

he treats of particulars, but in his essay on the study of the law f. 1. where he speaks generally, after saying that all gentlemen are liable to serve on Juries, and that therefore, they should have a general knowledge of the laws of their country, he says, “ In this situation
 “ they have frequently a *right* to decide on their
 “ oaths, questions of nice importance, in the
 “ solution of which some *legal* skill is requisite,
 “ especially as the *law* and the *fact* are *intimately blended together*.—And the general incapacities of our best Juries to do this with any tolerable propriety, has greatly debased their authority, and has unavoidably thrown more power into the hands of the Judges to direct, controul, and even reverse their verdicts, than perhaps the constitution intended.”

Here we find the learned Judge contending, that Juries are liable to decide questions of importance,—of law and fact,—as a matter of right, and constitutionally so, which right their incapacity has suffered to be invaded by Judges—We discern something like sense in this, but we do not find the same consistency of thought prevail in every page of this author’s work, particularly in those which inform us that law and fact, which is fact and crime, (*ut infra,*)

infra,) is not for the capacity of a Jury to try, as intimately blended together, in criminal cases, but only in civil ones; from whence, and according to Sir Mathew Hale, Judges would have a partial field to range in, and trial by Jury would be useless; which, as in the case of Mr. Horne, and others, has been too fatally the mode.

The cause, however, of Mr. Horne, is the cause of the public.—The people suffer in him, he is imprisoned and fined, to intimidate others from complaining of our public abuses, under those governors, who, tender and delicate in their ruinous conduct, fall on their opposers with merciless rapacity.

It is a maxim in our law, that every man criminally charged, is presumed innocent till convicted, and shall be prosecuted with mildness and care.—Was Mr. Horne presumed innocent before conviction, and prosecuted with gentleness and charity? No. He was convicted before trial by his *grand Jury*, (the Attorney General) who knowing the stretch of the law's *sole consideration*, was *sufficiently assured* (in Judge Blackstone's words) that it would justify his conviction of Mr. Horne, as a kind of petit
Jury,

Jury, after twelve *cyphers* of special men had found that *black* was not *white*.—There was as little mildness and charity in Mr. Horne's prosecutor (the Attorney General) as in his proceedings. He was vindictive on the trial, and malicious in the Court of King's Bench, when Mr. Horne awaited its judgment against him. It may be wrong to blame nature, and therefore, if malice and illiberality are characteristic of this Attorney General, we have only to regret, as his friends, that education and experience have not thrown a veil over those qualities, in an officer, whom elegance and politeness would render important and respectable: but it is very remarkable, that whatever may be the real man, in a council, without a silk gown and without the bar, we find him in a smooth robe, and in office, treading the usual track,—a coarse, vulgar, and austere blusterer.—We may remember very well, that the Attorney General, Norton, in Mr. Wilkes's case, said, that had it been adjudged to have *excited*, instead of tending to excite, an insurrection, it would have been no less a crime against the state than *high treason*.—The Attorney General, Thurlow, repeated nearly the same words, when Mr. Horne was called up to judgment, with this variance.—The former spoke

spoke *doubtfully*, the latter *positively*, that he could hardly distinguish Mr. Horne's offence from high treason!—Was this hopeful speech in the hour of judgment, charitable or mild?—Or what was the learned speaker pursuing? An aggravation of punishment! for which reason, as it was not in his power to effect it, the judges always agreeing in their sentence before they call the convict to hear it, we can only say, that it strongly marked the man, who agitated by Mr. Horne's defence, discovered the fallibility of human nature, in the overflowings of his wrath.

How the idea of high treason could enter into the subtle brain of either Norton, in Mr. Wilkes's case, or Thurlow in Mr. Horne's, is marvellous, as no law logic, ever yet proved libel and high treason to be convertible terms. They are opposite and distinct offences.—One by construction, is a breach of the peace, if libel be an offence,—the other, the highest of all capital offences.—Any Attorney General, who will tell us otherwise, is an impostor; he would make truth treason, and all the freeholders of Britain, riotous traitors; and yet, such is our situation, that we must put up with all this—see English liberty insulted, and our constitution

tion invaded, by the injurious *reserved power* of an Attorney General, and the misapplication of the law to sanctify it by *meer construction*.—Let us then supplicate the genius of England, her tutelur saint, to pervade the minds of her sons, and to accelerate the happy period when Parliament will be less venal and corrupt, and better disposed to abolish such extraneous powers of an Attorney General, than in 1766, when a motion for that end was rejected by the commons, and that a libel may be defined by the law to be some *positive* crime and not a *constructed* one.—The law will then not be able to make *tendency* to evil a *crime*, and the subject will have less reason to complain.

