

127-6



0442

A N <sup>6</sup>  
E N Q U I R Y

Into the CAUSES of the late  
Increase of Robbers, &c.

WITH SOME  
PROPOSALS for Remedying this  
GROWING EVIL.

IN WHICH

The Present Reigning VICES are impartially  
exposed; and the Laws that relate to the  
Provision for the POOR, and to the Punish-  
ment of FELONS are largely and freely ex-  
amined.

*Non jam sunt mediocres hominum libidines, non humanæ audaciæ ac tolerandæ. Nihil cogitant nisi cædem, nisi incendia, nisi rapinas. Cic. in Catil. 2<sup>da</sup>.*

By HENRY FIELDING, Esq;  
Barrister at Law, and One of His Majesty's Justices  
of the Peace for the County of *Middlesex*, and for  
the City and Liberty of *Westminster*.

L O N D O N :

Printed for A. MILLAR, opposite to *Katharine-Street*,  
in the *Strand*. M. DCC. LI.

[ Price 2 s. 6 d. ]

TO THE  
RIGHT HONOURABLE  
Philip Lord Hardwick,

Lord High Chancellor of *Great Britain*.

MY LORD,

**A**S the Reformation of any Part of our Civil Polity requires as much the Knowledge of the Statesman as of the Lawyer, the following Sheets are, with the strictest Propriety, addressed to a Person of the highest Eminence in both these Capacities.

The Subject of this Treatise cannot be thought unworthy of such a Protection, because it touches only those Evils which have arisen in the lower Branches of our Constitution. This Consideration will account for their having hitherto escaped your Lordship's Notice; and that alone will account for their having so long prevailed: But your Lordship will not, for this Reason, think it below your Regard; since, however ignoble the Parts may be in which the Disease is first engendered, it will in time be sure to affect the whole Body.

The Subject, indeed, is of such Importance, that we may truly apply to it those Words of Cicero, in his First Book of Laws: *Ad Reipublicæ formandas & stabiliendas vires, & ad*

iv DEDICATION.

*sanandos Populos omnis pergit Oratio.* How far I have been able to succeed in the Execution, must be submitted to your Lordship's Candour. I hope I have no immodest Opinion of my own Abilities; but, in truth, I have much less Confidence in my Authority. Indeed the highest Authority is necessary to any Degree of Success in an Attempt of this Kind. Permit me, therefore, my Lord, to fly to the Protection of the Highest which doth now exist, or which perhaps ever did exist, in this Kingdom.

This great Sanction is, I am convinced, always ready to support what really tends to the Public Utility: If I fail, therefore, of obtaining the Honour of it, I shall be fully satisfied that I do not deserve it, and shall sit down contented with the Merit of a good Intent: for surely there is some Praise due to the bare Design of doing a Service to the Public. Nor can my Enemies, I think, deny that I am entirely disinterested in my Endeavour, unless they should discover the Gratification which my Ambition finds in the Opportunity of this Address.

*I am with the most profound Respect,*

MY LORD,

*Your Lordship's most obedient,*

*most devoted humble Servant,*

Henry Fielding.

[ v ]

---

THE  
P R E F A C E.

**T**HERE is nothing so much talked of, and so little understood in this Country, as the *Constitution*. It is a Word in the Mouth of every Man; and yet when we come to discourse of the Matter, there is no Subject on which our Ideas are more confused and perplexed. Some, when they speak of the Constitution, confine their Notions to the Law; others to the Legislature; others, again, to the governing or executive Part; and many there are, who jumble all these together in one Idea. One Error, however, is common to them all: for all seem to have the Conception of something uniform and permanent, as if the Constitution of *England* partook rather of the Nature of the Soil than of the Climate, and was as fixed and constant as the former, not as changing and variable as the latter.

Now in this Word, *The Constitution*, are included the original and fundamental Law of the Kingdom, from whence all Powers are derived, and by which they are circumscribed; all legislative and executive Authority; all those municipal Provisions which are commonly called *The Laws*; and, *lastly*, the Customs,

Manners, and Habits of the People. These, joined together, do, I apprehend, form the Political, as the several Members of the Body, the animal Oeconomy, with the Humours and Habit, compose that which is called the Natural Constitution.

The Greek Philosophy will, perhaps, help us to a better Idea: for neither will the several constituent Parts, nor the Contexture of the whole, give an adequate Notion of the Word. By the Constitution is, indeed, rather meant something which results from the Order and Disposition of the whole; something resembling that Harmony for which the Theban in Plato's Phædo contends; which he calls ἀόρατον τε καὶ ἀσώματον, something invisible and incorporeal. For many of the Greeks imagined the Soul to result from the *ἁρμῶν* or Composition of the Parts of the Body; when these were properly tempered together, as Harmony doth from the proper Composition of the several Parts in a well tuned musical Instrument: In the same manner, from the Disposition of the several Parts in a State; arises that which we call the Constitution.

