will.

This was the Rock on which he split, and his Greatness, at once, became like the Shadow of Death, a mere nothing: for, upon his Departure, the Throne was declared to be vacant, and the Prince and Princess of *Orange* seated thereon; but not till they had entered into the most solemn Engagement to govern according to the known Laws of the Realm, and to confirm to the People all their religious and civil Rights,



Rights, which they did by giving their Assent to this excellent Law; for on that Condition, and that only, their Highnesses were put in Possession of the Government of these Kingdoms.

Never could any Law be better contrived for the Security of both the King and the People; and it was at that Time thought to be the sure and certain Standard and Safeguard of the Right of Succession and of *English* Liberty to all Posterity; and there is no Doubt of its being such, until the Generality of the People are so wasted by Luxury, as to become an easy Prey to Venality and Corruption, and so besotted as neither to see, feel, hear, or understand.

This Act passed the royal Assent on the 16th Day of *December*, *Anno Dom.* 1689, and is intituled,

An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown.

**W**HEREAS the Lords Spiritual and Temporal, and Commons assembled at *Westminster*, lawfully, fully and freely representing all the Estates of the People of this Realm, did upon the thirteenth Day of *February* in the Year of our Lord One thousand six hundred eighty-eight, present unto their Majesties, then

called and known by the Names and Stile of *William and Mary*, Prince and Princess of *Orange*, being present in their proper Persons, a certain Declaration in Writing, made by the said Lords and Commons in the Words following; viz.

Whereas the late King *James* the Second, by the Assistance of divers evil Counsellors, Judges, and Ministers employed by him, did endeavour to subvert and extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom;

By assuming and exercising a Power of dispensing with, and suspending of Laws, and the Execution of Laws, without Consent of Parliament.

By committing and prosecuting divers worthy Prelates, for humbly petitioning to be excused from concurring to the said assumed Power.

By issuing, and causing to be executed a Commission under the Great Seal, for erecting a Court called, *The Court of Commissioners for Ecclesiastical Causes*.

By levying Money for and to the Use of the Crown by Pretence of Prerogative, for other time, and in other manner than the same was granted by Parliament.

By raising and keeping a standing Army within this Kingdom in Time of Peace, without Consent of Parliament, and quartering Soldiers contrary to Law.

By causing several good Subjects, being Protestants, to be disarmed at the same time, when  
Papists

Papists were both armed and employed, contrary to Law.

By violating the Freedom of Election of Members to serve in Parliament.

By Prosecutions in the Court of King's Bench, for Matters and Causes cognizable only in Parliament; and by divers other arbitrary and illegal Courses.

And whereas of late Years partial, corrupt, and unqualified Persons, have been returned and served on Juries in Trials, and particularly divers Jurors in Trials for High Treason, which were not Freeholders.

And excessive Bail hath been required of Persons committed in criminal Cases, to elude the Benefit of the Laws made for the Liberty of the Subjects.

And excessive Fines have been imposed.

And illegal and cruel Punishments inflicted.

And several Grants and Promises made of Fines and Forfeitures; before any Conviction or Judgment against the Persons, upon whom the same were to be levied.

All which are utterly and directly contrary to the known Laws and Statutes, and Freedom of this Realm.

And whereas the said late King *James* the Second having abdicated the Government, and the Throne being thereby vacant.

His Highness the Prince of *Orange*, (whom it hath pleased Almighty God to make the glorious Instrument of delivering this Kingdom

from Popery and arbitrary Power) did (by the Advice of the Lords spiritual and temporal, and divers principal Persons of the Commons) cause Letters to be written to the Lords spiritual and temporal; being Protestants; and other Letters to the several Counties, Cities, Universities, Boroughs, and cinque Ports, for the choosing of such Persons to represent them, as were of right to be sent to Parliament; to meet and sit at *Westminster*, upon the two and twentieth Day of *January*, in this Year One thousand six hundred eighty and eight, in order to such an Establishment, as that their Religion, Laws, and Liberties might not again be in Danger of being subverted: upon which Letters, Elections have been accordingly made;

And thereupon the said Lords spiritual and temporal, and Commons, pursuant to their respective Letters and Elections, being now assembled in a full and free representative of this Nation, taking into their most serious Consideration the best Means for attaining the Ends aforesaid; do in the first Place (as their Ancestors in like case have usually done) for the vindicating and asserting their ancient Rights and Liberties, declare;

That the pretended Power of suspending of Laws, or the Execution of Laws by regal Authority, without Consent of Parliament, is illegal.

That the pretended Power of dispensing with Laws, or the Execution of Laws by regal Authority,

thority, as it hath been assumed and exercised of late, is illegal.

That the Commission for erecting the late Court of Commissioners for ecclesiastical Causes, and all other Commissions and Courts of like nature, are illegal and pernicious.

That levying Money for or to the Use of the Crown, by Pretence of Prerogative, without Grant of Parliament, for longer time, or in other manner, then the same is or shall be granted is illegal.

That it is the Right of the Subjects to petition the King, and all Commitments and Prosecutions for such petitioning, are illegal.

That the raising or keeping a standing Army within the Kingdom in time of Peace, unless it be with Consent of Parliament, is against Law.

That the Subjects, which are Protestants may have Arms for their Defence, suitable to their Conditions, and as allowed by Law.

That Election of Members of Parliament ought to be free.

That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament.

That excessive Bail ought not to be required, nor excessive Fines imposed, nor cruel and unusual Punishments inflicted.

That Jurors ought to be duly impannelled, and returned, and Jurors which pass upon Men

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in Trials for high Treason ought to be Freeholders.

That all Grants and Promises of Fines and Forfeitures of particular Persons before Conviction, are illegal and void.

And that for Redress of all Grievances, and for the amending, strengthening, and preserving of the Laws, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Liberties; and that no Declarations, Judgments, Doings, or Proceedings, to the Prejudice of the People in any of the said Premises, ought in any wise to be drawn hereafter into Consequence or Example.

To which Demand of their Rights, they are particularly encouraged by the Declaration of his Highness the Prince of *Orange*, as being the only Means for obtaining a full Redress and Remedy therein.

Having therefore an entire Confidence, That his said Highness the Prince of *Orange* will perfect the Deliverance so far advanced by him, and will still preserve them from the Violation of their Rights, which they have here asserted, and from all other Attempts upon their Religion, Rights, and Liberties;

The said Lords spiritual and temporal, and Commons assembled at *Westminster* do resolve,

That

That *William* and *Mary*, Prince and Princess of *Orange* be, and be declared, King and Queen of *England*, *France*, and *Ireland*, and the Dominions thereunto belonging, to hold the Crown and royal Dignity of the said Kingdoms and Dominions, to them the said Prince and Princess, during their Lives, and the Life of the Survivor of them; and that the sole and full Exercise of the regal Power be only in, and executed by the said Prince of *Orange*, in the Names of the said Prince and Princess during their joint Lives; and after their Deceases, the said Crown and royal Dignity of the said Kingdoms and Dominions to be to the Heirs of the Body of the said Princess; and for Default of such Issue, to the Princess *Anne* of *Denmark*, and the Heirs of her Body; and for Default of such Issue to the Heirs of the Body of the said Prince of *Orange*.

And the Lords spiritual and temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.

And that the Oaths hereafter mentioned be taken by all Persons of whom the Oaths of Allegiance and Supremacy might be required by Law, instead of them; and that the said Oaths of Allegiance and Supremacy be abrogated.

I A. B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to their Majesties, King *William* and Queen *Mary*;

So help me God.

I A. B.

**I** A. B. do swear, That I do from my Heart abhor, detest and abjure, as impious and heretical this damnable Doctrin and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever.

And I do declare, That no foreign Prince, Person, Prelate, State or Potentate, hath, or ought to have any Jurisdiction, Power, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm;

So help me God.

Upon which their said Majesties did accept the Crown and Royal Dignity of the Kingdoms of *England, France, and Ireland*, and the Dominions thereunto belonging, according to the Resolution and Desire, of the said Lords and Commons, contained in the said Declaration.

And thereupon their Majesties were pleased, that the said Lords spiritual and temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties royal Concurrence, make effectual Provision for the Settlement of the Religion, Laws, and Liberties of this Kingdom, so that the same for the future might not be in Danger again of being subverted; to which the said Lords spiritual and temporal, and Commons, did agree and proceed to act accordingly.

Now



Now in Pursuance of the Premises, the said Lords spiritual and temporal, and Commons in Parliament assembled, for the ratifying, confirming, and establishing the said Declaration, and the Articles, Clauses, Matters, and Things therein contained, by the Force of a Law made in due Form by Authority of Parliament, do pray that it may be declared and enacted, That all and singular the Rights and Liberties asserted and claimed in the said Declaration, are the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be; And that all and every the Particulars aforesaid, shall be firmly and strictly holden and observed, as they are expressed in the said Declaration; and all Officers and Ministers whatsoever, shall serve their Majesties and their Successors, according to the same, in all Times to come.

And the said Lords spiritual and temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvellous Providence, and merciful Goodness to this Nation, to provide and preserve their said Majesties royal Persons most happily to reign over us upon the Throne of their Ancestors, for which they render unto him from the Bottom of their Hearts their humblest Thanks and Praises, do truly, firmly, assuredly, and in the Sincerity of their Hearts think, and do hereby recognize, acknowledge,

knowledge and declare, that King *James* the Second having abdicated the Government, and their Majesties having accepted the Crown and royal Dignity, as aforesaid, their said Majesties did become, were, are, and of right ought to be, by the Laws of this Realm, our Sovereign Liege Lord and Lady, King and Queen of *England*, &c. and the Dominions thereunto belonging, in and to whose princely Persons, the royal State, Crown and Dignity of the said Realms, with all Honours, &c. and Authorities to the same belonging and appertaining, are most fully, rightfully and intirely incorporated, united and annexed.

And for preventing all Questions and Divisions in this Realm, by Reason of any pretended Titles to the Crown, and for preserving a Certainty in the Succession thereof, in and upon which the Unity, Peace, Tranquility and Safety of this Nation doth, under God wholly consist and depend, the said Lords spiritual and temporal, and Commons, do beseech their Majesties, that it may be enacted, established and declared, that the Crown and regal Government of the said Kingdoms and Dominions, with all and singular the Premises thereunto belonging and appertaining, shall be and continue to their Majesties, and the Survivor of them, during their Lives, and the Life of the Survivor of them; and that the entire, perfect, and full Exercise of the regal Power and Government, be only  
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in, and executed by his Majesty, in the Names of both their Majesties during their joint Lives; and after their Deceases, the said Crown and Premises, shall be and remain to the Heirs of the Body of her Majesty; and for default of such Issue, to her Royal Highness the Princess *Anne of Denmark*, and the Heirs of her Body; and for default of such Issue, to the Heirs of the Body of his said Majesty: And thereunto the said Lords Spiritual and Temporal, and Commons, do in the Name of all the People aforesaid, most humbly and faithfully submit themselves, their Heirs and Posterities for ever; and do faithfully promise, That they will stand to, maintain and defend their said Majesties; and also the Limitation and Succession of the Crown herein specified and contained, to the utmost of their Powers, with their Lives and Estates against all Persons whatsoever, that shall attempt any thing to the contrary.

And whereas it hath been found by Experience, that it is inconsistent with the Safety and Welfare of this Protestant Kingdom, to be governed by a Popish Prince, or by any King or Queen marrying a Papist, the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, That all and every Person and Persons that is, are, or shall be reconciled to, or shall hold Communion with the See or Church of *Rome*, or shall profess the Popish Religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or  
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enjoy the Crown and Government of this Realm, and *Ireland*, and the Dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal Power, Authority, or Jurisdiction within the same; and in all and every such Case or Cases, the People of these Realms shall be, and are hereby absolved of their Allegiance; and the said Crown and Government shall from time to time descend to, and be enjoyed by such Person or Persons, being Protestants, as should have inherited and enjoyed the same, in case the said Person or Persons so reconciled, holding Communion, or professing or marrying, as aforesaid, were naturally dead.

And that every King and Queen of this Realm, who at any time hereafter shall come to and succeed in the Imperial Crown of this Kingdom, shall on the first Day of the Meeting of the first Parliament, next after his or her coming to the Crown, sitting in his or her Throne, in the House of Peers, in the Presence of the Lords and Commons therein assembled, or at his or her Coronation, before such Person or Persons who shall administer the Coronation Oath to him or her, at the time of his or her taking the said Oath, (which shall first happen) make, subscribe, and audibly repeat the Declaration mentioned in the Statute made in the thirtieth Year of the Reign of King *Charles* the Second, entitled, *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament.*

But

But if it shall happen, that such King or Queen upon his or her Succession to the Crown of this Realm, shall be under the Age of twelve Years, then every such King or Queen shall make, subscribe, and audibly repeat the said Declaration at his or her Coronation, or the first Day of the Meeting of the first Parliament, as aforesaid, which shall first happen after such King or Queen shall have attained the said Age of twelve Years.

All which, their Majesties are contented and pleased, shall be declared, enacted, and established by Authority of this present Parliament, and shall stand, remain, and be the Law of this Realm for ever; and the same are by their said Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, declared, enacted, and established accordingly.

And be it further declared and enacted by the Authority aforesaid, That from and after this present Session of Parliament, no Dispensation by *Non obstante* of or to any Statute, or any Part thereof, shall be allowed, but that the same shall be held void and of no effect, except a Dispensation be allowed of in such Statute; and except in such Cases as shall be specially provided for by one or more Bill or Bills to be passed during this present Session of Parliament.

Provided that no Charter, or Grant, or Pardon, granted before the three and twentieth Day of *October*, in the Year of our Lord One Thou-

and Six Hundred Eighty Nine, shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same Force and Effect in Law, and no other than as if this Act had never been made.

We shall now conclude with *The Act of Settlement*, which is relative to the foregoing Law, as being a further Limitation of the Succession to the Crown. That provides that no Person whatsoever, professing the Roman Catholic Religion, shall ascend the Throne of these Kingdoms; and this Law is not only a Confirmation of that, but also limits the Succession of the Crown to the Protestants of the illustrious House of *Hanover*, in which are some excellent Provisions made for the better Security of the Rights and Liberties of the Subject, and closes with a Confirmation of all those good and wholesome Laws which our brave Ancestors procured for the Safety and Well-being of the People of this Land. And as this Law is the Compact between the House of *Hanover* and the People of *Great Britain*, it ought to be most religiously observed and adhered to; and it is, I fear, much to be lamented, that the Restrictions laid upon that Family never to leave the Kingdom without Consent of Parliament, has been taken off by a Repeal of that Clause in an Act passed in the Beginning of his late Majesty's Reign. Oh! may no more Alterations be made in this Compact, and may the

**SUCCESSION IN HIS MAJESTY'S  
ROYAL**

ROYAL HOUSE, AND THE RELIGION, LAWS, RIGHTS, AND LIBERTIES OF THE SUBJECT go Hand in Hand down to all Posterity, until this Globe shall be reduced to its original Chaos, and Time shall be swallowed up in Eternity: and let all the People say *Amen*.



Anno 12 & 13 Gulielmi III. Regis.

*An ACT for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject.*

Commonly called *The Act of Settlement*.

**W**HEREAS in the first Year of the Reign of your Majesty, and of our late most gracious Sovereign Lady Queen *Mary*, &c. an Act of Parliament was made, intituled, [*An Act for declaring the Rights and Liberties of the Subject, and for settling the Succession of the Crown*] wherein it was (amongst other things) enacted, established, and declared, That the Crown and Regal Government of the Kingdoms of *England, France, and Ireland, &c.* should be and continue to your Majesty and the said late Queen, during the joint Lives of your Majesty and the said Queen, and to the Survivor: And that after the Decease of your Majesty and of the said Queen, the said Crown and Regal Government should be and remain to the Heirs of the Body of the said late Queen: And for default of such Issue, to her Royal Highness the Princess *Ann* of *Denmark,*

*mark*, and the Heirs of her Body: And for default of such Issue, to the Heirs of the Body of your Majesty. And it was thereby further enacted, That all and every Person and Persons that then were, or afterwards should be reconciled to, or shall hold Communion with the See or Church of *Rome*, or should profess the Popish Religion, or marry a Papist, should be excluded, and are by that Act made for ever incapable to inherit, possess or enjoy the Crown and Government of this Realm and *Ireland*, and the Dominions thereunto belonging, or any part of the same, or to have, use or exercise any regal Power, Authority or Jurisdiction within the same: And in all and every such Case and Cases, the People of these Realms shall be and are thereby absolved of their Allegiance: And that the said Crown and Government shall from time to time descend to and be enjoyed by such Person or Persons, being Protestants, as should have inherited and enjoyed the same in case the said Person or Persons, so reconciled, holding Communion, professing, or marrying, as aforesaid, were naturally dead. After the making of which Statute, and the Settlement therein contained, your Majesty's good Subjects, who were restored to the full and free Possession and Enjoyment of their Religion, Rights and Liberties, by the Providence of God giving Success to your Majesty's just Undertakings and unwearied Endeavours for that Purpose, had no greater temporal Felicity to hope or wish for, than to see a royal Progeny



Progeny descending from your Majesty, to whom (under God) they owe their Tranquillity, and whose Ancestors have for many Years been principal Assertors of the Reformed Religion and the Liberties of *Europe*, and from our said most gracious Sovereign Lady, whose Memory will always be precious to the Subjects of these Realms; and it having since pleased Almighty God to take away our said Sovereign Lady, and also the most hopeful Prince *William* Duke of *Gloucester*, (the only surviving Issue of her Royal Highness the Princess *Ann* of *Denmark*) to the unspeakable Grief and Sorrow of your Majesty and your said good Subjects, who under such Losses, being sensibly put in mind, that it standeth wholly in the Pleasure of Almighty God, to prolong the Lives of your Majesty, and of her Royal Highness, and to grant to your Majesty, or to her Royal Highness, such Issue as may be inheritable to the Crown and regal Government aforesaid, by the respective Limitations in the said recited Act contained, do constantly implore the divine Mercy for those Blessings; and your Majesty's said Subjects having daily Experience of your Royal Care and Concern for the present and future Welfare of these Kingdoms, and particularly recommending from your Throne a further provision to be made for the Succession of the Crown in the Protestant Line, for the Happiness of the Nation, and the Security of our Religion; and it being absolutely necessary for the Safety, Peace and Quiet of this Realm, to obviate all  
Doubts

Doubts and Contentions in the same, by reason of any pretended Titles to the Crown, and to maintain a Certainty in the Succession thereof, to which your Subjects may safely have recourse for their Protection, in case the Limitations in the said recited Act should determine: Therefore for a further Provision of the Succession of the Crown in the Protestant Line, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, do beseech your Majesty that it may be enacted and declared: And be it enacted and declared by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons, &c. and by the Authority of the same, that the most excellent Princess *Sophia*, Electress and Dutchess Dowager of *Hanover*, Daughter of the most excellent Princess *Elizabeth* late Queen of *Bobemia*, Daughter of our late Sovereign Lord King *James* the first, of happy memory, be and is hereby declared to be the next in Succession in the Protestant Line, to the Imperial Crown and Dignity of the said Realms of *England*, *France*, and *Ireland*, with the Dominions and Territories thereunto belonging, after his Majesty, and the Princess *Ann* of *Denmark*, and in default of Issue of the said Princess *Ann*, and of his Majesty respectively: And that from and after the Deceases of his said Majesty our now Sovereign Lord, and of her Royal Highness the Princess *Ann* of *Denmark*,

*mark*, and for default of Issue of the said Princess *Ann* and of his Majesty respectively, the Crown and regal Government of the said Kingdoms of *England, &c.* with the Royal State and Dignity of the said Realms, and all Honours, &c. and Authorities to the same belonging and appertaining, shall be, remain and continue to the said most excellent Princess *Sophia*, and the Heirs of her Body, being Protestants: And thereunto the said Lords Spiritual and Temporal and Commons, shall and will, in the Name of all the People of this Realm, most humbly and faithfully submit themselves, their Heirs and Posterities; and do faithfully promise, that after the Deceases of his Majesty, and her Royal Highness, and the Failure of the Heirs of their respective Bodies, to stand to, maintain and defend the said Princess *Sophia*, and the Heirs of her Body, being Protestants, according to the Limitation and Succession of the Crown in this Act specified and contained, to the utmost of their Powers, with their Lives and Estates, against all Persons whatsoever that shall attempt any thing to the contrary.

Provided always, and it is hereby enacted, that all and every Person and Persons, who shall or may take or inherit the said Crown, by virtue of the Limitation of this present Act, and is, are, or shall be reconciled to, or shall hold Communion with the See or Church of *Rome*, or shall profess the Popish Religion, or shall marry a Papist, shall be subject to such Incapacities,

cities, as in such Case or Cases are by the said recited Act provided, Enacted and Established: And that every King and Queen of this Realm, who shall come to and succeed in the Imperial Crown of this Kingdom, by Virtue of this Act, shall have the Coronation Oath administered to him, her or them, at their respective Coronations, according to the Act of Parliament made in the first year of the Reign of his Majesty, and the said late Queen *Mary*, intituled, *An Act for establishing the Coronation Oath*, and shall make, subscribe and repeat the Declaration in the Act first above recited, mentioned or referred to, in the manner and form thereby prescribed.

- And whereas it is requisite and necessary that some further Provision be made for securing our Religion, Laws and Liberties, from and after the Death of his Majesty and the Princess *Ann of Denmark*, and in Default of Issue of the Body of the said Princess, and of his Majesty respectively; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same,

“ THAT whosoever shall hereafter come to the  
 “ Possession of this Crown, shall join in  
 “ Communion with the Church of *England*, as  
 “ by Law Established.

“ That

“ That in Case the Crown and Imperial  
“ Dignity of this Realm shall hereafter come  
“ to any Person, not being a Native of this  
“ Kingdom of *England*, this Nation be not  
“ obliged to engage in any War for the Defence  
“ of any Dominions or Territories which do not  
“ belong to the Crown of *England*, without  
“ the consent of Parliament.

“ That no Person who shall hereafter come to  
“ the Possession of this Crown, shall go out of  
“ the Dominions of *England, Scotland, or Ireland*,  
“ without consent of Parliament.

“ That from and after the time that the fur-  
“ ther Limitation by this Act shall take effect,  
“ all matters and things relating to the well Go-  
“ verning of this Kingdom, which are properly  
“ cognizable in the Privy Council by the Laws  
“ and Customs of this Realm, shall be transacted  
“ there, and all Resolutions taken thereupon  
“ shall be signed by such of the Privy Council as  
“ shall advise and consent to the same.

“ That after the said Limitation shall take ef-  
“ fect, as aforesaid, no Person born out of the  
“ Kingdoms of *England, Scotland or Ireland*, or  
“ the Dominions thereunto belonging (although  
“ he be Naturalized or made a Denizen, (except  
“ such as are born of *English* Parents) shall be  
“ capable to be of the Privy Council, or a Mem-  
“ ber of either House of Parliament, or to enjoy  
“ any Office or Place of Trust, either Civil or Mi-  
“ litary, or to have any grant of Lands, Tene-  
“ ments

“ ments or Hereditaments from the Crown to  
 “ himself, or to any other, or others in Trust  
 “ for him.

“ That no Person who has an Office or Place  
 “ of Profit under the King, or receives a Pen-  
 “ sion from the Crown, shall be capable of  
 “ serving as a Member of the House of Com-  
 “ mons.

“ That after the said Limitation shall take ef-  
 “ fect, as aforesaid, Judges Commissions be  
 “ made *Quam diu se bene Gesserint*, and their  
 “ Salaries ascertained and established: but upon  
 “ the Address of both Houses of Parliament, it  
 “ may be lawful to remove them.

“ That no Pardon under the great Seal of *Eng-*  
 “ *land*, be pleadable to an Impeachment by the  
 “ Commons in Parliament.”

And whereas the Laws of *England* are the Birthright of the People thereof, and all the Kings and Queens who shall ascend the Throne of this Realm, ought to administer the Government of the same according to the said Laws, and all their Officers and Ministers ought to serve them respectively according the same: The said Lords Spiritual and Temporal, and Commons do therefore further humbly pray, that all the Laws and Statutes of this Realm for securing the established Religion, and the Rights and Liberties of the People thereof, and all other Laws and Statutes of the same, now in force, may be ratified and confirmed; and the same are by his Majesty, by  
 and

and with the advice and consent of the said Lords Spiritual and Temporal, and Commons, and by Authority of the same, Ratified and Confirmed accordingly.



In order to make this Treatise as useful as possible, a Gentleman of remarkable Integrity and Zeal for the true Interest of his Country, has presented the Editor with the following EXHORTATION.

*Gather not my Soul with Sinners, nor my Life with bloody Men,*

*In whose Hands is Mischief: And their right Hand is full of Bribes. Ps. xxvi. 9, 10. Old Version.*

*For the Congregation of Hypocrites shall be desolate, and Fire shall consume the Tabernacles of Bribery.*

*Job Chap. xv. 34.*

*To the Christian and Independent CLERGY, The GENTRY, FREEHOLDERS, and other ELECTORS of MEMBERS to serve in PARLIAMENT for Great Britain.*

GENTLEMEN,

**U**PON your virtue and firmness, chiefly depend the Liberties and Happiness of you and your Posterity,

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If

If you honestly and vigorously exert yourselves upon all future elections of the representative Body of the People of *Great Britain*, you may, by the Blessing of God, who has so often stretched forth his Almighty Arm for the Preservation of this Land, recover your Country, even from the brink of ruin upon which it stands at this melancholy *Æra*,

But if, on the contrary, some of you shall be deluded by Bribes, to Elect the shameless Minions and Slaves of a Ministry; and if they who shall preserve their hands clean from Corruption, shall neglect to exert themselves in their several stations, to the utmost of their abilities, against the choice of such abandoned Tools; you have nothing to expect, but the most abject Slavery, Poverty and Oppression. The execrable Creatures, who purchase your Votes, may conclude they have a right to Trade in your Lives, Liberties and Properties: But whether they will really think they have that right or no, they will certainly make no scruple to sell you to their Corruptors. — If ever this should be the Case, *Britain* will be deprived of all her advantages as an Island, as well as of all the Blessings of her Constitution: For the Ministry who shall be profligate enough to pack a House of Commons by Bribery and Corruption, and keep the Members of it in Pay and Dependency, must have views, quite foreign to the Liberties of the People, and the National Interest and Glory: Since an able and virtuous Ministry, — Lovers of their Country, —

faithful



faithful Servants of their Prince,—and zealous and active for the welfare of both, will have no occasion to have recourse to a *pack'd* and *venal* House of Commons; but will despise such mean and dishonorable Acts, or rather Tricks and Shifts of Government, wholly relying on the Aid and Support of a Disinterested, Honest, and Free chosen Representative of the Kingdom.

But a Ministry *Ignorant* and *Weak*, and in all respects, except Sense and Courage, like *Catiline*, Ambitious—Self-interested and Self-willed;—Vicious, Rapacious and Profuse, must, and will, to support their Power, so destructive of the Liberties, Honour, and Interest, of their Country, be always ready, however opposite to the National Prosperity, to humour the *Inclinations*; and indulge the *Passions* of their Master, which can be done by no means so effectually, as by Corrupting you to choose for your Representatives, Infamous Tools, who will concur with all their Diabolical Schemes, and rivet the Fetters of *Britons*.