If there be any love of liberty left among us it will be criminal in us to be indifferent about the welfare of our country.—Mr. Locke says, no people can alienate their posterity's immunities; and whoever can be unconcerned about the liberty and happiness of the community of many millions of his fellow creatures, connected to him by the endearing ties of nature, must be unfeeling, sordid, selfish, and harden'd against all natural affection, and incapable of every generous or tender attachment.

Our condition, as we have seen in the preceding pages, is very calamitous.—We are subject to punishment for speaking and publishing the truth, because truths are galling things to those who betray their trust, and who when found disgusting to us, instead of quitting their lucrative places, apply to an Attorney General to punish us for complaining.—What in the whole world can tend more to slavery?—Indeed it is a specie of slavery in itself. We are liable to be punished by our servants for finding fault with them; and *truth*, that sacred repository of all that is good, is an aggravation of our supposed crime.—Our fellow subject Mr. Horne, is said, to have offended the King and his Ministers, by praying a contribution for the widows of those Americans who were killed by *his* troops.—The King can do no wrong, as doing nothing of himself.—The army is termed his troops, but if any part of it discharge their bullets, or sheath their swords in the bowels of their brethren, when no rebellion constitutionally exists, or war is declared, is it the fault of the King? It is not, and speaking of our present, (whom God preserve) there is no one but must adore him for his humanity, and those cardinal virtues which give grace to human nature and glory to our great Creator.—It is not to him

H

nor

nor his troops Mr. Horne alluded.—It was to *that ministry*, and the unhappy command of some of our ministerial generals, who fatally employ a part of our military in *America*, by whose hostility, those widows were left husbandless, for whom, and their families, Mr. Horne advertised relief, and for which, whatever the creatures of the court may say, or think to the contrary, he has been treated as a slave, not as a freeman.

To those who can reconcile themselves to the idea, that human beings are to be no more regretted in their destruction than sheep, we can have little to offer.—It may be a weakness in our nature to be of an opposite opinion, but never a crime.—The tree is known by its fruit, and whoever reads this address to the independent and humane part of our community, will believe the author of it (if not a Cromwell, a Richard the III, or a Caligula) to be a man, who (though wrong in any part of his conclusions to be found herein) cannot observe with indifference, any thing whereby his fellow subjects may be affected in the enjoyment of those bounties, which under God they have a right to possess, without invasion.—Though our corruption, and natural disposition to sin, is not
 averted

averted by providence, in the slaughter of each other for reasons beyond the ken of human conception, it is difficult to comprehend the antithesis, that population is necessary in one sense, for the welfare of all states; and in the other, that a hostile destruction of the people is justifiable.—Yet such is the history of all sublunary affairs, that when Kings possess more territory than they know how to govern, they grow ambitious, and quarrelsome, and instead of appealing to a neutral power, morally to adjust their disputes, they settle them wantonly in the blood of their subjects.—To reason by analogy, they say, is not to reason at all, and those who plead scriptural facts, and tell us, “whatever is, is right,” ought to be left to the enjoyment of their own thoughts, and to comport themselves in their plunders and iniquities, for which such pleading will always find excuse, and countenance the foulest actions; but who, among us, that is formed in humanity’s softer mould, can hear of a man’s being eat in one country, and scalped in another, without a pang? There may be effiminacy in our shuddering at the thought of bloodshed by cruel, unrelenting, remorseless butchers; but if it be masculine, glorious, or praise worthy to deem all things right, that happen;—“whatever is, is right,” and no-

thing is wrong beyond a stated rule.—A preacher of this doctrine, would never want a crowded congregation, were it possible he could make it orthodox, and then the devil would triumph, where angels should alone preside.

