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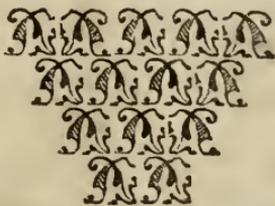
TO THE

Mirror of Justices;

BEING

An ACCOUNT of some Instances of the Practice
of Former Times, in Order to the Improvement of
Justice, and Safeguard of the Constitution.

— O Melebae Deus nobis haec otia fecit.
Namque erit ille mihi Semper Deus illius aram,
Saepe tener Nostris ab ovilibus imbuet agnus.
Virg.



Printed, in the YEAR MDCCXVI.

AC 911. 1716. H83

THE SUPPLEMENT

TO THE HISTORY OF THE

PROVINCE OF MASSACHUSETTS

FROM 1780 TO 1820

BY

JOHN G. BROWN

GEORGICUM:
OR A
SUPPLEMENT
TO THE
MIRROR of JUSTICES, &c.



IN the *Mirror of Justices*, an Ancient Law Book, Writ before the Conquest and enlarg'd since by *Andrew Horn* Cap. 4. Sect. 8. we find one of the Laws of King *Alfred* in these Words
Of False Judges assigned, King *Alfred* ordained such Judgment, That they do Wrong they do to God, whose Vicegerents they are, and to the King, who is p

into so noble a Place as is the Chair of God, and hath given them so great Dignity as to represent the Person of God, as Consuls as to Judge Offenders, that first they be adjudged make Satisfaction to those they have hurt, and that the Remainder of their Goods should be to the King, saving all other Rights; and that all their Possessions, with all their purchased Land should be forfeited, in whose Hands soever they be conveyed and that they be delivered over to false Lucifer, so low t

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they never return to them again, and their Bodies, that they be Punish'd and Banish'd at the King's Pleasure: And for a Moral False Judgment, that they be Hang'd as other Murderers.

In pursuance of this Law, King *Alfred* caused Forty four Judges to be Hang'd in one Year, as appears by the same Author, a particular List of whose Names and Crimes I have given hereafter.

The Courts were not then settled at *Westminster-Hall*, but Justice was Administred by the *Prefecti Comitatus*, call'd *Comites*, and their Co-adjutors call'd *Vice-Comites*, not from their Attendance upon the Person of the King, but from their Office or Jurisdiction, which in their particular Districts bore some Resemblance to the *Comes Palatij*, who were eligible by the People, as I think I cou'd make appear, if it were material, and which I mention on-ly to account for the Hanging so many Judges in one Year.

And least this Exemplary Act of Justice shou'd be impud-ent to the Barbarity of the Times, I think it necessary to give some Account of this great *Saxon* Law-giver, that certainly was equal to any of the Ancients, except *Moses*. All Antiquity rings of him both in Verse and Prose. I shall mention a few Lines out of a Modern Poet, Sir *Win-
ston Churchill*, which are to be found in his *Divi Britannici*, or *British Worthies*, in praise of him.

To thee is due, great *Alfred*, double Praise:
To thee we bring the *Laxvel* and the *Bays*.
Master of *Arts* and *Arms*: Apollo so
Sometimes did use his *Harp*, sometimes his *Bow*.
And from the other Gods got the *Renown*,
To reconcile the *Gauntlet* and the *Gown*.

But

*But who did e'er, with the same Sword, like thee,
Execute Justice, and the Enemy?
Keep up at once the Law of Arms and Peace,
And from the Camp issue out Writs of Ease?*

I the rather have taken notice of this, because this ingenious Gentleman, whilst his great Soul was inspir'd with the Glory of the *British Worthies*, and his Pen was transmitting the noblest Ideas of them to future Ages, happen'd to add to their Number, and to bestow upon his Country another Hero, that seems to be the Epitome of them all, and to whom all those of the Posterity of *Alfred*, that he himself would own, were he now alive, are highly indebted, being the Father, as I take it, of His Grace the present Duke of *Marlborough*; which wou'd make a Body think, that the Representations and Images of Vertue being strongly imprinted in the Mind of the Parent, may have the same Influence in forming the Progeny that deform'd Objects are often known to have in some cases.

Asserius Menevensis and *John Spelman*, the Son of Sir *Henry*, have writ the Life of this Monarch, wherein they style him *Magnus* and *Fundator*, being the Projector of our Constitution, and seems by this exemplary Severity upon the Guardians or Conservators of it in its Infancy, to have pointed out the only Way to Posterity, that he thought capable of preserving it. His Fortune was exercis'd and ambiguous, which he bore with a Constancy and Equality that contributed to his Greatness: He was abandon'd after he was King, and forc'd to abscond, which the Clergy of that time attributed to some Sin that he was guilty of, and inflicted by God as a Punishment upon him in this World, that he might not suffer in the next. His elder Brother had injur'd him very much

in

in his Patrimony left him by his Father; but however he was intrusted by him in the Wars, and serv'd him faithfully to his Death notwithstanding; and in return, his Brother left him the Kingdom, having the Fee-simple thereof, as the *Alumni Alfredi* in *Oxford* affirm in their Comment upon *Spelman*, tho' in disherison of *Kenred* the Son of *Wolfer* his elder Brother; so that he came in by the Donation of a Monarch that was Absolute, not by a Divine Right, but that of Conquest, which he deriv'd from his Pagan Predecessors, that had no knowledge of God, or any Privy or Communion with him except in the ordinary Course of Providence. He perform'd several great Achievements, having brought the Remains of the *Saxon* Heptarchy under his Obedience, and likewise some part of the *Welsh*, call'd *Ordovices*, a stout and warlike People; but the greatest of his Actions was in relaxing the Reins of Government, and granting large Immunities and Liberties to his People, and likewise Means to preserve them, by instituting the Grand Inquest of the Kingdom, call'd the *Michael Gemot*, or Parliament; and the smaller Inquests, call'd *Judicium Duodecem virale*, or Juries, and by dividing the Country into Shires or Prefectures, and ordaining Governors over them, that were Creatures of the People.

Says *MALMSBURIENSIS*, *Volentes Angli in potestatem Alfredi concesserant gaudentes se talem virum edidisse qui posseteos in libertatem evehere.*

This wise Prince did not think fit to leave a Despotick and Arbitrary Power in his eldest Son over the Lives and Liberties of all the rest of his Children, who were equally dear to him, and amongst whom he numbred his People; nor did he intend that any one should wear his Crown that wou'd not submit to his Laws and Ordinances, which he left as a Charge or Condition upon their Estate. And

And he did not only protect his People by his Arms, and amend them by his Laws, but likewise made use of all the Arts of Peace to Polish and Adorn their Minds, thereby to render them more Tractable to Government, and more Capable of Discerning the Use and Excellency of it.

He Modell'd and Enlarg'd both the Universities, and his *Alumni* Translated *Spelman* into the Universal Language in honour of him, and us'd to Drink to his Glorious Memory very Plentifully, till that great Light of the Gospel the Bishop of *Cork* discover'd it to be a Sin, in his late Revelations.

He invited Learned and Ingenious Men to come and Settle in his Dominions from all Parts, and gave them the greatest Encouragement; particularly to one *Johannes Erigena* a famous *Irishman*, that had been brightned by the *Eastern* Learning.

Before the Conquest when the Judge or *Præfectus Comitatus* was Eligible by the People, it is to be remark'd that the King was generally the Person that prosecuted the Judges to Punishment, as King *Alfred* did, and several others; particularly King *Edgar*, who us'd frequently to make a Progress for that purpose; but after the appointment of the Judges fell into the Hands of the Crown the People were Commonly the Complainants in Parliament.