If therefore one part of you shall suffer yourselves to be bribed to the Choice of such Men; and if the rest shall be lulled into a blind and fatal security, and neglect to oppose with all their might such a Choice, you will deserve to be reduced to the most intolerable Slavery, Poverty and Oppression.—— You will deserve to see the *Bill of Rights*—The *Act of Settlement*—*Habeas Corpus Act*—and even *Magna Charta* explained away, and reduced to meer shadows and empty

names——To see the Sweat of your Brows, the Care and Industry of your Merchants and Manufacturers, and all the little Money left in the Nation transported hence, and conveyed into the Coffers of subsidiary Beggars, and lavished in a *G——n* System, to aggrandize, of all the *G——n* El——tes, the last, the meanest and most insignificant; and which from its Situation and Sterility, must for ever so continue, the Blood of *Britain* unshed, and her Treasures undrained.——To see the Trade of this Island, without which, you cannot subsist either as a Nation, or as Individuals, distressed by heavy and ruinous Duties——*neglected* and *undefended*.——Your *Mediterranean* and *East India* Trades——Your Plantations and your *American* Colonies, Rights and Possessions, left an easy Prey to *French* Encroachments, Invasions and Depredations.——To see your Properties seized, and your Birthrights violated by the Great and Powerful; your Lives exposed to false Accusations, and your Persons to arbitrary Imprisonments, heavy Fines, severe Whippings, to Pillories, Gibbets, Chains and Manacles:——To see your Judges, before whom you are to stand upon Life and Death, and before whom all Cases concerning Liberty and Property must be brought, Venal and Corrupt; the Witnesses, in all Cases of Moment to you, suborned and perjured; and the Juries, who are to decide your Fate in all Matters touching Life, Liberty and Property; Packed, Bribed and Modelled, to the iniquitous and pernicious

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ous Projects, of a weak, overbearing, wicked and detestable Ministry, alike Enemies to King and People.—To see yourselves loaded with an immense Debt, which can never be paid, and oppressed by grievous and continually increasing Taxes, to support *Foreign* Measures; to maintain *Powerful* indeed; but *Idle* Fleets, lying *useless* in their Docks, and if ordered out, improperly stationed, and destined under the conduct of those, who dare not fight, and know not how to command; and to keep on foot a large and dangerous standing Army: And you will also deserve to see under a Ministry, Diffident and Distrustful of the Zeal and Devotion of the *British* Soldiery to their Service, an Army of *Foreigners* established upon you for ever; *Russians*, — *Hessians*, — *Hanoverians* — and what not; to awe you, and cut your Throats if you murmur and complain, to seize your Possessions, when they shall be strong enough, and in the mean while to live *Idly* and *Luxuriously* upon your Labour and Industry, and to Seduce and *Ravish* your *Wives* and *Daughters*; and if they resist and struggle, to throw them behind Fires and Murder them, and those, who upon their Cries shall fly to their Assistance.

I say, you will deserve to see established upon you for ever, such an Army of *Russians* (ay, and of *Germans* too) who of all the European Nations are esteemed the most Haughty, Insolent and Immoral, and as great Strangers to Gratitude, Generosity and Humanity, as an Army of  
*Germans*

*Germans* in the Bowels of this Country. — You will likewise deserve to fall a Province to *France*, to be Hewers of Wood and Drawers of Water to *French* Slaves, and like them wear wooden Shoes. — Good God! My Countrymen, what a miserable condition will it be, to be Slaves to Slaves? And if ever this should be the case, you have nothing to expect but Popery, which you must embrace, and forsake your Religion and the Worship of the *True* God, to fall down before *Idols* and *Images* made with Mens Hands, out of Wood and Stone; for which you will be in danger of Damnation, or else be burned alive by zealous, furious and implacable Popish Priests. — To be betrayed with the Concurrence of R——t R——d A——b——rs of Heaven, into the Hands of Blaspheming, Rapacious, Malignant, Merciless, Vindictive, and Outrageous *Jews*; whose abominable Tenets oblige them to Murder and Extirpate ALL, without distinction of Age or Sex, who own the SAVIOUR of Mankind; whilst the Body of the Clergy look tamely on with mute Tongues and idle Pens. — You will further deserve to see, during the Approach of these dreadful Calamities, all Posts of Honour and Profit in the State, Civil, Military, Naval, and, I had almost said, Ecclesiastical, filled up with Buffoons, Flatterers and Parasites, Pimps, Fiddlers, Sodomites, and Catamites, and when the measure of your Iniquity shall be full, to be, through the just Vengeance of an offended God, swallowed by an Earthquake, or consumed  
in

in Storms of Fire and Brimstone, like the sinful inhabitants of *Sodom* and *Gomerrah*.

All the foregoing Evils and Calamities you will certainly deserve, if upon the Elections of your Representatives to serve in Parliament, one part of you shall foolishly and madly take the Golden Bait of Bribery and Corruption, whilst the uncorrupt Electors, shall almost as scandalously, neglect to oppose so fatal a Practice.

Let me then first apply to you, who are the Poor and Indigent part of the Electors; and let me ask you, will even you, necessitous as you may be, expose your Country and yourselves, to the hazard of such intolerable Miseries, for so inconsiderable a Temptation, as the sum which may be offered to each of you, for the purchase of the Lives, Liberties and Properties, and for the Trade and Glory of your Country?—The Money that may possibly be distributed amongst you, upon so iniquitous an Occasion, I dare say, will not amount, upon an average, to more than ten Guineas a Man—Will this be an advantage to you? No: It will be a disadvantage: For there is scarce a Man of you, whose daily Labour can be estimated at less than *One Shilling* a Day, which for the working Days will amount in the whole to 15l. 13s.—Six Months at least before a general Election, no Work is done, so we will say, for 156 Days and a half, so many *Shillings* must be deducted from the above sum, the amount of a Year's Labour, which will amount to 7l. 16s. 6d, and while the Money you sell  
your

your Votes for lasts, after an Election, through the habit of Idleness and Drunkenness before, you will spend at least, three Months of that half Year in Alehouses; so that we may fairly deduct for that three Months, Ninety Days out of your Labour, which at a *Shilling* each Day will amount to 4l. 10s.—which being added to the above 7l. 16s. 6d, will make your Loss of Labour in an Election Year amount to 12l. 6s. 6d which being deducted from 15l. 13s.—which you would have gained by an honest Industry in the whole Year; there will remain gained by Labour that Year only 3l. 6s. 6d, to which if you add for a Bribe 10l. 10s.—Your Gain in the whole Year will be no more than 13l. 16s. 6d, which being deducted from the Gain of a whole Year's honest Industry, which will, as is said before, be 15l. 13s.— You will be Losers upon the whole in an Election Year 11. 16s. 6d, during three or four Months whereof, while you are squandering your Time and Money in Alehouses, your poor miserable Wives and Children at home, will go half Naked and half Famished.

		£ s. d.
	Gained by Labour, only	3 6 6
	Do. By a Bribe ———	10 10 0
		—————
One Year's	Total Gained — —	13 16 6
Labour is 15l. 13s.	By Balance, being so much	
	Lost by an Election — —	11 16 6
		—————
		15 13 0
		—————

So

So that instead of clearing 10l. 10s. by Bribery, you will be out of Pocket 1l. 16s. 6d. and contribute so much towards entailing Slavery, and all the Miseries I have recited, upon yourselves, and upon your Posterity; and thereby become odious in the sight of your Fellow Subjects and all honest Men.

But if what I have said has no effect upon you, for the sake of your Immortal Souls, look beyond the Grave; O foolish Wretches! do you think, that there is no God to Judge you, and no Hell to receive you? If you are Christians, you must believe that the all-just Judge of Heaven and Earth, will bring you to Judgment for your Sins; and cast you into that Hell of Eternal Fire and Brimstone, the exquisite Torments whereof are inexpressible and inconceivable, and where you will not find one drop of Water to cool your Tongues.—Were you to be asked this Question,—Do you believe, that you shall be damned for Theft, Murder, Adultery or any other Crime? You would certainly answer, Yes; and you would answer right. Is it then possible, you can be so egregiously stupid, as to believe you will not be damned for selling your Country! A Crime of so extensively a mischievous and atrocious Nature, that it far surpasses in Wickedness every other Crime that can be named, Infidelity and Blasphemy only excepted.—Thrust each of you but a Finger into the flame of a Candle—Can you hold it there a single Minute? You cannot; If therefore you cannot bear

X } bear the burn of a Candle upon so small a Member, for so short a space of Time, how will your Bodies and Souls support to endless Ages, the infinitely transcending Agonies of the unquenchable Flames of Hell? Think betimes, unhappy Men! And when the vile Corruptor extends his polluted and polluting Hands to seduce you from your Honesty, and to purchase your Country's Freedom for his Masters, and your Bodies and Souls for the Prince of Darkness, with Indignation reject the base Bribe, and with Scorn spit in the Face of the base Minion.

As for You, the *Christian* and *Independent Clergy*, the *Independent Gentry* and *Freeholders* of this Country, there can be no doubt of the Integrity of your Hearts, or of your love for your Country. The only Faults, of which you can be suspected, are too great an inattention to those Matters, which are of a public Nature and general Concern; — of, permit me to say, an inexcusable Indolence and Negligence, in not exerting properly the means placed in your Hands by God, and by the Constitution, in opposition to such Measures as you disapprove, and think destructive to the Liberties, Commerce, Interest, and Honour, of this Nation. Give me leave therefore to represent to you, and I am confident, when you seriously reflect upon what I offer, you will concur with me in Sentiments, that a meer simple Innocence of Measures, ruinous and fatal in Design and Consequence, will never recommend you to the Favour of GOD, nor induce  
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the Blessings of Posterity on your Memories. For God, at that great Day appointed to judge the World, when every Man must give an account of his Actions here, and will be responsible for the whole Conduct of his Life, for what he has left undone, as well as for what he has done, will not be satisfied with simple a Innocence, and inactive Virtue. No: He expects an active Virtue, exercising itself in the constant practice of all the Duties both to God and Man, and in a strict Obedience to the positive commands of revealed, and the dictates of natural Religion: So that if through Indolence and Negligence you suffer wicked Men to sacrifice the Commerce of *Britain*, which is the support of Millions, — To ruin her Naval Power, which is her chief Strength and Defence — To trample upon her Laws, which are the Security of all that is dear and valuable to her Natives — To stain her Honour, which is her brightest Gem; and to corrupt the Electors of her future Representatives in Parliament, which must end in the subversion of all her Laws, Rights and Privileges, and in the deprivation of all her natural Advantages and Blessings; I say, if through Indolence and Negligence, you suffer wicked Men to commit such Crimes, without opposing them in your several Stations, to the utmost of your Abilities, by a vigorous Application of those means, which the Goodness of God, and the Virtue of your Forefathers have put into your Hands; though you may plead your Innocence,

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so far, as not having been partakers of other Mens Sins, by an actual commission of them, yet instead of a reward for your Innocence, expect those Punishments assigned for the Sins of Omission; of Omission of those Duties, by the practice of which, you may preserve your Country from the insupportable Miseries of Servitude.

Awake, Awake, my dear Countrymen, from the Lethargy which benumbs your Senses, and let me intreat you to oppose the Hydra Bribery, the Founder of Slavery and arbitrary Power, with the most active Zeal.—Let the Christian and Independent Clergy, the Independent Gentry and Freeholders, with all their Friends and Tenants, before all Elections of Members of Parliament, flock in Shoals into the several Cities and Boroughs in their respective Counties; there let them declare the Crime, and shew the dreadful Consequences of Bribery and Corruption to the poor indigent Voters.—Tell them plainly, that whoever takes, or is suspected on good grounds of taking a Bribe for his Vote, shall never receive a single Farthing as a Tradesman or Labourer: Let the Landlords oblige their Tenants to carry no Corn or Cattle to a Borough notorious for Bribery, but carry the Markets to other places.—If you cannot persuade—Starve the Rascals into Honesty. And, above all, let the Christian and Independent Clergy, thunder from the Pulpit against Corruption, and set before their venal Eyes all the Terrors of Hell.

And

And now I will beg a Word or two to the Clergy in general: And let me ask you, Reverend Pastors of Christ's Flock, a few very plain and free Questions.

That Bribery and Corruption are no Strangers in this Country, is very evident, both from the several Laws made by the Legislature to suppress it, and by the many Petitions that have been presented to several Houses of Commons, complaining of undue Elections and Returns; in most of which Bribery and Corruption are Allegations against both the Electors and returning Officers.—That many Members have been Ejected those Houses of Commons, and returning Officers punished upon Proofs of those Allegations; that even some Boroughs have been Disfranchised, and others in danger of being so, for Bribery and Corruption, and that the first Laws made against Bribery and Corruption, and to secure the freedom of Elections of Parliaments, and of the People, are of no late Date, are notorious Facts, and plainly prove that the Monster has many Years since gained a footing in this Island: And if so, pray give me leave to ask you, how it comes to pass, that you Gentlemen, who bear the Commission of the Almighty King and Lord of the Universe, to preach the Gospel of Christ, to inculcate Principles of Religion and Morality, to recommend Virtue, and to discourage and decry Wickedness and Vice, have all this while, (some few excepted) confined your Pulpit Oratory to the lesser Sins of Men, and have

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passed over this crying Sin in silence? The Degrees of Sins are proportioned by the extensiveness of the Injury and Mischief they bring upon Mankind. Is not Cheating, Theft, Covetousness, Drunkenness, Lying, Fornication, Adultery, forbidden by the Laws of God, because they are injurious to Individuals? If therefore, for this Reason, for this one at least, these Sins are forbidden, can you be so silly as to believe that Bribery, which exceeds all these Crimes, because far more injurious in its Consequences, is not still more abominable in the Sight of God, whose Eyes are purer than to behold Iniquity? Is not the Sin of Bribery and Corruption of the most dangerous Tendency to the Lives, Liberties and Properties of the Subject, and to every National Interest? Nay, is it not of the most dangerous Tendency even to the Christian Religion? Was our blessed Saviour never likely to be dethroned in this Province of his universal Kingdom? Do not the Precepts of Christ and his Apostles forbid one Person to injure another? Can it then be agreeable to his beneficent Will, that one or a few should injure, nay, destroy nine or ten Millions of his Creatures? Why then are you so silent against this flagrant and pernicious Sin? Why do you forbear to *blow the Trumpet in Sion, to cry aloud and spare not?* Have you no Bowels of Compassion? Can you look unconcernedly on, and behold so many of your poor unhappy fellow Creatures, the Flocks of your divine Master committed to your peculiar and immediate

mediate Care, stand, tainted with Bribery and Corruption, upon the Brink of Hell, ready to plunge into a double Portion of Damnation, first, for Bribery and Corruption, secondly, for Perjury, the Consequence of that Bribery and Corruption ; and not reach out a friendly Hand, to save their immortal Souls from everlasting Perdition ? What dismal Apprehensions must sieze your Consciences in the Hour of Death, and what dreadful Confusion fill your Faces in the Day of Judgment, when you shall reflect, too late, that these unfortunate Wretches will owe their lamentable Condition, to the Omission of your Duty, in so important a Point of your sacred Function ; and perhaps will urge in their Defence at the last Day, that Omission, before the impartial and righteous Judge of the World ? Can you imagine, and preach to others, that Sins of Omission are Damnable, and yet fail yourselves in the Discharge of your Duty, in a Matter so essential to the temporal and eternal Welfare of Mankind ? Is it consonant to the Impartiality of the all-righteous God, to convict the Laity and acquit the Clergy for the same Offence ? Do you consider, what must be the Consequences to Religion, to Morality, and to Mankind, if you neglect to enforce your Precepts and Doctrines by your own Practice and Examples ? To what can we impute it, that we hear so little from the Pulpit upon this Subject ? Does the Power of the Great intimidate you ? Why should it ? Will you not preach against Bribery and Corruption,

with the Laws of the Land, as well as the Laws of God on your side? The Apostles feared nothing in the Discharge of their Duty.—Will you say, that to explode this Sin, and warn Men against it, is a Stumbling-block in the Road to Preferment? The Apostles were influenced by no worldly Considerations, they only sought the Glory of God, and your great Master, the Oracle of Truth expressly tells you, the Service of God and Mammon are incompatible. Is there any Exception of this Branch of your Duty, any private Instruction to omit it, in your Commission? If there is, produce it: I believe your Commission is the Bible, I have read the Scriptures, I can find no such Exception, no such Instruction there. Can you possibly forget the Assertion of the *Psalmist*, “ Verily there is a Reward for the Righteous, doubtless there is a God that judgeth the Earth.” If you do remember this, and if you do really believe it, it is scarce possible but you must at the same Time believe, that if you risk the Salvation of your Flocks, by neglecting to warn them against this foul and abominable Sin, the Furnace will for you be rendered seven times hotter.—GOD FORGIVE THE CLERGY.

But I have not yet done, something more if you please.

Do the Hearts of none of you *Faint* within you, when you read or hear the Exhortation at the Celebration of the Holy Sacrament? *viz.*—  
 “ Dearly beloved Brethren in the Lord, ye that  
 “ mind to come to the Holy Communion of  
 “ the

“ the Body and Blood of our Saviour Christ,  
“ must consider how St *Paul* exhorteth all Per-  
“ sons diligently to try and examine them-  
“ selves before they presume to eat of that Bread,  
“ and drink of that Cup: For as the Benefit is  
“ great, if with a true penitent Heart we receive  
“ that Holy Sacrament (for then we spiritually  
“ eat the Flesh of Christ, and drink his Blood;  
“ Then we shall dwell in Christ, and Christ in us)  
“ so is the Danger great if we receive the same  
“ unworthily; for then we are guilty of the  
“ Body and Blood of Christ our Saviour, we  
“ eat and drink our own Damnation, we kindle  
“ God’s Wrath against us, we provoke him to  
“ plague us with divers Diseases and sundry  
“ Kinds of Death.—Judge therefore your-  
“ selves, Brethren, that you be not judged of  
“ the Lord. Repent you truly of your past  
“ Sins,” (observe, Sins in general, Sins of Omis-  
“ sion to be sure as well as of Commission.—This  
“ certainly was the sense of the Church, when this  
“ Exhortation was composed, and when *eminently*  
“ *Learned* and truly pious Divines wore Mitres  
“ and Lawn Sleeves) “ have a lively and stedfast  
“ Faith in Christ our Saviour; amend your  
“ Lives” (that is, not by forsaking Sins of Com-  
“ mission only, but Sins of Omission likewise; by  
“ an active Principle, urging us on to the Practice  
“ and Discharge of all those Offices and Duties, the  
“ Performance of which we have neglected and  
“ omitted) “ and be in perfect Charity with all  
“ Men” (perfect Charity with all Men, cannot be

here understood in a confined Sense, limited to a Prohibition of Hatred and Malice, or to any one Breach of Charity; but in the greatest Latitude, an universal Charity, manifesting itself by Love and good Works, and by the Practice of every Virtue; because Mankind must be benefited, in some Degree, more or less, by every instance of Love, by every good Work, and by the Practice of every Virtue. To this Benefit the whole human Species, have one common Claim, and an *indefeasible*, hereditary Right, by the Laws of GOD, of Nature, and of Man, which Right they cannot be deprived of, (without a Violation of all those sacred Laws.) “So shall ye  
“ be meet Partakers of those holy Mysteries;” that is, upon the above Conditions.

I need not repeat the rest of this excellent Exhortation.

If then there is any *one amongst you*, Gentlemen of the Clergy, who has suffered this *egregious* and *all-destroying* Sin of Bribery and Corruption, to gain such footing in this Country, as it is universally believed to have gained, without exerting all his Faculties to root it up; I say, — I do ask that *unhappy* Man, let his *Rank* in the Church be whatever it will, who has been so blameably and inexcuseably *negligent* in the Discharge of his Duty in this particular, whether when he reads or hears, those emphatical and tremendous Words in the above most solemn and awful Exhortation, his Heart does not *Faint* within him? And I do farther ask him, if he does *examine* himself



self with the great strictness therein required; how it is possible that so vile and fatal a Sin of Omission can lie undiscovered *rankling* in his Heart? And if he does discover it, and yet contents himself only with taking the *Mote* out of his *Brother's* Eyes, and leaves this enormous *Beam* of Bribery and Corruption in his *Brother's*, and this as enormous *Beam* of Omission (in not warning him against it) in his *own* Eye, I say,——I do ask that *unhappy* Man, whether at that heavenly Feast of infinite Grace and Mercy, when those holy Symbols of the Body and Blood of Christ our Saviour, pass his Lips, his *own* Blood does not shudder,——His Tongue falter,——His whole frame tremble, and his Knees knock together? And if he does not *examine* himself thoroughly, I do moreover ask him, whether he can possibly be a *meet* Partaker of those holy Mysteries? And also if he does not repent and amend, that is, *alter* the whole conduct of his Life, and diligently and faithfully perform all the Duties he owes to God and Man, whether he will, or can possibly be a *meet* Partaker of them? ——Whether, under such melancholly Circumstances, it will not be the highest Presumption in such an one to approach the Lord's Table; and whether he will not, by so *unworthy* a Participation of the holy Eucharist, be “guilty of the Body and Blood of Christ our Saviour, and eat and drink his own Damnation, not considering the Lord's Body; kindle GOD's Wrath against him,

him, and provoke him (God) to plague him with divers Diseases, and sundry Kinds of Death?"

Pardon me, Gentlemen, that I deal so very plainly with you. It is not from Spleen or Rancour against the *Cloth* that it proceeds.— I assure you, upon the Word of a Christian, that I most highly respect and honour the most venerable and sacred Order, who bear the Commission of the Redeemer of the World, to preach Peace and Good-will to Men,—To guide them into the Paths of Religion and Virtue, Sincerity, Honesty and Truth,——To lash Immorality and Vice, and pronounce eternal Happiness to the Just, and eternal Misery to the Wicked.—— These are Matters of the highest Consequence to Mankind, and deserve our most serious Attention, which cannot be duly given by those who do not duly revere the Order, and the Members of that Order, when they demean themselves like Christians, as well as *profess* themselves such, and maintain the Dignity of their high and sacred Office, by a diligent and punctual, pious and zealous Execution of the divine Commission, deserve the utmost Respect, and the most tender, affectionate, and friendly Treatment: And for my own Part, I can with the strictest Veracity affirm, that whenever I have had the good Fortune to *stumble* upon a truly religious and pious Clergyman, who discharges the high trust committed to him conscientiously, and in the Manner he ought; and who by the general Tenor of his Life, proves himself to be a Pleaser of God  
rather

rather than a *Pleaser* of Men, I do to the utmost of my Power behave towards him, so, as I have just now declared, such worthy Clergymen deserve to be treated.

And now, Gentlemen, having frankly told you from what my freedom with you does not proceed, I will as frankly tell you from what it does.

It proceeds then, from a most compassionate Charity for the immortal Souls of those of you who have neglected to warn and reclaim, by every Method you possibly could, those *miserable* Wretches, who are *immersed* in the Sin of Bribery and Corruption, and who are running headlong to Hell and Destruction; and bringing, in Consequence of it, upon this Country, Slavery and every species of Misery, that it is possible to name or think of.

And it likewise proceeds from a most sincere Love to my Country, and a most hearty Concern for her *present ruinous* Condition: A Condition, which, I wish I could with Certainty say, does not too much resemble that of the unhappy *Britons*, who called in the *Germans* to fight their Battles, and defend them from their Enemies the *Picts* and *Scots*; and of whom *Milton* writes, quoting the Authority of *Gildas*, “ But Wantonness and Luxury, the wonted companions of Plenty, grew up as fast, and with them, if *Gildas* deserves belief, all other Vices incident to human Corruption. That which he notes especially to be the chief *perverting* of all Good “ in

“ in the Land, and so continued in his Days,  
 “ was the *hatred* of *Truth*, and all such as *durst*  
 “ appear to *Vindicate* and *Maintain* it. Against  
 “ them, as against the only Disturbers, all the  
 “ *Malice* of the Land was bent. Lies and Fal-  
 “ sities, and *such* as could best *invent* them, were  
 “ only in request. Evil was *embraced* for Good.  
 “ —Wickedness *honoured* and *esteemed* as Vir-  
 “ tue, and this quality *their* Valour had against  
 “ a foreign Enemy, to be ever *backward* and  
 “ heartless.——To civil Broils eager and  
 “ prompt.——In Matters of Government and  
 “ the search of Truth, *Weak* and *Shallow*;——  
 “ In Falshood and wicked Deeds, *Pregnant* and  
 “ Industrious.——Pleasing to GOD or not pleas-  
 “ ing, with *them* weighed alike; and the *worst*  
 “ most an end was the Weightier. All things  
 “ were done *contrary* to public Welfare and  
 “ Safety, nor only by *secular* Men, for the CLER-  
 “ gy also, whose *Examples* should have *guided*  
 “ others, were as Vicious and Corrupt. Many  
 “ of *them* besotted with *continual* Drunkenness,  
 “ or swollen with *Pride* and Wilfulness, full of  
 “ *Contention*, full of *Envy*, Indiscreet, *incompetent*  
 “ Judges to determine what in the Practice of  
 “ Life, is Good or Evil, Lawful or Unlawful.”

*Milton* in another place says, citing the same  
 Authority, “ They avenge, saith he, and they  
 “ protect, not the Innocent, but the Guilty;  
 “ they Swear oft, but perjure; they wage War,  
 “ but civil and unjust War. They punish ri-  
 “ gorously them that rob by the Highway;  
 “ but

“ but those grand Robbers that sit with them  
“ at Table, they honour and reward ; they give  
“ Alms largely, but in the Face of their Alms-  
“ deeds, pile up Wickedness to a far higher  
“ Heap. They sit in the Seat of Judgment,  
“ but go seldom by the Rule of Right; neglect-  
“ ing and proudly overlooking the Modest and  
“ Harmless; but countenancing the Audaci-  
“ ous, though guilty of abominable Crimes;  
“ they stuff their Prisons, but with Men com-  
“ mitted rather by Circumvention, than any just  
“ Cause. Nothing better were the Clergy, but  
“ at the same pass or rather worse, than when  
“ the *Saxons* came first in ; unlearned, unappre-  
“ hensive, yet impudent, subtle Prowlers, Pas-  
“ tors in Name, but in deed Wolves ; intent  
“ upon all Occasions, not to feed the Flock, but  
“ to pamper and well line themselves. Not  
“ called, but seizing on the Ministry as a Trade,  
“ not as a spiritual Charge : Teaching the Peo-  
“ ple, not by sound Doctrines, but by evil Ex-  
“ ample : Usurping the Chair of *Peter*, but  
“ through the Blindness of their own worldly  
“ Lusts, they stumble upon the Seat of *Judas* :  
“ Deadly haters of Truth, broachers of Lies :  
“ Looking on the poor Christian with Eyes of  
“ Pride and Contempt ; but fawning on the  
“ wickedest rich Men without shame : Great  
“ promoters of other Mens Alms with their set  
“ Exhortations ; but themselves contributing  
“ ever least ; slightly touching the many Vices  
“ of the Age, but preaching without end their  
“ own

“ own Grievances, as done to Christ; seeking  
 “ after Preferments and Degrees in the Church,  
 “ more than after Heaven; and so gained, make it  
 “ their whole study how to keep them by any Ty-  
 “ ranny. Yet lest they should be thought things  
 “ of no use in their eminent Places, they have  
 “ their Niceties and trivial Points to keep in  
 “ awe the superstitious Multitude; but in true  
 “ saving Knowledge leave them still as Gross and  
 “ Stupid as themselves; Bunglers at the Scrip-  
 “ tures, nay forbidding and silencing them that  
 “ know; but in worldly Matters, practised and  
 “ cunning Shifters; in that only Art and Simo-  
 “ ny, great Clerks and Masters, bearing their  
 “ Heads high, but their Thoughts object and  
 “ low.” He taxes them also as Gluttonous, In-  
 “ continent, and daily Drunkards. And what  
 “ shouldst thou expect from these, poor Laity?”  
 So he goes on; “ These Beasts all Belly? Shall  
 “ these amend thee, who are themselves labori-  
 “ ous in evil Doings? Shalt thou see with their  
 “ Eyes, who see right forward nothing but  
 “ Gain? Leave them rather, as bids our Savi-  
 “ our, lest ye fall both blind-fold into the same  
 “ Perdition. Are all thus? Perhaps not all, or  
 “ not so grossly. But what availed it *Eli* to be  
 “ himself blameless, while he connived at others  
 “ that were abominable? Who of them hath been  
 “ envied for his better Life? Who of them hath  
 “ hated to consort with these, or withstood their  
 “ entering the Ministry, or endeavoured zea-  
 “ lously their casting out? Yet some of these  
 “ perhaps

“ perhaps by others are legended for great Saints.  
“ This was the State of Government, this of Religion among the *Britons*, in that long calm of Peace which the Fight at *Badon Hill* had brought forth.”