But in the milder language of humanity, in the refinements of civility, society, and universal love,—in the language of reflection, and our duty to the omnipotent Father of finite Man, God forgive all human murderers, and defend us from the contamination of those, who, in their philosophical disquisitions, (which prove nothing) and in the hardness of their hearts can relish to hear (with the same glee that a hound would devour carrion) of the fall of their fellow men by sword or bullet.—If we differ in opinion, that the word War (curse on the word, but more accursed be the effects of it!) includes *legal* murder, it is because no law, or other scientific logic, will persuade us in our weakness, that War and Justice are synonymous, much less so, War and Injustice, according to the stated rules by our constitution long prescribed.

All things are nevertheless said to be safe, according to the language of courtiers, who impudently

prudently tell us that it is impossible to mend them *either in church or state*.—It would be much more sensible in them, to say at once, that we had better take a *Danish* example, and request our god-like King to take the reins of government into his own hands; and at the same time to give us peace, by destroying the power of Lords and Commons, since we might be safer under the government of *one supreme*, be the consequence what it may, than live under the tyranny of some hundreds of corrupted men; otherwise, (like the Romans) by not securing our liberties, in time, or throwing them at the feet of a King, who would possibly take care of them, we may hand down to posterity, not only a picture of our folly, but a deed of conveyance to government, of what should of right descend to a future people without alienation.

The boasted advantages of this country, obtained at the revolution, may be magnified by Bishops and high-church-men, who attribute their glory to the reformation, as much as they please; but experience assures us, that except in the expulsion of the Stuarts, the revolution was not a complete redress of publick abuses, for as Lord Percival said in the House of Commons, A. D. 1744, it was brought about so suddenly

suddenly that it was a wonder we gained what we did.—Would to God the eyes of our ancestors had been wide open to the consequence of what the Revolutionists did not correct! for by leaving those leak holes in the state vessel unrepaired, (which we have observed) the steersmen have driven her on rocks and quicksands for pretended safety, till liberty is so circumscribed and fenced in, that she has almost lost her virtue, and is only permitted to step forth on certain occasions, by her keepers, to amuse us with her periodical beneficence.—Such is the bane of our luxury and corruption, from an increase of which, may providence, and our own endeavours, speedily defend us, and remove from us the disgrace we have brought on ourselves, by submitting to a set of tyrants, whose power owes its existence to our tameness and cowardice, which has increased upon us since the revolution, in proportion as the spirit of liberty has exhaled, under those British distillers, who have found us complying and useful to their purposes.—Hear Lord Bathurst's words in a letter to Dean Swift :

“ In short, the whole nation is so abandoned
 “ and corrupt, that there is always a majority
 “ in both houses of Parliament.—He (meaning
 “ the

“ the King) makes them *all* in one house, and
 “ above *half* in the other. *Four and twenty Bi-*
 “ *shops* and *sixteen* Scotch Peers is a terrible
 “ weight in one. *Forty five* from one country
 “ besides the west of England, and all the
 “ government boroughs, is a dreadful number
 “ in the other.—Were his Majesty inclined to-
 “ morrow to make his body coachman his first
 “ minister, it would do just as well, and the
 “ wheels of government would move as easily
 “ as they do now with the sagacious driver who
 “ sits on the box. Parts and abilities are not
 “ in the least wanting to conduct public affairs.
 “ The coachman knows how to feed his cattle,
 “ the other feeds the beasts in his service, and
 “ this is all the skill that is necessary in either
 “ case.”

If this was our situation at that time, what is
 it now? Simply this.—Parts and abilities are
 employed to sacrifice sense and general utility
 at the shrine of ambition, extravagance, vanity,
 lewdness, gaming, and adultery.—Our gover-
 nors assume more power over us, and have se-
 parated themselves more from our interests than
 then, until intoxicated and lost in their borrow-
 ed importance and our tameness, they have al-
 most forgot that they are men, or that power
 has

has been entrusted to them for any other use than to employ it for their own advantage and our misfortune. If we are longer silent, we shall dwindle into the most abject tools and instruments to a licentious government. It may be difficult for us to relieve ourselves, but to complain with warmth of public injuries is laudable and right, and though it may not answer every purpose, it will certainly keep our public trespassers in a state of abeyance, and by a jealous watch on their actions, check their iniquitous pursuit.

