The Cry of the North:

Fair Trade, Fair Seisure, Fair Trial.

Quominus Commercium colatur, impediendi nemini jus est. Grotius *de Jur. Bell. & Pac. l. 2. c. 2. sect. 5.*

No Living can crush, or in the least discourage our Liberty of Fair Trade.

I have heard many Sober and Observing Persons complain of the Danger, Mens Lives and Properties are in, by the Frequency and Fashionableness of Perjury. Faith and Truth in all Occasions of attesting it, is the great Bond of Society, which when infringed, all must break and run to Confusion.

Lock. *upon Coin, Letter* 1. P. 4.

EDINBURGH,
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The Cry of the North:

BY the Fourth Article of the Happy Union, it is expresly declared, That *North-Britain* shall be under the same Regulations of Trade, and enjoy the same Encouragements and Privileges, as amply as *South-Britain*. Here is stipulated a Faithful Union of Commerce, which by no means is to be entrenched upon. This Equality of Trade gave Soul and Life to the Completion of the Union; so that a just and equitable Observance of this Article, will prove a strong Ligament for cultivating the same. When we have no separate Interest in Commerce, there will ensue an Union of Affection and Principles with relation to Government. The Fair Trader then over all the Island is to be encouraged, without any regard to *South* or *North*. Traffick is so extensive in its

Branches, that no Part of *Great-Britain* need be jealouſed for Rivalling one another. Such groundleſs Fears and Complaints, may proceed from the private Intereſt of a Few; but Trade fairly managed in any Part, redounds to the Advantage of the Whole; It ſupports the Dignity of the Crown; It produces a Multitude of People with Riches, which is a Prince's Treaſury; It is a Nurſery for Seamen, the Brazen Wall and Bulwark of the Iſland. Induſtry, where ever it appears, ſhould be cheriſhed; becauſe Inactivity and Poverty renders the Crown, as well as the People, deſpicable, tho' ſometimes the latter deſperate. It's a wiſe ſaying of *Hannibal*'s * to the *Carthaginians*, *We have hardly any Senſe of Publick Calamities, but when they affect us in our Private Fortunes; and there is no Loſs we feel ſo much, as that which touches any Part of our Eſtates.*

That the Decay of Trade will produce ſuch a fatal Conſeqence, is ſo obvious, that it is needleſs to Inſiſt upon it, for I wiſh there

* Livy. l. 5. c. 23. *Tantum nimirum ex publicis malis ſentimus, quantum ad privatas res pertinet; nec in eis quicquam acrius quam Pecuniæ damnum ſtimulat.*

there was not the leaſt Occaſion of Reflection upon this account. Whereas, after fair and deliberate Articles, the only prudent Method ſhould be a mutual Return of Friendſhip, and an earneſt Endeavour firmly to adhere to all Promiſes and Engagements, which are Religiouſly and *bonâ fide* to be obſerved; and that to ſuch a Nicety, as to give Reciprocal Aid and Eaſe, where any Overſight has been committed: That is to ſay, The Two Kingdoms being all One, it ought to be their utmoſt Purpoſe, to be One to all Intents. This is the only rational Way of Concord, which will defeat the Projects of all Deſigns, that may prove prejudicial to this Glorious Union. Which Noble Conjunction (without Overrating or Undervaluing any of the Kingdoms) does effectually ſecure the Tranquillity and Happineſs of Both, which now are ſo cloſey Cemented, that whatever is prejudicial to the One, will quickly be felt by the Other.

Whoever he is, who is ſo Imprudent and Inſolent as to adviſe another Treatment, muſt be reputed an Enemy to the Queen and

and Union *. If any Merchant here Trades contrair to Law, there is a Law that will reach him; but by all means in a Fair Way;and the ſame Law Condemns all unjuſt Practices againſt the Trader. The Law was made for Puniſhing and Diſcountenancing all Traffick pernicious to the Nation's Intereſt; but was never intended to Enſnare and Embaraſs any One in any Part of the Iſland, who obſerved the Law.

This will never go down with the private Concern of a few Merchants, and ſuch as are in their Intereſts, whoſe Eyes can be cleared with Gold, that they may entertain other Speculations and Politicks, which were hatched in *Italy*, where *Machiavelian* Principles are ſomtimes imbibed with the Air. They are haughty in their Carriage,& are for Triumphing over the *North* Trade, to ſuch a Pitch, as to Ruine it entirely. The ſawcy Language of ſuch Hotſpurs is, That the *Scots* are to be trampled upon; That we are all Rogues, therefore none of us to be credited. Poſts, *&c.* are better en-

* *Impeditis Commerciis, Rupto Fœdere*: Florus *l.* 2.

entruſted in the hands of ſuch, as are of their Kidney, that Matters of Trade may be regulated conform to their ſingular Schemes; yet ſtrange! the Revenue is not advanced.