But to proceed. If this Sin of Omission, in neglecting to warn the People against the detestable Sin of Bribery and Corruption, and to reclaim them from it, by every possible Method, is nothing more than the meer *effect* of Indolence and Forgetfulness, it is surely of a very highly criminal Nature: But if any of you are drawn into it by *worldly* Motives, the Consciences of such, I think, must stand accused of the Sin of *Commission*, as well as of *Omission*: For the *Clergyman* that suffers himself to be seduced by Promises of a *Court Living*, a *Prebend*, *Canoary*, *Deanery*, or *Bishoprick*, or suffers himself to be seduced by the meer Expectation of, or View towards any of these Emoluments (for God will judge and punish the evil Intentions of Men) into a profound Silence, with respect to the crying Sin of Bribery and Corruption; or if upon *such* Motives, he shall support a *Corrupt* and *Evil* Ministry, by giving his Vote and Interest for their *ductile* Tools, at an Election of Members of Parliament, or by any other means; I dare aver, that *that* Clergyman is as *guilty* of Bribery and Corruption as any poor, illiterate, uninformed, uninstructed Wretch, who shall sell his Vote to a *Ministerial* Tool at an Election. Therefore, if you have as yet no Regard for the Honour of

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GOD,

GOD, and the Purity of the Christian Religion.—If you have no *respect* for Decency, no *thirst* for a good Name.—If, you have remaining in your Breasts no Concern—No Love for your poor, distressed native Country—If none of these Considerations can influence your Hearts, —Yet — Let the *Jeopardy* of your precious and immortal Souls, and the terrible Punishments of another Life, alarm and excite you (whose Consciencés accuse you) to turn to the Lord your God with *humble* and *contrite* Spirits, and to exert yourselves as becomes the *Dispensers* of the Gospel and *Ambassadors* of Christ. Be Vigilant and Industrious in your several Parishes, especially in the Cities and Boroughs, there “Armed in Truth and Righteousness,” and “putting on “the whole Armour of God,” face all the “Powers of Darkness;” and stand in the Gap between Hell and your deluded Flocks: Let your Pulpits ring and echo with the *beinousness* of Bribery and Corruption; reveal to the Electors, the Ruin and Misery in which that deplorable Sin will involve their Country, *themselves* and their Posterity; assure them, that the most exquisite Torments of Hell, will be the certain Consequence of their Corruption; and thunder out the most dreadful Anathemas against the *Corruptor* and the Corrupted. Nor let this suffice: Constantly visit from House to House; inforce the Doctrines of the Pulpit, by private Admonitions to each Individual; examine each of them strictly; —Observe attentively, what Im-



Impressions your Instructions leave upon the Minds of the People, and what Progress they make in Reformation, and when you find them defective, redouble the Vigour of your Endeavours, for the Salvation of their Souls, and the Preservation of your Country.

Had you, *Gentlemen*, never been defective in your Duty, in this particular, I am persuaded this fatal Vice had never arrived at its present Gigantic size, which is become a Subject of Lamentation to every good Man in these Kingdoms.

In order therefore to excite you to this diligent, and absolutely necessary Discharge of your Duty, let me exhort you, let me intreat you to view the *good Things* of this Life in a proper and true Light, and to fix a fair and just Value upon *fat Livings, fat Prebends, fat Canonries, fat Deaneries, and fatter Bishopricks*. Esteem them all as the Permissions of God, and the Appointments of the Constitution, for the Advancement of Religion and Piety, and for the Rewards of Learning and Merit, and not for the Advancement and Price of *Worldly-minded Men*. — Reflect within *yourselves*, that, when you acquire any of these Preferments, upon any other Principles than those of Christianity, and by any other Conduct than such as is consistent with her Purity, and conformable to her Precepts, you Crucify the Lord of Life afresh, and increase your own Damnation.

To pass over what you will hereby suffer in your Characters, a Consideration, which has

ever influenced the Minds and Actions of all sober, wise, and thinking Men, who have invariably thought, a good Name a Jewel of inestimable Price; I shall recommend to your most serious Consideration, how *precarious* those temporary Blessings are (if such Things can be called Blessings, which are obtained by a base Servility, by turning Godliness into Gain, or any other unchristian Means.) both in their Acquisition and Possession.

As to the former, how often are Men *baffled* in their Attempts, and disappointed in their Expectations, though founded in the *Promises* of the Great? And as to the latter, you may do well, to remember the sad-Story of the *Sordid Wretch*, mentioned in the Gospel; who rejoicing and exulting in the multitude of his Stores, resolved to pull down his Barns and build greater; but was stopped short in the full career of his Avarice and Folly, by the Voice of GOD, pronouncing this just and mortifying Sentence upon him; “Thou Fool! this Night thy Soul shall be required of thee: Then, whose shall those Things be which thou hast provided?” — Read — Mark — Learn — and inwardly Digest, and Practice this Twelfth Chapter of St *Luke*, that you be not like this Fool — to whom our Lord compares him, “That layeth up Treasures for himself, and is not Rich towards God.” — That you may not, after so many miraculous Proofs of the Divine Mission of our Saviour, deny him, by *disobeying* his Precepts and *rejecting* his Counsels,  
and

and in the End be convicted of the Sin of Blasphemy against the Holy Ghost which shall not be forgiven?

But suppose God should permit you, to remain in Possession of any of these Ideal Blessings, Twenty, Thirty, Forty, or even Fifty Years, at so dear a Purchase, as the Loss of his Favour for ever, and the Loss of the extatic Joys of Heaven, exchanged for the infinitely exquisite Anguish of those gloomy, sulphurous and fiery Regions assigned for the Wicked, can it be worth *your* whiles?—Think betimes! What is even *fifty* Years (the longest Time you can reasonably expect to keep Possession) compared to Eternity?—But were you permitted to hold *London, Winchester, Durham, York, or Canterbury*, for Myriads of Myriads of Years, — What are Myriads of Myriads of Years, when compared to the *endless* Ages of Eternity?—Far less than a single drop of Water to the vast Ocean, or the minutest particle of Matter to the IMMENSE GLOBE,

Our blessed Saviour once speaking to his Disciples, put these two questions to them,

“ For what is Man profited, if he gain the whole World and lose his own Soul? Or what shall a Man give in exchange for his Soul? ” If then the whole World is a Trifle, and no Compensation to a Man for the Loss of his Soul, which, I think, is the plain Import of the first Question; and if, when cast into Hell, he would give the whole World, and more if he had it to

give, for the exchange of his Soul; that is, to translate it from Hell to Heaven, which, I think, is the plain import of the second Question, *What a meer Trifle, — What a cheap Toy, — What a foolish Bauble, — What an empty Grandeur, — and what an inconsiderable Price is London, Winchester, Durban, York or Canterbury, to be put upon the Soul of Man? What a poor Bargain, what a silly Contract with Satan this, for the Forfeit of everlasting Bliss in the Presence of God, and to endure the Tortures of Hell to all Eternity? Eternity! — Thou dreadful Thought to the habitual, confirmed, hardened and impenitent Sinner.*

Follow therefore, I beseech you, the wholesome Counsel of your great and good Master, and, “Lay not up for *yourselves* Treasures upon Earth, where Moth and Rust do corrupt, and Thieves break through and steal;” But, “Lay up for yourselves Treasures in Heaven, where neither Moth nor Rust doth corrupt, and where Thieves do not break through and steal.” For, (says our Saviour in the next Verse) “Where your Treasure is, there will be your Heart also.” And to induce you to do so by a faithful and diligent Discharge of your Duty, he has given you his infallible Word, that your heavenly Father will give you good Things here, that is, the Necessaries and Conveniences of Life, as well as the greatest Rewards hereafter. Be then, let me request you, so *modest* as to believe, that God is wiser than the *Wiseest* of you, and that

that infinite Wisdom knows better what is fit for you than *you* yourselves know; and be so wise, as to rely upon the infallible Promise of God; who, the Apostle assures you “cannot Lye.”

Therefore be vigilant in the pastoral Office, watch carefully over Christ's Fold; lest “the Devil” (who) “as a roaring Lion walketh about seeking whom he may devour,” should seize the “Sheep committed to your Care; and that you may not incur the censure of the Prophet *Isaiah* upon the Lord's *Watchmen* in those Days. “All ye Beasts of the Field come to devour, yea, all ye Beasts of the Forest. His Watchmen are blind, they are all ignorant, they are all dumb Dogs; they cannot Bark; sleeping, lying down, loving to Slumber.—Yea, they are greedy Dogs, which can never have enough; and they are Shepherds that cannot understand. They all look to their own Way, every one for his Gain, from his Quarter.—Come ye, say they, I will fetch Wine, we will fill ourselves with strong Drink, and to Morrow shall be as this Day, and much more abundant.”

I cannot conclude this Exhortation, without paying my Compliments to our *Right Reverend* Fathers in God, in an humble Proposition or two to their *spiritual* Graces and Lordships, for the suppression of this abominable Sin of Bribery and Corruption, and for the Salvation of those poor Wretches, who involve themselves in the double Guilt of Bribery and Perjury, and for the Advancement of Religion, Morality and good Manners.

ners. And I cannot but flatter myself, from *their* Graces and Lordships *well known* Piety and holy Zeal for God's Service, and from their *well known* Love of their Country, that what I shall offer, will be intirely agreeable to them, and that they will instantly and earnestly carry it into Practice.

First then, my *very good* Lords, I humbly recommend to your Graces and Lordships *most exemplary* Piety and Zeal, that in each of your respective Dioceses, you will in your several Visitation-Charges, demonstrate to the World, that you do *believe* and *fear* the Lord your God, and that you do love him with all your Hearts, with all your Minds, with all your Souls, and with all your Strength; and that you do truly serve him by a most active and vigorous Sedulity, in your Endeavours to open the Eyes of the Blind, and Mouths of the *dumb* Watchmen, to inform the *ignorant* Watchmen, and to enlighten (as far as possible) the Minds of them, who have no Understanding, and to avert the Eyes of such as look to their *own* Way, every one for his Gain, and to strictly enjoin the Watchmen to employ their utmost Industry in their several Cures, to destroy that hideous Enemy to the spiritual and temporal Interests of Mankind, Bribery and Corruption; as well as all the lesser Sins. I press this the more, because I never heard, that your Lordships have in your Visitation-Charges, so much ~~or~~ touched upon this outrageous Sin. And indeed, my Lords, I cannot forbear thinking, that if your

*pious*

*pious* Graces and Lordships, will apply your *eminent* Learning, and *astonishing* Abilities to the Extirpation of this Sin, which as it is so abominable in the sight of Him, “ of whom ye say, “ that He is *your* GOD,” and whom your Graces and Lordships will, one Day or other, most certainly find to be so, and in the Sight of all honest Men, must be also very abominable in *your* Sights; the Effects of your *pious* Labours would be extremely salutary and successful: Especially as your *spiritual* Graces and Lordships are in Possession of a most *powerful* Specific for ecclesiastical Blindness, Dumbness and Ignorance: You have, my Lords, a vast number of very plump Benefices in your Disposals. It therefore may not be improper in your Visitation-Charges, and upon every other Opportunity, to assure your Clergy; that Learning, Virtue, sound Morals, and true Piety, and Vigilance over their respective Flocks, shall only intitle them to your Graces and Lordships Favours in the distribution of them: and that those Clergymen who discharge the holy Function best, shall have the best Preferments.

I believe, my Lords, that Man is born with innate Principles of Virtue; and with strong Affections towards, as well as with violent Passions that interfere with it; and that whenever Men deviate from the Paths of Virtue, they are generally drawn aside by some false delusory Interest or Pleasure, which shocks their Consciences at the same time they indulge their unruly Passions:

So

So that if your Graces and Lordships will but add the weight of *Interest* to your Eloquence, will prefer *none* of the Clergy, but such as shall recommend themselves by their Worth and Merit; and will severely frown upon, wherever you find him, the Hypocrite, the *Time-server*, the *ministerial* Minion and Immoral Man; I am persuaded, we shall soon with Pleasure behold a great Progress in the Reformation of Manners in this Nation, and particularly, be delivered from the merciless Jaws of that Monster, Bribery and Corruption.

And I think it must have very happy effects, if to this conduct towards your Clergy; your Graces and Lordships will seriously advise them, especially upon all future Elections, to act upon Disinterested, and truly *English* Principles; and to be influenced in giving their Votes and Interests for Members of Parliament, by no Hopes, no Promises, no Considerations, but what tend to the Glory of God and the Good of their Country; and to give their Votes and Interests for Gentlemen of the greatest Integrity and Ability; and strenuously to oppose the *Beasts* of the Field, and the *Beasts* of the Forest; that is, all corrupt, profligate and wicked Men, who will buy the Electors, in order to carry them, and this whole Nation with them to Market, and there sell them all for Slaves. Such a pastoral Care in the Fathers of the Church of *England*, would equally tend to the Security of LIBERTY, the Encouragement:



agement of COMMERCE, the Prosperity of BRITAIN, and the Promotion of RELIGION, MORALITY and PIETY.

I have now done with your Graces and Lordships Visitations, and what might prove useful in them. I shall, secondly, beg your Graces and Lordships Permissions to make you an humble Proposal much for your Graces and Lordships Honours, and very conducive to your Health and Pleasure.

And First, for the two last of these: Exercise my *very good* Lords, is allowed by the Physicians to be extremely conducive to Health, and long Life; and almost every one agrees that *traveling* is extremely pleasant; and although it may be something expensive to your Graces and Lordships, yet whatever Expences you may be at upon this Account, you will doubtless save in Physicians Fees and Apothecaries Bills.

And then for your Graces and Lordships Honours, I humbly propose, that, as the Judges, twice every Year divide themselves into Circuits, all over *England*, to distribute Justice, and enforce the Laws of the Land; so your Graces and Lordships would also divide yourselves into like Circuits, twice at least every Year, to distribute Christianity and enforce the Laws of God: and in these Circuits to Visit (at least two of you together) every Parish in the Kingdom in its turn: And if all the Parishes cannot be Visited in one Year, let those which shall not have been *blessed* with the *Light* of your Graces and Lordships Coun-

Countenances, enjoy that Blessing in the subsequent Year or Years, as expeditiously as the Nature of the Thing will admit of.

In these Annual Visitations your Graces and Lordships may send for the Minister of each Parish, and examine him first; as to his behaviour and conduct in his Parish; and inquire what Progress he has made in the Reformation of his Parishioners, and particularly with respect to this crying and destructive Sin of Bribery and Corruption. Your *Holinesses* may then call the People to the Church, where, in your episcopal Robes, and with your Mitres upon your *sacred* Heads, which will add Solemnity to your Proceedings, and infuse Veneration and Awe into the Minds of the common People, give them from your own *pious* Lips, the same ghostly Advice, which I have already recommended to the inferior Clergy to give them.

Should your *Right Reverences* put this Proposal immediately into Practice, I am confident, that by the next general Election, there will be scarce a footstep of that Monster Bribery and Corruption to be traced in this Land. Christianity would revive, Virtue and Liberty would once more rear their venerable and drooping Heads, and flourish in a new Youth.—Infidelity, Vice and Slavery would fly before them; Almighty God would shower down his choicest Blessings upon the righteous People, and upon your Graces and Lordships his *faithful Watchmen*, by whose assiduous Labours, so many Thousands of his Creatures

tures will be rescued from the Snares of Satan, and everlasting Perdition: By such a glorious Zeal for the Honour of God, the Welfare of your Country, and the Felicity of your fellow Subjects and your fellow Creatures, your Graces and Lordships would immortalize your own *great* Names, and elevate the Reputation of the Church of *England* to the Stars of Heaven; and when God shall send his pale Messenger, Death, my Lords, (for your Graces and Lordships, must Die, like other Men, and return to the Dust from whence you came,) shall pluck your Mitres from your *sacred* Heads, your merciful Redeemer shall adorn you with celestial Crowns.

Think not, my Lords, that I propose to you a very arduous and unreasonable Task. I propose nothing but what is easy and practicable; and what your Lordships know the Judges perform every Year. — They, my Lords, are not *younger*, nor *better able* to bear Fatigue than your Graces and Lordships; nor are those really useful Officers of the State better paid, and for the Generality not near so well, for the very great Trouble and laborious Duty of their Office, as your Graces and Lordships are, for the *little* Trouble and Labour annexed by the Constitution of *England* ( I don't say by the Law of God) to the Episcopal: So that in respect to the Duty of that Office, your Lordships must acknowledge that our Saviour's " Yoke is Easy and his Burden Light." It would extend these Sheets too much, to draw a Parallel between the Labour

N

of

of a venerable Judge and an *holy* Prelate —  
 Or I could draw a very striking one. I shall  
 therefore only compare the Salaries of the  
 Judges with the Revenues of the Bishops. A  
 Puisny Judge, my Lords, receives no more than  
 1500*l. per Annum*; the three Chiefs from 2500*l.*  
 to 4000*l. per Annum*. I am informed that the  
 Incomes of the poorest Sees, by the help of Com-  
 mendams, are advanced to 1500*l. per Annum*,  
 which is to the full as much as the Salary of the  
 Laborious, Pains-taking, and useful Puisney  
 Judge: And 'tis well known that many Sees  
 produce from 2000 — to 6 — or 8000*l. per*  
*Annum* (viz.) *Ely, Exeter, Chester, Salisbury,*  
*Worcester, London, Winchester, Durham, York,*  
*and Canterbury*, and perhaps some others: — I  
 say not this from a Principle of Envy; but only  
 to convince your Graces and Lordships, that  
 though you should take upon you the *additional*  
 Duty I have taken the Freedom to propose; and  
 which, though it will not be more cumbersome,  
 than the similar Duty of a Judge; yet you will  
 be as *well* requited, and many of you much *better*  
 than those necessary Officers of the State. In-  
 deed, my Lords, I am so far from *envying* you,  
 or *begrudging* you your Revenues, that I should  
 rejoice to see those of all the Bishopricks raised  
 to an equality, and not of less value than 5000*l.*  
*per Annum* more than *Canterbury*, which, with *York*  
 I would have kept at their present Value; be-  
 cause I think this would effectually *prevent* Tran-  
 slations: which in *future* Times may be productive

of much Evil both to Religion and Liberty, if *great Men* at the Helm, should *hereafter* think it proper to fortify themselves by the acquisition of a Dead Weight; and for such purpose should place in the several Sees, Men biaffed by *Avarice* and *Pride*, instead of those who shall be endowed with the excellent Qualities recommended by *St Paul* in the first Epistle to *Timothy*, Chapter iii. where the Apostle shews both what a Bishop ought to be, and what he ought not to be. In the second Verse he says, "A Bishop must be blameless, the Husband of one Wife, Vigilant, Sober, of good Behaviour, given to Hospitality, apt to Teach." In Verse 3. he says, amongst other Things, "that he must not be Greedy of filthy Lucre, not Covetous." And that a Bishop must not be proud, he clearly expresses in Verse 6: where he says, "Not a Novice, lest being lifted up with Pride, he fall into the Condemnation of the Devil." If your Graces and Lordships should wonder why I would raise the Revenues of all the Sees to a greater Value than those of Archbishopricks; I answer, that as Avarice and Ambition are predominant Passions in the Heart of Man, it is possible, that after Avarice has been well crammed, if some check be not given to Ambition, this Fiend might break loose, and allure those *holy Men*, who shall in Time succeed your Graces and Lordships, from their Duty to God and their Country, so that I think it absolutely Necessary to leave Avarice at Liberty, to combat Ambition;

tion; that the great End of *advancing* the Incomes of the Bishopricks may not be defeated.

Having, my *very good* Lords, plainly, I hope, shewn, that the Proposal I have made to your Graces and Lordships, to go Circuits all over *England*, is absolutely Necessary under the present general Degeneracy and Depravity of the People; that it would highly conduce to the Glory of God, the Salvation of Souls, the Preservation of your Country, and Advancement of your own Honours; and also that it would greatly contribute both to your Health and Pleasure; and having likewise plainly shewn, that it is both reasonable and practicable, and nothing more than what the Judges constantly do; and notwithstanding this additional, and I will say, incumbent and indispensable Duty upon your Graces and Lordships, you will, after all, be, as well, and for the most part *better* paid for your Labours in the Gospel, than those venerable and useful Sages are, for their Labours in the Law; I shall, therefore, in the next place endeavour to rouze, and animate your *pious* Right Reverences, by setting before you, the brightest, and most illustrious Patterns, that ever appeared upon Earth; And by constant and careful copying of which, your Graces and Lordships will, as far as the frailty of human Nature will permit, raise yourselves to that sublime Perfection, recommended by our Saviour, when he said, "Be ye therefore perfect, even as your Father which is in Heaven is perfect."

Consider

Consider therefore, I beseech your Graces and Lordships, how much *happier* your Condition is in this World, than was the Condition of the holy Apostles; or than that of even the Son of God himself.—The Apostles, my *very excellent* Lords, were extremely poor and necessitous Men, yet, they were never solicitous to “lay up for themselves *Treasures* upon Earth,” they were only ambitious, by a most *Faithful, Diligent, Laborious, and Dangerous* discharge of their Duty in their ministerial Callings, to lay up for themselves *Treasures*, and to secure an Interest, durable as Eternity, in HEAVEN.—In “Heaven, my Lords, were their *Treasures*, and “therefore, were their Hearts there also.”—They, my Lords, to preach the Gospel of Christ, traversed the Earth on *Foot*, even to the End of it, “Casting all their Care upon God,” who they *believed* and *knew* “Cared for them,” and subsisting themselves by the *Charity* of the primitive Christians, and exposing themselves continually to the bitterest Persecutions, either the Malice of Jews or Heathens could devise:—To Reproaches, — Imprisonments, — Whippings — Stonings, and at last finishing their glorious Courses under the most barbarous — painful, and exquisite Torments, that either the Fury of merciless Tyrants on Earth, or the Rage of infernal Spirits could contrive for Man on this side the Grave.—Your Graces and Lordships *cannot*, I am sure, *complain* of Poverty, your Purses are *very Deep*, and *very well* filled;—

The Duty of your Office is not extended to the Ends of the Earth, but limited to the *small* Region of *England*, where, *small* as it is, your Graces and Lordships are under no necessity to *tramp* on Foot, but have your Coaches and Four, and Coaches and Six, attended with *noble* Retinues, to convey you to every part of the Kingdom: Nor are your Graces and Lordships exposed, like the poor Apostles, to bitter Persecutions and most cruel Deaths——But to lead your Graces and Lordships Attention to a far brighter, and more glorious Pattern, permit me to remind you of the mean Condition to which the SON OF GOD stooped. The Place of his Nativity, *my great* Lords, was a Stable, and his first Cradle a MANGER; his divine Feet carried him over all *Judea*, doing Good, (mind that my Lords, doing Good) and “ though the Foxes have Holes, “ and the Birds of the Air have Nests, the Son “ of Man had not where to lay his Head:” And, according to some, was forced to work at *Joseph's* Trade for his daily Bread.——How different then are your Conditions, *my great, magnificent, and bappy* Lords! — Your Graces and Lordships inhabit *stately* Palaces, *richly* Furnished, wherein you sleep on *Soft* Beds of Down, and, like *wealthy Dives*, fare *sumptuously* every Day. — God grant that your Graces and Lordships latter Ends may not be like his also!——It is therefore *impossible* that when your Graces and Lordships compare your *bappy, very bappy* Conditions in this World, to the poor, mean, distressed,



treffed, wretched and forlorn Condition of the SON OF GOD, and the holy Apostles; but your *tender* and *devout* Hearts must swell high, and overflow, with the *noblest* sentiments of Gratitude, to the Fountain of all Goodness.—— It is impossible, I say, my Lords, that when you reflect upon their Indigency, and their necessitous Circumstances,——upon their wide, distant, laborious and fatiguing Travels, seldom or never lightened by any *conveniency* of Beast or Vehicle, and when, my Lords, you reflect upon *your own* vast Pomp, and abundant Plenty, upon your *great Conveniencies* and fine Accommodations for Travelling over this little Spot of the Globe; and upon the perfect Peace and Security you enjoy in your easy Labours for the Glory of God, and Salvation of Man, and compare these great Advantages and Blessings, to the indigent and necessitous Circumstances of the SON OF GOD, and the holy Apostles, and to the dreadful Dangers they were exposed to, and to the bitter Sufferings and terrible Deaths they underwent. It is surely impossible, that your Graces and Lordships can think, that you can ever do *too much*, in return to that infinitely gracious GOD, who has done so much for you, or that you can think, the *easy* Talk I have recommended to you, is *too hard* to undertake, for the great and noble Ends proposed by it; the Suppression of Atheism, Deism, of Bribery and Corruption; and all that numerous Train of Vices which has overflowed the Land, and destroyed that plentiful Crop of  
Virtue,

Virtue, which naturally springs up, and flourishes in the fertile Soil of Christianity.

Permit me, my *very pious* Lords, to mention one more particular Advantage which will accrue to Religion, from these anniversary Circuits.

**HUMILITY**, my Lords, is one of the eminent Branches of Christianity, and next to Faith, Love and Charity, is the most beautiful Feature in her lovely Face. Now; my *very humble* Lords, no Virtue appears so bright, amiable and affecting, as when dressed, in the Practice and Examples of the *best* Men and *greatest* Personages. If so, it is a great part of a Divine's Duty to display and exhibit the Virtues arrayed in the shining Practice and Examples of our blessed Saviour and the holy Apostles; that being thus adorned and set off in the clearest, brightest, most amiable and affecting Manner, they may appear with the greatest Advantages to Mankind—And if this be so, my Lords, I can see no Method, by which the fair Virtue of Humility, so strictly enjoined by the Son of God, and the Apostles, and so strongly recommended by their Practice and Examples, can be set in so clear and strong a Light, or appear to so great Advantage, as when it shall be viewed by all, in the strong Contrast of your Graces and Lordships *great Equipages*, and all the rest of your outward Pomp, State and Magnificence.

My Lords, I humbly crave your Graces and Lordships pardon, for thinking to employ so  
much

much of your Time as the Reading of these Sheets will engage ; especially as your *precious* Hours are *continually* employed in the Exercise of *Praise* and *Thanksgiving*, and the Discharge of other religious Duties : But if I did not really believe, that some new, active and very vigorous Application to the Minds of a deluded, corrupt and wicked Generation, was not absolutely necessary, to restore them to their right Senses, and to reduce them to the Paths of Religion, Virtue and Honesty ; I should have spared your Graces and Lordships, and all those to whom this Exhortation is particularly addressed, the Trouble of perusing it: Besides, my Lords, I might have *incurred* your Graces and Lordships *displeasure*, and have been *too justly* censured by you for a very *unchristian* Partiality ; in bestowing so much Pains for the precious and immortal Souls of the *inferior* Clergy, without expressing the least Concern, for the same precious and immoral Part of your GRACES and LORDSHIPS.

But to return to those, to whom these Sheets are particularly addressed.

GENTLEMEN,

It is now no time for the Indulgence of Atheism, Deism, Bribery and Corruption, and every other kind of Vice. The Stores of Destruction are opened in Heaven : — The Hour of Vengeance is arrived : — Clouds of destroying Thunder blacken thick over our impious Heads : — They have already burst over AMERICA ; How soon the Storm may sweep away that valuable Branch of our Commerce, that nursing

nursing Mother of our gallant Seamen, and support of our naval Strength and Glory, God only knows: I fear very soon. They have already burst over MINORCA:—MINORCA, the Safeguard of our Mediterranean Trade, that is to say, of our *Spanish, Italian and Turkey* Trades, and, as I think I can clearly shew, of every Branch of our Trade;—MINORCA, the Acquisition of the *British* Arms, under a great, wise, just, good and GENEROUS PRINCESS; who felt tenderly for her Subjects, engaged in no Measures, but such as she really judged were conducive to the Interest and Honour of her Kingdoms; who maintained the Honour of the *British* Flag, and the Dominion of the Seas, and made the proud, perfidious *Gaul*, fly before her VICTORIOUS ARMS, and tremble at her great Name, — MINORCA, that once bright Jewel in the Crown of *Britain*, now adorns the Crown of *France*, our antient inveterate Enemy, and sparkles on the Head of *Lewis*. — MINORCA, is now no more the Possession of *Britain*. — Yet, God be praised, BLAKENEY still lives—lives to return to the longing Arms, and desiring Eyes, of his fond Country—Lives, to accuse and to convict the vile Traytor at Home, and the scandalous Coward upon the Ocean. — Oh! BLAKENEY! valiant, wise, faithful, honest BLAKENEY! though thou hast been basely robbed and pillaged of Victory, yet thou hast gained immortal Fame. Hadst thou, like *Richlieu*, been supported, thy Victory over *French* Slaves had been easy, and far less glorious.

glorious than thy honourable Capitulation, after the last grain of Powder spent.—Thy Name, O **BLAKENEY!** is made, rare Instance, immortal by Defeat, and thy fair Honour rises from the Ruins of thy Country.—Latest Posterity, shall bless thy glorious Memory; while beggared and ruined Progenies, shall load with Infamy the Memories of the Traytors and Cowards, who combined to sacrifice Thee and *Britain* upon the Altars of Avarice, Corruption and Cowardice.—And while thou livest, **GREAT GENERAL!** Never-fading Laurels, the just Reward of thy Valour, Conduct and Fidelity, shall crown thy hoary Head, and shade thy venerable Brow.—And may thine and *Britain's* ravished Eyes, behold thy Foes and hers, for their vile Treachery, dragged to Execution, dressed and dishonoured in funeral Rosemary and the baleful Yew.