In the 17th Year of the Reign of *Edward* the first, whom my Lord *Coke* calls the Wisest King that ever was, Twelve Judges were punish'd very heavily, but in a Parliamentary Method. Sir *Ralph de Hengam* Chief Justice of the King's-Bench, was fin'd 7000 Marks. Sir *Thomas Weyland* Chief Justice of the Common-Pleas, was Attainted of Felony; and Sir *Adam de Stratton* Chief Baron of the *Exchequer* (an

Exquisite Rogue that had got a prodigious Estate) was fin'd 34000 Marks, which amounted to 2266 l. 13 s. 4 d. Sterling, and was Reckon'd an immense Sum in those Times.

Of this passage *Walsingham* says, fol. 54. *Justitarios omnes de falsitate deprehensos a suo officio deposuit ipsos Juxta merita gravi puniens multa.*

In the 24th Year of the Reign of *Edward* the Third, who was Reckon'd a very Wise Prince too, *Sir William Thorp*, Chief Justice of the *King's-Bench*, for taking five Bribes that came to no more than 100 was adjudg'd to be Hang'd in Parliament.

The Reason of the Judgment is Enter'd in the Roll in these Words,

Quia predictus Willielmus Thorpe, qui Sacramentum domini Regis Erga populum suum habuit ad Custodiendum fregit malitiose falso & re belliter quantum in se potuit.

And 'tis entered into the Roll that this Judgment shou'd not be a President in Respect of any other Oath but that of a Judge.

This Judgment was question'd afterwards in Parliament the 25th of *Edward* the 3d. numero 10, and was declared to be Law, *Nemine Contradicente*; and I take the same Law to be in all Cases where a Judge breaks his Oath, falso & malitiose (i. e.) wittingly. *Thorp's* Oath is entered in the Roll, which is the same with the Judges Oath, the 18th of *Edward* the 3d, which I suppose the Judges take here.

And I do conceive the Judges fall under the same Penalty where they give any Extrajudicial Opinions contrary to Law, knowingly, being bound by their Oaths to Counsel the King according to Law.

In the 11th Year of *Richard* the 2d, Judgment of High Treason was given against Eighteen several Persons of Eminent Rank, for misadvising the King; three of whom were the Archbishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*.

Six Judges were among them, *Loxon* the King's Serjeant at Law, *Blake* the King's Council, and *Usk* the Sheriff of *Middlesex*.

The Archbishop, Duke and Earl fled for it. Sir *Robert Trifilian* the Lord Chief Justice was hang'd at *Tyburn*, and his Throat Cut in Purfuance of his Sentence; and likewise *Usk* and *Blake*, and several others. Some got a Pardon of Life but were Banished and their Estates Confiscated, and 'tis observable that all this was done by Parliament.

The Occasion was thus. *Richard* the 2d having Misgovern'd during his Minority, a Commission was appointed by Act of Parliament to Twelve Peers and others, to inspect the Management of the Household, the Revenue, and the Courts of Justice.

The Archbishop, Duke and Earl, who were the Ministry, and the Persons chiefly Aim'd at by this Commission, perswaded the King that the Procurers of this Commission were guilty of High Treason, as being against the Prerogative, tho' by Act of Parliament; whereupon *Blake* the King's Council was Comanded to draw an Indictment of High Treason against the Commissioners, which he did, and stands Entered in the Roll to this Effect.

That they the said Commissioners and others, had Traiterously Conspir'd amongst themselves, to procure this Commission by Authority of Parliament, against the Royalty of the King to his Dishonour and in Derogation of the Crown; and that they forc'd the King's Consent, and Combin'd to Maintain one another in so doing.

The Design was to try them that were not Peers by a *Middlesex* Jury, and *Usk* the Sheriff of the County, (which it seems has been an Ancient Practice upon Life and Liberty) was made a Tool to Pack a Jury that found the Indictment.

But that was not sufficient to Screen themselves by the Authority of the Judges, they procur'd them to Prostitute that Sacred and Venerable Character to their Wicked Designs, whose Credit it has been always thought by Wise and Honest Men to be the Common Interest of King and People, to preserve as an indifferent Umpire and Mediator between them, which has been useful to both in times of the greatest misunderstanding.

The Question was put to them whether Urging and Persuading the King to Consent to this Commission in Parliament was High Treason or not? and they answer'd that it was; for which they were Punish'd, as is before mention'd, no Body excepted the Ministry, the Judge, the Sheriff, or the Drawer of the Indictment. Upon which I observe two Things.

I. That in Treasons which concern the King and Kingdom, the Parliament is not ty'd to the strict Rules of the Common Law, but that according to the Course of Parliaments, they may declare Treasons which is reserv'd to them by the 25th of *Edward* the 3d.

II. That Fear and Cowardise can be no Excuse to Judges, (for it appears they were menac'd by the Duke of *Ireland*, and they made that part of their Defence) who are intrusted with the Rights of Mankind, and ought not only to lay down their Posts, but their Lives with Constancy and Courage, rather than betray the Charge committed to them.

In the beginning of the Reign of *Henry* the 8th, Two Barons of the *Exchequer*, viz. *Sir Richard Empson* and *Edmund Dudley* were Beheaded on *Tower-hill*. Their

Their Case was thus, *Henry* the 7th, in the 11th Year of his Reign, had brought the Lords and Commons into an Act under the specious Pretences of the Glory of God and the Good of the People, as appears by the Preamble that put it into the Power of the Justices of Peace and of other Commissioners to determine Offences against Penal Laws in a summary Way at their Discretion without a Jury.

The ill Consequences of this Statute are a sufficient Experiment to convince every free born *Reader* *Note this.* *English Man* of the Value of Juries, and justify the Blood and Treasure that has been spent in contending for every Letter of *Magna Charta*, the great Foundation of our Liberties. My Lord *Cook*, who is always in a great Passion at every Invasion of the Fundamentals of the Common Law, is so free with this Statute, as to call it sometimes most unjust and strange, and at other times injurious, and he makes bold to give a Caveat to Parliaments, to leave all Causes to be measured by the golden and strait Metewand of the Law, and not to the uncertain and crooked Cord of Discretion.

I have mention'd his very Words for the Elegance of the Metaphors, wherby he seems to compare a discretionary Power in the Judge to a Cord or Rope in the Hands of the Hangman.

The Statute cou'd not bite without Teeth, Hands were necessary to put it in execution, *Empson* and *Dudly* were thought proper for so great a Trust; and how these Judges behav'd themselves when they had power to act without a Jury, which I take to be the same as when they have power to influence a Jury by Fines or Rules of Court, I shall leave to the Historians to relate, but it cost them their Lives.

Speed

Speed and *Bacon* give an Account of them at large, to which I refer the Reader, the Copy of an Indictment of one of them follows here after for the Abuse of Justice.

It is with much Concern, that I must Remember that this *Bacon* who was Lord High Chancellor of *England* in the Reign of *James* the first, tho' he gave *Empson* and *Dudly* most opprobrious Names in his History, fell into as great an Error himself.

He happen'd to be detected in Parliament, for Selling Interlocutory Orders, in his Court. Which indeed is as great an Instance of Humane Frailty, as that of *Peter* in Denying his Master.

He had Censured this Crime with the utmost Abhorrence in several of his Writings, particularly in his Essay upon the Office of a Judge, which is at large in the Appendix.

However led into Necessity and Want, into so great a Piece of Wickedness, his Noble and Ingenuous Nature wou'd not let him make any Defence. He Confess'd the Fact, Condemn'd himself, and seem'd to take a Pleasure in the good, so great an Example of Justice wou'd do to Mankind as appears by his Letter to the Lords, of which you have a Copy hereafter.

He was the *Columbus* of the Learned World, a continual Benefactor to all Men; having given as great Light to the World almost as the Sun it self, by his Discoveries, but notwithstanding the Learning of this great Man, his Life but narrowly escap'd, and tho' they wou'd not let such a useful part of the Creation Dye (the like of which had scarce ever been known before) yet he was depriv'd of his Office, fin'd and reduc'd to Beggary.