With a profound Reverence to the *South*, be it ſpoken, there are Perſons of Merite, Honour and Prudence in the *North*, tho' they may have the bad Fortune, to be maliciouſly Traduced and Miſrepreſented by *Boutefeus*, who create burning Jealouſies. Such open Contempt of a People foments Sedition, and Diſunion contrair to Law *. Theſe raſh Expreſſions recoil upon the Speaker, and diſcover Imprudence. As for Promotion; the Queen may beſtow Her Favours according to Her Royal and Gracious Pleaſure; altho' it's hoped, that this Country will in part ſhare of Her Majeſty's Goodneſs and Benevolence, while they are worthy of it. Our Queen is an Indulgent Nurſing Mother, who will with an equal Hand diſpenſe Her Bounty to all Her Children, and not allow One Child to exhauſt all

* K. James *VI. Par.* 20. *cap.* 9.

all Her Esteem, when Another merites a Share.

Ministers of State will certainly give no Ear to such false Insinuations, without Examining the Truth, and enquiring whether any such Informers, are Men of Candor and Probity. For Men of so great Characters will, no doubt, consider that in such Informers Ambition and Envy may sully Honour, and prompt Men to Pursue wrong Measures. Ambition looks upon all Mankind as its Inferior, spares no Quality, overlooks Honour, stops at nothing, that can promove its Designs, let the Consequence be what it will. If an Amibitious Spirit is not Paramount, wherever He sits; if all his Propòsals of Actings and Disposal of Places, are not acquiesced in, whether they are for Her Majesty's Interest or not; then He breaths Revenge, and pursues pitiful Ways of undermining those, that justly oppose his Intentions, which they are in Conscience satisfied, will prove destructive to Her Majesty's Interest, a Bar upon Trade, and an Infringement of the Articles of Union. Envy loves

loves Intriguing in Darkness; it works subtily to the Prejudice of Good Men, and dares not openly discover its Informations, lest these should be found Calumnious. From hence arises false Characters of Gentlemen, who will not comply with Sinistrous Practices, prejudicial to the *North* Trade, nor Interest themselves in One's Private Piques, occasioned by his own Folly.

Customs upon Goods were granted for the Support of the Crown. The Exaction of these Impositions is lawful and necessar. An Employ in this Office is honourable, where there are several Gentlemen of Worth, Civility and Knowledge, who are of Opinion, that the Enlargement and Cultivation of Trade, is the best Method of encreasing the Revenue. Upon this account they are not inclined to injure the Merchant under Covert of the Law. Taxes are to be collected with little noise, that there may be no Umbrage of Complaint. The Merchant must be civilly treated, and dispatched, that the Opportunity of his Mercate may not

 be

be loſt, nor his Commodities loſt by unneceſſar delays, or Forms of Proſecution.

Needleſs Severities ſhould not be uſed, either for an Officer's Gain, or to Gratify a Petulant and Revengeful Humor. Under the ſhadow of Law to be malicious, and to ſhow Reſentment of Private Quarrels, in a Publick Office, is to committ Iniquity by Law. Therefore any that Tranſgreſs in their Duty, and take indirect ways in their Offices, Collections or Seiſures, ought to be Stigmatized. How impudent, and bold are ſome Publicans when the Law favours them in the leaſt. It's beyond all doubt, who will cheat the Subject, will defraud the Queen. Haraſſments in Seiſures, &c. frequently proceed, from a Deſign of impoſing Exorbitant Exactions. The Civil Law is Severe, and that to Death, againſt the Injuries of Officers †. All Shifts and Tricks of Collectors, &c. to promote their own Private Ends

† L. 12. ff. De Publicanis. *Quantæ audaciæ, quantæ temeritatis, ſunt Publicanorum Factiones; ad compeſcendam audaciam, &c.*
De Super exactionibus. Cod. *Si quis autem in ſuper exactionis crimine fuerit confutatus, capitali pœna ejus cupiditas amovenda eſt.*

Ends ſhould be Puniſhed. The Government ſhould take care to hinder their Importunity and Impertinence, and the Trouble they give the Subjects in Trade, which are born with more Impatience, than heavy Cuſtoms; for the Oppreſſions of Publicans are greivous.