**OH! COMMERCE!**

**OH! BLAKENEY! OH! VIRTUE!**

**OH! LIBERTY!**

**OH! MY COUNTRY!**

But to return. The Clouds have, I said, already burst over *America* and *Minorca*.—The former is in imminent Danger.—The latter is lost—I fear—for ever;—and with it—the Trade of this Nation.—What other terrible Judgments God, “to whom Vengeance belongeth,” may have in Store for us, are yet hid in the unfathomable Depths of his unsearchable Counsels.—*Unhappy—wretched* **BRITAIN,** is in so deplorable a Condition, that she has no natural,

natural, no human Means left to escape total Destruction.——If she is preserved in this Day of her Calamity, it can only be by the miraculous and merciful Intervention of Providence——of that Almighty and all-gracious Being, who has so often stretched forth his all-protecting Arm in the defence of this once happy Island : ——And the only way to draw down upon us his miraculous Mercy, is, to sincerely and heartily Repent of our manifold and abominable Sins, and in all respects thoroughly to reform our Lives. —— First then, let Bribery and Corruption, the Spring and main Source of that violent Torrent of Iniquity, which bears down all before it, be instantly expelled the Land. To this great Business let every Individual give his utmost help ; and particularly let the *whole* Body of the CLERGY labour,——most assiduously labour in this good Work, and thereby endeavour to repair the Mischief brought upon this Nation in consequence of their Remissness in the Discharge of the Duties, of the ministerial Function: For I am in my Conscience convinced, that the exorbitant Growth of Bribery and Corruption, can be justly imputed to nothing else, so much, as to their great and inexcusable Remissness and Neglect of their Duty.— And whether the present melancholy State of this Country, is not the Effect of Bribery and Corruption, I leave to the impartial Judgments of others : And whether this most blameable Omission of the Clergy in not warning the People against a Crime too fatal to Religion,

gion, Liberty, Commerce, and National Honour, proceeds only from Indolence, or from Venality, or from both, I do not take upon me to determine; but however this is certain, let the Cause be what it will, the Effects to the People are the same; and the Difference only respects the Clergy: For the lazy Priest will be *Damned* for not having *improved* his Talent; the venal Priest will be *condemned* to a greater *Damnation* for the Venality and Corruption of his Heart.

I cannot conclude this Exhortation, without offering up my most hearty and fervent Prayers to Almighty God, that he will be graciously pleased to grant his Grace and holy Spirit to every Individual of this sinful Nation, to sincerely and heartily repent him of his evil Ways, and to conform himself in all Things to God's holy Laws, That he will infuse into the Hearts of all, that glorious Spirit of Virtue and Liberty, which inspired the Breasts of our great Forefathers, and which exalted the Reputation and Name of this Country, far above those of all the Nations upon Earth: That he will be graciously pleased, "to abate the Pride, assuage the Malice, and confound the Devices of our" intestine and foreign, "Enemies, and deliver us out of their Hands:" And as the Ground-work of our thorough Reformation, that he will be graciously "pleased to illuminate all Bishops, Priests and Deacons, with true Knowledge and Under-

O

“ PREACH-

“**PREACHING** and **LIVING** they may set it forth  
 “and shew it accordingly.” And “to deliver  
 “them from all the *Deceits* of the *World*, the  
 “*Flesh* and the *Devil* :” That at the second  
 Coming of Christ, “attended by the holy An-  
 gels” and surrounded with the whole Splendor  
 and Glory of Heaven, when the **LAST TRUMP**  
 shall call them forth from the dark and silent  
 Grave, *to hold up their Hands*, at that great and  
 tremendous Tribunal of the impartial and righte-  
 ous Judge; who will make no distinction of  
 Persons, and before whom the whole human  
 Race of all Professions and Denominations what-  
 soever, must appear, give an Account of their  
 whole Conduct here, and be punished to all  
 Eternity for their Sins of Omission, as well as of  
 Commission; they may escape that terrible Sen-  
 tence, Christ himself has declared he will pro-  
 nounce upon the Wicked, “Depart from me,  
*ye Cursed* into everlasting Fire, prepared for the  
 Devil and his Angels.”

And at this most **AWFUL**——**TREMENDOUS**  
 ——and **IMPARTIAL TRIBUNAL**,——“When  
 “the **LORD** himself shall descend from Heaven  
 “with a **SHOUT**, with the **VOICE** of the **ARCH-**  
 “**ANGEL**, and with the **TRUMP** of **GOD**, and  
 “the **Dead** in **CHRIST** shall rise first,”——at  
 this most **AWFUL**——**TREMENDOUS**——and  
**IMPARTIAL TRIBUNAL**, I say, must also *Arch-*  
*bishops* —— *Bishops* —— *Deans* —— *Canons* ——  
*Prebendaries* —— *Vicars* —— *Priests* —— and *Dea-*  
*cons* stand in the last **GREAT DAY**; and there,  
 then



—*then Believing*, but I hope not *Trembling*, like the “*Devils who Believe and Tremble*,” shall, according to their *Actions* in this *Life*, either *Good* or *Evil*, receive—a *JUST* and *IRREVOCABLE SENTENCE*.

And the *LORD* have *Mercy* upon their *SOULS*.

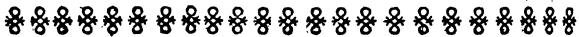
*I am,*

*GENTLEMEN,*

*Your most hearty Well-wisher  
and faithful Servant,*

*A Friend to RELIGION,  
LIBERTY, and  
PROPERTY.*





*The Security of Englishmens Lives, or the Trust; Power, and Duty of the GRAND JURIES of ENGLAND, explained according to the Fundamentals of the English GOVERNMENT, and the Declarations of the same made in Parliament by many STATUTES.*

First Printed in the Year MDCLXXXI.

**T**HE principal Ends of all Civil Government, and of human Society, were the Security of Mens Lives, Liberties and Properties, mutual Assistance and Help each unto other, and Provision for their common Benefit and Advantage; and where the Fundamental Laws and Constitution of any Government have been wisely adapted unto those Ends, such Countries and Kingdoms have increased in Virtue, Prowess, Wealth and Happiness, whilest others, through the Want of such excellent Constitutions, or Neglect of preserving them, have been a Prey to the Pride, Lust and Cruelty of the most Potent, and the People have had no Assurance of Estates, Liberties or Lives, but from their Grace and Pleasure: They have been many Times forced to welter in each others Blood, in their Masters Quarrel for Dominion, and at best they

they have served like Beasts of Burden, and by continual, base subserviency to their Masters Vices, have lost all sense of true Religion, Virtue and Manhood.

Our Ancestors have been famous in their Generations for Wisdom, Piety, and Courage, in forming and preserving a Body of Laws to secure themselves and their Posterities from Slavery and Oppression, and to maintain their Native Freedoms ; to be subject only to the Laws made by their own Consent in their general Assemblies, and to be put in Execution chiefly by themselves, their Officers and Assistants ; to be guarded and defended from all Violence and Force, by their own Arms, kept in their own Hands, and used at their own Charge under their Princes Conduct ; entrusting nevertheless an ample Power to their Kings, and other Magistrates, that they may do all the Good, and enjoy all the Happiness, that the largest Soul of Man can honestly wish ; and carefully providing such means of correcting and punishing their Ministers and Counsellors, if they transgressed the Laws, that they might not dare to abuse or oppress the People, or design against their Freedom or Welfare.

This Body of Laws our Ancestors always esteemed the best Inheritance they could leave to their Posterities, well knowing that these were the sacred Fence of their Lives, Liberties, and Estates, and an unquestionable Title whereby they might call what they had their own, or say they were their own Men : The inestimable value of

this Inheritance moved our Progenitors with great Resolution bravely from Age to Age to defend it ; and it now falls to our Lot to preserve it against the dark Contrivances of a Popish Faction, who would by Frauds, Sham-Plots, and infamous Perjuries, deprive us of our Birth-rights, and turn the Points of our Swords (our Laws) into our own Bowels ; they have impudently scandalized our Parliaments, with Desigs to over-turn the Monarchy, because they would have excluded a Popish Successor, and provided for the Security of the Religion and Lives of all Protestants : They have caused Lords and Commoners to be for a long Time kept in Prisons, and suborned Witnesses to swear Matters of Treason against them ; endeavouring thereby, not only to cut off some who had eminently appeared in Parliament for our antient Laws, but through them to blast the Repute of Parliaments themselves, and to lessen the Peoples Confidence in those great Bulwarks of their Religion and Government.

The present Purpose is to shew how well our worthy Forefathers have provided in our Law for the Safety of our Lives, not only against all Attempts of open Violence, by the severe Punishment of Robbers, Murderers, and the like, but the secret poisonous Arrows that fly in the Dark, to destroy the innocent by false Accusation and Perjuries. Our Law-makers foresaw both their Dangers from the Malice and Passion, that might cause some of private Condition, to accuse others falsely in the Courts of Justice, and the

the great Hazards of worthy and eminent Mens Lives, from the Malice, Emulation, and ill Designs of corrupt Ministers of State, or otherwise potent, who might commit the most odious of Murders in the Form and Course of Justice; either by corrupting of Judges, as dependent upon them for their Honour and great Revenue, or by bribing and hiring Men of depraved Principles, and desperate Fortunes, to swear falsely against them; doubtless they had heard the Scriptures, and observed that the great men of the *Jews* sought out many to swear Treason and Blasphemy against Jesus Christ: They had heard of *Abab's* Courtiers and Judges, who in the Course and Form of Justice, by false Witnesses, murdered *Naboth*, because he would not submit his Property to an Arbitrary Power. Neither were they ignorant of the antient *Roman* Histories, and the pestilent false Accusers that abounded in the Reign of some of those Emperors, under whom the greatest of Crimes was to be Virtuous: Therefore, as became good Legislators, they made as prudent Provision as perhaps any Country in the World enjoys, for equal and impartial Administration of Justice in all the Concerns of the Peoples Lives; that every Man, whether Lord or Commoner, might be in safety, whilst they lived in due Obedience to the Laws.

For this Purpose it is made a Fundamental in our Government, that unless it be by Parliament, no Man's Life shall be touched for any Crime whatsoever, save by the Judgment of at least twenty four Men \*; that is, twelve or more, to find

\* See Lord Coke's *Instit.* 3<sup>d</sup> part, p. 40.

find the Bill of Indictment, whether he be Peer of the Realm, or Commoner, and twelve Peers, or above, if a Lord, if not twelve Commoners to give the Judgment upon the general Issue of Not guilty joined \*; of these twenty four the first twelve are called the Grand Inquest, or the Grand Jury, for the Extent of their Power, and in regard that their Number must be more than twelve, sometimes twenty three, or twenty five, never were less than thirteen, Twelve whereof at least must agree to every Indictment, or else it is no legal Verdict; if eleven of twenty one, or of thirteen, should agree to find a Bill of Indictment, it were no Verdict. The other Twelve, in Commoners Cases, are called the Petit-Jury, and their Number is ever Twelve; but the Jury for a Peer of the Realm may be more in number, though of like Authority. The Office and Power of these Juries is *Judicial*, they only are the Judges from whose Sentence the Indicted are to expect Life or Death; upon their Integrity and Understanding, the Lives of all that are brought into Judgment do ultimately depend; from their Verdict their lies no Appeal, by finding Guilty or Not Guilty; they do complicately resolve both Law and Fact.

As it hath been the Law, so it hath always been the Custom, and Practice of these Juries, upon all general Issues, pleaded in Cases Civil as well as Criminal, to judge both of the Law and Fact. So it is said in the Report of the Lord Chief Justice  
*Vaughan,*

\* See *Mag. Chart. Coke's 2d part of Instit. p. 50, 51.*

*Vaughan*\*, in *Basket's Case*, that these Juries determine the Law in all Matters where Issue is joined and tried, in the principal Case, whether the Issue be about a Trespass or a Debt, or Disseizin in Assizes, or a Tort, or any such like, unless they should please to give a special Verdict with an implicit Faith in the Judgment of the Court, to which none can oblige them against their Wills.

These last Twelve must be Men of equal Condition with the party Indicted, and are called his Peers: therefore if it be a Peer of the Realm, they must be all such, when Indicted at the Suit of the King; and in the Case of Commoners, every Man of the Twelve must agree to the Verdict freely, without Compulsion, Fear, or Menace, else it is no Verdict. Whether the Case of a Peer be harder, I will not determine. Our Ancestors were careful that all Men of the like Condition and Quality, presumed to be sensible of each others Infirmity, should mutually be Judges each of others Lives, and alternately taste of Subjection and Rule; every Man being equally liable to be Accused, or Indicted, and perhaps to be suddenly judged by the Party, of whom he is at present Judge, if he be found innocent. Whether it be Lord or Commoner that is Indicted, the Law intends (as near as may be) that his Equals that judge him, should be his Companions, known to him, and he to them, or at least

\* See the Reports of the Lord Chief Justice *Vaughan*, p. 150, 151.

least his Neighbours or Dwellers near about the Place where the Crime is supposed to have been committed, to whom something of the Fact must probably be known; and though the Lords are not appointed to be of the Neighbourhood to the Indicted Lord, yet the Law supposes them to be Companions, and personally well known each unto other, being presumed to be a small number (as they have antiently been) and to have met yearly, or oftner in Parliament, as by Law they ought, besides their other Meetings, as the hereditary Counsellors of the Kings of *England*: If time hath altered the Case of the Lords, as to the Number, Indifferency and Impartiality of the Peers, it hath been, and may be worthy of the Parliament's consideration, and the greater Duty is incumbent upon Grand Juries, to examine with the utmost Diligence the Evidence against Peers, before they find a Bill of Indictment against any of them, if in Truth it may put their Lives in greater danger.

It is not designed at this time to undertake a Discourse of Petit-Juries, but to consider the Nature and Power of Grand Inquests, and to shew how much the Reputation, the Fortunes, and the Lives of *Englishmen*, depend upon the conscientious Performance of their Duty.

It was absolutely necessary for the Support of the Government, and the Safety of every Man's Life and Interest, that some should be trusted to inquire after all such as by Treasons, Felonies, or lesser Crimes, disturbed the Peace, that they might



might be prosecuted, and brought to condign Punishment; and it was no less needful for every Man's quiet and safety, that the Trust of such Inquisitions should be put into the Hands of Persons of Understanding and Integrity, indifferent, and impartial, that might suffer no Man to be falsely accused, or defamed, nor the Lives of any to be put in jeopardy, by the malicious Conspiracies of great or small, or the Perjuries of any profligate Wretches: For these necessary, honest Ends was the Institution of Grand Juries.

Our Ancestors thought it not best to trust this great Concern of their Lives and Interests in the Hands of any Officer of the King's, or in any Judges named by him, nor in any certain number of Men during Life, lest they should be awed or influenced by great Men, corrupted by Bribes, Flatteries, or love of Power, or become negligent, or partial to Friends and Relations, or pursue their own Quarrels or private Revenges, or connive at the Conspiracies of others, and indict thereupon. But this Trust of inquiring out, and indicting all the Criminals in a County, is placed in Men of the same County, more at least than Twelve of the most honest, and most sufficient for Knowledge, and Ability of Mind and Estate, to be from Time to Time at the Sessions and Assizes, and all other Commissions of Oyer and Terminer, named and returned by the chief sworn Officer of the County, the Sheriff, (who was also by express Law antiently chosen annually by the People of every County) and trusted with the

the Execution of all Writs and Proceſſes of the Law, and with the Power of the County to ſuppreſs all Violences, unlawful Routs, Riots, and Rebellions. Yet our Laws left not the Election of theſe Grand Inqueſts absolutely to the Will of the Sheriffs, but have deſcribed in general their Qualifications, who ſhall inquire and indict either Lord or Commoner: They ought, by the old common Law, to be lawful liege People, of ripe Age; not over-aged or infirm, and of good Fame amongſt their Neighbours, free from all reaſonable Suſpition of any Deſign for himſelf or others, upon the Eſtates or Lives of any ſuſpected Criminals, or Quarrel, or Controverſy with any of them: They ought to be indifferent and impartial, even before they are admitted to be ſworn, and of ſufficient Underſtanding and Eſtate for ſo great a Trust. The antient Law-Book, called *Briton* \*, of great Authority, ſays, The Sheriffs, Bailiffs, ought to be ſworn to return ſuch as know beſt how to inquire, and diſcover all Breaches of the Peace; and left any ſhould intrude themſelves, or be obtruded by others, they ought to be returned by the Sheriff, without the Denomination of any, except the Sheriffs Officers. And agreeable hereunto was the Statute of eleven *Henry IV.* in theſe Words †. “ *Item,*  
“ Because of late Inqueſts were taken at *West-*  
“ *minster* of Perſons named to the Juſtices, without  
“ due Return of the Sheriff, of which Perſons  
ſome

\* See *Briton*, p. 9. and 10.

† See eleven *Henry IV.*

“ Some were outlawed, &c. and some fled to  
“ Sanctuary for Treason and Felony, &c. by  
“ whom, as well many Offenders were indicted,  
“ as other lawful liege People of the King not  
“ guilty, by Conspiracy, Abetment, and false  
“ Imagination of others, &c. against the Course  
“ of the common Law, &c. It is therefore  
“ granted for the Ease and Quietness of the  
“ People, that the same Indictment, with all  
“ its Dependences, be void, and holden for none  
“ for ever; and that from henceforth, no In-  
“ dictment be made by any such Persons, but  
“ by Inquest of the King’s liege People, in the  
“ manner as was used, &c. returned by the  
“ Sheriffs, &c. without any denomination to the  
“ Sheriffs, &c. according to the Law of *England*,  
“ and if any Indictment be made hereafter, in  
“ any Point to the Contrary, the same be also  
“ void, and holden for none for ever.” See also the  
Statute of *Westm.* 2d cap. 38. and *Articul. super*  
*Cortas* \*, ch. 9.

So careful have our Parliaments been that the  
Power of Grand Inquests might be placed in the  
Hands of good and worthy Men; that if one Man  
of a Grand Inquest, though they be Twenty Three  
or more, should not be *Liber & Legalis Homo*, or  
such as the Law requires, and duly returned with-  
out denomination to the Sheriff; all the Indict-  
ments found by such a Grand Jury, and the Pro-  
ceedings upon them, are void and null. So, it  
was adjudged in *Scarlet’s* case.

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\* See *Coke Instit.* 3d Part, fol. 33.

I know too well, that the Wisdom and Care of our Ancestors, in this Institution of Grand Juries, hath not been of late considered as it ought; nor the Laws concerning them duly observed; nor have the Gentlemen and other Men of Estates, in the several Counties, discerned how insensibly their legal Power and Jurisdiction in their Grand and Petit Juries is decayed, and much of the Means to preserve their own Lives and Interests, taken out of their Hands. It is a wonder that they were not more awakened with the Attempt of the late Lord Chief Justice *Keyling*, who would have usurped a Lordly, dictatorial Power over the Grand Jury of *Somersetshire*, and commanded them to find a Bill of Indictment for Murder, for which they saw no Evidence, and upon their Refusal, he not only threatned the Jury, but assumed to himself an Arbitrary Power to fine them.

Here was a bold Battery made upon the antient Fence of our Reputations, and Lives: If that Justice's Will had passed for Law, all the Gentlemen of the Grand Juries must have been the basest Vassals to the Judges, and have been pennially obliged, *Jurare in Verba Magistri*, to have sworn to the Directions or Dictates of the Judges: But thanks be to God, the late long Parliament (though filled with Pensioners) could not bear such a bold Invasion of the *English* Liberty; but upon the Complaint of one Sir *Hugh Windbam*, Foreman of the said Jury, and a Member of that Parliament, the Commons brought the then Chief

Chief Justice to their Bar, to acknowledge his Fault, whereupon the Prosecution ceased.

The Trust and Power of Grand Juries, is, and ought to be, accounted amongst the Greatest and of most Concern, next to the Legislative. The Justice of the whole Kingdom, in criminal Cases, almost wholly depending upon their Ability and Integrity, in the due Execution of their Office: Besides, the Concernments of all Commoners, the Honour, Reputation, Estates, and Lives of all the Nobility of *England*, are so far submitted to their Censure, that they may bring them into question for Treason, or Felony, at their Discretion: Their Verdict must be entred upon Record, against the greatest Lords, and Process must legally go out against them thereupon, to imprison them if they can be taken, or to outlaw them, as the Statutes direct; and if any Peer of the Realm, though innocent, should justly fear a Conspiracy against his Life, and think fit to withdraw, the Direction of the Statutes, in proceeding to the Outlawry, being rightly pursued, he could never reverse the Outlawry, as the Law now stands, save by Pardon, or Act of Parliament. Hence it appears, that in case a Grand Jury should be drawn to Indict a Noble Peer unjustly, either by means of their own Weakness, or Partiality, or a blind Submission to the Direction or Opinion of Judges: One such Failure of a Jury, may occasion the Ruin of many of the best or greatest Families in *England*: I mention this Extent of the Grand Juries Power over all the Nobility,

only to shew their joint Interest and Concern with the Commons of *England* in this ancient Institution.

The Grand Juries are trusted to be the principal means of preserving the Peace of the whole Kingdom, by the terror of Executing the Penal Laws against Offenders, by their Wisdom, Diligence, and Faithfulness in making due Inquiries after all Breaches of the Peace, and bringing every one to answer for his Crime, at the Peril of his Life, Limb, and Estate; that every Man, who lives within the Law, may sleep securely in his own House.

It is committed to their Charge and Trust, to take care of bringing capital Offenders to pay their Lives to Justice, and lesser Criminals to other Punishments, according to their several Demerits. The Courts, or Judges, or Commissioners of Oyer and Terminer, and of Gaol Delivery, are to receive only from the Grand Inquest, all capital Matters whatsoever, to be put in Issue, tried and judged before them by the Petit Juries. The whole Stream of Justice, in such cases, either runs freely, or is stopped and disturbed; as the Grand Inquests do their Duties, either faithfully and prudently, or neglect or omit them.

And as one part of their Duty is to Indict Offenders, so another part is to protect the Innocent, in their Reputations, Lives and Interests, from false Accusers, and malicious Conspirators: They are to search out the Truth of such Informations

as come before them, and to reject the Indictment if it be not sufficiently proved; and farther, if they have reasonable Suspicion of Malice, or wicked Designs against any Man's Life or Estate, by such as offer a Bill of Indictment; the Laws of God and of the Kingdom, bind them to use all possible means to discover the Villany; and if it appear to them (whereof they are the legal Judges) to be a Conspiracy, or malicious Combination against the Accused, they are bound by the highest Obligations upon Men and Christians, not only to reject such a Bill of Indictment, but to Indict forthwith all the Conspirators with their Abettors and Associates.

Doubtless there hath been Pride and Covetousness, Malice and desire of Revenge in all Ages, from whence have sprung false Accusations and Conspiracies; but no Age before us ever hatched such Villanies, as the Popish Faction have contrived against our Religion, Lives, and Liberties. No History affords an Example of such Forgeries, Perjuries, Subornations, and Combinations of infamous Wretches, as have been lately discovered amongst them, to defame loyal, innocent Protestants, and to shed their guiltless Blood in the Form and Course of Justice, and to make the King's most faithful Subjects appear to be the vilest Traitors unto him. In this our miserable State, Grand Juries are our only Security, inasmuch as our Lives cannot be drawn into jeopardy by all the malicious Crafts of the Devil, unless such a Number of our honest

Countrymen shall be satisfied in the Truth of the Accusations. For prevention of such Plotters of Wickedness as now abound, was that Statute made in the forty second of *Edward 3. 3.* in these Words: "To eschew the Mischiefs and Damage done to divers of the Commons by false Accusers, which oftentimes have made the Accusations more for Revenge and singular Benefit, than for the Profit of the King, or of his People; which accused Persons, some have been taken, and sometimes caused to come before the King's Council by Writ, and otherwise, upon grievous Pain, against the Law; It is assented and accorded for the good Government of the Commons, that no Man be put to answer without Presentment before Justices, or matter of Record, &c. according to the old Law of the Land, and if any Thing be done to the Contrary, it shall be void in Law, &c." And (saith the Statute of the twenty fifth of *Edward 3. 4.*) "None shall be taken by Petition, or Suggestion made to the King or to his Council, unless it be by *Indictment*, or *Presentment* of good and lawful People of the same Neighbourhood where such Deeds be done, &c." That is to say, by a Grand Jury.

All our Lives are thus by Law trusted to the Care of our Grand Inquests, that none may be put to answer for their Lives, unless they Indict them. If a causeless Indictment of any Man should carelessly pass from them, his guiltless Blood,



Blood, or what Prejudice soever the Accused should thereby suffer, must rest upon them, who by Breach of their Trust were the Occasions of it; their Fault cannot be excused by the Prosecution of an Attorney, or Solicitor General, or any other Accuser, if it were in their Power to be more truly informed in the Case. Whosoever prevents not an Evil when he may, consents to it.

Now to oblige these Juries to the more conscientious care; to Indict all that shall appear to them Criminals, and to save every Innocent, if it may be, from unjust Vexation and Danger, by Malice and Conspiracy, our Ancestors appointed an Oath to be imposed upon them, which cannot be altered; except by Act of Parliament: Therefore every Grand Jury Man is sworn, as the Foreman, in the Words following, *viz.*

“ You shall diligently inquire, and true Pre-  
“ sentment make of all such Articles, Matters  
“ and Things as shall be given you in Charge.  
“ And of all other Matters and Things as shall  
“ come to your own Knowledge; touching this  
“ present Service. The King’s Counsel, your  
“ Fellows, and your own; you shall keep secret :  
“ You shall present no Person for Hatred or  
“ Malice; neither shall you leave any one un-  
“ presented for Favour, or Affection, for Love,  
“ or Gain, or any hopes thereof; but in all  
“ Things you shall present the Truth, the  
“ whole Truth, and nothing but the Truth, to  
“ the best of your Knowledge; so help you  
“ God.”

“ God.” The Tenor of the Oath is plain, saying in these Words, “ All such Matters and “ Things as shall be given you in Charge :” But whensoever a general Commission of Oyer and Terminer is issued, all Capital Offences are always the principal Matters given in Charge to the Grand Jury, which is enough for the present Discourse of their Duty. Hence then it evidently appears, that every Grand Jury is bound to inquire diligently after the Truth of every Thing, for which they shall Indict or Present any Man: They are not only bound by the Eternal Law of loving their Neighbour, to be as tender of the Life and good Name of every Man, as of their own, and therefore to take heed to the Truth in Accusing or Indicting any Man; but their express Oath binds them to be diligent in their Inquiries, that is, to receive no Suggestion of any Crime for Truth, without examining all the Circumstances about it, that fall within their Knowledge; they ought to consider the first Informers, and inquire as far as they can into their Aims and Pretences in their Prosecutions: If Revenge or Gain should appear to be their Ends, there ought to be the greater suspicion of the Truth of their Accusations; the Law intending all Indictments to be for the Benefit of the King and of his People, as appears by the Statute of forty second *Edward* 3. 3. Next, the Jury are bound to inquire into the Matters themselves, whereof any Man is accused, as to the Time, Place, and all other Circumstances of the Fact alledged. There

There have been false Informers, that have suggested Things impossible; for instance, that Thirty Thousand Men in Arms were kept in readiness for an Exploit, in a secret Place; as if they could have been hid in a Chamber or a Cabinet. The Jury ought also to inquire after the Witnesses, their Condition and Quality, their Fame and Reputation; their Means of Subsistence, and the Occasion whereby the Facts whereof they bear Witness came to their Knowledge. Sometimes Persons of debauched Lives and low Condition, have deposed Discourses, and reasonable Counsels, against Persons of Honour and Virtue, so unlikely to come to their Knowledge, (if such Things had been) that their Pretence of being privy to them, was a strong Evidence that their whole Story was false and feigned. It is also agreeable unto our antient Law and Practice, and of great Consequence in cases of Treason or Felony, that the Jury inquire after the Time, when first the Matters deposed came to the Witnesses Knowledge, and whether they pursued the Directions of the Law in the immediate Discovery and Pursuit of the Traitor or Felon, by Hue and Cry, or otherwise, or how long they concealed the same; their Testimony being of little or no Value, if they have made themselves Partakers of a Crime by their voluntary Concealment.

