THE

Grand-Jury-Man's OATH and OFFICE EXPLAINED:

AND THE

Rights of English-Men ASSERTED.

A

DIALOGUE

BETWEEN

A Barrister at Law,

AND

A Grand-Jury-Man.

London, Printed for *Langley Curtis*, near *Fleet-Bridge* upon *Ludgate-Hill*. 1680.

THE Grand-Jury-Man's OATH and OFFICE EXPLAINED: AND THE Rights of English-Men ASSERTED.

Grand Jury-man. SIr! I am Summon'd to be one of the *Grand Inquest*, and I would willingly beg ſome Information from you touching the nature of that Service by Law.

Barriſter. I ſhall readily gratifie ſo Juſt a Re-

 queſt,

queſt, being glad to hear you ſolicitous to *understand* fully your duty: For that ſhews your Reſolution to *perform* it Conſcientiouſly. Therefore to come to the matter.

By the Law of *England* no perſon (except in a *few* extraordinary Caſes needleſs to trouble you with) can be *Convicted* of any Crime, but there muſt firſt *two Juries* paſs upon him.

1. The *Grand Jury*, who Preſents the offence on the behalf of the King.

2. The *Petty Jury* [in Caſes Capital, call'd *the Jury of Life and Death*] who are to try the matter of ſuch Preſentment between the King and the Party accuſed.

The firſt of theſe is properly call'd, *The Grand* [or Great] *Jury* in a threefold reſpect.

1. For their *Number*, other Juries conſiſt but of 12 men; This of more, as 17, 19, 23, or the like.

2. For their *Quality*, becauſe they generally are and ought to be Perſons of more than ordinary Account, Eſtates, Underſtanding, *&c.*

3. For the *Extent of their Office* or Duty, being Jurors

Jurors for the King for the whole Body of that County for which they ſerve; And have power to Preſent all offences whatſoever committed therein, That are againſt the Kings Peace, Crown and Dignity.

Gr. Jury-man. Well then, The Grand Jury is the *Great Spring*, or *Primum Mobile* of the Court, that gives motion to all the other Wheels in Proſecutions Criminal, Their Preſentment being the *Key* that either opens or ſhuts the proceedings of the Court in every Offence.

Barr. You take it right, and therefore the Law provides, That they be *probi & legales Homines*, *good and lawful Men.*

1. Each of them muſt be *probus* (*quaſi probatus*) an *approved honeſt Man*, faithful and skilful.

2. He muſt be *Legalis* too, a *lawful Perſon*, that is not outlaw'd, of good Fame and Credit, No Alien, but a Leige-Subject of *England*; For the Free People of *England* by Law can only be Preſented and Tryed *per Pares* by their Equals and fellow-Subjects.

 Gr. Jury-

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Gr. Jury-man. I perceive then the Law Reposes a great Trust in a Grand-Jury for the discovery of Offences, and that in their hands the Reputation and Peace of their Neighbours and fellow-subjects does much Consist. Therefore to understand their Duty the better, I desire you to recite unto me the Oath that is usually Administred unto them.

Barr. Very opportunely thought on, I was Just coming to it; Here it is, read it your self deliberately.

The Oath of a *Grand Juror.*

YOU *shall diligently Inquire, and true Presentment make of all such things and matters as shall be given you in Charge, or shall come to your Knowledge concerning this present Service. The Kings Counsel, your Fellows, and your own, you shall well and truly keep secret. You shall Present nothing for Malice, or Evil Will that you bear to any Person; Neither shall you leave any thing Unpresented for Love, Favour, Affection, Reward, or any hopes thereof. But in all things that shall Concern this present service, you shall Present the Truth, the whole Truth, and nothing but the Truth, according to your best skill and knowledge;* So help you God.

Gr. Jury-

Gr. Jury-man. But I would gladly hear the particulars of this Oath a little explained.

Barr. Observe then its several Branches.

1. *You shall diligently Inquire and true Presentment make*; Hereby they are oblig'd to Enquire, and that diligently, not to be slothful, or negligent, not to take things upon Trust, or hurry them over carelessly; but to proceed on a mature and strict Examination, and then to make true Presentment.