I must take an Occasion here to be so plain with Popery as to own, that I take it to be a Creature of the Devil, who has wrought all the Superstition of the old Heathen, who worshipp'd Men and Women, and sometimes the Vices under feign'd Names, as that of *Mercury* and *Venus*, into the Body of Christianity, and many other Stories, that must appear fabulous to all Men that permit themselves to use their Understandings. The Devil had one of his side amongst the Apostles, and he has always had some of his Friends in the Church of Christ, to put Lies into its Mouth, to make it suspected. This has driven some good Natures and great Wits into Atheism, till they recover'd, by the Maturity of their Judgment, the Grace of God, and great Mortifications, as it happen'd to *Picus* the Prince of *Morandola* and *Concordia*.

It has likewise occasion'd some good Men to run into the opposite Extreme, who had no Rule in their Judgment of the Religion but the Distance it bore from Popery, which has unhappily broke the Unity of our Holy Church, which was establish'd by Law, according to the Spirit of God and the true Principles of the Gospel.

And I must tell all those Persons that profess the Ministry of the Gospel in the Church of *England*, and endeavour to establish any Falshood or Imposture in its Doctrine, that they are the Agents or Instruments of the Devil, and acting the same Part with their Predecessors, that disgrac'd the Christian Verity with the Romish Superstition, which undoubtedly they are as capable of embracing as any other Imposture.

This Religion so contrary to Truth, and the Sense and Reason of Mankind, cou'd never think of restoring it self but by Force and Violence, wherefore it has always been a
Friend

Friend and Prostitute to Arbitrary Power since the Reformation, and has found Means to recommend it self to Princes that were cruel, proud, or vicious themselves, or govern'd by them that were such,

Far be it from me to reflect upon the Ashes of Majesty, or to say, that good and pious King *Charles I.* whose Murder is a Reproach to Mankind, was inclinable to Popery; but it certainly found Favour in his Reign, which was owing to the Vices of his Ministers, and the Principles of his Queen, who were united in Interest to destroy the *English* Freedoms both of Body and Mind,

For what sort of Doctrines were advanc'd by *Laud*, *Sipthorp* and *Manwaring*, as warranted by the Gospel, I refer the Reader to *Rushworth*. One was, that the King was the sole Proprietor of the Country, and accordingly Parliaments were laid aside, and plausible Devices set on foot to raise Money without them.

One was founded upon an Ancient Writ that appears in the Register to Command the Sea Ports to provide Shipping, Men, Furniture and Apparel in Cases of Iminent Danger, Which is one of those Cases that *Ingulphus* calls, *Trinoda necessitas*. *Noy* was the Principal Projector. But to screen themselves, it was thought expedient to have the Judges of their side, whose Sacred Character as I have observ'd before, has Commonly been Prostituted to the designs of Villains that Plundered or Betray'd their Country. The Poor King who was nothing but goodness, but an utter Stranger to the World, and intirely possess'd by them that were near him, was perswaded when he heard the Opinion of his Judges, upon which he depended, tho' form'd by the Ministry, to put the Project in Execution.

The

The Opinion of the Judges *una voce* was Certified in Obedience to a Privy Seal, very formally Directed to them with the questions propounded.

1. That these Writs were legal in Cases of Necessity, which was true.

2. That the King was the only Judge of that Necessity. Which left every Man's Property and Liberty at the Mercy of the Prince, as often as he or his Ministry thought themselves at any time in Danger, who had nothing to fear at this time but Parliaments.

Tho' this in plain English was directly contrary to their Oath, and an Effectual Surrender of all that ever had been Purchas'd by the Vertue, Courage and Blood of our Ancestors in several Contests with bad Princes; all but two of the Judges persisted in their Opinion, when the Matter came in a Judicial manner before them in the *Exchequer* in Mr. *Hamden's* Case.

My Lord *Clarendon* in his History has set an Immortal Brand upon this infamous Judgment, says he, *There was scarce an Auditor so weak, but he cou'd take his Oath that he believ'd the Judges forswore themselves.*

Hatton and *Croke* alter'd their Opinions, and made very learned Arguments in favour of Mr. *Hamden* which are Printed, wherein they Excuse themselves as if they Sign'd the Certificate in Compliance to a Majority contrary to their Judgments.

Which in my humble opinion is so far from being an Apology that it is an Aggravation of their Crime. They were then upon their Oaths to Counsel the King according to Law, and they confes'd they broke those Oaths by doing the Contrary knowingly.

A Stout and great learned Judge has preserv'd a Nation of which I have given an Instance hereafter ; and it may be that the King trusted to their Judgment and Authority more then all the rest, and therefore the Retracting their opinions after they had probably engag'd the King in such Measures that he cou'd not extricate himself from with Honour or Safety, makes a double Charge upon them.

Such may most properly be call'd the Executioners of the Royal Martyr, for whatever his good and tender Inclinations for his Servants, and pretended Friends, might lead him to, his Judgment was form'd by these Men, that he rely'd upon as a Common Umpire between him and his People ; and they undoubtedly have Accounted before God by this time, for abusing the Princely Vertues of their Master, whereby he was put at Enmity with his best Subjects ; and afterwards fell into the Hands of the worst.

The Judgment given in Mr. *Hamdens* Case was afterwards question'd in Parliament, the Record was Vacated, the Roll crossed with a Pen in the House of Lords, and Subscrib'd by the Clerk of the Parliament, the Chief Justice and most of the rest of them were Impeach'd who absconded sometime, but the Civil Wars soon afterwards came on.

It is inherent in the Nature of all Propriety and Dominion, whether Publick or Private, to be alienable, the Parties Interestted concurring, for all Laws Abhor a Perpetuity, because Circulation is as necessary in things Moral as Natural.

To say, that the Kings of *England* and their People can't Transfer the Right of Government to whom they please, is a manifest Absurdity ; and contrary to the Practice of former Ages, as well as the Nature of the Thing ; as may appear by several Instances quoted by the *Alumni Alfredi* in their Coment on *Spelman*. It

It is the same to say, that the Establishment of the Crown by the Laws of Succession and Inheritance is indefeasible, and can't be alter'd by an express Renunciation of the next Heir, or by an implied one, as where he is under any Natural or Political Incapacity, or where he rejects the Terms and Ordinances that were impos'd upon him by the Founder, whether it be God or Man, and claims to act under the Pretence of a greater Authority than he really has, which was certainly a frequent and reasonable Condition impos'd in several of the *Saxon* Constitutions, as when a Tenant for Life makes a *Feofment in Fee*.

And I do in my Conscience believe every Papist to be disqualified to wear the Crown, as much as a Pagan or an Idiot, or a Person that actually renounces; because the first Act of his Reign, which is his Coronation Oath, he himself must think to be a very great piece of Wickedness, for he must either forswear himself, or support a Religion which he believes to be odious to God, and in which no Man can be saved, and which he is engag'd to destroy by a superior Obligation.

It cou'd never be the Intention of *Alfred*, that such a degenerate Branch of his Family, that was capable of so ill a Thing as to take an Oath with a design to break it, and was not only unfit for Government but even humane Society, shou'd Rule over the rest of his Royal Posterity, nor cou'd it be the Will of God, if we may presume to judge of it by the Light of Natural Reason, without the Revelation of his Prophets.

Let them consider of what they do, that endeavour by their Preaching to invest such Miscreants with the Reputation of a divine and indefeasible Authority, to which they certainly have not so good a Title as the Devil, to whom God did

once give a special Commission to torment *Job*; but that was no Argument that *Job* was bound to Passive Obedience, or that he ought not to resist, as much as he cou'd, for his own Preservation.

In the Reign of *Car. II.* upon these Principles some wise Men, that were no Enemies to the Royal Family, but were for preventing what happen'd afterwards, promoted the Bill to exclude the Duke of *York* from succeeding to the Crown. To obviate this, the Duke pretends himself to be a Protestant, and every body that said or wrote any thing to the contrary, or otherwise to his Prejudice, was to be punish'd by the Course of Law; but Truth was not to be suppress'd without taking away the Freedom of Juries, that great Inquisitor of Truth, the Light of the Constitution, and the Bulwark of Liberty, whose Word is call'd *Veredictum*, or *Dictum veritatis*.