Neither may the Jury lawfully omit to inquire concerning the Parties accused, of their Quality, Reputation, and the Manner of their Con-

Conversation, with many other Circumstances; from whence they may be greatly helped to make right Inferences of the Falshood, or Truth of the Crimes whereof any Man shall be accused. The Jury ought to be ignorant of nothing whereof they can inquire, or be informed, that may in their Understandings enable them to make a true Presentment or Indictment of the Matters before them.

When a Grand Jury is sworn to inquire diligently after all Treasons, &c. it is natural and necessary to their Business, to think of whom they should inquire; and it is plainly and easily resolved, that they ought to inquire of every Man that can or will inform them; and if any kind of Treason be suggested to them, to have been done by any Man, or Number of Men, their Duty is the same in that particular, as it was in the general; that is, to seek diligently to find the Truth. It is certainly inconsistent with their Oaths, to shut their Ears against any lawful Man, that can tell them any thing relating unto a Crime in Question before them: No Man will believe, nor can they themselves think that they desire to find and present the Truth of a Fact, if they shall refuse to hear any Man, who shall pretend such Knowledge of it, or such material Circumstances, as may be useful to discover it; whether that which shall be said by the Pretenders, will answer the Juries expectations, must rest in their Judgments, when they have heard them. It seems therefore from the Words of the

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the Oath, that there is no Bound or Limit set (save their own Understanding or Conscience) to restrain them to any Number or Sort of Persons of whom they are bound to inquire; they ought first and principally to inquire of one another mutually, what Knowledge each of them hath of any Matters in Question before them; the Law presumes, that some at least of so many sufficient Men of a County, must know or have heard of all notable Things done there against the public Peace; for that End, the Juries are by the Law to be of the Neighbourhood to the Place where the Crimes are committed. If the Parties, and the Facts whereof they are accused, be known to the Jury, or any of them, their own Knowledge will supply the Room of many Witnesses. Next they ought to inquire of all such Witnesses as the Prosecutors will produce against the Accused, they are bound to examine all fully and prudently to the best of their Skill; every Jury Man ought to ask such Questions (by the Foreman at least) as he thinks necessary to resolve any doubt that may arise in him, either about the Fact, or the Witnesses, or otherwise; if the Jury be then doubtful, they ought to receive all such further Testimony as shall be offered them, and to send for such as any of them do think able to give Testimony in the Case depending.

If it be asked how, or in what manner, the Juries shall inquire; the Answer is ready, According to the best of their Understandings. They only,

only, not the Judges, are sworn to search diligently to find out all Treasons, &c. within their Charge, and they must and ought to use their own Discretion in the Way and Manner of their Inquiry: No Directions can legally be imposed upon them by any Court, or Judges; an honest Jury will thankfully accept good Advice from Judges, as they are Assistants; but they are bound by their Oaths to present the Truth, the whole Truth, and nothing but the Truth, to the best of their own, not the Judges, Knowledge: Neither can they, without Breach of that Oath, resign their Consciences, or blindly submit to the Dictates of others; and therefore ought to receive, or reject such Advices, as they judge them good or bad.

If the Jury suspect a Combination of Witnesses against any Man's Life, (which perhaps the Judges do not discern) and think it needful to examine them privately and separately, the Discretion of the Juries in such a Case, is their only, best, and lawful Guide; though the example of all Ages and Countries, in examining suspected Witnesses privately and separately, may be a good Direction to them.

Nothing can be more plain and express, than the Words of the Oath are to this purpose. The Jurors need not search the Law Books, nor tumble over heaps of old Records, for the Explanation of them. Our greatest Lawyers may from hence learn more certainly our antient Law in this case, than from all the Books in their Studies.

dies. The Language wherein the Oath is penned is known and understood by every Man, and the Words in it have the same signification, as they have wheresoever else they are used. The Judges (without assuming to themselves a Legislative Power) cannot put a new Sense upon them, other than according to their genuine, common Meaning. They cannot Magisterially impose their Opinions upon the Jury, and make them forsake the direct Words of their Oath, to pursue their Glosses. The Grand Inquest are bound to observe alike strictly every part of their Oath; and to use all just and proper Ways which may enable them fully to perform it; otherwise it were to say, that after Men had sworn to inquire diligently after the Truth, according to the best of their Knowledge, they were bound to forsake all the natural and proper Means which their Understandings suggest for the Discovery of it, if it be commanded by the Judges.

And therefore, if they are jealous of a Combination of the Witnesses, or that Corruption and Subornation hath been made use of, they cannot be restrained from asking all such Questions, as may conduce to the Sifting out of the Truth, nor from examining the Witnesses privately and separately; lest (as *Fortescue* says) the Saying of one should provoke or instruct others to say the like\*.

Nor are the Jury tied up to inquire only of such Crimes as the Judges shall think fit to give them

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\* *Fortescue D Laud. Leg. Ang. cap. 26.*

them directly in Charge; much less of such Bills only as shall be offered to them; but their Inquiry ought to extend to *all other Matters and Things which shall come to their Knowledge, touching the present Service.* If they have Ground to suspect that any Accusation before them proceeds from a Conspiracy, they are obliged by their Oaths to turn the Inquiry that Way, and if they find cause, not only to reject the Bills offered upon such Testimony, but to indict such Witnesses, and all the Abettors of their Villany.

They are carefully to examine what sort of Men the Witnesses are; for it is a Rule in all Laws, that *Turpes à Tribunalibus arcentur*, vile Persons ought to be rejected by Courts of Justice. Such Witnesses would destroy Justice, instead of promoting it. And the Grand Jury are to take care of admitting such: They may and ought (if they have no certain Knowledge of them) to ask the Witnesses themselves of their Condition, and Way of Living, and all other Questions, which may best inform them what sort of Men they are. It is true, it may be lawful for the Witnesses, in many Cases, to refuse to give Answer to some Demands which the Jury may make; as where it would be to accuse themselves of Crimes: But yet that very Refusal, or avoiding to give direct Answers, may be of great use to the Jury, whose only Business is to find out the Truth; and who will be in a good Measure enabled to judge of the Credit of such Witnesses, as dare not clear themselves of Crimes,  
which



which common Fame or the Knowledge of some of the Grand Inquest has charged them with.

If the Witnesses which come before the Grand Jury upon an Indictment for Treason, should discover upon their Examination, that they concealed it a long Time without just Impediment; The Presumption of Law will be strong against them, that no sense of Honesty or of their Duty brought them at last to reveal it.

It appears by *Brañton*\*, that antient Writer of our Laws, that in Cases of Treason the Juries were in his Days advised (as now they ought) to be so severe in their Inquiry within what Time the Witnesses discovered the Treason after it came to their Knowledge; that if it were not evident that they revealed it with as much Expedition as was well possible for them, they were not by Law to be heard as Witnesses: It was scarce permitted them (saith he) to *look back* in their going; such ought to be their speed to make known the Treason. Or if in any Case they be otherwise openly flagitious, though they be not legally infamous, or if they are Men of desperate Fortunes, so that the Temptation of Want is manifestly strong upon them, and the Restraint of Conscience can be supposed to be little or none at all; whatever they say is, at least, to be heard with extraordinary Caution, if not totally rejected.

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\* *Brañton*, L. 3. c. 3. *Non morari debet, &c. nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei quod retro aspiciat, &c. Si post intervallum accusare velit, non erit de Jure audiendus.*

In *Scotland*, \* such a degree of Poverty, that a Witness cannot swear himself to be worth Ten Pounds is sufficient to lay him aside wholly in these high Concernments of Criminal Cases: And in some other Kingdoms, to be a loose Liver, is an Objection of the same force, against any produced for Witnesses.

And for the better Discovery of the Truth of any Fact in Question, the Credit of the Witnesses, and the Value of the Testimonies; it is the Duty of the Grand Inquest to be well informed concerning the Parties indicted; of their usual Residence, their Estates and manner of Living, their Companions and Friends, with whom they are accustomed to converse, such Knowledge being necessary to make a good Judgement upon most Accusations; but most of all in Suspicions, or Indictments of secret Treasons, or Treasonable Words, where the Accusers can be of no Credit, if it be altogether incredible that such Things as they testify should come to their Knowledge.

Sometimes the Quality of the accused Person may set him at such a Distance from the Witnesses, that he cannot be supposed to have conversed with them familiarly, if his Wisdom and Conduct has been always such, that it is not credible he would trust Men so inconsiderable, or meer Strangers to him, and such as are wholly incapable to assist in the Design which they pretend to discover.

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\* *Sir G. Mackenzie, Crim. Law. lib. 26. 3.*

Can the Grand Inquest believe such Testimony to be of any value? Or can they avoid suspecting Malice, Combination, and Subornation in such a Case? Or can they shew themselves to be just, and conscientious in their Duty, if they do not suspend their Verdict until further Inquiry, and write *Ignoramus* on the Bill?

It is undoubtedly Law which we find reported in *Stiles\**, that *though there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see Cause to the contrary.*

Now to make their Inquiry more instrumental and advantageous to the Execution of Justice, they are enjoined by their Oath to keep secret *the King's Counsel, their Fellows, and their own.* Perhaps it is not sufficiently understood or considered, what Duty is enjoined to every Man of a Grand Inquest by this Clause of their Oath, being seldom (if ever) explained to them in the general Charge of the Judges at Sessions or Assizes: But it is necessary that they should apprehend what Counsel of the King is trusted with them. Certainly there is or ought to be much more of it communicated to them, than is commonly thought, and in Things of the greatest Consequence. To them ought to be committed in the several Counties where any Prosecutions are begun, the first Informations and Suspicions of all Treasons, Murders, Felonies, Conspiracies, and other Crimes, which may subvert the Government, endanger or hurt the King, or destroy

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\* *Stiles Repor.* 11.

the Lives or Estates of the innocent People, or any way disquiet or disturb the common Peace. Our Law intends the Counsels of the King to be continually upon the Protection and Security of the People, and Prevention of all their Mischiefs and Dangers by wicked, lawless, and injurious Men. And in order thereunto, to be advising how to right his wronged Subjects in general, if the public Safety be hazarded by Treasons of any kind; or their Relations snatcht from them by Murderers, or any Way destroyed by malicious Conspirators in form of Law; or their Estates taken away by Robbery and Thieves, or the Peace broken. And for these Ends to bring to exemplary Justice all Offenders, to deter others from the like Wickedness. And until these Counsels of the King come to the Grand Jury, he can bring no such Criminals to Judgment, or to answer to the Accusations and Suggestions against them. Hence it becomes unavoidably necessary, to reveal to the Grand Juries all that hath been discovered to the King, or any of his Ministers, Judges, or Justices, concerning any Treasons, or other Offences, whereof any Man is accused. And where Suspicion hath caused any to be Imprisoned; all the Grounds of their Suspicions ought to be opened, concerning the Principals and the Accessories, as well before as after the Fact; all the Circumstances and Presumptions that may induce a Belief of their Guilt, and all Notices whatsoever, which may enable the Jury to make a more exact and effectual Inquiry, and to present the

the whole Truth. They themselves will not only be Offenders against God by reason of their Oath, but subject to legal Punishments, if they knowingly conceal any Criminals, and leave them unrepresented; and none can be Innocent, who shall conceal from them any Thing that may help and assist them in their Duty.

The first notices of Crimes or Suspicions of the Criminals; by whomsoever brought in, and the Intentions of Searching them out; and Prosecuting them legally, are called the King's Counsel; because the principal Care of executing Justice is entrusted to him, and they are to be Prosecuted at his Suit, and in his Name; and such Proceedings are called Pleas of the Crown. From hence may be easily concluded, that the King's Counsel, which, by the Oath of the Grand Inquest, is to be kept secret, includeth all the Persons offered to them to be Indicted, and all the Matters brought in Evidence before them, all Circumstances whatsoever whereof they are informed, which may any Way conduce to the Discovery of Offences; all Intimations given them of Abettors and Encouragers of Treasons, Felonies, or Perjuries and Conspiracies, or of the Receivers, Harbourers, Nourishers, and Concealers of such Criminals.

Likewise the Oath, which enjoins the Counsel of their Fellows, and their own to be kept, implies, that they shall not reveal any of their personal Knowledge concerning Offences or Offenders; nor their Intentions to Indict any Man thereupon;

upon; nor any of the Proposals and Advices amongst them of Ways to inquire into the Truth of any Matter before them, either about the Crimes themselves, or the Accusers and Witnesses, or the Party accused, nor the Debates thereupon amongst themselves, nor the Diversity of Opinions in any Case before them.

Certainly this Duty of Secresy concerning the King's Counsel was imposed upon the Grand Inquest with great Reason, in order to the public Good. It was intended that they should have all the Advantages which the several Cases will afford, to make effectual Inquiries after Criminals, to offer them to Justice. If Packs of Thieves, private Murderers, secret Traitors, or Conspirators and Suborners, can get Intelligence of all that is known of their Villanies, all the Parties concerned may consult together, how to hide their Crimes, and prevent such further Inquiries as can be made after them; they may form Sham-stories by agreement, that may have Appearance of Truth to mislead and delude the Jury in their Examination, and avoid contradicting each other; they may remove or conceal all such Things as might occasion a fuller Discovery of their Crimes, or become circumstantial Evidences against any of their Associates, if one or more of them be known or taken, or is to be indicted. There hath been Confederates in high Crimes, who have secured themselves from the Justice done upon some of their Companions, by their confident Appearance and Denial of the Fact, having been emboldened therein from their  
Knowledge,

Knowledge of all the Grounds of Suspicion, and all the Witnesses examined about them, and the Matter of their Testimonies. It is too well known what Helps of discovering the whole Popish-Plot were lost, through the Want of keeping secret the King's Counsel therein, before the Matter was brought either to the Parliament, or to any Grand Inquest; and thereby they were disabled for the effectual Execution of their Offices, and could never search into the Bowels of that dangerous Treason in any County. But our Law having placed this great Trust of Inquiry in the Prudence and Faithfulness of the Grand Inquest, was careful that they might not disable themselves for their own Trust, by the Indiscretion or worse Fault of any of their own number, in revealing the King's Counsel or their own.

And as it was intended hereby to preserve unto them all reasonable Helps for their bringing to Light the hidden Mischiefs that might disturb the common Peace, so it was necessary to prevent the Flight of Criminals; if the Evidence against one that is accused should be publicly known, whether it should be sufficient for an Indictment of him, and how far it extends to others; his Confederates and Accomplices might easily have notice of their Danger, and take Opportunity to escape from Justice.

Yet the Reason will be still more manifest for keeping secret the Accusations and the Evidence by the Grand Inquest, if it be well considered, how useful and necessary it is for discovering  
Truth

Truth in the Examinations of Witnesses in many, if not in most Cases that may come before them; when if by this Privacy Witnesses may be examined in such Manner and Order, as Prudence and Occasion direct; and no one of them be suffered to know who hath been examined before him, nor what Questions have been asked him, nor what Answers he hath given, it may probably be found out whether a Witness hath been biassed in his Testimony by Malice or Revenge, or the Fear or Favour of Men in Power, or the Love or Hopes of Lucre and Gain, in present or future, or Promises of Impunity for some enormous Crime.

The Simplicity of Truth in a Witness may appear by the natural Plainness, Easiness, and Directness of his Answers to whatsoever is propounded to him, by the Equality of his Temper, and Suitableness of his Answers to Questions of several kinds, and perhaps to some that may be asked for Trial-sake only of his Uprightness in other Matters. And the Falseness, Malice, or ill Design of another, may be justly suspected from his Studiousness and Difficulty in Answering, his Artifice and Cunning in what he relates, not agreeable to his Way of Breeding and Parts; his reserved, indirect, and evasive Replies to easy Questions; his Pretences of Doubtfulness and want of remembering Things of such short Dates, or such Notoriety, that it is not credible he could be ignorant or forgetful of them. In this Manner the Truth may be evidenced to the Satisfaction



faction of the Jurors Consciences, by the very Demeanor of the Witnesses in their private Examinations, inasmuch as the greatest Certainty doth often arise from the careful Observation and comparing of such minute Matters; of which a distinct Account is not possible to be given to a Court: And for that Reason (among others) the Juries are made the only absolute Judges of their Evidence.

Yet further, their private Examinations may discover Truth out of some Disagreement of the Witnesses, when separately interrogated, and every of the Grand Inquest asks them Questions for his own Satisfaction about the Matters which have come to his particular Knowledge, and this freely, without Awe or Control of Judges, or Distrust of his own Parts, or Fear to be checked for asking impertinent Questions.

Conspiracies against the Lives of the Innocent, in a Form of Justice, have been frequently detected by such secret and separate Examination of Witnesses. The Story of *Susanna* is famous; that two of their Elders, and Judges of great Credit and Authority, testified in the open Assembly a malicious Invention against her, with all the Solemnity used in Capital Cases, and Sentence of Death passed upon her, and was ready to be executed, had not wise *Daniel* cried out in her behalf \*: “ Are ye such Fools, O *Israelites*,  
“ that

\* Note, that the Testimony given in the Assembly without separating the Witnesses, and trying the Truth by Circumstances, was esteemed no Examination or Knowledge of the Truth.

“ that without Examination (or Knowledge of  
 “ the Truth, ye have condemned a Daughter of  
 “ *Israel*? Return (said he) again to Judgment,  
 “ and put these two one far from another, and I  
 “ will examine them:” And being asked separately (though in Public, the Testimony having been so given before) concerning the Place of the Fact then in Question, they had not agreed upon that Circumstance, as they had upon their Story; and so their Falshood became manifest, one saying the Adultery was committed under a *Lentisk* Tree, the other, it was under a *Prime* Tree: And upon that Conviction of the false Witnesses, the whole Assembly cried with a loud Voice, and praised God. These false Witnesses were put to Death, as their Law required.

We have also a late Instance of the Usefulness of private and separate Examinations, in the Case of the Lord *Howard*, against whom the Attorney General prosecuted an Accusation of Treason, the last Midsummer Term, before the Grand Inquest for *Middlesex*. Mrs. *Fitz-Harris*, and *Teresa Peacock* her Maid, swore Words of Treason against him positively, and agreed in every Point whilst they were together: But by the Prudence of the Inquest, being put asunder, and the Mistress asked how her Maid came to be admitted to the Knowledge of such Matters; she had an Evasion ready, pretending her Maid had craftily hearkened behind a Wainscot Door, and so heard the Treason. But the Maid not suspecting what her Mistress had said, continued  
 in

in her first Story, that she heard the Treason from the Lord *Howard* himself, and was as much trusted by him as her Mistress: By this Circumstance the Falshood and Perjury (which Mrs. *Fitz-Harris* hath since acknowledged) was discovered; and the Snare for the Life of the injured Lord was broken, as is manifest by his Liberty now obtained by Law. X

Witnesses may come prepared, and tell plausible Stories in open Court, if they know from the Prosecutor to what they must answer; and have agreed and acquainted each other with the Tales they will tell, and have resolved to be careful, that all their Answers to cross Interrogatories, may be conformable to their first Stories: And if these relate only to Words spoken at several Times in Private to distinct Witnesses, in such a Case, Evidence, if given in open Court, may seem to be very strong against the Person accused, though there be nothing of Truth in it. But if such Witnesses were privately and separately Examined by the Grand Inquest, as the Law requires, and were to Answer only such Questions as they thought fit, and in such Order as was best in their Judgments, and most natural to find out the Truth of the Accusation, so that the Witnesses could not guess what they should be asked first, or last, nor one conjecture what the other had said, (which they are certain of when they know beforehand what the Prosecutor will ask in Court of every one of them, and what they have resolved to answer) if the Inquest should put them

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them

them out of their Road, and then compare all their several Answers together, they might possibly discern Marks enough of Falshood, to shew that their Testimonies ought not to be depended upon, where Life is in Question.

By what is now said, the Reasonableness of this Institution of Secrecy may be discerned in respect to the Discovery of Truth, and the Protection of the Innocent from malicious Combinations and Perjuries. Yet the same Secrecy of the King's Counsel is no less necessary to reserve the Guilty for Punishment; when the Evidence against any Party accused is not manifest and full, it may be kept without Prejudice under Secrecy until further Inquiry; and if sufficient Proof can afterwards be made of the Offence, an Indictment may be found by a Grand Inquest, and the Party brought to answer it: But when the Examinations are in open Court, or the King's Counsels any other way divulged, and the Evidence is Weak, and less than the Law requires, it is not probable that it will be more or stronger, and should an Indictment be found, and the Party tried by a Petit Jury, whilst the Evidence is not full, they must and ought to acquit him, and then the further Prosecution for the same Offence is for ever barred, though his Guilt should afterward be manifest, and confessed by himself.

From hence may certainly be concluded, that Secrecy in the Examinations and Inquiries of Grand Juries is in all respects for the Interest and Advantage of the King. If he be concerned to  
have

have secret Treasons, Felonies, and all other Enormities brought to Light, and that none of the Offenders should escape Justice; if the Gain of their Forfeitures be thought his Interest (which God forbid) then the first Notices of all dangerous Crimes, and wicked Confederacies, ought to be secretly and prudently pursued and searched into by the Grand Inquest: The Accusers and Witnesses ought not to publish in a Court, before a Multitude, what they pretend to know in such Cases, until the Discretion of so many honest Men of the Neighbourhood, hath first determined whether their Testimony will amount to so good and full Evidence, that it may be made public with safety to the King and People in order to Justice. Else they are obliged by Oath to lock up in their own Breasts all the Circumstances and Presumptions of Crimes, until they, or such as shall succeed in the same Trust, shall have discovered (as they believe) Evidence enough to convict the Accused, and then, and not before, they are to accuse the Party upon Record, by finding the Bills, as it is usually called. But when Bills are offered without satisfactory Evidence, and they neither know nor can learn any more, they ought for the King's sake, to indorse *Ignoramus* upon them, lest his Honour and Justice be stained, by causing or permitting such Prosecution of his People in his own Name, and at his Suit, as shall appear upon their Trial and Acquittal to have been frivolous, or else malicious Designs upon their Lives and Fortunes.

If it should be said, that whatsoever Reasons there are for this Oath of Secrecy; yet it cannot deprive the King of the Benefit of having the Evidence made public, if he desires it, and that the Grand Jury do not break their Oaths when the King, or the Prosecutor for him, will have it so: It is not hard to shew that such Notions have no Foundation in Law or Reason, and seem to come from Men who have not well studied the first Principles of the *English* Government, or of true Religion.

Whosoever hath learnt, that the Kings of *England* were ordained for the good Government of the Kingdom in the Execution of the Laws, must needs know, that the King cannot lawfully seek any other Benefit in judicial Proceedings, than that common Right and Justice be done to the People according to their Laws and Customs. Their Safety and Prosperity are to be the Objects of his continual Care and Study, that being their highest Concern. The Greatness and Honour of a Prince consists in the Virtue, Multitude, Wealth and Prowess of his People; and his greatest Glory is, by the Excellence of his Government so to have encouraged Virtue and Piety, that few or no Criminals are to be found in his Dominions. Those who have made this their principal Aim, have in some Places so well succeeded, as to introduce such a Discipline and Rectitude of Manners, as rendered every Man a Law unto himself. As it is reported in the History of *Peru*\*, that

\* *Gar. de la Vega. Hist. de los Incas.*

that though the Laws were so severe as to make very small Crimes Capital, yet it often fell out, that not one Man was put to Death in a Year, within the whole Compass of that vast Empire.

The King's only Benefits in finding out and punishing Offenders by Courts of Justice, are the Preservation and Support of the Government, the Protection of the Innocent, revenging their Wrongs, and preventing further Mischiefs by the Terrors of exemplary Punishments.

The King is the Head of Justice in the Esteem of our Laws, and the whole Kingdom is to expect Right to be done them in his several Courts instituted by Law for that purpose. Therefore Writs issue out in his Name in all Cases where Relief is sought by the Subjects: And the Wrongs done to the Lives or Limbs of the People, are said to be done against the Peace of the King, his Crown and Dignity, reckoning it a Dishonour to him and his Government, that Subjects should not, whilst they live within the Law, enjoy Peace and Security. It ought to be taken for a Scandal upon the King, when he is represented in a Court of Justice as if he were partially concerned, or rather inclined to desire, that a Party accused should be found Guilty, than that he should be declared Innocent, if he be so in Truth. Doubtless the King ought to wish in all Inquiries made after Treasons, Felonies, &c. that there were none to be found in his Kingdom; and that whosoever is accused, might be able to answer so well and truly for himself, as to shew the Accu-

sation to be erroneous or false, and to be acquitted of it. Something of this appears in the common Custom of *England*, that the Clerks of the King's Courts of Justice, when any Man hath pleaded Not Guilty to an Indictment, pray forthwith that God would send him a good Deliverance.

The Destruction of every Criminal is a loss to a Prince, and ought to be grievous to him; in the common regard of Humanity, and the more particular Relation of his Office, and the Name of Father. The King's Interest and Honour is more concerned in the Protection of the Innocent, than in the Punishment of the Guilty. This Maxim can never run them into Excesses; for it hath ever been looked upon as a Mark of great Wisdom and Virtue in some Princes and States, upon several Occasions to destroy all Evidences against Delinquents; and nothing is more usual than to compose the most dangerous Distempers of Nations by Acts of general Amnesty, which were utterly unjust, if it were as great a Crime to suffer the Guilty to escape, as to destroy the Innocent. We do not only find those Princes represented in History under odious Characters, who have basely murdered the Innocent; but such as by their Spies and Informers were too inquisitive after the Guilty: whereas none was ever blamed for Clemency, or for being too gentle Interpreters of the Laws. Though *Trajan* was an excellent Prince, endowed with all heroic Virtues, yet the most eloquent Writers, and his



his best Friends, found nothing more to be praised in his Government, than that in his Time, all Men might think what they pleased, and every Man speak what he thought, and he had no better Way of distinguishing himself from his wicked Predecessors, than by hanging up the Spies and Informers, whom they had employed for the discovery of Crimes \*. But if the Punishment of Offenders were as universally necessary as the Protection of the Innocent, he were as much to be abhorred as *Nero*; and that Clemency which is so highly praised, were to be looked upon as the worst of Vices, and those who have hitherto been taken for the best of Princes, were altogether as detestable as the worst.

Moreover all human Laws were ordained for the Preservation of the Innocent, and for their sakes only are Punishments inflicted. That those of our own Country do solely regard this, was well understood by *Fortescue*†, who saith, "Indeed I could rather wish Twenty Evil-doers to escape Death through Pity, than one Man to be unjustly condemned." Such Blood hath cried to Heaven for Vengeance against Families and Kingdoms, and their utter Destruction hath ensued. If a Criminal should be acquitted by too great Lenity, Caution, or otherwise, he may be reserved for future Justice from Man or God, if he doth not repent; but it is impossible that Satisfaction or  
Reparation

\* *Tacit. lib. 1. Hist.*

† *Fort. de Laud. Leg. Ang. ch. 27.*

Reparation should be made for innocent Blood, shed in the Forms of Justice.

Without all Question, the King's only just Interest in the Evidence given against the Party accused, and in the Manner of taking it, is to have the Truth made manifest, that Justice may thereupon be done impartially: And if Accusations may be first examined in secret more strictly and exactly, to prevent Fraud and Perjury, than is possible to be done in open Court, (as hath before appeared) then it is for the King's Benefit to have it so. And nothing done in, or by a Court, about the Trial of the Accused, is for the King, (in the Sense of our Law) unless it some Way conduce to Justice in the Case. The Witnesses which the Prosecutor brings, are no farther for the King, than they tell the Truth and the whole Truth, impartially; and by whomsoever any others may be called upon the Inquiry, or the Trial to be examined, if they sincerely deliver the Truth of the Matters in Question, they are therein the King's Witnesses, though the Accused be acquitted by reason of their Testimonies. If such as are offered by the Attorney General to prove Treason against any Man, shall be found to swear falsely, maliciously, or for Reward or Promises, though they depose positively Facts of Treason against the Accused, yet they are truly and properly Witnesses against the King, by endeavouring to prevent Justice, and destroy his Subjects: Their Malice and Villany being confessed or proved, the King's Attorney ought (*ex Officio*)

*Officio*) to Prosecute them in the King's Name, and at his Suit, for their Offences against him in such Depositions pretended to have been for him: And the legal Form of the Indictment ought to be for their swearing falsely and maliciously against the Peace of the King, his Crown and Dignity. The Prosecutors themselves, notwithstanding their big Words, and assuming to themselves, to be for the King, if their Prosecution shall be proved to be Malicious, or by Conspiracy against the Life or Fortune of the Accused, they are therein against the King, and ought to be indicted at the King's Suit, for such Prosecutions done against his Crown and Dignity. And if an Attorney General should be found knowingly guilty of Abetting such a Conspiracy, his Office could not excuse or legally exempt him from suffering the villainous Judgment, to the Destruction of him and his Family. It is esteemed in the Law one of the most odious Offences against the King, to attempt in his Name to destroy the Innocent, for whose Protection he himself was ordained. Queen *Elizabeth* had the true Sense of our Law, when the Lord *Burleigh*, upon Sir *Edward Coke* her then Attorney's coming into her Presence, told her, this is he who Prosecutes *pro Domina Regina*, for our Lady the Queen; and she said, she would have the Form of the Records altered; for it should be *Attornatus Generalis qui pro Domina veritate sequitur* \*; The Attorney General who Prosecutes for our Lady the Truth.