2. *Of all such things and matters as shall be given you in Charge, or shall come to your knowledge.* Here is laid down the Subject-matter of their Inquiry. By *Matters and Things*, must be understood, All offences against the Law by them Inquirable of, As Treasons, Murders, Felonies, Perjuries, Forgeries, Misdemeanours, *&c.* Which are commonly summ'd up to them in the Speech [or *Charge*] of the Judge. All and every such offences which either they know of their *own knowledge*, or which shall appear to them by the *Testimonies* of others, they are to Present.

3. *The Kings Counsel, your Fellows, and your own, you shall well and truely keep secret.* By the Kings Counsel

ſel (I conceive) is to be underſtood, the *Evidence of Witneſſes* that ſhall be produced to them on the Kings behalf; This muſt not be Revealed or Diſcovered by the Grand Jurors, but kept ſecret from the Perſon concern'd, his Friends and all others, the Reaſon whereof ſeems to be this; Their Preſentment is but of the Nature of an *Accuſation*, or Charge. Now if they, having heard and Examined the Witneſſes ſhould divulge the Particulars, and wherein the Force of the Evidence lies; Then might the Party proſecuted (perhaps a Traitor, Muderer or Felon) take an opportunity to *Fly* from Juſtice; (For many times the Criminal is not apprehended, or is out upon *Bail* till after the Bill found by the Grand Inqueſt,) or at leaſt there might thereupon be ſome *Tampering* or Indirect Practiſes uſed to take off, or *Sweeten* the Evidence when it comes to be Tryed by the Petty Jury.

Nor are they to diſcover what any *one* or more amongſt themſelves have together Counſell'd, adviſed, or debated in the Buſineſs before them. Becauſe the ſame might *diſcourage* particular Members of ſuch Juries from giving freely their Opinions in diſcharge of their Conſciences, and render them liable to Malice, Reflections, *&c.* And therefore if

if a Jury be agreed, and the Court perhaps not pleaſed with their Verdict, ſhould take upon them to ask, *Which of the Jury-men were firſt or moſt earneſt for finding it thus or thus?* I conceive the ſame and all other Inquiries of that kind to be utterly unlawful; That the Jurors are not bound by Law to anſwer thereunto, but oblig'd by their Oath to the contrary.

4. *You ſhall Preſent nothing for malice &c.* Having ſet forth what they are to doe, the Oath next preſcribes with what *Integrity* and Impartiality they are to do it, excluding all Malice and Revenge on the one hand, and all Favour and Affection on the other.

5. *But in all things you ſhall Preſent the Truth, the whole Truth, and nothing but the Truth.* The *Truth*; that is, Truth ſufficient to make a juſt Accuſation againſt a nocent Perſon. *The whole Truth*; not concealing wilfully any Crime that appears to them. *And nothing but the Truth*; That is, no known falſity, no falſe Accuſation againſt any Perſon muſt be Preſented, to bring an Innocent Perſon into diſgrace and Jeopardy, ſo as to force him to take a Tryal where it does not appear, That he hath committed any Crime, or where there is not any ſufficient Accuſation, or where the Fact charged (If

(If in it self Criminal) is yet not so fixt upon him by any probable Evidence, as deservedly to expose him to a Tryal for it.

Grand-Jury-man. But since the Grand-Jurors are thus sworn to present Truth, and nothing but the Truth; And yet Experience shows, That very frequently the Party prosecuted is really *not Guilty*, and so found by the Petty Jury, though the former have presented the Indictment against him to be *Billa Vera*, a *True Bill*, I demand how these Oaths of the Two can consist together, and with a safe Conscience?

Barrister. Though there may seem (*primâ facie* on first thoughts) some *Contradiction* between the two Verdicts, yet really there is none; But both may be true in their several proper *Respects*, and safely, that is, honestly given. I may (for certain weighty Reasons and Proofs that I have considered) *verily believe*, That *A. B.* is Guilty of such a Murder or Robbery, and therefore for the Execution of Justice (that Glory and Safety of a Kingdom) I may *swear* that I believe so, and judge it my Duty to Present him, That he may be Legally *Tryed* for such Crime; And yet It may be possible that

that he is all this while *Innocent*, And perhaps when I come to hear his *Defence*, *I may think so too*; Yet have I not herein done him, or my own Conscience any wrong.