One Method they took was thus, if the Juror took upon him to give his Verdict contrary to what the Judge held to be Evidence, he fin'd him as for a Contempt, which destroy'd the Indifference and Impartiality of Juries, and resolv'd all again into the discretionary Power of the Judge, who cou'd make a Juror say what he pleas'd upon pain of being fin'd, which confounded the several Jurisdictions of Law and Fact, and defeated the whole Intent and Policy of the Institution.

The Recorder of *London*, I think, was the first Beginner of it; but the Matter coming by a *Habens Corpus* into the *Common-Pleas* in the Case of *Bushel*, the Fine was resolv'd to be void: The Folly and Absurdity of it is fully expos'd in *Vaughan's Reports*, to which I refer the Reader; for the Judges of the *Common-Pleas* happen'd to be Men of Integrity and Fortune, that wou'd not transmit Chains to their Posterity, or cut the Sinews of their own Inheritance, by weak-
ning

ning its greatest Security, which wou'd not only impair the Title, but likewise the Valuation.

But they made other Judges that put all their Projects in Execution, which *Sydny*, one of the Martyrs of Liberty in his Dying Speech; calls Blemishes to the Bar. Some of them were such poor hungry Wretches, that they would have been suspected in the High-ways, and much more in the Courts of Justice: They stuck at nothing, they were impeach'd, Bills to exclude the Duke, and to create Judges for Life, were urg'd but frustrated by the Court. Several honest Men were murder'd and others remov'd, and King *James* mounted the Throne. Then the Whore of *Babylon* threw off her Mask, and shew'd her Nakedness; he own'd his former Hypocrisy, declar'd himself a Papist, took the Coronation Oath, and broke it immediately, by trampling upon all Laws both Humane and Divine. Certainly he took himself to be Indefeasible, and out of the reach of mortal Men; and indeed the Priests and the rest of his Flatterers might have easily perswaded him, that he was *Comes Syderum. & Frater Lune*, as the *Persian* Emperors us'd to style themselves.

And now in return for the Bill of Exclusion, he had found a Way to settle the Crown upon a Popish Successor, and notwithstanding the *Jus Divinum*, and the Hereditary indefeasible Right, to transfer it quite out of the Royal Line without any Help or Assistance from Parliaments; and that was by one of the most shameful Impositions that ever was upon the Face of the Earth: He own'd an Infant for his Child that was not so, which was to be educated in the Romish Religion. What sort of a Religion must that be, that cou'd dictate such a piece of Wickedness? 'Twas such a Religion that made *Lucretius* to be an Atheist, and cry

Tantum.

— *Tantum Religio potuit suadere Malorum.*

I think if I know my own Heart, I wou'd not wrong any one willingly, not even the Pretender, nor wou'd I tell a Lye, or commit an Act of Infidelity even by a Smile where it was not due, for I love Truth and its Author, better then all the Princes on Earth, and even my Life; and since I am not an Eye Witness of this Fact, I will give an Account of the Grounds of my Opinion, which I have weigh'd impartially.

King *James* had been Married Eight Years to his Queen without Issue, and under the Repute of some Natural Disability, Contracted by his Vices. The first Year of his Reign it sounded like a Miracle, to hear that his Queen was with Child; all Sober Men profess'd their Scruples at the thing, and the Rumour of an Imposture was Publick; and it was the Interest of the Court, and likewise in their Power, to give the World and the Presumptive Heir Satisfaction, if there had been Truth in it. It had been Easy to have done it before the Birth, as upon a Writ *de ventre inspiciendo* in a private Case; at the time of the Birth by an Attestation of the most Credible Persons; and after the Birth by the Marks and Signatures of Pregnancy, all which was Eye Work *Super visum corporis*, which wou'd have stood the severest Inquisition of Parliament, which they ought to have promoted, to have remov'd the Censure.

But on the contrary the Princess of *Orange* was in *Holland*, the Princess of *Denmark* sent to the *Bath*, and Seven Bishops to the *Tower*, and none present at the Birth but such as were Interested and Engaged by their Principles or otherwise, to promote the Fraud. Such was their Proof which

was

was given only by Affidavits in a Clandestine manner. And 'tis probable that they wou'd make as slight of an Oath, as the King did at his Coronation, for the same Pious Ends.

These Actions the Parliament held amounted to an Abdication of the Government, and produc'd the Revolution. *Jefferies* Lord High Chancellor, a Principal Adviser, died in the Tower, and thereby escap'd the Vengeance of the Law.

And that Sycophants and Time-servers may blush at their own Cowardice and Iniquity, I will mention some Instances of the heroick Courage, and unshaken Integrity of some of the Sages of the Law.

Sir William Gascoine, in the Reign of *Henry* the 4th. committed the Prince and Heir Apparent of the Crown to a Tipstaff, for a Contempt to the Court: The Prince submitted, and the King applauded him for it.

In the time of *Queen Elizabeth*, a Project was hatching to raise Mony too without Parliament by the Courtiers, who possess'd the Queen with a Notion of the Legality of it; the Method was by Letters from the Lords of the Council, on pretence of the Wars of *Ireland*: *Justice Walmesly* had a Letter amongst others directed to him, but he wou'd not pay one Penny. The Queen hearing that a learned Judge, that was dependant upon her for his Place, disputed Payment, began to suspect that she had been abus'd, and that there was something in the Wind, and therefore caus'd him to be conven'd before the Council, where she heard him her self, and he inform'd her, that such a Method of levying Mony was contrary to her Coronation Oath, of which he was one of the Conservators, and that by the vertue of the Oath of a Judge, he was oblig'd to let her know it; whereupon she order'd the Mony to be restor'd that had been Levy'd. If

If *Walmsly* had been a Sycophant, this glorious Queen might have been led into Measures that wou'd have been her Destruction ; but *Walmsly's* Integrity, Courage and Learning, quench'd the Flame that was kindling, and for ought I know, preserv'd the Queen and Kingdom.

This Queen had erected a new Office in the *Common Pleas* for making out *Super sedes*, the *Prothonotaries* and *Philizers* had it as a Branch of their Office *Time immemorial*. The Queen granted the new Office to *Cavendish*, and requir'd the Judges to put him in possession, who said they could not without due Course of Law ; whereupon the Queen writ to them very sharply for the same purpose : And for Answer, they sent her Majesty a List of several of their Predecessors that had been punish'd for the like Fault, being contrary to their Oath ; and then the Queen acquies'd.

There is another famous Example in the Reign of King *William*, in that Great and Reverend Judge Sir *John Holt*, whose Learning, Courage and Integrity was like an *Atlas* to the State, and fit to support the Globe, and all the Rights of Mankind.

'Twas in the Case of *Ashly* and *White*, and 'twas to stem the Torrent of a Popular Tyranny which then was growing in the Commons, as much as ever it had done in any other part of the Legislature.

I must observe the three Blessed Peace Makers *Har-----t*, *Harley* and *St. John*, were then Ringleaders in the House of Commons ; they and their Mates have been in all Parts of the Constitution, the Church, the Parliament, the Ministry, and have appear'd like Goblins or Sprights in every Room of the Fabrick in several Shapes, but yet true to the same Ends, Purposes and Designs, *viz.* To advance the
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Interest of France, a Popish Pretender, and to make Peace Abroad and War at Home.

They always drove Priviledge, Prerogative and Religion as they had the handling of them up to the Hilt, and Stretch'd them till they were ready to burst their Orbs.

At this time they were pleas'd to be Patriots and for the Rights of the Commons. The Question in this Case depending in the Court of *King's-Bench* was, whether a Free-Man being refus'd his Vote in an Election for Parliament Men, might not have an Action at Common-Law against the Officer to Repair the Injury in Damages; the Right of Voting being a Benefit and Advantage arising from his Freedom, as much as any other Fruit or Profit whatsoever, arising from his Freehold. This Question did not interfere with the Jurisdiction of the Commons which they exercise over their own Members; but depended upon a Rule of Property which was under the Direction of the Common-Law, and the true measure of the Recompence to be allow'd for it.