If we are haraſſed, ſhall we not complain for Redreſs? Yes, with boldneſs. I remember in the late King's Reign, of an Eloquent and Brave Speech of a *Welch* Gentleman's, againſt the Earl of *Portland*'s Gift of ſome Lands in *Wales*, and that in King *William*'s Preſence, which ſtoped the Expeding of the Grant. Shall not then, a great many here, ſeek for Releif, from Bars upon *Trade*, impoſed by Officers? When a Good and Generous Princeſs ſways the Sceptre, who is ready to Puniſh all Encroachments, and is willing, that *Articles* faithfully agreed to, ſhould be Religiouſly obſerv'd. And when Violation of *Faith*, is abominated by our *Fellow Subjects*, who have always made good their Treaties and Engagements; Who

 Value

Value Themſelves, upon their Honourable Obſervance of all Pactions; ſo that there are no Potentates or States who can Veigh with them, in a Conſummated Credit and Reputation of being Adorned, with ſuch a Noble *Virtue*.

How requiſite then is it, that Officers of Integrity and Prudence, be entruſted with the Management and Direction of Inferior Ones, in order to the Puniſhing and Curbing the Chicanery of Puny Fellows, who out of Envy, Covetouſneſs, or at the Inſtigation of others, vexes the Merchant, and values not, what way their baſe Deſigns are accompliſh'd, providing they gain their Point. Such Monſters of Mankind, vindicate their Pretenſions, by Suborning falſe Witneſſes, and makes Perjury, the curſed Inſtrument of their Villany.

If any ſuch Wickedneſs, has been attempted or committed here, it's the Intereſt of the Injured, to diſcover the ſame. For my Part, I ſhall diſcourſe a little, upon the Na-

Nature, Conſequence and Puniſhment of this Crime, according to the Laws of Nature, the Civil and Municipal.

By the Law of Nature, Men are obliged to ſpeak the Truth, otherwiſe Speech would be of ill Conſequence, and of no uſe in Humane Society *: Contrair to Veracity is Falſhood, which is a crafty and deceitful Mutation of the Truth to another's Hurt †. Here is a Door open to Perjury, which either conceals, or expreſſes more than the Verity. *B.*

Falſhood in general, is committed by Fabricating a falſe Writ, or by Subſcribing it, or cauſing another Subſcribe it. *C.*

Subornation of Witneſſes is a Species of Falſhood, which induces Witneſſes by Corruption, Favour or Fear to teſtify an Untruth. This includes the Crime of Concuſſion, which threatens to Extort a falſe Evidence; and

* *Vid. Grotium & Puffendorf. de Interpretatione.* † *Falſitas eſt Veritatis Imitatio,* Nov. 73. (C). *Vel ut verum non appareat quid celaverunt.* l. 16. ff. ad C. Corn. de F. Tit. (S). *Qui Inſtrumentum dolo malo ſcripſerit, ſignaverit, vel ſignare curaverit* h. t. l. 2. ſect. 9. Pen.

and is the more aggravating, when done, under Pretext of Power and Authority of one's Office (*r*); where One menaces to do an Ill Turn to a design'd Witness, by Deprivation of Office, here is Temptation and Compulsion concurring. The Punishment of Concussion is Arbitrary, by the Civil and our Law. I include also under this Head, the Instigators of others, to falsly Accuse one (*s*).

There is another base Practice, which uses to prevail in this Crime, and may be added here, *viz.* A Combination of Several to Prosecute the Merchant, where all Wickedly Agree, to use all Unfair Means, to have a Cargo condemn'd, in order to a Division amongst them, which is also punishable (*t.*)

Having spoke of the Nature of this Crime, I come next to treat of its fatal Consequences. Men entred into Society, on purpose to secure

(r) *Si simulato Præsidis jussu, concussio intervenerit.* ff. de Concus. (s) *Ad S.C.Turpil.* ff. l. 1. sect. 13. *Qui accusatorem summitit.* (t) L. Jul. de Vi Pri. ff. l. 6. *Qui improbe coeunt in alienam litem, ut quicquid ex condemnatione, &c. inter eos communicaretur.*

cure their Lives, Fortunes and Reputations from any Invasion. It is then the Interest of Mankind to punish such Crimes, as directly level at these; Catiffs who secretly undermine these, should be made Examples to the Terror of others, their Hands ought to be chained up, lest they ever attempt the like. Now what Security is there, in Reputation, Life or Goods, where Practising of false Evidence is used.