Let us therefore on the whole, constantly and instantly regard our natural and constitutional liberties, and though we may want power to defend them against ministerial encroachments, let us not forget that sovereignty is truly with us; and that what has been once done, in opposition to a bad ministry, may be done again to effect our welfare, when irritated to do ourselves justice.—Whatever a majority of us desire, it is undoubtedly lawful for us to have, unless contrary to the laws of God.—The difference between the time of Charles I. and the present is this; the opposition was then between a bigoted King and a brave and free Parliament.—Now the opposition is between a corrupt court
joined

joined by a multitude of all ranks and stations, bought with the public money, and the honest independent part of the nation.

Charles the first and his son, claimed a right of governing from divinity, while they governed like devils.—They invaded the law and the constitution.—The father, by his enthusiasm and supineness, neglected the national welfare. The son, by his luxury and dissipation, diffused among the people examples of immorality, which by their adopting, inclined them more favourably to public pollution.—But in regard to his present Majesty, his family and predecessors, since that abandoned age, they derived their regal title from an English statute, and the choice of the people.—There is not (God be praised) the least divinity in our King's right to govern us, beyond what he receives from us. God is in us all,—no more in Kings than peasants, but is equally all in all.—We live not in those dark days, when liege-men and vassals, concurred as of right, with King, Thanes, and Lords, in every thing they did, without contemplating thereon, but we live to glorify the rights *naturally* claimed by our ancestors, and *politically* and *beneficially* enjoyed by them, from the reign

I

o.

of Henry III. downwards; when the arbitrary (though ignorant) authority of King, Thanes, and Lords began to be curbed, and the people, from the increasing lights of wisdom, became of more consequence than before.

We hear of no divine right of Kings, or passive obedience, until our country was embroiled with civil troubles, the consequence of royal prostitution in *pious* Charles the first.—It was then that the King's authority, and claim to the crown, were urged to descend from heaven; but in that chimera, indulged in the minds of fools and impostors, there was blasphemy, which ultimately brought down the vengeance of God, in the power of his offended people upon *him*, who, by himself, and vitiated friends, attempted to justify an oppressive and unconstitutional reign.—This proves that Kings are politically mortal, and created by mortal man.—They are equally subjects of the common law of our land, and with their ministers, may be spoke of with candid severity, when their conduct requires it notwithstanding they have appeared desirous of a power, to padlock our tongues and pens from speaking or writing, either to illustrate their good, or condemn their bad actions.—If they had such a power, we should be in a state of vassallage,

-salage, holding our liberties only as tenants at will, determinable at their pleasure.—All ideas of mutual subjection, for mutual benefit, would then be lost, because there would be a schism in the body politick, and the community would suffer by separate interests.—If our Almighty Father has assigned every man his station to be useful in this life, whatever extraordinary talents, riches, or advantages, individuals possess, they are only fiduciary, and not intended for the peculiar service of those who possess them.—They are given for mutual assistance, for being placed in an imperfect state, we are in want of each other's service, be our stations high or low, and it is from hence, that no possessions are exclusively our own, *vix ea nostra voco*.—If ministers are to do as they please with us, and punish us for looking into their administrations, they are *ex vi termini*, positive tyrants.—It must however strike us evidently, that this would be against reason and nature, which have made us master of ourselves, and left us subject to no other being on earth, but by our own consent for public and private good.

The sentiments of the late Swift will be more expressive.—He says, “No man can be a prince without subjects, or a master without ser-

“ wants, and where there is a mutual depen-
 “ dence, there is a mutual duty; for instance,
 “ the subject must obey his prince, and in those
 “ countries that pretend to freedom, princes
 “ are subject to *those laws the people have chosen*.
 “ They are bound to protect their subjects, in
 “ *liberty, property, and religion*, to receive their
 “ petitions, and redress their grievances.—So
 “ that the best prince, in the opinion of wise
 “ men, is only the greatest servant in the nation,
 “ not only a servant to the public in general,
 “ but in some sort to every man in it.”

In any other sense, his character would be arbitrary, and his power founded on the wreck of the rights of man;—nothing would support it but force.—A limited monarch must govern according to law, wherein the subject feels as much satisfaction in obedience, as the monarch can desire to exact.