The Judges were all Menac'd by the Commons, and the very Council committed that Argued the Point. But *Holt* singly and by himself notwithstanding gave his Judgment for the Plaintiff, contrary to the Opinion of all the Rest of the Judges of *England*, who when the Cause came by Writ of Error into the House of Lords, being convinc'd by the Clearness of his Reasons, chang'd their Minds all but two.

How they got into the Ministry, and what they did there is worth relating. Tho' certainly there never were greater Monsters or Prodigies of Vice and Lewdness, yet they made a shift to recommend themselves to our late Queen by their Religion whose Piety and Regard for the

true Christian Church, establish'd by Law, has been abus'd in a most shameful manner.

Far be it from me to reflect upon that Saint in Heaven for Humane Weakness; *Alcmena* was debauch'd by one that had the Art to turn himself into the Shape of her Husband, and so might the most vertuous Woman in the World. The first Step they took, was to get one of the Daughters of the *Philistines* into her Majesty's Bosom, who soon serv'd her as *Dalilah* did *Samson*, by persuading him to cut off his Hair, wherein his Strength lay. The Duke of *Marlborough* and the rest of the Ministry, probably the most prosperous that had been at any time in *England*, are discharg'd, and these Gentlemen and their Friends put in their Room for their Christianity, which I must confess I never cou'd discern, unless it lay in the building of Fifty new Churches, which were no more than the wooden Hands of a Pick-pocket folded in a Posture of Devotion, to give him a better Opportunity of using his real ones. They did something likewise in order to the Propagation of the Gospel in foreign Parts, by sending *Lesty* over to convert the Pretender to his Religion, which he call'd the Church of *England*, the first Article of which was Hereditary and Indefeasible Right: The second, that such Hereditary and Indefeasible Right was vested in the Pretender; from which Propositions the Conclusion was to be made to the People in due Season.

These Ministers durst not own what they were about, but acted steadily to their Point under other Pretences, which were very transparent to a discerning Eye.

The open Frankness and Generosity of an honest Heart, will shew it self like the Beams of the Sun, and the Works of the Prince of Darkness may be as easily discover'd by their

their Shades and Colours. As the whole Project was for suppressing Truth and Justice, and for promoting an Imposture, so they had the Cunning to employ Persons in all Stations, that were qualify'd by great Endowments of Wit, Eloquence and Learning, to set off a Lye, to which they wou'd make Truth it self, even the Word of God, to be a Witness sometimes. The Pulpits rung of Hereditary and Indefeasible Right, and the holy Evangelists vouch'd to prove a Doctrine that wou'd have undone the Royal Line, and have given the Posterity of *Kenred* a much better Title than those of *Alfred*.

Moderation (which is no more than a wise Government of our Passions, or a Restraint upon Envy, Hatred and Uncharitableness towards our mis-guided Brethren) in which all the old Philosophers have plac'd Vertue it self; which seems to be the Essence of Christian Morality, the very Image of our excellent Constitution in Church and State, and which its Adversaries have now occasion to speak well of, was prov'd by *Higgins* to be a damnable Sin, and represented as Mediocrity and Indolence in Religion.

There was one of their Fellow Labourers in this Vineyard, that I must take particular Notice of, *Propter Excellentiam*. If his parts be not Supernatural he is certainly one of the greatest Wits of the Age. He is Master of all those Figures and Tropes in Rhetorick, that can Disfigure Truth or Corrupt the Opticks in order to misrepresent the Object.

A Reverend Gentleman of my Acquaintance will undertake to prove that he is actually the Devil, but I take him to be but a Wizard at most. The Witch *Circe* was not better Qualify'd to Transform *Ulysses* and his *Mates* into *Swine*.

Vide John Bull. He *Hocus pocus'd* the Duke of *Marlborough* into the Shape of an Attorney by his Enchantments.

And 'twas he as I have been inform'd, that Metamorphos'd Sir *Constantine Phipps* into *Aristides* the Just; and bespattered in the most shameful manner those Glorious and never to be forgotten Patriots that now so Worthily Preside over the Laws in this Kingdom; which they lately Defended with the Hazard of their Lives.

Vide Tale of a Tub. He had serv'd the Christian Religion the same way before, being capable of making every thing that is Good appear Vile, and every thing that is Vile appear Laudable.

Vide Essays Writ by Swift. For these Talents he was made a Dignitary in the Church of Christ, which is one of the best Reasons he can give for not abolishing Christianity at this present Conjuncture: How he has behav'd himself since I shall leave it to his Congregation to Relate; and only say with *Michael* the Arch-Angel, *the Lord rebuke thee Satan*; without any Railing Accusation, for to be sure the Father of Lyes wou'd have the better of me at Reviling.

At these things no Body durst cry out Fire, but honest Men wou'd shake their Heads, Drink to the Glorious Memory of King *William*, and sometimes repeat a Copy of Verses in his Praise, which the Ministers took to be calling themselves Knaves; and were Resolv'd to strain a Point to suppress it. They got a Christian Bishop to write a Book to prove, that Drinking to the Glorious Memory, was a mortal Sin, and caus'd a worthy Gentleman, Brother to the Lord *Moor*, to be prosecuted for repeating a Prologue in the Playhouse that spoke well of King *William*, and I think indeed ill of no Body in order to Pillar him.

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For this purpose they were determin'd to put out the Eyes of Mankind, and to extinguish all the Lights of the Law as well as the Gospel. Juries, the old Protection of the Innocent, stood in their Way. To remove which, they had advanc'd a Doctrine in the Corporation of *Dublin*, which I must beg leave to call, as King *Edgar* did, *Nobilissima Civitas*, that put it into the Power of the Mayor, (whom they had corrupted, together with Three of his Brethren; and indeed all the rest had been tempted with very great Offers) to determine the Election of a Successor, by obliging the Electors to choose One out of Three to be propos'd by himself, which wou'd have influenc'd the Election of Sheriffs, and consequently of Juries and Parliament Men.

To satisfie our late gracious Sovereign Queen *Anne*, who wou'd not have countenanc'd them if she had thought they had done amiss, they procur'd all the Judges in this Kingdom, except *D——n*, to certify this Position to be Law.

And lest this Project shou'd fail, they establish'd another Rule in the upper Bench, by a Solemn Judgment, that made the Return of Juries intirely dependent upon the Discretion of the Court or its Officers, which absolutely frustrated the Intent of the Institution which was to protect the younger Children of *Alfred*, from the Rage, Violence, or Injustice of their elder Brother, or his Ministers, having suffer'd himself before by the Arbitrary Power of his elder Brother.

If this Judgment was given *Falso & Malitiose*, i. e. knowingly against the Law, which I have no greater Grounds to presume, than that they had all the Information and Light that Truth and Reason cou'd receive from the great Learning and Eloquence of the Lord *Brodrick*, now Lord High Chancellor of *Ireland*, the Lord Chief Justices *Whitshed* and *Forster*,

ster, and the late Lord Chief Baron *Dean*, 'tis a Capital Offence, but of an indefinite Species to be declared only in Parliament, according to the Presidents mention'd, and so is an Extrajudicial Opinion, if against Law, given by way of Certificate. And indeed nothing can more properly be call'd High Treason *Lesa Majestas*, or a mortal false Judgment, than that which Misguides Kings, and brings their Royal Estate, and even their Lives, sometimes in Danger. The Legicides are truly the Regicides

I doubt not but all those Patriots that Preserve the Memory of *Alfred* the Founder, and *William* the Restorer will be of the same Opinion.