Because of Man's raging and corrupted Passions, he is subjected to Law, which Restraint, conduces to the Safety and Good of Mankind. If one Injure another in the least, it should be Redressed, but much more, if one attempt the indangering of all that is Sacred and Valuable. Humane Society cannot subsist, when these Caterpillars consume all that is of any Worth amongst Men.

Our greatest Safety is reposed in the Law, which provides, that no Man shall be punished, in Life or Chattels, without sufficient

cient Proof. Therefore Wicked Men, when there is a Defect of Probation, they Suborn Witnesses, that by a seeming Regularity, they may act in the Terms of the Law; against such Hellish Contrivances the Law Protects us, which is extremely severe, when the least Attempt is made to elude and tamper with Justice, which is injur'd as well as Mankind by this Crime.

This Villany is a manifest breach of Divine and Natural Laws, which are the Fountains of all Humane Laws. For a Man to rob, injure another, to promote his own Advantage, is more against Nature than Death or Poverty. Truth and Equity are the Bonds of Society which if broke, would ruine Mankind, and render him worse than the Beasts, and reduce Matters to a State of War *.

It's no great Matter of Admiration, to find some Acting thus contrair to the Dictates of Reason and Conscience; if we reflect

* *Detrahere aliquid alteri, & hominem, hominis incommodo, suum augere commodum, magis est contra Naturam, quam Mors & Paupertas.* Cicero *de Off. l.* 3.

flect upon some Men's Principles, who look upon all Men with an evil Eye, who measure the Qualifications of Others by their own Actions, who maintain the *Italian* Doctor's Axioms of Dissimulation, Perjury and Trick. *Fallere fallentem non est fraus*, (to deceive the Deceiver is no Cheat) is a considerable Scrap of Latine; but when wrong applyed, and made a handle for Roguery, is very unbecoming a Person of Probity, far less a Christian. The genuine meaning of this Proverb, relates to Warlike Stratagems against our Enemies.

The next thing under consideration is the Punishment of this detestable Crime. Our Law † with all Rigour follows the Civil in this Case. The Crimes of Falshood, Perjury and Subornation, are punished in Person, Goods and Reputation, *viz.* By Banishment, Whipping, dismembering of Hand and Tongue, and by Infamy; so that the Guilty is rendred incapable of enjoying any Dig-

 nity

K. James 5. P. 6. c. 80.

nity or Office (r). The Punishment is Arbitrary by *Q. Mary, Parl.* 6. *C.* 46. I find that the Penalty is chang'd, according to the Quality and Circumstances of the Fault, and is sometimes Capital *.

This Rigidity is but Just; for a Thief and Highway-man is Hanged for Robbery, and why not the Suborner, who under pretext of Law, secretly strikes at Life, Fortune, Reputation and Liberty, which cannot be so easily defended as Goods can be Secured from a Thief? From a Knight-of-the-Post we are in hazard of all we enjoy, even of our Good Name, which is more valuable than Treasure, and more to be esteemed than Life. In *Scotland* Death has been inflicted against False-witnesses and Suborners, viz. *Cheyne*, *Grahame* and *Dunlop* †.

Not only the Committers of this Act, but all Advisers and Assistants are liable to Punishment.

(r) L. 1. sect. 13. ff. de Falsis. Pæna falsi, est Deportatio, & omnium bonorum Publicatio. l. penul. ff. de Crim: Stel: qui sunt in honore, ab ordine motio remittenda est.
* Cod. l. 8. sect. 22. de Falsis. Supplicio Capitali, si id exegerit magnitudo commissi.
† McKenzie Crim. h: tit.

nishment. Moreover, the very Attempt is Criminal, and subject to the Penalty of the Law. They are accounted Accessories, who Aid, Advise, Instigate, or Suggest the Way and Manner of committing a Trespass *. If the Approver is punishable, how much more the Instigator, Perswader and Contriver? Not only the Consequence of a Delict is imputable, but the very Contrivance is Criminal, especially where the intended Action tends to the Overthrow of Fame, Honour, Life and Possessions. The Inducer of False Witnesses is punishable with us †. This Injury is the more aggravating, in that it arises from Intension and deliberate Design, which is termed by the Lawiers a Gross Fault *, and comprehends Malice and Deceit. Who wishes Success before a Villany is committed, is culpable. Upon this Subject, *Cicero* says prettily enough †, *What difference is there between him who perswades one to*