“ No man, to whom education, in a private
 “ station, (or even a palace, if not corrupted by
 “ flatterers) had given a philolophical dispositi-
 “ on, would be desirous, if he became a King,
 “ of arbitrary power; reflections on all the ex-
 “ amples which history can produce, would
 “ make him wish to govern by laws, and to
 “ owe

“owe his authority as much to their force, as
“the subject could his liberty.”

Thus we see clearly, that if it be the spirit of the constitution, that Kings should govern by law, we have an undoubted right publicly to complain of the conduct of their ministers when they do wrong; and when such a right requires exertion, those ministers ought to quit their places, and not fall on any part of the people with violence, for what they themselves have occasioned.

To conclude, and once more turn to Mr. Home, who being in confinement, for no crime, but affronting a corrupt ministry, we must lament that in him we are insulted and oppressed, and waiting with patience an alteration in the complexion of political things, rely on an amendment of the law in cases of libel, by a destruction of information *ex officio*, a definition positively what a libel is, and by Juries being at liberty to judge of crime as well as fact.

What consequences may be produced from the long prevailing system of government, a little time will discover, but whenever it happens that the mild voice of influence shall occasion worse effects than formerly the stern commands
of

of prerogative, and that the King's *friends*, while possessed of more power than an equal balance, between them and the people will allow, shall think they have not enough, but grasp for more; we may then see "in the common course of things, how the same causes can produce different effects and consequences among us, from what they did in *Greece and Rome*."

As our public affairs now are circumstanced, let us hope a time will soon arrive, when the sun of wisdom will irradiate our political hemisphere, and the glory of our constitution spread its all-cheering rays over our plentiful country; when the ministry will be composed of men, more attached to its prosperity, and less self-interested in their schemes.—A favourable opportunity may then offer for justice to suspend her balance with an equipoise, and distribute to us, and to all men, impartial and equal right.

But why, after all, is Mr. Home to be abused, as we have heard him, in his name and character? He has quitted the church, and alas! is but a man; and creatures of habit, who depending not on their own senses, or having none to depend on, are unhappily hurried away by prejudice and report, to damn the man whom
slander,

flander, and conscious demerit, have marked a prey to their hell-born fury.—Some among us know Mr. Horne, and can rescue his reputation from the unhallowed jaws of envy and calumny, by our experience of his general conduct.—His enemies and maligners, who dive with microscopic eyes for faults in him, (disregarding all virtues) are to be pitied for their temerity and folly.—Mercy on Men! for Man on Man hath none.

Grant then, Oh Majesty uncreate, that while abuse may make us cautious, charity and benevolence may keep us out of polluted hands, and make us loving and kind unto each other, neither forgetting our own insignificance, nor neglecting to pay the compassionating tribute for the failings of our fellow worms, whose life daily upbraids thy supernal goodness. Grant, thou King of Kings, thou ruler of worlds, and glorious patron of liberty, that the iron sceptre with which puny tyrants destroy the rights of thy creature, Man, may speedily be broken, and let the human worms of the earth know in conscience, (thy reflected image) that to devour their fellows, or rule with tyranny, was never thy intention.—Assert thy mighty power and sovereign dominion over those, who impiously wish to be thy
vice-

vice-gerents on earth, and strive toward it in their deceitful ministry.—Open the hearts of those, whose stations enable them to restore to us, freely and without compulsion, our unalienable rights and privileges.—The cause of civil and religious liberty will then prove victorious. The law will not be extended beyond the bounds of our constitution.—Crimes, trespasses, and misdemeanors, will become positive, and not imaginary.—Juries will exert their duty, and none of us be subject to the perilous vengeance of our constituted rulers, for constructed offences, unjudged, and undetermined, except by themselves.

D.

F I N I S.

E R R A T A.

Page 7, line 16, for *far*, read *farther*.

Page 19, line 8, for *rests*, read *vests*.

Page 20, line 10, for *officio*, read *officio*.

Page 33, line 24, for *were and*, read *and were*.

Page 50, line 7, for *distringus*, read *distringas*.

Some inaccuracies in the pointing, which the candid reader is craved to excuse.