My Lord *Coke* in his Pleas of the Crown says, that King *Alfred's* Law against false Judges was Antiquated, but he was then Antiquated himself, and in his Dotage, for it was one of the first Principles in our Constitution, like that of self Preservation in Natural Beings; and has often exerted it self since. *Vid. Pryn upon Coke.*

Nothing is more Rational then that the Law shou'd have a Power of Avenging it self upon its Murderers. 'Tis Capital says Mr. *Pym* to Cut the Banks in *Holland*, which lie under the Superficies of the Water. And *Comines* observes that our *Stat. de Tallagio non concedendo*, and other old Laws, are as Walls and Banks against Arbitrary Power, which is more dreadful to an *English* Man than all the Dangers of the Sea, being like the Inundation of the *Nile*, which confounds Property and Defaces all the Land-Marks; and to which we owe the Skill and Fame of the *Egyptian Geometricians*,

If the ordinary Course of Justice wou'd not reach them, 'twould be justifiable for the Legislature to interpose, as has been often done, where the King, Lords and Commons have been agreed; but I have omitted all Instances of that Kind, as being unnecessary, and of which I do not approve without the utmost Necessity.

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The Kings of *England* have granted all the Constitutions of *Alfred* to the People of *Ireland*, but I don't find any Example that has ever been made here for their Preservation, which seems to be reserv'd for a *Georgic*, being the greatest Improvement to Land, to adorn the glorious Reign of King *George*, who is govern'd by God, the Rightful and Lawful Heir of *Alfred*, and a religious observer of his Laws, as *Emanuel Commenus* was styl'd in respect of the Emperor *Constantine*.

Θεοκυβέρνητῳ κληρόνῳ τῷ στέμματῳ τῷ κωνσταντίνῳ κὶ νεμύμενῳ πάντα τὰ τότε δίκαια.

I must own, that Justice unless it is mix'd with Mercy, which is another Attribute of God, whom we ought to imitate, rather seems Vindictive than Exemplary, and a few Examples will answer the true Ends of making them if they are severe, which cannot be too great in the Case of a false Judge, whose Punishment never was reckon'd an Act of Cruelty, but rather of Popularity, for as *Thucidides* observes, Mankind resent Injustice in a Magistrate from whom they expect Protection more than open Violence or Robbery in the High-ways; and indeed the Doctors and Teachers both of the Law of God and Man, that are appointed as Lights and Guides to Sovereigns and their Subjects, are properer Objects of Vengeance than those that have been abus'd or misled by them; which to my Knowledge, has been the Case of many worthy and well meaning Men, and no Body is so Infallible, but it may be his own Case one time or another.

There are a great many Instances of the Punishment of Judges in foreign Countries, some of them seem to be wittily Cruel: I will only mention one.

Cambyfes the King of *Persia* caus'd *Syſammes* a Judge to be Flead, and put to Death ; and a Cushion to be made of his Skin (which was Dressed with a great deal of Curiosity for the purpose) for the Bench where he Sat, and that the Example might have a greater Influence upon the Successor, and that the Father's Skin might be a perpetual Monitor of Justice to him, he prefer'd *Otanes* his Son to his Place.

R I N I S.

ADVERTISEMENT.

Very speedily will be publish'd by the Author,
 An Essay upon the Fall of *Adam*.
 Transactions in the *Exchequer*, &c.



A N

A P P E N D I X.

The OFFICE of a JUDGE.

JUDGES ought to remember, that their Office is *Jus dicere*, and not *Jus dare*: To Interpret Law, and not to make Law, or give Law. Else will it be like the Authority claimed by the Church of Rome, which under pretext of Exposition of Scripture, doth not stick to add and alter, and to pronounce that which they do not find; and by shew of Antiquity to introduce Novelty. Judges ought to be more Learned than Witty, more Reverend than Plausible, and more Advised than Confident. Above all things Integrity is their Portion and proper Vertue: Cursed (saith the Law) is he, that removeth the Land Mark. The Mislayers of a Meer-Stone is to blame; but it is the unjust Judge that is the Capital Remover of Land-Marks, when

he defineth amifs of Lands and Property. One foul Sentence doth more hurt than many foul Examples; for these do but corrupt the Stream, the other corrupted the Fountain. So saith Solomon. *Fons turbatus, & Vena corrupta, est Justus cadens in causa sua corum Adversario*, The Office of Judges may have reference unto the Parties that sue, unto the Advocates that plead, unto the Clerks and Ministers of Justice underneath them, and to the Sovereign or State above them.

First, For the Causes or Parties that sue. There be (saith the Scripture) that turn Judgment into Wormwood; and surely there be also that turn it into Vinegar; for Injustice maketh it bitter, and Delays make it sour. The Principal Duty of a Judge is to suppress force and fraud, whereof force is the more pernicious when it is open, and fraud when it is close and disguised. Add thereto contentious Suits, which ought to be spewed out as the Surfeit of Courts. A Judge ought to prepare his way to a Just Sentence, as God useth to prepare his way by raising Valleys, and taking down Hills: So when there appeareth on either side an high Hand, violent Prosecution, cunning Advantages taken, Combination, Power, Great Counsel, then is the vertue of a Judge seen, to make Inequality Equal, that he may plant his Judgment as upon an even Ground. *Qui fortiter emungit, elicit sanguinem*; and where the Wine-Press is hard wrought, it yields a harsh Wine that tastes of the Grape-Stone. Judges must beware of hard Constructions, and strain'd Inferences; for there is no worse Torture than the Torture of Laws, specially, in case of Laws penal; they ought to have care, that, that which was meant for Terror, be not turned into Rigor, and that they bring not upon the People that Shower whereof the Scripture speaketh, *Pluet super eos Laqueos*: for penal Laws pressed are a
Shower

*Show*er of *Snares* upon the People. Therefore let *Penal Laws*, if they have been *Sleepers* of long, or if they be grown unfit for the present *Time*, be by wise *Judges* confined in the *Execution*, *Judicis Officium est, ut Rius ita Tempora Rerum, &c.* In *Causés* of *Life* and *Death*, *Judges* ought (as far as the *Law* permitteth) in *Justice* to remember *Mercy*; and to cast a severe *Eye* upon the *Example*, but a merciful *Eye* upon the *Person*.

Secondly, For the *Advocates* and *Counsel* that plead; *Patience* and *Gravity* of hearing is an essential part of *Justice*, and an over-speaking *Judge* is no well-tuned *Cymbal*. It is no *Grace* to a *Judge*, first to find that which he might have heard in due time from the *Bar*, or to shew quickness of conceit in cutting off *Evidence* or *Counsel* too short, or to prevent *Informations* by *Questions* though pertinent. The parts of a *Judge* in hearing are four: To direct the *Evidence*; to moderate length, repetition, or impertinency of *Speech*. To *Recapitulate*, *Select*, and *Collate* the material *Points* of that which hath been said; and to give the *Rule* or *Sentence*. Whatsoever is above these, is too much, and proceedeth either of *Glory* and *Willingness* to *Speak*, or of *Impatience* to *Hear*, or of *Shortness* of *Memory*, or of want of a stayed and equal *Attention*. It is a strange thing to see, that the boldness of *Advocates* should prevail with *Judges*; whereas they should imitate *God* in whose *Seat* they sit, who represseth the *Presumptious*, and giveth *Grace* to the *Modest*. But it is more strange, that *Judges* should have noted *Favourites*; which cannot but cause multiplication of *Fees*, and suspicion of *By-ways*. There is due from the *Judge* to the *Advocate* some *Commendation* and *Gracing*, where *Causés* are well handled, and fair *Plead*ed; especially towards the side which obtaineth not; For

that upholds in the *Client* the Reputation of his *Counsel*, and beats down in him the conceit of his *Cause*. There is likewise due to the *publick* a civil Reprehension of *Advocates*, where there appeareth cunning Counsel, gross Neglect, slight Information, indiscret Pressing, or an over-bold Defence. And let not the *Counsel* at the Bar chop with the *Judge*, nor wind himself into the handling of the *Cause* anew after the Judge hath declar'd his Sentence: But on the other side, let not the *Judge* meet the *Cause* half way, nor give occasion to the Party to say, *His Counsel or Proofs were not heard*.