The Grand Jurors work, I told you, is no more in its own Nature, than to Present Offences which they find *fit for a Tryal*. They hear only one side, *viz.* The witnesses *against the Prisoner*, and do not, nay cannot, hear any thing in his *Defence*; Nor to Confront or weaken the Evidence brought against him, and so cannot be intended to give in more than a *verisimilary* or *probable* Charge; which by what they have heard, they do aver upon their Oaths, does seem to them to be *Just and true*, and fit for Justice to take Cognizance of. And therefore by their Oath you see, they are oblig'd to make true Presentments *concerning this present service* [that is, according as the nature of their present Service in the Capacity of a Grand Jury requires] and also their Oath in the End is qualified, [*According to their best skill and knowledge*] which denotes not an absolute Certainty, but so as things appear.

And for the same Reason it is, That in the Record, The Grand Juries finding a Bill is Entred *Juratores pro domino Rege præsentant*, *The Jurors for our Lord*

Lord the King do PRESENT; [that is, Inform, Charge or by way of Accusation on Just and Reasonable Grounds urge and put to Answer] But the Verdict of the Petty Jury is Recorded thus, *Juratores dicunt*, The Jurors positively *SAY* or *Affirm*. And when afterwards on Tryal any man is Acquitted or Convicted, The Record runs thus, The Jurors say, That *A. B.* is Guilty [or not Guilty] of the Felony aforesaid in the Indictment aforesaid specified, which *Ei superius imponitur*, is above *laid or Charg'd* upon him in manner and form as by the Indictment aforesaid, *superius versus eum supponitur*, *Is above against him supposed*. So that you see here, the Law it self Construes the Bill found by the Grand Jury to be only a laying on, or probable Charging of a Crime, and speaks of it but as a supposition; so that by *Billa vera*, can only be understood a Bill that appears to have Truth in it, necessary to be tryed, and fit for the Enquiry of another Jury; The Adjective, *Vera*, in this place not so strictly signifying *True*, as *meet*, fit, or reasonable; And so 'tis used sometimes by Authors, as *verum est* in *Terence*, which Grammarians render, *it is fit*, or you *speak Reason*.

And therefore on the other side, they never endorse upon those Bills they do not find [*Billa Falsa*

Falsa, that is, a false Bill,] but modestly write, *Ignoramus*, which signifies, They are Ignorant of the matter in the Bill, and that they find *no Cause* either from what they have heard from the Witnesses, or know of their own knowledge to Commend it to a further Inquiry, or to put the party on any Tryal.

Grand Jury-man. If this be all, it seems Grand Jurors need not much scruple the finding of most Bills brought before them.

Barrister. Not too fast, you have heard by their Oath they are *diligently to Inquire*; And these words, *Truth and nothing but the Truth*, have great weight and Obligation. They must therefore have some knowledge or good probable proof on Oath, on which they verily believe the matter *deserving Tryal*, and the Party *Guilty*, or else they cannot in Conscience Endorse a *Billa vera*. For if they should do it without such just and lawful Inducements, they apparently violate their Oath, and withall are highly Guilty of Injustice towards their Neighbour in preferring a *causeless Accusation* against him, whereby his Credit is impaired, his Life Liberty or Estate exposed unnecessarily to the *hazard*, trouble,

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ble, and charge of a Tryal, *&c.* Wherein if by any Ill practice with, or the Ignorance of the *Petty Jury*, he ſhould be *Convicted* (when Innocent). though ſuch Petty Jury would be moſt Immediately concern'd; yet the Grand Jurors too cannot be Excuſed from a *ſad ſhare* in the Guilt of the *Blood*, or Ruine of ſuch an Innocent Perſon and his Family; For, *Qui non prohibet cum poteſt, jubet, He that doth not hinder Injuſtice when it lies in his Power, Commits it*; And it was by reaſon of their inconſiderate groundleſs Preſentment, and finding *Billa vera* where they had no Juſt Cauſe ſo to do, that occaſion'd the miſchief; For without *That*, it could never have happen'd.

Grand-Jury-man. You have very well ſatisfied me in theſe Particulars; But ſuppoſe a Bill ſhould be brought before the Grand-Jury, wherein a man is accuſed for doing *ſome Act that is* in it ſelf no Crime; Only in the Indictment it is called *Treaſon*, *Sedition*, or *Miſdemeanor*, and ſaid to be done *falſly and maliciouſly*, with an Intent to raiſe Sedition, bring the Government into Contempt, *&c.* Now if it happen that the particular and *Naked Fact be proved*, But that the ſame is Treaſon, Sedition or Miſdemeanour is not declared by any Law, nor yet

yet does it appear by any proof that it was done with any ſuch *ill mind*, or *criminal Intention*, what muſt the Grand Jury do in this Caſe?