* Tenentur, qui jubent, consensum adhibent, concilium dant, laudant, assentantur, aut alio modo in ipso crimine participant. Grotii. I. B. & P. l. 1. c. 21. sect. 2. Rom. & nostro leg: qui Ope & concilio. * Culpa lata. † Quid Interest inter suasorem facti & Probatorem, aut quid refert, utrum voluerim factum, an gaudeam factum. in 2. Philip.

to an ill Action, or him who afterwards approves of it? Or, what signifies it, whether I would have a thing done, or whether I rejoice when it is done, or am sorry that it did not take effect? And this leads me to Discourse upon the *Nudus Conatus*, or Attempt.

The Formation & Intention of Wickedness is imputable by the Law of God and Nature, altho' Human Law does not regard mens Thoughts, so as to punish Fancies and Notions, yet They notice men, when they vent their ill Designes, and endeavour to have them put in Execution. Where there is an Opportunity of perpetating Villanies secretly and easily, then the Law is more rigid in the Penalty. If the Crime was designed, and ready to be Executed, but was happily detected before Commission: This Prevention cannot Excuse the Guilty, who cannot plead Exemption upon that Head; because it was none of his Fault, that his Hellish Plot proved abortive. A Falsifier, or Accessory, cannot by passing from the Writ *which he once used*, free Himself of the Punish-

Punishment inflicted by Law (*c*). In Malefices the Willor Inclination, not the Event is respected (*s*). The Act of Subornation in the very Attempt is Irregular, and is a kind of a Preparation of Poyson, tho' it does not succeed. (*t*) All Criminal Endeavours are punishable, as being an Offence against the Commonwealth, tho' no Act follow thereupon (*u*) This will be more clear when illustrated by an Example or Supposition: When a Paper (which is the *Corpus Delicti*) full of untruths, tending to the Detriment of Others, is produced, and Persons solicited and threatned to Attest the same; yet these designed Evidences refuse the same, and discover it, because contrary to their Duty and Consciences. Sure this Attempt is Criminal, tho' it had not the intended success. (*x*) In Rapes &c. the *Nudus conatus sine Effectu*, is imputable; and much more in Subornation, where more than Chastity is in Jeo-

(*c*) K. J. 6. P. 23. c. 22. (*s*) In maleficiis voluntas non exitus spectatur. l. 14. ff. de Sic: (*t*) Tenetur, qui hominis occidendi causa, venenum fecerit. ib. l. 1. sect. 1. (*u*) Mackenzie's Crim: tit. 1. sect. 4. (*x*) Pæna L. corn: irrogatur eis, qui falsas testationes dolo malo fecerunt. t. 10. sect. 1. de Fals.

Jeopardy in caſe of ſucceſs. He who will dare Attempt the Practiſing of Witneſſes, or Adviſe the ſame, will not boggle at, or fall ſhort of Perpetrating all manne of Lewdneſs.

In the Year 1616. One *Dunlop* and Others were Hanged for Offering themſelves to be falſe Witneſſes, altho' they were not admitted to Depone, becauſe their Deſign of Falſeſwearing was happily detected before their Examination. Now what Puniſhment is too harſh for the Suborner or Adviſers thereof; Certainly Baniſhment and Infamy is little enough.

In Falſhood *Socii Crtminis* are admitted as Witneſſes, becauſe without that the Crime could not be proven * By parity of Reaſon Subornation and Concuſſion (which are Species of Falſhood) may habily be proven by ſuch as were threatned, and induced to be Witneſſes: For how can there be any other mean of Probation, ſince the Inducer would never indicate his Reſolution, but to his

* Mackenzie's Crim: tit: Witneſſes, ſect. 10.

his deſigned Inſtruments, whom he thought to involve in his Guilt.

VVhen Reaſon and Law dictates, that the above narrated Enormities ſhould be thus puniſhed, then Honeſt Gentlemen in Poſts of Truſt, are not farr out of their Duty, when they would have Force and Fraud come to Light; by which diſcovery, Suborners, Inſtigators and their Accomplices, may be diſmiſſed from Places of Credite, whoſe continuance in Offices, will add ſtrength and boldneſs to Perjury, and to the total deſtruction of *Trade*.

From ſuch Evils,

And thoſe who Contrive

and Practiſe Them,

Good Lord deliver us,

AMEN.