Thirdly, For that that concerns *Clerks* and *Ministers*. The Place of *Justice* is an Hallowed Place; and therefore not only the Bench, but the Foot-pace, and Precincts, and Purprife thereof ought to be preserved without Scandal and Corruption. For certainly *Grapes* (as the Scripture saith) *will not be gathered of Thorns or Thistles*; neither can *Justice* yield her Fruit with Sweetness amongst the Briars and Brambles of Catching and Poling *Clerks* and *Ministers*. The Attendance of Courts is subject to four bad Instruments: First, Certain Persons that are sowers of Suits which make the Court swell, and the Country pine. The second sort is, Of those that engage Courts in Quarrels of Jurisdiction, and are not truly *Amici Curie*, but *Parasiti Curie*, in puffing a Court up beyond her bounds, for their own Scraps and Advantage. The third sort is, Of those that may be accounted the Left Hands of Courts; Persons that are full of nimble and sinister tricks and shifts whereby they pervert the plain and direct Courses of Courts, and bring Justice into oblique Lines and Labyrinths. And the fourth is, The Poller and Exacter
of

of *Fess*, which justifies the common resemblance of the *Courts of Justice* to the *Bush*, whereunto while the sheep flies for Defence in Weather, he is sure to lose part of his Fleec. On the other side, an *Antient Clerk*, skilful in Precedents, wary in proceeding, and understanding in the Business of the *Court*, is an excellent Finger of a *Court*; and doth many times point the way to the *Judge* himself.

Fourthly, For that which may concern the *Sovereign* and *Estate*. *Judges* ought above all to remember the conclusion of the *Roman Twelve Tables*, *Salus Populi Suprema Lex*; and to know, That Laws, except they be in order to that end, are but things Captious, and Oracles not well Inspired. Therefore it is an happy thing in a *State*, when *Kings* and *States* do often consult with *Judges*; and again, when *Judges* do often consult with the *King* and *State*: The one, when there is a matter of Law intervenient in business of State; The other, when there is some consideration of State intervenient in matter of Law. For many times the things deduced to *Judgment* may be *Meum* and *Tuum*, when the reason and consequence thereof may Trench to point of *Estate*. I call matter of *Estate* not only the parts of *Sovereignty*, but whatsoever introduceth any great Alteration, or dangerous Precedent, or concerneth manifestly any great Portion of People. And let no Man weakly conceive, that Just Laws and true Policy have any *Antipathy*: For they are like Spirits and Sinews, that one moves with the other. Let *Judges* also remember, That *Solomons Throne* was supported by Lions on both sides: Let them be Lions, but yet Lions under the *Throne*; being circumspect, that they do not check or oppose any Points of *Sovereignty*. Let not *Judges* also
be

the so ignorant of their own right, as to think there is not left to them, as a Principal part of their Office, a wise Use and Application of Laws ; for they may remember what the *Apostle* saith of a greater Law than theirs, *Nos scimus quia Lex bona est, modo quis ea utatur legitime.*

THE



THE
O A T H
O F A
J U D G E.

In dorſe Claus. de Anno Edw. 3. Part Primo.

YE ſhall Swear, That well and truly ye ſhall ſerve our Sovereign Lord the King, and his People in the Office of Juſtice; and that ye ſhall Counſel our Lord the King in his Needs; and that ye ſhall not give any Counſel or Aſſent to any thing, the which might turn to hurt or diſheriting of the King by any Way or Colour; and that ye ſhall not know any hurt or diſheriting of the King; that ye ſhall make it to him known by you or by ſome other Perſon; and that ye ſhall do equal Law and Execution of Right to all the Kings Subjects, Rich and Poor, without having regard to any Perſon; and that ye ſhall not take by you, or by any

any other, privily no apart, any Gift or Reward of Gold or of Silver, nor of any other Thing, the which might turn you to Profit, unless it be Meat or Drink, and that of little Value of any Man that shall have any Plea or Procces hanging before you, as long as the same before your self such Pleas and Proccesses shall be hanging, nor after for that Cause; and that ye shall take no Fees as long as ye be Justice, nor Robe of any Person great or small in any Case, but of the King himself; and that ye shall not give Counsel or Advice to any Person, great or small, in any Case where the King is Party; and in case that any Persons of what ever Estate they be of, come before you in Sessions with Force and Arms, or otherwise, against the Peace, or against the Form of the Statute thereof made to disturb the Execution of the Common Law, or for to Menace the People, that they may not do the Law, that you shall arrest their Bodies, and put them in Prison; and in case that they be such as ye may not arrest, that ye shall certify the King of their Names, and their Misdoings hastily, to that end, that he may thereof ordain Remedy; and that ye shall not maintain by your self, nor by none other, privily nor openly, any Plea or Quarrel hanging in the King's Courts, or elsewhere in the Country; and that ye shall not delay any Persons of Common Right for the Letters of the King, or of any other Person, nor for any other Cause; and in case that any Letters come to you contrary to the Law, that ye shall certify the King, and ye shall proceed to do the Law, the same Letter notwithstanding, and ye shall do and procure the Profit of the King and his Crown in all things, where ye them reasonably may do; and in case that ye be found in default hereafter in any of the Points aforesaid, ye shall be at the King's Will of Bodies, Lands, and of Honour, to do there of that that shall please the King.

A N

INDICTMENT

O F A

J U D G E

For the Abuse of His OFFICE.

Translated into *English*.

THE Jurors present, That *Richard Empson*, late of *London*, Knight, late Counsellor of the most excellent Prince, *Henry* the Seventh, late of *England*, on the Tenth of *May*, in the Twentieth Year of the said late King, and divers times before and after at *London*, and not having God before his Eyes, but as the Son of the Devil, imagining the Honour, Dignity, and Prosperity of the said late King, and the Prosperity of his Kingdom of *England* not at all to value or regard; but to the End, that he might obtain to be a more singular Favourite of the said late King, whereby he himself might be made a Noble or Great Man, and Govern the whole Kingdom of *England* at his Pleasure, Falsly, Deceitfully and Treasonably sub-

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verting the Law of *England*, did (amongst other Things) the Day and Year aforesaid, at *London*, in the Parish and Ward aforesaid, procure, and cause to be found, divers false Inquisitions, Offices of Intrusions and Alienations of divers Liege Subjects Mannors, Lands and Tenements that they held, the Mannors, Lands and Tenements in those Inquisitions specified of our Lord the King in *Capite*, or otherwise, when in truth it was not so : And afterwards when the said Liege Subjects of our Lord the late King would have tendred and alledged Traverses to the said Inquisitions, in the Court of him the said late King, according to the Law of *England*, they could not be admitted to those Traverses, but he, the said *Richard Empson*, debar'd and delay'd them from the same, till they had agreed with him to Pay divers great and insupportable Fines and Redemptions ; as well for the Profit of the said late King, as for the proper, private Advantages of him the said *Richard*, to the great impoverishment of the said Subjects ; and that the said *Richard*, the Day and Year aforesaid, in the Parish and Ward aforesaid, and several times before and after, divers Liege Subjects of the said late King, holding of our said Lord the King divers Mannors, Lands and Tenements, by Knights Service, and themselves being by the Death of their Ancestors under Age, and so in the wardship of the King, by reason of their Tenure, when they came to lawful Age, and ought to have had due liberty of their Mannors, Lands and Tenements, according to the Custom and Law of *England*, and would have prosecuted the same accordingly to the Course of *Chancery*, did refuse them so to do, and totally deny and exclude until they had made with him, the said *Richard*, divers great Fines and Redemptions, more than they could bear, as well for the Gain of the said late King,

as for the private Benefit of him the said *Richard*, whereby many of the said late King's People were by such Grievances and unjust Extortions many ways vexed, insomuch that the Subjects of the said late King did manifoldly murmur and bear ill Will against the said late King, to the great Peril of him the said late King, his Kingdom of *England* and the Subversion of the Laws and Customs of this Realm.