Barriſter. If the matter charg'd be (as you put it) no Crime in it ſelf by Law, then though it be never ſo much branded with ſuch aggravating terms, yet ſince the ſame do in no kind appear to the Jury to be deſerved, they muſt undoubtedly retorn an *Ignoramus*; For you have heard, That their work and the main Scope of their Oath, is to Preſent ſuch matters as appear to them *fit for Juſtice to take Cognizance of*; But where they are ſatisfied, that there is no ſuch Crime, if they ſhould Endorſe a *Billa vera*, and ſo put a perſon, whom in their Conſciences they think Innocent, (becauſe nothing appears to them to the contrary,) to the hazard, charge and trouble of a Tryal, It were a plain violation of their Oath, and unjuſt as aforeſaid.

Grand-Jury-man. But this were for them to take upon themſelves the *knowledge of the Law*; Now I have heard people ſay, Juries are only to Judge *of matter of Fact*.

Barriſter. Jurors are to conſider *both Law and Fact*,

or else they will never deliver just and lawful Verdicts. To what purpose does the Law provide, that Jurors should be so well qualified as to Estate, Understanding, and Sufficiency; And so strictly sworn, but only to detect Offenders, and preserve the Innocent from needless vexation and trouble? How far Juries are Judges of Law as well as of Fact, is pretty well set forth in a small Treatise lately publisht, Intituled, *The Englishmans Right*, To which (as well worth every true Englishmans Reading) I refer you for further Information. Only to satisfie you at present, I shall desire you but to consider of the sad Consequences that would follow, this conceit, That Juries must necessarily find every Indictment where the bare matter of Fact (be it what it will) is proved, without Inquiring into, and weighing the Nature of that Fact, or retorning *Ignoramus* where they find the same *Not Criminal*.

Suppose a Bill were exhibited against *A. B.* for *Treason*, for looking on the *Tombs at Westminster*, or of high *Misdemeanour* for *taking a Pipe of Tobacco, falsly wickedly and maliciously, with an Intent to Infect the Air, and destroy his Majesties Leige-Subjects with pernicious Vapors*; And it were very fully prov'd, *That he indeed lookt upon the Royal Tombs*, or did *whiff the Pipe*;

Pipe; but nothing of any such design of *Poysoning* the People thereby, appears in Proof; Now would you, or any Grand-Jury-man that wears five Senses and *a Soul* about him, retorn a *Billa vera* on these Indictments? And yet here the matter of Fact is prov'd, and by these mens unreasonable Reasonings you should be bound to find it.

Again, Imagine an Indictment brought against a Person setting forth, *That he falsly and maliciously and with an Intent to create and foment Rebellion, Sedition, Divisions and Distractions amongst the People of England, did cause to be printed and Published in the English Tongue, a certain Book called, The BIBLE*; And it be proved by an Hundred and Fifty Witnesses, that he did indeed Print and publish the *Holy Book*, yet would not you rather have your hand Rot off, than with it to Subscribe *Billa vera* here? But if this opinion were true, you should be bound to do it, or else be Clamour'd and Hector'd at, as if you were Guilty of the blackest Perjury.

Nor is this any Extravagant Supposal, If (which God forbid) *Popery* should prevail amongst us; For tis not above 150 years since, a poor honest *Bookseller* was burnt to death at *Avignion* in *France*, for no other Crime but selling *Bibles* in *French*; and to denote his Crime, two Bibles were fixt about his Neck, and

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and burnt with him, [See *Foxes* Acts and Monuments, fol. 861.] And here in *England* K.H. the 8*th*. on the 8*th* of *July* 1546. Issued a Proclamation requiring all *English* New Testaments to be brought in by such a day to the Constables in every Precinct, and so to the Sheriff to be *Burnt*; And that if after such day, any Person should be found to have any such Testament, or any part thereof in his Custody, he should not only suffer *Imprisonment* and punishment of his body at the Kings Will and Pleasure, but also be *Fined* at the discretion of any 4 of his Majesties Council.