\* *Coke Inst.* 3d part. p. 79.

Truth. Whoever is trusted in that Employment, dishonours his Master and Office, if he gives Occasion to the Subjects to believe that his Master seeks other Profits or Advantages by Accusations, than the common Peace and Welfare: He ought not to excite a Jealousy in any of their Minds, that Confiscations of Estates are designed or desired by any of the King's Ministers; whosoever makes such Advantages to the Crown their principal Aim in accusing, are either Robbers and Murderers, (in the Scripture sense) in seeking innocent Blood for Gain, or in the mildest Construction, (supposing the Accusation to be on good Grounds) they shew themselves to be of corrupt Minds, and a Scandal to their Master and the Government. Profit or Loss of that kind ought to have no Place in judicial Proceedings against suspected Criminals, but Truth is only to be regarded; and for this Reason the Judgments given in Courts of human Institution, are in Scripture called, the Judgments of God, who is the God of Truth.

Yet farther, if any Benefit to the King could be imagined by making the Evidence to the Grand Jury public, it could not come in Competition with the Law expressed in their Oath; which by constant uninterrupted usage, for so many Ages, hath obtained the force of Law. *Bracton* and *Briton*, in their several Generations bear Witness, that it was then practised; and greater Proof of it need not be sought, than the Disputes that appear by the Law-Books to have been

been amongst the antient Lawyers, whether it was Treason or Felony for a Grand Jury to discover, either who was indicted, or what Evidence was given them. The Trust of the Grand Juries was thought so sacred in those Ages, and their Secrecy of so great Concern to the Kingdom, that whosoever should break their Oath therein, was by all thought worthy to die; only some would have had them suffer as Traitors, others as Felons\*. And at this Day it is held to be a high Misprision, punishable by Fine and Impoverishment. The Law then having appointed the Evidence to be given to Grand Juries in secret, the King cannot desire to have it made public. He can do no Wrong, saith the old Maxim; that is, He can do nothing against the Law, nor is any Thing to be judged for his Benefit that is not warranted by Law; his Will, Commands, and Desires, are therein no otherwise to be known: He cannot change the legal Method or Manner of inquiring by Juries, nor vary in any particular Case from the customary and general Forms of judicial Proceedings; he can neither abridge nor enlarge the Power of Juries, no more than he can lessen the legal Power of the Sheriffs or Judges, or by special Directions order the one how they shall execute Writs, and the other how they shall give Judgments, though these made by himself.

It is Criminal, no doubt, for any to say, that the King desires a Court of Justice, or a Jury,

\* *Coke Instit.* 3d part, p. 107.

Jury, to vary from the Direction of the Law, and they ought not to be believed therein: If Letters, Writs, or other Commands should come to the Judges for that Purpose, they are bound by their Oaths not to regard them, but to hold them for Null; the Statutes of 2 E. 3. 8. and 20 E. 3. 1. are express; That if any Writs or Commandments come to the Justices in Disturbance of the Law, or the Execution of the same, or of Right to the Parties, they shall proceed as if no such Letters, Writs, or Commands were come to them: And the Substance of these and other Statutes, is inserted into the Oath taken by every Judge; and if they be under the most solemn and sacred Tie in the Execution of Justice, to hold for nothing or none the Commands of the King under the great Seal; surely the Word or Desire of an Attorney General in the like Case ought to be less than nothing.

Besides, they are strangely mistaken, who think the King can have an Interest different from, or contrary unto that of the Kingdom, in the Prosecution of Accused Persons: His Concernments are involved in those of his People; and he can have none distinct from them. He is the Head of the Body Politick, and the legal Course of doing Justice, is like the orderly Circulation of the Blood in the natural Bodies, by which both Head and Body are equally preserved, and both perish by the Interruption of it.

The King is obliged to the utmost of his Power to maintain the Law, and Justice in its due Course,

Course, by his Coronation Oath, and the Trust thereby reposed in him. In former Ages he was conjured not to take the Crown, unless he resolved punctually to observe it. *Bromton* and others speaking of the Coronation of *Richard* the first, deliver it thus, that having first taken the Oath; *Deinde indutus Mantello, ductus est ad Altare, & conjuratus ab Archiepiscopo, & prohibitus ex parte Dei, ne hunc Honorem sibi assumat, nisi in mente habeat tenere Sacramenta & Vota quæ superius fecit. Et Ipse respondit, se per Dei auxilium omnia supradicta observaturum bona fide. Deinde cepit Coronam de Altari, & tradidit eam Archiepiscopo, qui posuit eam super caput Regis, & sic Coronatus Rex, ductus est ad sedem suam\**. Afterward, clothed with the Royal Robe, he is led to the Altar, and conjured by the Archbishop, and forbid in the Name of God, not to assume that Honour, unless he intended to keep the Oaths and Vows he had before made; and he answered, by God's help he would faithfully observe all the Premises: And then he took the Crown from off the Altar, and delivered it to the Archbishop, who put it upon the King's Head; and the King thus crowned, is led unto his Seat. The Violation of which Trust cannot be as well a Wound unto their Consciences, as bring great Prejudice upon their Persons and Affairs.

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\* *Brom.* p. 1159. *Mat. Paris,* p. 153. *Hovel.* p. 374. *Baker.* p. 68.

The Common Law that exacts this, doth so far provide for Princes, that having their Minds free from Cares of preserving themselves they may rest assured, that no Acts, Words or Designs, that may bring them into danger, can be concealed from the many Hundreds of Men, who by the Law are appointed in all Parts of the Kingdom, watchfully to take Care of the King; and are so far concerned in his Safety, that they can hope no longer to enjoy their own Lives and Fortunes in Peace, than they can preserve him, and the good Order which according to the Laws he is to uphold.

It is the joint Interest of King and People, that the antient Rules of doing Justice be held sacred and inviolable; and they are equally concerned in causing strict Inquiries to be made into all Evidences given against suspected, or accused Persons, that the Truth may be discovered; and such as dare to disturb the public Peace by breaking the Laws, may be brought to Punishment. And the whole Course of judicial Proceedings in Criminal Causes, shews that the People is therein equally concerned with the King, whose Name is used. This is the Ground of that distinction which *Sir Edward Coke* makes between the Proceedings in Pleas of the Crown, and Actions for Wrongs done to the King himself. “ In Pleas of the Crown, or other common Offences, Nuisances, &c. principally concerning others, or the Public, there the King by Law must be apprised by Indictment, Pre-  
“ sentment,



“sentment, or other matter of Record; but  
“the King may have an Action for such Wrong  
“as is done to himself, and whereof none other  
“can have an Action but the King, without be-  
“ing apprised by Indictment, Presentment, or  
“other matter of Record, as a *Quare impedit*,  
“*Quare incumbravit*, a Writ of Attaint, of Debt,  
“Detinue of Ward, Escheat, Scire fac. pur re-  
“pealer patent \*,” &c. Unto which every Man  
must answer: But no Man can be brought to an-  
swer for public Crimes at the King’s Suit, other-  
wise than by Indictment of a Grand Jury.

The whole Course of doing Justice upon Crimi-  
nals, from the beginning of the Process, unto  
the Execution of the Sentence, is, and ever was  
esteemed to be the Kingdom’s Concernment, as  
is evidenced by the frequent Complaints made  
in Parliament, that Capital Offenders were Par-  
doned to the Peoples damage and wrong. In  
the 13 *Richard 2.* it is said, that the King hear-  
ing the grievous Complaints of his Commons  
in Parliament, of the outrageous Mischiefs which  
happened unto the Realm, for that Treasons,  
Murders, and Rapes of Women, be commonly  
done, and committed, and the more because  
Charters of Pardon had been easily granted in  
such Cases; and thereupon it was enacted, that  
no Pardon for such Crimes should be granted,  
unless the same were particularly specified there-  
in: and that if a Pardon were otherwise granted  
for the Death of a Man, the Judges should not-  
withstanding

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\* *Coke 3d. Inst. page 136.*

withstanding inquire by a Grand Jury of the Neighbourhood concerning the Death of every such Person, and if he were found to have been wilfully Murdered, such Charter of Pardon to be disallowed; and Provisions were made by imposing grievous Fines upon every Person, according to his Degree and Quality, or Imprisonment, who should presume to sue to the King for any Pardons of the aforesaid Crimes: and that such Persons might be known to the whole Kingdom, their Names were to be upon several Records. The like had been done in many Statutes made by several Parliaments, as in the 6 *Ed.* 1. 9. the 2 *Ed.* 3. 2. the 10 *Ed.* 3. 2. and the 14 *Ed.* 3. 15. wherein it was acknowledged by the King in Parliament. “ That the Oath of  
 “ the Crown had not been kept, by reason of  
 “ the Grant of Pardons contrary to the aforesaid  
 “ Statutes; and enacted, that any such Charter  
 “ of Pardon, from thenceforth granted against  
 “ the Oath of his Crown and the said Statutes,  
 “ the same should be holden for none.” In the  
 27 *Edw.* 3. 2. It is further provided, for preventing the Peoples damage by such Pardons;  
 “ That from thenceforth in every Charter of Par-  
 “ don of Felony, which shall be granted at any  
 “ Man’s suggestion, the said suggestion, and the  
 “ Name of him that maketh the suggestion, shall  
 “ be comprised in the same Charter; and if after  
 “ the same suggestion be found untrue, the Char-  
 “ ter shall be disallowed and holden for none: And  
 “ the Justices before whom such Charter shall be  
 “ alledged,

alledged, shall inquire of the same suggestion,  
and that as well of Charters granted before  
this Time, as of Charters which shall be  
granted in Time to come, and if they find  
them untrue, then they shall disallow the  
Charter so alledged, and shall moreover do as  
the Law demandeth."

Thus have Parliaments from Time to Time declared, that the Offences against the Crown are against the public Welfare, and that Kings are obliged by their Oath and Office to cause Justice to be done upon Traitors and Felons, for the Kingdom's sake; according to the antient common Law declared by *Magna Charta* in these Words: *Nulli negabimus, nulli vendemus, nulli differemus Justitiam* \*. We will sell to no Man, we will not deny or defer to any Man either Justice or Right.

And as the Public is concerned, that the due and legal Methods be observed in the Prosecution of Offenders, so likewise doth the Security of every single Man in the Nation depend upon it: No Man can assure himself he shall not be accused of the highest Crimes. Let a Man's Innocence and Prudence be what it will, yet his most inoffensive Words and Actions are liable to be misconstrued, and he may, by Subornation and Conspiracy, have Things laid to his Charge, of which he is no ways Guilty. Who can speak or carry himself with that Circumspection, as not to have his harmless Words or Actions wrested

\* 9. Hen. 3<sup>o</sup>. 29.

to another sense than he intended? Who can be secure from having a Paper put into his Pockets, or laid in his House, of which he shall know nothing till his Accusation? History affords many Examples of the detestable Practices in this kind of wicked Court Parasites, among which one may suffice for Instance, out of *Polybius*, an approved Author\*. “*Hermes*, a powerful Favourite under *Antiochus* the Younger, but a Man noted to be a Favourer of Liars, was made use of against the innocent and brave *Epigenes*: He had long watched to kill him, for that he found him a Man of great Eloquence and Valour, having also Favour and Authority with the King: He had unjustly but unsuccessfully accused him of Treason, by false glosses put upon his faithful Advice given to the King in open Council; this not prevailing, he by Artifice got him put out of his Command, and to retire from Court; which done, he laid a Plot against him, with the help and Counsel of (one of his Accomplices) *Alexis*, and writing Letters as if they had been sent from *Molon*, (who was then in open Rebellion against his Prince, for fear, amongst other Reasons, of the Cruelty and Treachery of *Hermes*) and corrupted one of *Alexis*'s Servants with great Promises, who went to *Epigenes*, to thrust the Letters secretly amongst his other Writings, which when he had done, *Alexis* came suddenly to *Epigenes*, demanding of him, if he had received any Letter from *Molon*: And when he said he had none, the other said, he

\* *Polybius*, lib. 5.

He was confident he should find some; wherefore entering the House to search, he found the Letters, and taking this occasion, slew him, [lest if the Fact had been duly examined, the Conspiracy had been discovered.] These Things happening thus, the King thought that he was justly slain; in this Manner the worthy *Epigenes* ended his Days: But this great Man's Designs did not rest here; for within a while, heightened with Success, he so arrogantly abused his Master's Authority, as he grew dangerous to the King himself, as well as to those about him; inso-much as *Antiochus* was forced, for that he hated and feared *Hermes*, to take away his Life by Stratagem, thereby to secure himself." By these, and a Thousand other Ways, the most unblemished Innocence may be brought into the greatest Dangers. Since then every Man is thus easily subject to Question, and what is one Man's case this Day, may be another Man's to Morrow, it is undoubtedly every Man's Concern, to see (as far as in him lies) in every Case, that the accused Person may have the Benefit of all such Provisions, as the Law hath made for the Defence of Innocence and Reputation.

Now to this End there is nothing so necessary as the secret and separate Examination of Witnesses; for though perhaps, as hath been already observed, it may be no very difficult Thing for several Persons, who are permitted to discourse with each other freely, and to hear, or be told, what each of their Fellows had been asked, and answered,

answered, to agree in one Story ; especially if the Jury may not ask what Questions they shall think fit for the Satisfaction of their own Consciences ; but that they shall be so far under the Correction and Censure of the Judges, as to have the Questions which they put called by them Trifles, impertinent, and unfit for the Witnesses to speak to: yet if they be examined apart, with that due Care of sifting out all the Circumstances which the Law requires, where every Man of the Jury is at full Liberty to inquire into any thing for his clearer Information, and that with what Deliberation they think fit ; and all this be done with that Secrecy which the Law commands ; it will be almost impossible for a Man to suffer under a false Accusation.

Nor has the Law been less careful for the Reputation of the Subjects of *England*, than for their Lives and Estates ; and this seems to be one Reason why, in criminal Cases, a Man shall not be brought to an open legal Trial by a Petit Jury, till the Grand Jury have first found the Bill. The Law having intrusted the Grand Inquest in a special manner with their good Names ; they are therefore not only to inquire whether the Fact that is laid, was done by the Party accused, but into the Circumstances thereof too, whether it were done traiterously, feloniously, or maliciously, &c. according to the manner charged :: Which Circumstances are not barely Matter of Form, but do constitute the very Essence of the Crime: And lastly, into the Credit of the Witnesses,

nesses, and that of the Party accused. And unless they find both the Fact proved upon him, and strong Presumptions of such aggravating Circumstances attending it, as the Law requires in the Specification of such Crime; and likewise are satisfied in the Credibility of the Witnesses; they ought not to expose the Subject to an open Trial in the Face of the County, to a certain Loss of his Reputation, and Hazard of his Life and Estate. Moreover, should this Practice of public Examination prevail, and the Jurors Oath of Secrecy continue, how partial and unequal a Thing would it be to declare that to all the World, which will blast a Man's good Name, and religiously conceal what they may know tending to his Justification? To examine Witnesses, perhaps suborned, certainly prepared, and have Evidence dressed up with all the Advantages that Lawyers Wits can give it, of the foulest Crimes a Man can be guilty of, and this given before some Thousands against him, and yet for the same Court to swear those, whom the Law makes Judges in the Case, not to reveal one Word of those Reasons, which have satisfied their Consciences of his Innocence? What is this, but an Artifice of slandering Men, it may be, of the most unspotted Conversation, and of abusing Authority, not so much to find Men guilty, as to make them infamous? After this Ignominy is fixed, what Judgment can the Auditors, and from them the World, make, but  
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of high Probability of Guilt in the Party accused, and Perjury in the Jury?

This Course, if it should be continued, must needs be of most dangerous Consequence to all sorts of Men: It will both subject every one without Relief to be defamed, and fright the best and most conscientious Men from serving on Grand Juries, which is a most necessary Part of their Duty.

Now since there is in our Government, as in every one that is well constituted there ought to be, great Liberty of Accusation, that no Man may be encouraged to do Ill through Hopes of Impunity, if by this means a Method be opened for the Blasting the most innocent Man's Honour, and deterring the most Honest from being his Judges, what remains, but that every Man's Reputation, which is most dear unto such as are Good, is held precariously, and it will be in the Power of great Men to pervert the Laws, and take away whose Life and Estate they please; or at least to fasten Imputations of the most detested Crimes upon any, whom for secret Reasons they have a mind to defame? The Consequences of which Scandal, as they are very mischievous to every Man, so in a trading Country in a more especial manner, to all who live by any Vocation of that kind.

The greatest Part of Trade is driven upon Credit; most Men of any considerable Employment dealing for much more than they are truly worth: And every Man's Credit depends as well upon



upon his Behaviour to the Government he lives under, as upon his private Honesty in his Transactions between Man and Man; so that the Suspicion only of his being obnoxious to the Government, is enough to set all his Creditors upon his Back, and put a Stop to all his Affairs; perhaps to his utter Ruin. What Expedition and Violence will they all use to recover their Debts, when he shall be publicly charged with such Crimes, as forfeit Life and Estate? Tho' there should not be one Word of the Accusation true, yet they knowing the Charge, and the seeming Proofs in the Court, and the Consequences of it, and not being acquainted with the Truth, as it appears to the Jury, Self-Interest will make his Creditors to draw in their Effects; which is no more than a new Contrivance, under Colour of Law, of undoing honest Men.

If to prevent any of these Mischiefs, the Jury should discover their Fellows and their own Counsel, as the Court by public Examination doth, it would not only be a wilful Breach of their Oath, but a Betraying of the Trust which the Law has reposed in them; for the Security of the Subject. For to subject the Reasons of their Verdicts upon Bills to the Censure of the Judges, were to divest themselves of the Power which the Law has given them, for most important Considerations, without Account or Controul; and to interest those in it, whom the Law has not in this Case trusted, and so by Degrees, the Course of Justice in one of the most material

rial Parts may be changed, and a fundamental Security of our Liberty and Property insensibly lost. On the other hand, If for fear of being unworthily reproached as *Ignoramus* Jurymen, obstinate Fellows that obstruct Justice, and deserve the King, the Grand Jury shall suffer the Judges, or the King's Counsel, to prevail with them to indorse *Billa vera*, when their Consciences are not satisfied in the Truth of the Accusation, they act directly against their Oaths, oppress the Innocent, whom they ought to protect, and, as far as in them lies, subject their Country, themselves and Posterity, to arbitrary Powers; pervert the Administration of Justice, and overthrow the Government, which is instituted for the obtaining of it, and subsists by it.

This seems to be the greatest Treason that can be committed against the whole Kingdom, and threatens Ruin unto every Man in private in it. No one can be safe against authorised Malice; and, notwithstanding the Care of our Ancestors, Rapine, Murder, and the worst of Crimes, may be advanced by the Formality of Verdicts, if Grand Juries be over-awed, or not suffered to inquire into the Truth, to the Satisfaction of their Consciences. Every Man whilst he lives Innocently, doth, under God, place his hopes of Security in the Law, which can give no Protection, if its due Course be so interrupted, that Frauds cannot be discovered: Witnesses may as well favour Offenders, as give false Testimony against the Guiltless, and if they, by hearing  
what

what each other faith, are put into a Way of concealing their villainous Designs, there can be no legal Revenge of the Crimes already committed. Others by their Impunity will be encouraged to do the like : And every quiet-minded Person will be equally exposed unto private Injuries, and such as may be done unto him, under the Colour of Law. No Man can promise unto himself any Security for his Life or Goods ; and they who do not suffer the utmost Violences in their own Persons, may do it in their Children, Friends and nearest Relations, if he be deprived of the Remedies that the Law ordains, and forced to depend upon the Will of a Judge, who may be (and perhaps we may say are) too often corrupted, or swayed by their own Passions, Interests, or the Impulse of such as are greater than they. This Mischief is aggravated by a commonly received Opinion, that whosoever speaks against an accused Person is the King's Witness ; and the worst of Men, in their worst Designs, do usually shelter themselves under that Name ; whereas he only is the King's Witness, who speaks the Truth, whether it be for or against him that is accused. As the Power of the King is the Power of the Law, he can have no other Intention than that of the Law, which is to have Justice impartially administred : and as he is the Father of his People, he cannot but incline ever to the gentlest side, unless it be possible for a Father to delight in the Destruction, or desire to enrich himself by the Confiscation of his Chil-

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drens

drens Estates. If the most wicked Princes have had different Thoughts, they have been obliged to dissemble them, We know of none worse than *Nero*; but he was so far from acknowledging, that he desired any Man's Condemnation, that he looked upon the Necessity of signing Warrants for the Execution of Malefactors, as a Burden, and rather wished he had not learnt to Write, than to be obliged to do it \*. They who by spreading such barbarous Errors, would create unto the King an Interest different from that of his People which he is to preserve, whilst they pretend to serve him in destroying of them, they deprive him of his Honour and Dignity; Justice is done in all Places, in the Name of the chief Magistrate; it being presumed, that he doth embrace every one of his Subjects with equal Tenderness, until the Guilty are by legal Proofs discriminated from the Innocent; and amongst us the King's Name may be used in civil Cases, as well as Criminal: But it is as impossible for him rightly to desire I should be condemned for killing a Man whom I have not killed, or for a Treason that I have not committed, as that my Land should be unjustly taken from me by a Judgment in his Bench, or I should be condemned to pay a Debt that I do not owe.

In both Cases we sue unto him for Justice, and demand it as our Right. We are all concerned in it, publicly, and privately; and the King, as well as all the Officers of Justice, are by their several

\* Sen. Vit. Ner. *Utinam nescirem litteras.*

veral Oaths, obliged in their respective Capacities to perform it. They are bound to give their Assistance to find out Offenders; and the King's Attorney is by his Oath to prosecute them, if he be required. And he is not only the King's Servant in such Cases, but the Nation's; or rather, cannot otherwise serve the King, than by seeing Justice done in the Nation.

Whensoever any Man receives an Injury in his Person, Wife, Children, Friends or Goods, the King is injured; inasmuch as he is by his Office to prevent such Mischiefs, and ought to be concerned in the Welfare of every one of his Subjects; but the Parties to whom the Injuries are done, are the immediate Sufferers, and the Prosecution is principally made, that they may be repaired or revenged, and other innocent Persons secured by the Punishment of Offenders, in which the King can be no otherwise concerned, than as he is to see his Office faithfully performed, and his People protected. The King's Suit therefore is in the Behalf of his People; yet the Laws leave unto every Man a Liberty, in case of Treasons, Murders, Rapes, Robberies, &c. to sue in the King's Name, and crave his Aid; or by Way of Appeal, in his own. The same Law looks upon Felons, or Traitors, as public Enemies; and by authorizing every one to pursue and apprehend them, teacheth us, that every Man, in his Place, ought to do it. The same Act whereby one, or a few are injured, threatens all; and every Man's private Interest so concurs

with that of the Public, that all depends upon the exact Preservation of the Method prescribed by the Law, for the impartial Inquisition after suspected Offenders, and most tender Care of preserving such as are innocent. As this cannot possibly be effected without secret and separate Examinations, the forbidding of them is no less than to change the Course which is enjoined by Law, confirmed by Custom, and grounded upon Reason and Justice.

If, on the other Side, any Man believe, that such as in the King's Name prosecute suspected Delinquents, ought only to try how they may bring them to be condemned, he may be pleased to consider, that all such Persons ought, according unto Law, to produce no Witness whom they do not think to be true; no Evidence, which they do not believe good; nor can conceal any thing that may justify the Accused. No Trick or Artifice can be lawfully used to deceive a Grand Jury, or induce them to find or reject a Bill, otherwise than as they are led by their own Consciences.

All Lawyers were antiently sworn to put no Deceit upon the Courts for their Client's sake; and there are Statutes still in force to punish them if they do it. But there is an eternal Obligation upon such as are of Counsel against Persons accused of Crimes, not to use such Arts as may bring the Innocent to be condemned; and thereby pervert that, which is not called the Judgment of Man, but of God; because Man  
renders

renders it in the Stead and by the Commandment of God. Such Practices do not exalt the Jurisdiction of Tribunals; but infect and pollute them with that innocent Blood, which will be their Overthrow. And least of all can it be called a Service to the King; since none could ever stand against the Cry of it. This is necessarily implied in the Attorney General's Oath, to serve the King in his Kingly Office, wherein the Law presumes he can do no Wrong. But the greatest of all Wrongs, and that which hath been most destructive unto Thrones, is by Fraud to circumvent and destroy the Innocent. This is to turn a legal King into a *Nimrod*, a Hunter of Men. This is not to act the Part of a Father or a Shepherd, who is ready to lay down his Life for his Sheep; but such as the Psalmist complains of, "who eat up the People as if they eat Bread." *Jezebel* did perhaps applaud her own Wit, and think she had done a great Service to the King, by finding out Men of *Belial*, Judges and Witnesses, to bring *Naboth* to be stoned: But that unregarded Blood was as a Canker, or the Plague of Leprosy, in his Throne and Family, which could not be cured but by its Overthrow and Extinction. But if the Attorney General cannot serve the King by abusing Juries, and subverting the Innocent, he can as little gain an Advantage to himself by falsifying his Oath; by the true Meaning whereof he is to prosecute Justice impartially: And the eternal divine Law would annul any Oath or Promise that he should

have taken to the Contrary, even though his Office had obliged him unto it.

The like Obligation lies upon Jurors not to suffer themselves to be deluded, or persuaded, that the Judges, King's Counsel, or any others can dispense with that Oath, or any Part of it, which they have taken before God unto the whole Nation; nor to think that they can swerve from the Rules set by the Law without a damnable Breach of it. The Power of releasing or dissolving conscientious Obligations, acknowledged in the Pope, makes a great Part of the *Roman* Superstition; and that grand Impostor could never corrupt Kingdoms and Nations to their Destruction, and the Establishment of his Tyranny, until he had brought them to believe he could dispense with Oaths, taken by Kings unto their Subjects, and by Subjects to their Kings; nor impose so extravagant an Error upon either, until he had persuaded them he was in the Place of God. It is hard to say, how the Judges or King's Counsel can have the same Power, unless it be upon the same Title; but we may be sure they may as well dispense with the whole Oath as any Part of it, and can have no Pretence unto either, unless they have the Keys of Heaven and Hell in their keeping: It is in vain to say, the King as any other Man may remit the Oath taken unto and for himself; he is not a Party for himself, but in the behalf of his People, and cannot dispose of their Concernments without their Consent, which is given only in Parliament.

The



The King's Counsel ought to remember, they are in criminal Cases of Counsel unto every Man in the Kingdom. It is no ways referred unto the Direction of the Judges, or unto them, whether that Secrecy enjoined by Law, be profitable unto the King or Kingdom; they must take the Law as it is, and render Obedience unto it, until it be altered by the Power that made it. To this End the Judges, by Acts of Parliament, *viz.* 18 *Ed.* 3. *cap.* 8. and 20 *Ed.* 3. *cap.* 1. are sworn to serve the People, "Ye shall serve our Lord the King and his People in the Office of Justice, &c. Ye shall deny to no Man common Right by the King's Letters, nor no other Man's, nor for no other Cause; and in default thereof in any Point, they are to forfeit their Bodies, Lands and Goods." This proves them to be the Peoples Servants as well as the King's.