F. 2

A.



L I S T

Of the Names and Crimes of the Justices Hang'd by King *Alfred*.

1. **H**E Hanged *Darling*, because he judged *Sidulf* to Death, for the Retreat of *Idulf* his Son, who afterwards acquitted him of the Fact.
2. He Hanged *Segner*, who judg'd *Ulf* to Death after sufficient aquital.
3. He Hanged *Cadwin*, because he judged *Hackwy* to Death, without the Consent of all the Jurors; for whereas he had put himself upon a Jury of Twelve Men; and because that Three would have saved Him again the Nine: *Cadwin* removed the Three and put others upon the Jury, upon whom *Hackwy* put not himself.
4. He Hanged *Cole*, because he judged *Ivs* when he was a Madman.
5. He Hanged *Malmes*, because he judged *Prat* to Death upon a false Suggestion that he committed the Felony.
6. He Hanged *Athulf*, because he caus'd *Copping* to be Hanged before the Age of one and twenty Years [it was against Law then, but now *nequitia supplet Aetatem*].
7. He Hanged *Markes*, because he judged *During* to Death by Twelve Men that were not Sworn.
8. He Hanged *Ostline*, because he judged *Seaman* to Death by a false Warrant, grounded upon false Suggestions, which supposed *Seaman* to be a Person in the Warrant, which he was not.
9. He Hanged *Billing*, because he judged *Leston* to Death by fraud in this manner, he said to the People, sit all ye here but he who kil'd the

the Man, and because that *Leston* did not sit with the others, he commanded him to be Hanged and said that he did assist, where he knew he did not assist to kill the Party.

10. He Hanged *Seafoul*, because he judged *Ording* to Death as not answering.

11. He Hanged *Thurston* because he judged *Thugner* to Death by a Verdict of Inquest, taken *ex Officio*, without Issue joyned.

12. He Hanged *Athelston*, because he judged *Herbert* to Death, for an Offence not Mortal.

13. He Hanged *Rambold*, because he judged *Lefchild* in a Case not notorious, without Appeal, and without Indictment.

14. He Hanged *Ralf*, because he judged *Dunston* to die for an escape out of Prison.

15. He Hanged *Frebern*, because he judged *Harpin* to die, whereas the Jury was in doubt of their Verdict; for in doubtful cases one ought rather to save than condemn.

16. He Hanged *Seabright*, who judged *Athebrus* to Death, because he had discharg'd one that had given a false Judgment in a Case Capital.

17. He Hanged *Hale*, because he saved *Tristrame* the Sheriff from Death, who took the Kingsuse from a nother goods against his Will, for as much as any such taking from another against his Will, and Robbery hath no difference.

18. He Hanged *Arnold*, because he saved *Bailifs*, who Robbed the People by colour of Distresses; some by selling Distresses; such and others by Extortion of Fines; because between such Tortious Acts and Robbery there was no Difference.

19. He Hanged *Erkinweld*, because he Hanged *Franklin*, for nought else, but because he taught to him who vanquished him by Battle-mortal, to say the word Cravent.

20. He Hanged *Bermond*, because he caused *Gerbot* to be Be-headed by his Judgment in *England*, for that, for which he was Out-law'd in *Ireland*.

21. He Hanged *Alkman*, because he saved *Cateman* by a colour of Disseism, who was Attainted of Burglary.

22. He

22. He Hanged *Saxmond*; because he Hanged *Barold* in *England*, where the Kings Writ runneth for a Fact, which he did in the same Land where the Kings Writ did not run.

23. He Hanged *Alflet*, because he judged a *Clerk* to Death, over whom he had no Cognizance.

24. He Hanged *Piron*, because he judged *Huntiny* to Death, because he gave Judgment in appeal before the Forty Days Pendant, the appeal by a Writ of false Judgment before the King.

25. He Hanged *Delany*, because he caused *Eldons* to be Hanged who kill'd a Man by Misfortune.

26. He Hanged *Oswin*, because he judged *Fulcher* to Death out of Court.

27. He Hanged *Muedin*, because he Hanged *Halgrave* by Warrant of Indictment not Special.

28. He Hanged *Horn*, because he Hanged *Simin* at days forbidden.

29. He Hanged *Wolmer*, because he judged *Grant* to Death by colour of a Larceny, of a thing which he had received by Title of Bailment.

30. He Hanged *Therberne*, because he judged *Osgot* to Death, for a fact whereof he was acquitted before against the same Plantif, which Acquittance he tendred to averre by Oath, and because he would not averre it by Record, *Therbern* would not allow of the Acquittal which he tendred him.

31. He Hanged *Wolston*, because he adjudged *Howbert* to Death at the suit of the King, for a fact which *Howbert* confest, and of which the King gave him his Pardon, but he had no Charter thereof; Nevertheless he vouched the King to warrant it, and further tendred to averre it by inrolment of the Chancery.

32. He Hanged *Oskitell*, because he judged *Cutling* to Death, by the Record of the Coroner, whereby Replication allowable the Plea did not hold; and the Case was such, *Cutling* was taken and Tortured so much, as he confessed he had Mortally Offended, only to be quit-
ted of the pain; and *Oskitell* adjudged him to death upon such his Confession which he had made to the Coroner, without Trial of the truth of the Torture or the Fact, and further the said King caused the Coroner and Officers Accessories to be apprehended who hanged the
the

the People, and all those that might have hindred the false Judgment, and did not hinder the same in all Cases: For he Hanged all the Judges who had falsely saved any Man guilty of Death, or had falsely hanged any Man against Law, or any Reasonable Persuasions.

He Hanged the Suitors of *Calvelot*, because they had adjudged a Man to Death in a Case not notorious, altho' he were guilty thereof.

He Hanged the Suitors of *Dorchester*, because they judged a Man to Death by Jurors in their liberty, for a Felony done out of it; and whereof they had not the Cognizance by reason of Foreignity.

He Hanged the Suitors of *Cirencester*, because they kept a Man so long in Prison that he died, who wou'd have acquitted himself by Foreigners, that he offended not Feloniously.

I suppose these Suitors made up the Number of 44 Judges.

The Lord BACON's Letter to the House of Lords.

MAY it please your Lordships, I shall humbly crave at your Hands, a benign Interpretation of that which I shall now write for words, that come from wasted Spirits, and of pressed Minds; are more safe in being deposited to a Noble Construction, then being Circled with any reserv'd Caution, this being moved and as I hope, obtain'd of Your Lordships as a Protection to all that I shall say. I shall go on but with a very strange Entrance as may seem to Your Lordships; as first, for in the midst of a State of as great Affliction as I think a mortal Man can Endure, Honour being above Life: I shall begin with the professing of Gladness in some things. The first is that hereafter the greatness of a Judge, or Magistrate, shall be no Protection to him against Guilti-

Guiltiness, which is the beginning of a Golden Work: The next
 that after this Example, 'tis like that Judges will fly from any thing
 in the likeness of Corruption, tho' it were at a great Distance, as
 from a Serpent which tends to the Purgeing of the Courts of
 Justice; and reducing them to their true Honour and Splendor.
 And in these two Points, God is my Witness, tho' it be my for-
 tune to be the Anvil upon which these two Effects are broken and
 wrought, I take no small Comfort. But to pass from the Motions
 of my Heart, whereof God is my Judge to the meanest of my Cause:
 Whereof your Lordships are Judges under God and his Lieutenant.
 I do understand there hath heretofore been expected from me some
 Justification. And therefore I have chosen only one Justification
 for all others; out of the Justification of Job for after the clear
 Submission and Confession which I shall now make unto Your Lord-
 ships, I hope I may say, and justify with Job in these words. I
 have not hid my sins with Adam, nor concealed my faults in my
 Besom: This is the only Justification I will use, &c. And then
 he proceeds and confesses the Fact.

F I N I S.