Grand-Jury-man. God defend us from such times. But I pray let us retorn to our Discourse; I have observ'd, That in Indictments, Informations, *&c.* There are certain words used which are seldom proved; As *Vi & Armis, Contra pacem, falsè, malitiosè, &c. With Force and Arms against the Peace, falsly, maliciously, and the like*; Pray therefore Inform me, Is it a sufficient Cause not to find a Bill, If the Jury have not Proof of These?

Barrister. Here lies the *Knot*, the pinch of the Business, which rightly understood, would silence this Controversie for ever. You must note therefore,

fore, that sometimes these words are only *of Course*, or *matter of Form*, rais'd by a Just and reasonable Implication of Law; but sometimes they may be thrust in to raise a pretence or colour of *Crime*, where there is really none.

The *Distinction* therefore to be observ'd, is this; Where the Act, or matter of Fact charged, is in it self *a Crime* or offence against Law, there the Law does necessarily in Pleadings require and Imply those words; and If the Jury do find and are satisfied, That the substance of the Charge is such a Crime, and the Person guilty thereof, They are bound *to find it*, though no direct proof be made of those *Circumstantials*.

But where the Act, or matter of Fact is in it self *Innocent* or Indifferent, there the purport of these words is necessarily to be proved, for else there is *no Crime*, and consequently no fit matter to be put to a Tryal; In which Case the Grand Jury is bound in Conscience and Law to retorn an *Ignoramus*; and a Petty Jury, *Not Guilty*.

For though some Gentlemen of the long Robe are pleas'd to call these words only, *Pepper and Vinegar*, harmless sawce; yet if meerly for them, a Jury should pronounce a *Billa vera* or *a Guilty*, where the *main dish* is good and *wholsome*, they

would become *rank poyson*, and destroy all the Vital Liberties of the Nation.

Gr. Jury-man. What then may be the design, That yet some People plead a Necessity of the Juries finding *all Bills*, however worded or aggravated, where the *matter of Fact* (as they call it) is proved?

Barrister. I do not care whether there be *any such* People, or any such *design.* But this I know, That in the 11*th* year of K. *Henry* the 7*th* there was an *Act of Parliament* obtain'd on very specious Pretences, That Justices of Assize, and of the Peace should have full Power or Information for the King, *without any Presentment of a Grand Jury, or Tryal by a Petty Jury*, To hear and determine at their *Discretion*, all offences &c. *By pretext of which Law* (saith the Learned Lord *Cook*, 4 part *Institutes*, fol. 41.) *Empson and Dudley* (Two Judges, or Justices, for the latter is the Legal Title) *and their followers, did commit upon the Subject unsufferable Pressures and Oppressions. And thereby brought infinite Treasures to the Kings Coffers, whereof the King himself* (saith the same Reverend Author) *in the end repented with great Grief and Compunction*; And the Statute was repealed, and

and the said *False Justices*, notwithstanding such their pretended Authority, (even of an Act of Parliament, yet the same being against *Magna Charta* and the Fundamental Laws of the Land) were both fairly *Beheaded*, and no less than *Seven* of their little Instruments, Promoters, Informers, or what you please to call them, *viz. Canby, Page, Smith, Derby, Wight, Sympson* and *Stockton*, were set on the *Pillory*, and afterwards ordered to ride through *London*-Streets with their *Faces towards the Horse Tail.* With the same whereof *the Rogues* within 7 days after all dyed in Newgate. See *Baker's* Chronicle, fol. 254.

Now if there should be any such Design as you talk of, (which I neither know, nor can beleive) It must be to do the *same thing* in Effect *by Colour of the Common-Law*, which these Villains *Empson and Dudley* did by Pretence of a *Statute-Law*; For what real *Difference* is there between getting an Information or Indictment drawn by order of certain Justices against a Person, and Condemning and Fining him at their pleasure *without any Jury* at all, (which was the *Empson* and *Dudley*-way.) And causing and Indictment or Information stuff'd with *hideous terms* on an *innocent* indifferent matter of Fact, to be Presented to two Juries successively; but

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but *withall telling them*, they are bound not to consider whether such matter of Fact be indeed *any Legal Crime*, And so *Trepanning* (for I can call it no better, whether it be done by *Wheadling* or *Menacing* and huffing,) the said Juries, to find the Party *Guilty*; When in their own Consciences they do not believe he has committed any such Crime. And then shall come the said Justices, and upon such his Conviction, Sentence him to be *Hang'd*, or to *stand in the Pillory*, or be *Fined* so many Hundred Pounds (much more perhaps than the poor Creature is worth; so that it amounts to an Imprisonment from which only *Death* can Bail him:) And all this for that which is no *real Breach* of any Law either of God or his Native Countrey.