Further, by the express Words of the Commissions of Oyer and Terminer, they are required to "assist every Man that suffers Injury, and make diligent Inquisition after all manner of Falshoods, Deceits, Offences and Wrongs done to any Man, and thereupon to do Justice according to the Law:" So that in the whole Proceedings in order unto Trial, and in the Trials themselves, the Thing principally intended, which several Persons are severally in their Capacities obliged to pursue, is, the Discovery of Truth: The Witnesses are to depose "the Truth, the whole Truth, and Nothing but the Truth:" Thereupon the Counsel for the King  
are

are to prosecute: The Grand Jury to present: And the Petit Jury to try: These are several Offices, but all to the same End. It is not the Prisoner, but the Crime that is to be pursued; this primarily, the Offender but by Consequence; and therefore such Courses must be taken, as may discover that, and not such as may ensnare him: When the Offence is found, the impartial Letter of the Law gives the Doom; and the Judges have no Share in it, but the Pronouncing of it: Till then the Judges are only to preside, and take Care that every Man else, who is employed in this necessary Affair, do his Duty according to Law. So that upon result of the whole Transaction, impartial Justice may be done, either to the Acquittal, or Condemnation of the Prisoner.

Hereby it is manifest why the Judges are obliged by Oath, to “serve the People as well as the King:” And by Commission, to “serve every one that suffers Injuries.” As they are to see that Right be done to the King, and his injured Subjects in discovering of the Delinquent; so they are to be of Counsel with the Prisoner, whom the Law supposeth may be ignorant as well as innocent; and therefore has provided, that the Court shall be of Counsel for him, and as well inform him of what legal Advantages the Law allows him, as to resolve any Point of Law when he shall propose it to them. And it seems to be upon the Presumption of this steady Impartiality, in the Judges, (thus obliged by all that

that is held sacred before God and Man to be unbiassed) that the Prisoner hath no Counsel; for if the Court faithfully perform their Duty, the Accused can have no Wrong, or Hardship, and therefore needs no Adviser.

Now suppose a Man perfectly Innocent, and in some Measure knowing in the Law, should be accused of Treason or Felony; If the Judges shall deny unto the Grand Jury the Liberty of examining any Witnesses, except in open Court, where nothing shall be offered that may help to clear the Prisoner, but every Thing aggravated, that gives Colour for the Accusation; such Persons only produced, as the King's Counsel, or the Prosecutors shall think fit to call, of whose Credit also the Jury must not inquire, but shall be controlled and brow-beaten in asking Questions of such unknown Witnesses for their own Satisfaction, if they have any Tendency to discover the Infamy of these Witnesses, or the Falshood of their Testimony; how can Innocence secure any Man from being arraigned?

And if the Oath of the Judges should be as much forgotten in the farther Proceedings upon the Trial, where in Cases of Treason the Prisoner shall have all the King's Counsel (commonly not the most unlearned) prepared with studied Speeches, and Arguments to make him black and odious, and to strain all his Words, and to alledge them for Instances of his Guilt: If then all his private Papers, and Notes to help his Memory in his Plea and Defence, shall be taken  
from

from him by the Gaoler, or the Court, and given to his Prosecutors; and all Advice and Assistance from Counsels or Friends, and his nearest Relations, shall be denied him, and none suffered by Word or Writing to inform him of the Indifferency, or Honesty, or the Partiality or Malice of the Pannels returned (whom the Law allows him to Challenge or refuse, either peremptorily or for good Reasons offered;) should he be thus deprived of all the good Provisions of the Law for his Safety, to what Frauds, Perjuries, and Subornations is not he, and every Man exposed, who may be accused? What Deceits may there not be put upon Juries? And what Probability is there of finding Security in Innocence? What an admirable Execution would this be of their Commission, to “ make diligent Inquisition after all  
 “ manner of Falshoods, Deceits, Wrongs and  
 “ Frauds, and thereupon to do Justice according  
 “ to Law?” When at the same Time, if so managed, a Method would be introduced of ruining and destroying any Man in the Form of Justice. Such Practices would be the highest Dishonour to the King imaginable, whose Name is used, and so far misrepresent the Kingly Office, as to make that appear to have been erected to vex and destroy the People, which was intended and ordained to help and preserve them.

The Law so far abhors such Proceedings, that it intends, that every Man should be strictly bound to be exactly Just, in their several Employments, relating to the Execution of Justice.

The

The Serjeant of the King's Counsel, Sir *George Jeffreys*, amongst the rest, who prosecute in the King's Name, and are consulted in the forming Bills of Indictment, and Advice about the Witnesses, and their Testimonies against the Accused; these, if they would remember it, when they are made Serjeants, take an Oath, *Coke's 2d Institute*, Page 214, "as well and truly to serve  
" the People," whereof the Party accused is one,  
" as the King himself; and to minister the King's  
" Matters duly and truly after the Course of the  
" Law to their Cunning;" not to use their Cunning and Craft to hide the Truth, and destroy the Accused if they can.

They are also obliged by the Statute of *Westm.* 1. *cap.* 29. To put no manner of Deceit or Collusion upon the King's Court, nor secretly to consent to any such Tricks as may abuse or beguile the Court, or the Party, be it in Causes Civil or Criminal: And it is ordained, that if any of them be convicted of such Practices, he shall be imprisoned for a Year, and never be heard to plead again in any Court; and if the mischievous Consequence of their Treacheries be great, they are subject to farther and greater Punishments. Our antient Law Book, called *the Mirror of Justice*, *cap.* 2. *Sect.* 4. says, "That every Serjeant Pleader is chargeable by his Oath, not  
" to maintain or defend any Wrong or Falshood  
" to his Knowledge, but shall leave his Client  
" when he shall perceive the Wrong intended by  
" him: Also that he shall not move or proffer  
" any

“ any false Testimony, nor consent to any Lies,  
 “ Deceits or Corruptions whatsoever in his Plead-  
 “ ings.”

As a farther Security unto the People against all Attempts upon their Laws, exemplary Justice hath been done, in several Ages, upon such Judges, and Justiciaries, as through Corruption, Submission unto unjust Commands, or any other sinister Consideration, have dared to swerve from them: The Punishments of these wicked Men remain upon Record, as Monuments of their Infamy, to be a Terror unto all that shall succeed them. In the Reign of the *Saxons* the most notable Example was given by King *Alfred*, who caused above forty Judges to be hanged in a short Space, for several Wrongs done to the People, as is related in *the Mirror of Justice*: Some of them suffered for imposing upon Juries, and forcing them to give Verdicts according to their Will; and one, as it seems, had taken the Confidence to examine a Jury, that he might find which of them would submit to his Will, and setting aside him who would not, condemned a Man upon the Verdict of Eleven.

Since the Coming in of the *Normans*, our Parliaments have not been less severe against such Judges as have suffered the Course of Justice to be perverted, or the Rights and Liberties of the People to be invaded: In the Time of *Edward* the first, *Anno* 1289. the Parliament finding, that all the Judges, except two, had swerved from their Duty, condemned them to several Punish-  
 ments

ments according unto their Crimes; as Banishment, perpetual Imprisonment, or the Loss of all their Estates, † &c. Their particular Offences are specified in a Speech made by the Archbishop of *Canterbury* in Parliament. They had broken *Magna Charta*; incited the King against his People; violated the Laws, under Pretence of expounding them; and impudently presumed to prefer their own Counsels to the King, before the Advices of Parliament; as appears by the Speech, &c. thereunto annexed.

The like was done in the Time of *Edward II.* when *Hugh de Spencer* was charged for having prevailed with the King to break his Oath to the People, in doing Things against the Law by his own Authority.

In *Edward* the Third's Time, Judge *Tborpe* was hanged, for having in the like manner brought the King to break his Oath. And the happy Reign of that great King \* affords many Instances of the like Nature; among which, the Punishment of *Sir Henry Green* and *Sir William Skipwith*, deserve to be observed, and put into an equal Rank with those of his brave and victorious Grandfather.

In *Richard* the Second's Time, eleven of the Judges, forgetting the dreadful Punishments of their Predecessors †, subscribed malicious Indictments, against Law; and gave false Interpretations

† *Ex Chron. Anno 10 Ed. I.*

\* *Daniel's History, pag. 260, 261.*

† See all the English Histories of *Walsingham, Fabian, Speed, &c.* in the eleventh and twenty first Years of *Richard II.*

tions of our antient Laws to the King, thereby to bring many of his most eminent and worthiest Subjects to suffer as Traitors at his Will; subjected the Authority, and very Being of Parliaments to his absolute Pleasure; and made him believe, that all the Laws lay in his own Breast. Hereupon Sentence of Death passed upon them; and though upon their Repentance, and confessing they had been swayed by Fear and Threatnings from the King, two only were executed; all the others were for ever banished, as unworthy to enjoy the Benefit of that Law, which they had so perfidiously and basely betrayed.

It were an endless Work to recite all the Examples of this kind that are to be found in our Histories and Records; but that of *Empson* and *Dudley* must not be omitted: They had craftily contrived to abolish Grand Juries, and to draw the Lives and Estates of the People into Question, without Indictments by them; and by Surprise, and other wicked Practices, they gained an Act of Parliament for their Countenance. Hereupon false Accusations followed without Number: Oppression and Injustice broke forth like a Flood. And to gain the King's Favour, they filled his Coffers. The Indictments against them, mentioned in *Anderson's Reports*, P. 156, 157. are worth reading; whereby they are charged "with Treason, for subverting the Laws and  
" Customs of the Land, in their Proceedings  
" without Grand Juries; and procuring the  
" Murmuring and Hatred of the People against  
" the



“ the King ; to the great Danger of him and  
“ the Kingdom.” Nothing could satisfy the  
Kingdom, though the King was dead whom they  
had flattered and served, but such Justice done  
upon them, and many of their Instruments and  
Officers, as may for ever make the Ears of Judges  
to tingle.

And it is not to be forgotten, that the Judges  
in Queen *Elizabeth's* Time, in the Case of *R. Cavendish*,  
in *Anderson's Reports*, Pag. 152, & 155.  
“ were,” as they told the Queen and her Coun-  
sellors, “ by the Punishment of former Judges,  
“ especially of *Empson* and *Dudley*, deterred from  
“ obeying her illegal Commands.” The Queen  
had sent several Letters under her Signet; great  
Men pressed them to obey her Patent under the  
Great Seal; and the Reasons of their Disobedi-  
ence being required; they answered, “ That the  
“ Queen herself, and the Judges also, had taken  
“ an Oath to keep the Laws; and if they should  
“ obey her Commands, the Laws would not  
“ warrant them, and they should therein break  
“ their Oath, to the Offence of God and their  
“ Country, and the Commonwealth wherein they  
“ were born. And, say they, if we had no Fear  
“ of God, yet the Examples and Punishments  
“ of others before us, who did offend the Laws,  
“ do remember, and recal us from the like Of-  
“ fences.”

Whosoever, being in the like Places, may de-  
sign, or be put upon the like Practices, will do  
well to consider these Examples, and not to

think that he, who obliquely endeavours to render Grand Juries useless, is less criminal than he that would absolutely abolish them. That which doth not act according to its Institution, is as if it were not in Being. And whoever doth without Prejudice consider this Matter, will see that it is not less pernicious to deny Juries the Use of those Methods of discovering Truth, which the Law hath appointed; and so by degrees turn them into a meer Matter of Form, than openly and avowedly to destroy them. Surely such a gradual Method of destroying our native Right is the most dangerous in its Consequence. The Safety which our Forefathers for many Hundreds of Years enjoyed, under this Part of the Law especially, and have transmitted to us, is so apparent to the meanest Capacity, that whoever shall go about to take it away, or give it up, is like to meet with the Fate of *Ismael*, to have every Man's Hand against him, because his is against every Man. Artifices of this Kind will ruin us more silently, and so with less Opposition, and yet as certainly as the other more open Oppression. This only is the Difference, that one Way we should be Slaves immediately, and the other insensibly: But with this farther Disadvantage too, that our Slavery would be the more unavoidable, and the faster riveted upon us, because it would be under Colour of Law, which Practice in Time would obtain.

Few Men at first see the Danger of little Changes in Fundamentals; and those who design them,

them, usually act with so much Craft, as besides the giving specious Reasons, they take great Care that the true Reason shall not appear. Every Design therefore of changing the Constitution ought to be most warily observed, and timely opposed. Nor is it only the Interest of the People, that such Fundamentals should be duly guarded, for whose Benefit they were at first so carefully laid, and whom the Judges are sworn to serve; but of the King too, for whose sake those pretend to act, who would subvert them.

Our Kings, as well as Judges, are sworn to maintain the Laws: They have themselves in several Statutes required the Judges, at their Peril, to administer equal Justice to every Man, notwithstanding any Letters or Commands, &c. even from themselves to the Contrary. And when any Failure hath been, the greatest and most powerful of them have ever been the readiest to give Redress. It appears by the Preface to the Statutes of the twentieth of *Edward* the III<sup>d</sup>; that the judicial Proceedings had been perverted; that Letters, Writs, and Commands had been sent from the King and great Men to the Justices; and that Persons belonging to the Court of the King, the Queen, and the Prince of *Wales*, had maintained and abetted Quarrels, &c. whereby the Laws had been violated, and many Wrongs done. But the King was so far from justifying his own Letters, or those illegal Practices, that the Preamble of those Statutes saith, they were made for the Relief of the People in

their Sufferings by them. That brave King, in the Height of his Glory, and Vigour of his Age, chose rather to confess his Error, than to continue in it; as is evident by his own Words:—

“ *Edward* by the Grace of GOD, &c. Because  
 “ by divers Complaints made unto us, we have  
 “ perceived that the Law of the Land, which  
 “ we by our Oath are bound to maintain, is the  
 “ less well kept, and Execution of the same dis-  
 “ turbed many times by Maintainances and  
 “ Procurements, as well in the Court as the  
 “ Country, We, greatly moved of Conscience  
 “ in this Matter; and for this Cause, desiring as  
 “ much for the Pleasure of GOD, and Ease and  
 “ Quietness of our Subjects, as to save our Con-  
 “ science, and for to save and keep our said  
 “ Oath, by the Assent, &c. enact, That Judges  
 “ shall do Justice, notwithstanding Writs, Let-  
 “ ters, or Commands from himself, &c. and that  
 “ none of the King’s House, or belonging to  
 “ the King, Queen, or Prince of *Wales*, do main-  
 “ tain Quarrels, &c.”

King *James*, in his Speech to the Judges in the Star Chamber, in the Year 1616, told them;  
 “ That he had after many Years resolved to re-  
 “ new his Oath, made at his Coronation, con-  
 “ cerning Justice; and the Promise therein con-  
 “ tained for maintaining the Law of the Land.”

And in the next Page save one says, “ I was  
 “ sworn to maintain the Law of the Land, and  
 “ therefore had been perjured if I had broken  
 “ it: GOD is my Judge, I never intended it.”

And

And his Majesty that now is, hath made frequent Declarations and Proteftations, of his being far from all Thoughts of defigning an Arbitrary Government; and that the Nation might be confident he would rule by Law.

Now if after all this, any Officer of the King's fhould pretend Instructions from his Master, to demand fo material an Alteration of Proceedings, in the higheft Cafes againft Law, as are abovementioned; and the Court, (who are required to flight and reject the moft folemn Commands under the Great Seal, if contrary to Law) fhould upon a verbal Intimation allow of fuch a Demand, and fo break in upon this Bulwark of our Liberties, which the Law has erected; might it not give too juft an Occafion to fufpect, that all the legal Securities of our Lives and Properties are unable to protect us? And may not fuch Fears rob the King of his greateft Treasure and Strength, the Peoples Hearts, when they dare not rely upon him in his Kingly Office and Truft, for Safety and Protection by the Laws? Our Englifh History affords many Inftances of thofe that have pretended to ferve our King in this manner, by undermining the Peoples Rights and Liberties, whose Practices have fometimes proved of fatal Confequence to the Kings themfelves, but more frequently ended in their own Defttruction.

But after all, imagining it could be made out that this Method of private Examination by a Grand Jury, (which, from what has been faid before,

before, hath appeared to be so extremely necessary for the public Good, and to every private Man's Security) were inconvenient, or mischievous, and therefore fit to be changed; yet being so essential a Part of the Common Law, it is no otherwise alterable than by Act of Parliament. We find by Precedents, that the bare Forms of Indictments could not be reformed by the Judges. The Words *Depopulatores agrorum, Infidiatores viarum, Vi & Armis, Baculis, Cultellis, Arcubus & Sagittis*, could not be left out but by Advice of the Kingdom in Parliament. A Writ issued in the Time of King *Edward III.* giving Power to hear and determine Offences, and all the Justices resolved, (*Coke's 4th Inst. P. 164.*)

“ That they could not lawfully act, having their  
 “ Authority by Writ, where they ought to have  
 “ had it by Commission : Though it was in the  
 “ Form and Words that the legal Commission  
 “ ought to be. *John Knivett*, Chief Justice, by  
 “ Advice of all the Judges, resolved that the  
 “ said Writ was *contra Legem*. And where di-  
 “ vers Indictments were before them found  
 “ against *T. S.* the same, and all that was done  
 “ by colour of that Writ, was damned.”

If in such seeming little Things as these, and many others that may be instanced, the Wisdom of the Nation hath not thought fit to intrust the Judges, but reserved the Consideration of them to the legislative Power; it cannot be imagined, that they should subject to the Discretion and Pleasure of the Judges, those important Points  
 in

in the established Course of administering Justice, whereupon depends the Safety of all the Subjects Lives and Fortunes. If Judges will take upon themselves to alter the constant Practice, they must either alter the Oath of the Grand Jury, or continue it : If they should alter it, so as to make it fail with any such new Method, and thus in Appearance charitably providèd that the Grand Jury should not take a mock Oath, or forswear themselves ; they then make an Incroachment upon the Authority of Parliaments, who only can make new, or change old legal Oaths, and all the Proceedings thereupon would be void.

If they should continue constantly to impose the same Oath, as well when they have Notice from the King, that the Jury shall not be bound to keep his Secrets and their own, as when they have none ; they must assume to make the same Form of Law to be of Force, and no Force ; and the same Words to bind the Conscience, or not bind it, as they will have them : Whereby they would profane the natural Religion of an Oath, and bring a foul Scandal upon Christianity, by trifling in that sacred Matter worse than Heathens. And whilst the Judges find themselves under the Necessity of administering the Oath unto Grand Juries, and not suffer them to observe it according to their Consciences, they would confess the Illegality of their own Proceedings, and can never be able to repair the Breaches, by pretending a tacit Implication if he King will ; but must unavoidably fall under that

that approved Maxim of our Law, *Maledicta est interpretatio quæ corrumpit textum*: It is a cursed Interpretation that dissolves the Text.

There are two vulgar Errors concerning the Duty of Grand Juries, which, if not removed, will in Time destroy all the Benefit we can expect from that Constitution, by turning them into a meer Matter of Form, which were designed for so great Ends. Many have of late thought, and affirmed it for Law, that the Grand Jury is neither to make so strict Inquiry into Matters before them, nor to look for so clear Evidence of the Crime, as the Petit Jury; but that of their Presentments, being to pass a second Examination, they ought to indict upon a superficial Inquiry and bare Probabilities: Whereas should either of these Opinions be admitted, the Prejudice to the Subject would be equal to the total laying aside Grand Juries. There being in Truth no Difference between arraighning without any Presentment from them at all, and their presenting upon slight Grounds.

For the first, that Grand Juries ought not to make so strict Inquiry, it were to be wished, that we might know how it comes to pass, that an Oath should be obligatory upon a Petit Jury, and not unto the Grand; or in what Points they may lawfully, and with good Conscience, quit that Exactness: Whether in relation to the Witnesses and their Credibility; or the Fact and all its Circumstances; or the Testimony and its Weight; or lastly, in reference to the Prisoner, and



d Probability of his Guilt ; and withal, upon what Grounds of Law or Reason their Opinion founded. On the contrary, he that will consider either the Oath they take, or the Commission, where their Duty is described, will find in all Points, that there lies an equal Obligation upon them and the Petit Juries.

They swear “ diligently to Inquire, and true Presentment make, &c. and to Present the Truth, the whole Truth, and Nothing but the Truth,” &c. And in the Commission of Oyer and Terminer, their Duty, with that of the Commissioners, is thus described: “ To inquire by the Oath of honest and lawful Men, &c. by whom the Truth of the Matter may be best known, of all manner of Treasons, &c. Confederacies, false Testimonies, &c. as also the Accessories, &c. by whomsoever or howsoever done, perpetrated or committed, by whom or to whom, how, in what Way, or in what Manner. And of other Articles and Circumstances premised, and of any other Thing or Things howsoever concerning the same.” Now for any Man after this to maintain, that Grand Juries are not to inquire, or not carefully, is as much as in plain Terms to say, they are bound to act contrary to the Commission, and their Oath:—And to affirm that they can discharge their Duty according to the Obligations of Law and Conscience, which they lie under, without a strict Inquiry into Particulars, to affirm that the End can be obtained without the Means necessary to it. The

The Truth is, that Grand Juries have both a larger field for their Inquiry, and are in many Respects better capacitated to make a strict one, than the Petit Juries: These last are confined as to the Person and the Crime, specified in the Indictment; but they are at large obliged to search into the whole Matter, that any ways concerns every Case before them, and all the Offences contained in it, all the criminal Circumstances whatsoever, and into every Thing, howsoever concerning the same. They are bound to inquire whether their Informations of suspected Treasons or Felonies, brought by Accusers, be made by Conspiracy, or Subornation; who are the Conspirators, or false Witnessess: By whom abetted, or maintained; against whom, and how many, the Conspiracy is laid; when, and how, and in what Course it was to have been Prosecuted.

But none of these most intricate Matters (which need the most strict and diligent Inquiries) can come under the Cognisance of the Petit Jury; they can only examine so much, as relates to the Credit of those Witnessess brought to prove the Charge against the Parties Indicted; wherein also they have neither Power, nor convenient Time to send for Persons, or Papers, if they think them needful, nor to resolve any Doubts of the Lawfulness, and Credibility of the Testimonies.

Yet farther, if the Crimes objected are manifest, it is then the Grand Jury's Duty to inquire after all the Persons any ways concerned in them, and

d the several Kinds of Offences, whereof every e ought jointly, or separately to be indicted as ey shall discover them to have been Principals, Accessories, Parties or privy thereunto, or to ve comforted, or knowingly relieved either e Traitors or Felons, or concealed the Offences others: But the Inquisition into all these atters, which require all possible strictness in urching, as being of the highest Importance to the public Justice, and Safety, is wholly t of the Power and Trust of the Petit Juries. ne Guilt, or Innocence of the Parties put upon eir Trials, and the Evidence thereof given, are e only Objects of their Inquiries. It is not eir Work, nor within their Trust to search into e Guilt, or Crimes of the Parties, whom they ry; they are bound to move within the Circle the Indictment made by the Grand Jury, to are to appoint, and specify the Offences, for ick the Accused shall be tried by the Petit ry.

When a Profecutor suggests that any Man is iminal, and ought to be indicted, it belongs the Grand Jury to hear all the Proof he can er, and to use all other Means they can, ereby they may come to understand the Truth the Suggestion, and every Thing or Circum- nce that may concern it; then they are care- ly to examine the Nature of the Facts, accord- ; unto the Rules of the Common Law, or the ress Words of the Statutes, whereby Offences distinguished, and Punishments allotted unto

X

each

each of them : It is true, that upon hearing the Party, or his Witnesſes, the Petit Jury may acquit or judge the Facts in the Indictment to be leſs heinous, or malicious, than they were preſented by the Grand Jury, but cannot aggravate them ; which being conſidered, it will eaſily appear by the Intent and Nature of the Powers given unto Grand Juries, that they are by their Oaths obliged, and their Inſtitution, ordained to keep all Injuſtice from entering the firſt Gates of our Courts of Judicature, and to ſecure the Innocent not only from Punishment, but from all Diſgrace, Vexation, Expence or Danger.

To underſtand our Law clearly herein, the Jurors muſt firſt know the lawful Grounds whereupon they may and ought to indict, and then what truly and juſtly ought to be taken for the Ground of an Indictment. The Principal and moſt certain is the Jurors personal Knowledge, by their own Eyes or Ears, of the Crimes whereof they indict : Or ſo many pregnant concurring Circumſtances, as fully convince them of the Guilt of the Accuſed : when theſe are wanting, the Depoſitions of Witneſſes and their Authority, are their beſt Guides in finding Indictments. When ſuch Teſtimonies make the Charge manifeſt and clear to the Jury, they are called Evidence, becauſe they make the Guilt of the Criminal evident, and are like the Light that diſcovers what was not ſeen before : All Witneſſes for that Reaſon are uſually called the Evidence, taking their Name from what they ought to be : Yet  
Witneſſes

Witnesses may swear directly and positively to an accusation, and be no Evidence of its Truth to the Jury; sometimes such Remarks may be made upon the Witnesses, as well in Relation to their Reputation and Lives, as to the Matter, Manner, and Circumstance of their Depositions, that from thence the Falshood may appear, or be strongly suspected: It is therefore necessary to know what they mean by a probable Cause or Evidence, who say that our Law requires no more for an Indictment.

*Probable*, is a Logical Term, relating to such Propositions, as have an appearance, but no certainty of Truth, shewing rather what is not, than what is, the matter of Syllogisms: These may be allowed in Rhetorick, which worketh upon the Passions, and makes use of such Colours as are fit to move them, whether true or false; but not in Logick, whose Object is Truth; as it principally intends to obviate the Errors that may arise from the Credit given unto appearances, by distinguishing the uncertain from the certain, *veribile à vero*, it cannot admit of such Propositions which may be false as well as true; it being as impossible to draw a certain Conclusion from uncertain Premises, as to raise a solid Building upon a tottering or sinking Foundation. This ought principally to be considered in Courts of Justice, which are not erected to bring Men into Condemnation, but to find who deserves to be condemned: and those Rules are to be followed by them, which are least liable to Deception. For this Reason

son the Counsel of the *Areopagites*, and some others of the best Judicatures that have been in the World, utterly rejected the use of Rhetorick, looking upon the Art of persuading by uncertain Probabilities, as little differing from that of Deceiving, and directly contrary to their Ends, who by the Knowledge of Truth, desired to be led into the Doing of Justice: But if the Art that made use of these Probabilities was banished from uncorrupted Tribunals, as a Hindrance unto the Discovery of Truth, they that would ground Verdicts totally upon them, declare an open Neglect of it; and as it is said, that *uno absurdo dato mille sequuntur*, if Juries were to be guided by Probabilities, the next Question would be concerning the more or less Probable, or what degree of Probability is required to persuade them to find a Bill: This being impossible to fix, the whole Proceedings would be brought to depend upon the Fancies of Men; and as nothing is so slight but it may move them, there is no security that innocent Persons may not be brought every Day into Danger and Trouble. By this means certain Mischiefs will be done, whilst it is by their own Confession uncertain whether they are any ways deserved by such as suffer them, to the utter overthrow of all Justice.

If the word *Probable* be taken in a common, rather than a nice Logical Sense, it signifies no more than likely, or rather more than unlikely: When a Matter is found to be so, the Wage is not even, there is Odds upon one side, and  
this

is may be a very good Ground, for Betting in Tennis Court, or at a Horse Race; but he that could make the Administration of Justice to depend upon such Points, seems to put a very small Value upon the Fortunes, Liberties and Reputation of Men, and to forget that those who in Courts of Justice have no other Business ere than to preserve them.

This continues in force, though in a Dialogue between a Barrister and a Grand Jury Man, published under the Title of the Grand Jury Man's Path and Office, it be said, p. 8, and 9. "That their Work is no more than to present Offences fit for a Trial, and for that Reason, give in only a verisimilar or probable Charge; and others have affirmed, that a far less Evidence will warrant a Grand Jury's Indictment, than a Petit Jury's Verdict." For nothing can be more opposite to the Justice of our Laws, than such Opinions: All Laws in doubtful Cases direct a suspension of Judgment, or a Sentence in favour of the accused Person: But if this were marked unto, Grand Juries should upon their Oaths affirm, they judge him Criminal, when the Evidence is upon such uncertain Grounds that they cannot but doubt, whether he is so or not. It cannot be hereupon said, that no Evidence so clear and full, but it may be false, and give the Jury occasion of doubts, so as all Criminals must escape, if no Indictment ought to be found unless the Proofs are absolutely certain, it is confessed that such Cases are not capable

of an infallible, Mathematical Demonstration; but a Jury, that examines all the Witnessess, that are likely to give any Light concerning the Business in Question, and all Circumstances relating to the Fact before them, with the Lives and Credit of those that testify it, and of the Person accused, may and do often find that which in their Consciences doth fully persuade them, that the accused Person is guilty; this is as much as the Law, or their Oath doth require; and such as find Bills, after having made such a Scrutiny, are blameless before God and Man, if through the fragility inseparable from human Nature, they should be led into Error? For they do not swear that the Bill is true, but that they in their Consciences believe that it is so; and if they write *Ignoramus* upon the Bill, it is not thereby declared to be false, nor the Person accused acquitted, but the Matter is suspended, until it can be more clearly proved, as in doubtful Cases it always ought to be.

Our Ancestors took great Care that suspicious, and probable Causes, should not bring any Man's Life, and Estate into Danger; for that Reason, it was ordained by the Stat. 37. Ed. 3. Cap. 18.

“ That such as made suggestions to the King,  
 “ should find Surety to pursue, and incur the same  
 “ Pain, that the other should have had if he were  
 “ attainted, in Case their suggestion be found  
 “ evil; and that then Process of the Law should  
 “ be made against the Accused.”

This



This manner of Proceeding hath its Root on eternal, and universal Reason: The Law given by God unto his People, *Deut.* 19. allotted the same Punishment unto a false Witness, as a Person convicted. The best disciplined Nations of the World learned this from the *Hebrews*, and made it their Rule in the Administration of Justice. The *Grecians* generally observed it, and the *Romans*, according to their *Lex Talionis*, did not only punish Death with Death, but the Intention of committing Murder by false Accusations, with the same Severity, as if it had been effected by any other Means. This Law was inviolably observed, as long as any thing of Regularity or Equity remained amongst them; and when thro' the Wickedness of some of the Emperors, or their Favourites, it came to be overthrown, all Justice perished with it. A Crew of false Informers broke out, to the Destruction of the best Men, and never ceased until they had ruined all the most eminent and antient Families: Circumvented the Persons, that by their Reputation, Wealth, Birth or Virtue, deserved to be distinguished from the common sort of People, and brought Desolation upon that victorious City. *Tacitus* complains of this, as the Cause of all the Mischiefs suffered in his Time and Country \*.

By their Means the most savage Cruelties were committed under the Name of Law, which thereby became a greater Plague, than formerly Crimes had been: No Remedy could be found, when

\* *Tacitus Ann.* 3;

when those *Delatores*, whom he calls, *genus hominum Publico exitio repertum, & pœnis quidem nunquam satis coercitum* \*, were invited by Impunity, or Reward: And the miserable People groaned under this Calamity, until those Instruments of Iniquity were by better Princes put to the most cruel, though well deserved Deaths.

The like hath been seen in many Places; and the Domestick quiet, which now is enjoyed in the principal Parts of *Europe*, proceeds chiefly from this, that every Man knows the same Punishment is appointed for a false Accusation, and a proved Crime.

It is hardly seven Years since Monsieur *Courboyer*, a Man of Quality in *Brittany*, suborned two of the King of *France's* Guards, to swear Treasonable Designs against *La Motte*, a Norman Gentleman; the Matter being brought to Monsieur *Colbert*, he caused the accused Person and the Witnessess to be secured, until the Fraud was discovered by one of them, whereupon he was pardoned, *La Motte* released, *Courboyer* beheaded, and the other false Witness hanged, by the Sentence of the Parliament of *Paris*. Though this Law seems to be grounded upon such Foundation, as forbids us to question the Equity of it, our Ancestors, (for Reasons best known unto themselves) thought fit to moderate its Severity, by the Statute of 38. *Ed. 3. cap. 9.* yet then it was enacted, and the Law continues in force unto this Day; “ that whosoever made Com-  
“ plaints.

\* *Tacitus Ann. 4.*

plaints to the King, and could not prove them against the Defendant," by the Process of law limited in former Statutes, which is first by a Grand Jury; he "should be imprisoned until he had made Good to the Party of his Damages, and of the Slander he suffered by such Occasion, and after shall make Fine and Ransom to the King," which is for the common Damage, that the King and his People suffer by such a false Accusation and Defamation of any Subject: And in the 42 *Ed. 3. cap. 3.* "To eschew the Mischiefs and Damage done by false Accusers," it is enacted, that "no Man be put to answer such suggestions, without Presentment before the Justices," *i. e.* by the Grand Jury: It cannot surely be imagined, that the suggestions made to the King and his Council, had no Probability in them, or that there was no Colour, Cause or Reason for the King to commit the Party to answer the Accusation: but the Grievance and Complaint was, that the People suffered certain Damage, and Vexation upon untrue, and at best uncertain Accusations, and that therein the Law was perverted by the King and his Counsel's taking upon them to judge of the Certainty or Truth of them, which of Right belonged to the Grand Jury only, upon whose Judgment and Integrity our Law doth wholly rely, for the Indemnity of the Innocent, and the Punishment of all such as do unjustly molest them.

Out

Our Laws have not thought fit so absolutely to depend upon the Oaths of Witnesſes, as to allow, that upon Two, or Ten Mens ſwearing poſitively Treason or Felony againſt any Man, before the Juſtices of Peace, or all the Judges, or before the King and his Council, that the Party accuſed, be he either Peer of the Realm, or Commoner, ſhould without farther Inquiry be thereupon arraigned, and put upon his Trial for his Life: Yet none can doubt but there is ſomething of Probability in ſuch Depoſitions; nevertheleſs the Law refers thoſe Matters unto Grand Juries, and no Man can be brought to Trial, until upon ſuch ſtrict Inquiries, (as is before ſaid) the Indictment be found. The Law is ſo ſtrict in theſe Inquiries, that though the Crime be never ſo notorious, nay, if Treason ſhould be confeſſed in Writing under Hand and Seal, before Juſtices of Peace, Secretaries of State, or the King and Council; yet before the Party can be arraigned for it, the Grand Jury muſt inquire, and be ſatiſfied, whether ſuch a Confeſſion be clear and certain: Whether there was no Colluſion therein: Or the Party induced to ſuch Confeſſion by Promise of Pardon: Or that ſome pretended Partakers in the Crime may be defamed, or deſtroyed thereby; they muſt inquire, whether the Confeſſion was not extorted by Fear, Threatnings, or Force, and whether the Party was truly *Compos mentis*, of ſound Mind and Reason at that Time.

The *Stat. 5. Eliz. cap. 1.* declares the antient common Law concerning the Trust and Duty of Juries;

uries; and enacts, that none should "be indicted for assisting, aiding, comforting, or abetting" Criminals in the Treasons therein made and declared, "unless he, or they be thereof lawfully accused by such good and sufficient Testimony or Proof, as by the Jury, by whom he shall be indicted, shall be thought good, lawful, and sufficient to prove him, or them Guilty of the said Offences." Herein is declared, the only true Reason of Indictments, *e.* the Grand Jury's Judgment that they have such Testimonies as they esteem sufficient to prove the Party indicted guilty of the Crimes whereof he is accused, and whatsoever the Indictment doth contain, they are to present no more, or other Crimes, than are proved to their satisfaction, as upon Oath they declare it is, when they present it. This Exactness is not only required in the Substance of Crimes, but in the Circumstances, and any Doubtfulness or Uncertainty in them makes the Indictment, and all Proceedings upon it by the Petit Jury, to be insufficient, and void, and holden for none, as appears by the following Cases.

In *Young's Case*, in the Lord *Coke's Reports Lib. 4. Fol. 40.* An Indictment for Murder was declared void for its Incertainty, because the Jury had not laid Certainty, in what Part of the Body the mortal Wound was given, saying only, that it was about his Breast; the Words were *Innam Plagam mortalem circiter pectus.* In like manner, in *Vaux's Case*, *Coke's Rep. Lib. 4. Fol. 44.*  
he

he being indicted for poisoning *Ridley*, the Jury had not plainly and expressly averred, that *Ridley* drank the Poison, though other Words implied it, and thereupon the Indictment was judged insufficient “ for (saith the Book) the Matter of an In-  
 “ dictment ought to be full, express, and certain,  
 “ and shall not be maintained by Argument or Im-  
 “ plication, for that the Indictment is found by  
 “ the Oath of the Neighbourhood.” In the second part of *Roll’s Reports*, p. 263. *Smith and Mall’s Case*, the Indictment was quashed for Incertainty, because the Jury had averred that *Smith* was either a Servant or Deputy, *Smith existens servus sive Deputatus*, are the Words: It was doubtless probably enough proven to the Jury, that he was either a Deputy, or Servant, but because the Indictment did not absolutely and certainly aver his Condition either of Servant or Deputy, it was declared void: If there be any Defect of Certainty in the Grand Jury’s Verdict, no Proof or Evidence to the Petit Jury can supply it, so it was judged by *Wrote and Wig’s Case*, *Coke 4. Rep. Fol. 45, 46, 47.* It was laid, that *Wrote* was killed at *Shipperton*, but did not aver that *Shipperton* was within the *Verge*, though in Truth it was, and no Averment or Oath to the Petit Jury, could supply that small Failure of Certainty to support the Indictment; and the Reason is rendered in these Words, viz. “ The Indict-  
 “ ment being *Veredictum*, id est, *dictum Verita-*  
 “ *tis*, a Verdict, that is, a saying of Truth, and  
 “ matter of Record, ought to contain the whole  
 “ Truth which is requisite by the Law, for  
 “ when

when it doth not appear, it is the same, as if it were not, and every material Part of the Indictment ought to be found upon the Oath of the Indicters, and cannot be supplied by the Averment of the Party." The Grand Jury's verdict is the Foundation of all judicial proceedings against Capital Offenders (at the King's Suit) that fail in any Point of Certainty, both Convictions, and Acquittals thereupon, are utterly void, and the Proceedings against both may be begun again, as if they had never been Tried, as it appears in the Case last cited, *Fol.* 47.

Now as the Law requires from the Grand Jury, particular, certain, and precise Affirmations of Truth, so it expects that they should look for like, and accept of no other from such as bring Accusations to them. For no Man can lawfully affirm that which is uncertainly delivered into him, or which he doth not firmly believe. The Witnesses that they receive for good, to depose only absolute Certainties about the Crime committed, that is, what they have seen, or heard from the accused Parties themselves, what others have told them; they are not to be suffered to make probable Arguments, and to infer from thence the Guilt of the Accused; their Testimonies ought to be positive, plain, direct and unambiguous: The Crime is to be sworn without any ambiguity or obscurity; not in Words qualified and limited to Belief, Conceptions, or Apprehensions. This absolute Certainty required in the Deposition of the Witnesses, is one principal  
Y Ground

Ground of the Jury's most rational Assurance of the Truth of their Verdict. The Credit also of the Witnesses ought to be free from all Blemish, that good and conscientious Men may rationally rely upon them in Matters of so great Moment as the Blood of a Man. It must also be certainly evident, that all the Matters which they depose, are consistent with each other, and accompanied with such Circumstances as in their Judgment render it credible. All just Indictments must be built upon these moral Assurances, which the Wisdom of all Nations hath devised as the best and only Way of deciding Controversies. Neither can a Grand Juryman, who swears to present nothing but the Truth, be satisfied with less.

It is scarce credible, that any learned in our Laws should tell a Grand Jury, that a far less Evidence will warrant their Indictment, being but an Accusation, than the Petit Jury ought to have for their Verdict. Both of them do, in like manner, plainly and positively affirm upon their Oaths the Truth of the Accusation; their Verdicts are indeed one and the same in Substance and Sense, though not in Words. There is no real Difference between affirming in Writing that an Indictment of Treason is true, as is the Practice of Grand Juries, and saying that the Party tried thereupon is Guilty of the Treason whereof he is indicted, as is the Course of Petit Juries. They are both upon their Oaths; they are equally obligatory unto both: The one therefore



we must expect the same Proof for their Satisfaction as the other; and as clear Evidence must be required for an Indictment as for a Verdict. It is unreasonable to think that a slighter Proof would satisfy the Consciences of the greater Jury, than is requisite to convince the less; and uncharitable to imagine, that those should not be as sensible as the others of the sacred Security they have given by Oath, to do nothing in their Offices but according to Truth.

If there ought to be any Difference in the Proceedings of the Grand and Petit Juries, the greater Exactness and Diligence seems to be required in the Grand Jury: For as the same Work of finding out the Truth, in order to the doing of Justice, is allotted unto both, the greatest Part of the Burden ought to lie upon them that have the best Opportunities of performing it. The Invalidity, Weakness, or Defects of the Proofs, may be equally evident to either of them; but if there be Deceit in stifling true Testimonies, or Malice in suborning wicked Persons to bring in such as are false, the Grand Jury may most easily, nay probably only can discover it: They are not straitned in Time; they may freely examine in private without Interruption from the Counsel or Court, such Witnesses as are presented unto them, or they shall think fit to call: They may jointly or severally inquire of their Friends or Acquaintance after the Lives and Reputations of the Witnesses, or the accused Persons, and all Circumstances relating

unto the Matter in question, and consult together under the Seal of Secrefy. On the other Side, the Petit Jury being charged with the Prifoner, acts in open Court, under the Awe of the Judges; is fubject to be difturbed or interrupted by Counfel; deprived of all Opportunity of confulting one another until the Evidence be fumm'd up; and not fuffered to eat or drink until they bring in a Verdict. So is it almoft impoffible for them, thus limited, to difcover fuch evil Practices as may be ufed for or againft the Prifoner, by Subornation or Perjury to pervert Juftice. If therefore the Grand Jury be not permitted to perform this Part of their Duty, it is hard to imagine how it fhould be done at all; and it is much more inconceivable how they can fatisfy their Confcienccs, if they fo neglect as to find a Bill upon an imperfect Evidence, in the Abfence of the Prifoner, in Expectation that it will be fupplied at the Bar: It concerns them therefore to remember, that if they proceed upon fuch Uncertainties, they will certainly give incurable Wounds to their Neighbour's Reputations, in order to the Deftroying of their Perfons.

Whatever Ground this Doctrine of indicting upon flight Proofs may have got in our Days, it is, as we have feen, both againft Law and Reason, and contrary to the Practice of former Times. My Lord Coke, in his *Comment on Weftminfter 2d*, tells us, " That in thofe Days, (and as yet, it ought to be) " Indictments taken in  
" the

“ the Absence of the Party, were formed upon  
“ plain and direct Proofs, and not upon Pro-  
“ babilities and Inferences.” Herein we see  
that the Practice of our Forefathers, and the  
Opinion of this great and judicious Lawyer,  
were directly against this new Doctrine: And  
some that have carefully looked backward, ob-  
served, that there are very few Examples of  
Men acquitted by Petit Juries, because Grand  
Juries of old were so wary in canvassing every  
Thing narrowly, and so sensible of their Duty  
in proceeding according unto Truth, upon sa-  
tisfactory Evidence, that few or none were  
brought unto Trial till their Guilt seemed evi-  
dent.

It is therefore a great Mistake, to think that  
the second Juries were instituted for the Hearing  
of fuller Proofs: That was not their Work, but  
to give an Opportunity to the accused Persons  
to answer for themselves, and make their De-  
fence; which cannot be thought to strengthen  
the Evidence, unless they be supposed to play  
Booby against their own Lives. By way of An-  
swer, the Prisoner may avoid the Charge: He  
is permitted to take Exceptions: He may de-  
mur or plead to the Indictments in Points of  
Law. Herein the Judges ought to assist him;  
and appoint Counsel, if he desire it. He may  
shew the Indicters, that is, the Grand Jury, or  
some of them, are not lawful Men, or not law-  
fully returned by the Sheriff: Embracery or  
Practice may be proved in the Packing of a Ju-

ry; a Conspiracy or Subornation may be discovered. Falshood may be found out in the Witnesses, by Questions about some Circumstances that none could have asked or imagined, except the Party accused. And besides doing Right to the Indicted in these and many other Things, it is the People's Due to have all the Evidence first taken in private, to be afterwards made public at the Trial, that the Kingdom may be satisfied in the equal Administration of Justice, and that the Judgments against Criminals may be of greater Terror, and more useful to preserve the common Peace.

If any object, that this Doctrine would introduce double Trials for every Offence, and all the Delays that accompany them: It may be answered, that *Nulla unquam de morte hominis sententia longa est*, Juv. Sat. "No Delay is to be esteemed long, when the Life of a Man is in Question." The Punishment of an Offender, that is a little deferred, may be compensated by its Severity; but Blood rashly spilt cannot be gathered up; and a Land polluted by it is hardly cleansed. Wise and good Men, in Matters of this Nature, have ever proceeded with extreme Caution, whilst the *swift of Foot* for that Business are in the Scripture represented under an ill Character, and have been often found in their Haste to draw more Guilt upon themselves, than what they pretended to chastise in others. To avoid this Mischief, in many well polished Kingdoms, several Courts of Justice  
are

are instituted, who take Cognizance of the same Facts, but so subordinate unto one another, that in Matters of Life, Limb, Liberty, or other important Cases, there is a Right of Appeal from the Inferior, before which it is first brought, to the Superior: Where this is wanting, Means have been found to give Opportunity unto the Judges to reflect upon their own Sentences, that if any thing had been done rashly, or through Mistake, it might be corrected: Man, even in his best Estate, seeming to have need of some such Helps. *Tiberius Cæsar* was never accused of too much Lenity, but when he heard that *Latorius Priscus* had been accused of Treason before the Senate, condemned, and immediately put to Death, *Tam præcípites deprecatus est pœnas*, he desired that such sudden Punishment might for the Future be forborn, and a Law was thereupon made, "That no Decree of the Senate should in less than ten Days be transmitted to the Treasury," before which Time it could not be executed, *Tacit. Ann. 3.* Matters of this Nature concerning every Man in *England*, it is not to be doubted but our Ancestors consider'd them; and our Constitution neither admitting of subordinate Judicatures, from whence Appeals may be made, nor giving Opportunities unto Juries to re-examine their Verdicts after they were given, they could not find a Way more suitable unto the Rules of Wisdom, Justice and Mercy, than to appoint two Juries, with equal Care, according unto different Methods, the one

one in private and at Leisure, the other publicly in the Presence of the Party, and more speedy, to pass upon every Man; so as none can be condemned unless he be thought Guilty by them both. And it cannot be imagined, that so little Time as is usually spent in Trials at the Bar, before a Petit Jury, should be allowed unto one that pleads for his Life, or unto them, who are to be satisfied in their Consciences, unless it were presumed, that the Grand Jury had so well examined, prepared and digested the Matter, that the other may proceed more succinctly, without danger of Erron.

Therefore let the Grand Juries faithfully perform their high Trust, and neither be cheated nor frightened from their Duty: Let them pursue the good old Way, since no Innovation can be brought in, that will not turn to the Prejudice of the accused Persons and themselves. Let them not be deluded with frivolous Arguments, so as to invalidate a considerable Part of our Law, and render themselves insignificant Ciphers, in Expectation that Petit Juries will repair the Faults they commit; since that would be no less than to slight one of the best Fences that the Law provides for our Lives and Liberties, and very much to weaken the other.

When a Grand Jury finds a Bill against any Person, they do all that in them lies to take away his Life, if the Crime be capital; and it is ridiculous for them to pretend they rely upon the Virtue of the Petit Jury, if they shew none

in

in themselves. They cannot reasonably hope the other should be more tender of the Prisoner's Concernments, more exact in doing Justice, or more careful in examining the Credit of the Witnesses, when they have not only neglected their Duty of searching into it, but added Strength unto their Testimony by finding a Bill upon it.

They cannot possibly be exempted from the Blame of Consenting, at the least, unto the Mischiefs that may ensue, unless they use all the honest Care that the Law allows to prevent them; nor consequently avoid the Stain of the Blood that may be shed by their Omission, since it could not have been, if they had well performed their Part before they found the Indictment, whereby the Party is exposed to so many Disadvantages, that it is hard for the clearest Innocence to defend itself against them.

But when the one and the other Jury act as they ought, with Courage, Diligence and Impartiality, we shall have just Reason, with the wise Lord Chancellor *Fortescue*, to celebrate that Law that instituted them\*: To congratulate with our Countrymen the Happiness we enjoy, whilst “ our Lives lie not at the Mercy of unknown Witnesses, hired, poor, uncertain; whose Conversation or Malice we are Strangers to; but Neighbours of Substance, of honest Report, brought into Court by an honourable sworn Officer: Men who know the  
“ Wit-

\* *Fortesc. de Laud. Leg. Ang. cap. 26.*

“ Witnesses, and their Credit, and are to hear  
 “ them and judge of them: That want no  
 “ Means for disclosing of Truth; and from  
 “ whom nothing can be hid, which can fall  
 “ within the Compass of human Knowledge.”

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“ **A**FTER that the King for the space of  
 “ three Years and more, had remained be-  
 “ yond Sea, and returned out of *Gascoign* and  
 “ *France* into *England*, he was much vexed and  
 “ disturbed by the continual Clamour both of  
 “ the Clergy and Laity, desiring to be relieved  
 “ against the Justices, and other his Majesty’s  
 “ Ministers, of several Oppressions and Injuries  
 “ done unto them, contrary to the good Laws  
 “ and Customs of the Realm; whereupon King  
 “ *Edward*, by his Royal Letters to the several She-  
 “ riffs of *England*, commanded that in all Coun-  
 “ ties, Cities, and Market Towns, a Procla-  
 “ mation should be made, that all who found  
 “ themselves aggrieved should repair to *West-*  
 “ *minster* at the next Parliament, and there shew  
 “ their Grievances, where as well the Great as  
 “ the Less should receive fit Remedies and speedy  
 “ Justice, according as the King was obliged by  
 “ the Bond of his Coronation Oath: And now  
 “ that great Day was come, that Day of judg-  
 “ ing even the Justices, and the other Minis-  
 “ ters of the King’s Council, which by no Col-  
 “ lusion or Reward, no Argument or Art of  
 “ Pleading they could elude or avoid: The  
 “ Clergy



“ Clergy therefore and the People being gather-  
“ ed together, and seated in the great Palace of  
“ *Westminster*, the Archbishop of *Canterbury*, a  
“ Man of eminent Piety, and as it were a Pillar  
“ of the holy Church and the Kingdom, rising  
“ from his Seat, and fetching a profound Sigh,  
“ spoke in this manner: Let this Assembly know  
“ that we are called together concerning the  
“ great and weighty Affairs of the Kingdom,  
“ too much alas of late disturbed, and still out  
“ of order, unanimously, faithfully and effectually  
“ with our Lord the King to treat and ordain:  
“ Ye have all heard the grievous Complaints of  
“ the most intolerable Injuries and Oppressions, of  
“ the daily Desolations committed both on Church  
“ and State, by this corrupt Counsel of our  
“ Lord the King, contrary to our great Charters,  
“ so many and so often, purchased and redeemed,  
“ granted and confirmed to us by the several  
“ Oaths of our Lord the King that now is, and  
“ of our Lords King *Henry* and *John*, and cor-  
“ roborated by the dreadful Thundrings of the  
“ sentence of Excommunication against the In-  
“ vaders of our common Liberties of *England* in  
“ our said Charters contained; and when we  
“ had conceived firm and undoubted hopes,  
“ that these our Liberties would have been faith-  
“ fully preserved by all Men, the King, circum-  
“ vented and seduced by the Counsels of evil  
“ Ministers, hath not been afraid to violate it by  
“ infringing them, falsely believing that he could  
“ for Rewards be absolved from that Offence,  
“ which would be the manifest Destruction of the  
“ Kingdom. “ “ There

“ There is another Thing also that grieves our  
 “ Spirits that the Justices subtilly and malici-  
 “ ously, by divers Arguments of Covetousness  
 “ and intolerable Pride, have the King against  
 “ his faithful Subjects sundry ways incited and  
 “ provoked, counselling him contrary to the  
 “ good and wholesom Advice of all the Liege-  
 “ men of *England*, and have not blushed nor  
 “ been afraid, impudently to assert and prefer  
 “ their own foolish Counsels, as if they were  
 “ more fit to consult and preserve the Common-  
 “ wealth, than all the Estates of the Kingdom  
 “ together assembled; so that it may be truly  
 “ said of them, they are the Men that troubled  
 “ the Land, and disturbed the Nation under  
 “ a false Colour of Gravity, have the whole  
 “ People grievously oppressed, and under pretence  
 “ of expounding the antient Laws, have intro-  
 “ duced new, I will not say Laws, but, evil  
 “ Customs: so that through the Ignorance of  
 “ some, and Partiality of others, who for re-  
 “ ward or fear of great Men have been engaged,  
 “ there was no Certainty of Law, and they  
 “ scorned to administer Justice to the People,  
 “ their deeds are deeds of Wickedness, and the  
 “ Work of Iniquity is in their Hand, their Feet  
 “ make haste to Evil, and the way of Truth  
 “ have they not known; what shall I say? there  
 “ is no Judgment in their Paths.

“ How many Free-men of this Land, faithful  
 “ Subjects of our Lord the King, have like the  
 “ meanest Slaves of lowest Condition without  
 “ any fault been cast into Prison, where some of  
 “ them

“ them by Hunger, Grief, or the Burden of  
“ their Chains have expired, they have also ex-  
“ torted at their Pleasure infinite Sums of Money  
“ for their Ransoms; the Coffers of some, that  
“ they might fill their own, as well from the  
“ Rich as the Poor, they have exhausted, by Rea-  
“ son whereof they have contracted the irrecon-  
“ cilable Hatred and dreadful Imprecations of all  
“ Men, as if they had purchased and obtained  
“ such an incommunicable Privilege, by their  
“ detestable *Charter of non Obstante*, that they  
“ might at their own Lust be free from all Laws  
“ both Human and Divine.

“ Moreover there is another more than ordina-  
“ ry Grievance, which hitherto hath, and in  
“ some Measure doth still rage among us: All  
“ Things are exposed to Sale, if not as it were  
“ to Plunder and Theft. Alas! how great Power  
“ hath the Love of Money in the Breasts of Men?  
“ Hear therefore, O ye Wicked, from my Mouth  
“ the dreadful Decree of Heaven; the Dejection  
“ of your Countenances accuse you, and like the  
“ Men of *Sodom*, ye have not hidden but pro-  
“ claimed the Sin; Wo be to your Souls, wo  
“ be to them that make Laws, and Writing  
“ write Injustice, that they may oppress the  
“ Poor in Judgment, and injure the Cause of  
“ the Humble, that Widows may become their  
“ Prey, and that they might destroy the Orphan.  
“ Wo be to those that build their Houses in In-  
“ justice, and their Tabernacles in Unrighteous-  
“ ness: Wo be to them that covet large Pos-  
“ sessions, that break open Houses, and destroy the  
the

“ the Man and his Inheritance : Wo be to such  
 “ Judges who are like Wolves in the Evening,  
 “ and leave not a Bone till the Morning. The  
 “ Righteous Judge will bring such Counsellors  
 “ to a foolish End, and such Judges to Confu-  
 “ sion : Ye shall all presently with a loud Cry,  
 “ receive the just Sentence of the Land.

“ At the hearing of these Things all Ears  
 “ tingled, and the whole Community lifted up  
 “ their Voice, and Mourned, saying, Alas!  
 “ alas for us! what is become of that *English*  
 “ *Liberty* which we have so often purchased,  
 “ which by so many Concessions, so many Statutes,  
 “ so many Oaths, hath been confirmed to us?

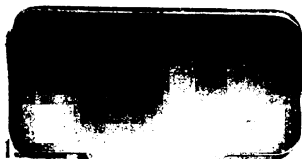
“ Hereupon several of the Criminals with-  
 “ drew into secret Places, being concealed by  
 “ their Friends; some of them were brought  
 “ forth into the midst of the People, and deser-  
 “ vedly turned out of their Offices; one was  
 “ banished the Land, and others were grievously  
 “ Fined, or Condemned to perpetual Imprison-  
 “ ment.

“ This is confirmed by *Spelman, An. 1290.*  
 “ All the Justices of *England*, saith he, were *An.*  
 “ *18. Ed. 1.* apprehended for Corruption, ex-  
 “ cept *John Mettingham*, and *Elias Bleckingham*,  
 “ whom I name for their Honour, and by  
 “ Judgment of Parliament condemned, some to  
 “ Imprisonment, others to Banishment, or Con-  
 “ fiscoation of their Estates, and none escaped  
 “ without grievous Fines, and the Loss of their  
 “ Offices.









B. L. 1