Grand-Jury-man. This indeed were the grossest Injustice, the most horrid scandal that would be cast on the *Laws of England*, which have been ever Celebrated for the most Equal, Just, and Merciful in the World; and so much worse than the Practice of *Empson* and *Dudley*, because by this means, *JURIES* would be made use of as *Stales* and *Properties* of oppression. But it is not to be *supposed*, That any Justices should offer, or suffer any such Indictments or Informations to be offered, to any Juries, or

or attempt to perswade Juries to find them, where the matter thereof is not *warranted by Law*.

Barrister. I know not what you can suppose, nor do I complain, That any such thing *has been attempted*, much less do I speak to discourage any *Just Prosecutions* of real Crimes and Misdemeanors; But I must tell you, That there are very wise men that *suppose* such things as we have been talking of, may possibly fall out, at least in *another Age*; For we are not Assured, That in all Generations there shall never be any *Ill men* put into Office; There may one day perhaps happen a little peevish Justice, or a *Blustring* Magistrate in some Village or other, that may be *no mighty Witch* at Law, and so ignorantly may promote *odd Fantastick* Indictments; or may be a *Creature of Ambition*, and so willing to serve a Turn for *Preferment*, and may Endeavour to *Hector Juries* out of their *Rights* and their *Wits*, or a thousand other Accidents. And therefore why should it be left upon a fallible supposal, a meer *Hap-hazard*, or why must Ill Precedents be given? The Institution and very End of Juries is to preserve *our Liberties* from the wily Encroachments of oppression; And therefore 'tis the Right and Priviledge; nay I will add, 'tis the indispensable *Duty* of

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of *Grand* and other *Juries*, to Act like men of Judgment, Conſcience and Courage in ſuch Caſes. For otherwiſe they *Forſwear* themſelves, grievouſly injure their Fellow-Subjects, betray the Freedomes of their Countrey, and open *a Gapp* for Slavery even in *that very Hedge*, which was purpoſely firſt *planted*, and has time out of mind been ſo carefully preſerved by our Anceſtors, to keep it out.

Grand Jury-man. Well, but if Juries do not give their Verdicts as the Court think fit, though the Jurors proceed uprightly according to the beſt of their Underſtanding and Conſciences, yet may not the Court *Fine* or *Impriſon* them.

Barriſter. No. The Law utterly Condemns any ſuch Practice, as you may ſee undeniably proved in the before mentioned Treatiſe, call'd, *The Engliſh man's Right*, p. 24. Nay, if any ſhould preſume to *Menace* or *Reproach* a Jury for giving their Verdict uprightly according to their Couſciences, It would be an High *Miſdemeanor*; and ſuch Inſolence ought to be Corrected with *Exemplary* puniſhment.

Grand Jury-man. Since Juries are ſo eſſential to our *Engliſh* Liberties, and of ſo *great Uſe* to the Nation,

tion, Is it not great Pitty, That men beſt qualify'd both for *Eſtates* and *Underſtandings* for that Service, ſhould oft-times uſe little under-hand Practiſes or ſmall Bribes to the *Officer* that Summons them, to avoid it.

Barr. 'Tis both a pitty and *a ſhame* if any ſuch thing be done, and ought likewiſe to be puniſhed; For thereby Perſons every way *unfit* may at laſt come to ſerve turn, and ſo Verdicts may become *Mercinary*, and People ſet up to *make a Trade* of being Jury-men; Whereas 'tis an Office that the *beſt Commoner* in *England*, is neither too good nor too *great* to ſerve his King and Countrey in; Which I wiſh all *Gentlemen* would Conſider, and readily diſpoſe themſelves to accept the ſame, when ever they ſhall legally be call'd unto it.

Gr. Jury-man. I thank you, Sir heartily for the Information and good Advice you have given me in this matter, and ſhall Endeavour to diſcharge my Duty accordingly, As becomes a Chriſtian, *a Loyal Subject*, and an upright *Proteſtant Engliſhman.*

FINIS.