In this Disposition the Laws have so considerable a Share; that, as no Man can perfectly understand the whole, without knowing the Parts of which it is composed, it follows, that, to have a just Notion of our Constitution, without a competent Knowledge of the Laws, is impossible. Without this, the reading over our Historians, may afford Amusement, but will very little instruct us in the true Essentials of our Constitution. Nor will this Knowledge alone serve our Purpose. The mere Lawyer, however skilful in his Profession, who is not versed in the Genius, Manners, and Habits of the People, makes but a wretched Politician. Hence the Historian, who is ignorant of our Law, and the Lawyer who is ignorant of our History, have agreed in that common Error,

Error, remarked above, of considering our Constitution as something fixed and permanent: for the exterior Form of Government (however the People are changed) still, in a great Degree, remains what it was; and the same, notwithstanding all its Alterations, may be said of the Law.

To explain this a little farther: From the Original of the Lower House of Parliament to this Day, the Supreme Power hath been vested in the King and the Two Houses of Parliament. These Two Houses have, each at different Times, carried very different Weights in the Balance, and yet the Form of Government remained still one and the same: So hath it happened to the Law; the same Courts of Justice, the same Form of Trials, &c. have preserved the Notion of Identity, tho', in real Truth, the present Governing Powers, and the present legal Provisions, bear so little Resemblance to those of our Ancestors in the Reign of King John, or indeed in later Times, that could any Lawyer or Statesman of those Days be recalled to Life, he would make, I believe, a very indifferent Figure in Westminster-hall, or in any of the Parts there adjacent.

To perceive the Alterations in our Constitution doth, in fact, require a pretty just Knowledge both of the People and of the Laws: for either of these may be greatly changed, without producing any immediate Effect on the other. The Alterations in the great Wheels of State abovementioned, which are so visible in our Historians, are not noticed in our Laws, as very few of the great Changes in the Law have fallen under the Eye of our Historians.

Many of both Kinds have appeared in our Constitution; but I shall at present confine myself to one only, as being that which principally relates to the Subject of the following Treatise.



[ viii ]

If the Constitution, as I have above asserted, be the Result of the Disposition of the several Parts beforementioned, it follows, that this Disposition can never be altered, without producing a proportional Change in the Constitution. 'If the Soul,' says *Simmius* in *Plato*, be a Harmony resulting from the Disposition of the corporeal Parts, it follows, that when this Disposition is confounded, and the Body is torn by Diseases or other Evils, the Soul immediately (whatever be her Divinity) must perish.' This will be apparent, if we cast our Eyes a Moment towards the animal Oeconomy; and it is no less true in the political.

The Customs, Manners, and Habits of the People, do, as I have said, form one Part of the Political Constitution; if these are altered therefore, this must be changed likewise; and here, as in the Natural Body, the Disorder of any Part will, in its Consequence, affect the whole.

One known Division of the People in this Nation is into the Nobility, the Gentry, and the Commonalty. What Alterations have happened among the two former of these, I shall not at present enquire; but that the last, in their Customs, Manners, and Habits, are greatly changed from what they were, I think to make appear.

If we look into the earliest Ages, we shall find the Condition of this Third Part to have been very low and mean. The highest Order of this Rank, before the Conquest, were those Tenants in Socage, who held their Lands by the Service of the Plough; who, as *Lyttleton* tells us, 'were to come with their Plough for certain Days in the Year, to plow and sow the Demefne of the Lords;' as the Villains, saith the same Author, 'were to carry and recarry the Dung of his Lord, spread it upon his Land, and to perform such like Services.'

This

[ ix ]

This latter was rightly accounted a slavish Tenure. The Villains were indeed considered in Law as a Kind of Chattle belonging to their Masters: for though these had not the Power of Life and Death over them, nor even of maiming them with Impunity, yet these Villains had not even the Capacity of purchasing Lands or Goods; but the Lord, on such Purchase, might enter into the one, and seize the other for his own Use. And as for the Land which they held in Villenage, tho' *Lord Coke* says, it was not only held at the Will of the Lord, but according to the Custom of the Manor; yet, in antient Times, if the Lord ejected them, they were manifestly without Remedy.

And as to the former, tho' they were accounted Freemen, yet were they obliged to swear Fealty to their Lord; and tho' *Mr. Rapin* be mistaken, when he says they could not alienate their Land, (for before the Statute of *Magna Charta*, Chap. 32. they could have given or sold the whole, but without any Alteration of the Tenure) yet was the Estate of these but very mean. 'Tho' they are called Freemen,' says *Lord Coke*, 'yet they ploughed, harrowed, reaped, and mowed, &c. for the Lord;' and *Bracton*, *Dicuntur Socmanni eo quod deputati sunt tantummodo ad culturam.*

Besides such as were bound by their Tenures to the Service of Agriculture, the Number of Freemen below the Degree of Gentry, and who got their Livelihood in the Mercantile or Mechanical Way, was very inconsiderable. As to the Servants, they were chiefly bound by Tenure, and those of the lower Sort differed very little from Slaves.

That this Estate of the Commonalty is greatly changed, is apparent; and to this Alteration many Causes in subsequent Ages have contributed.

First, The Oath of Fealty, or Fidelity, which of old Time was administered with great Ceremony, became

became afterwards to be omitted ; and though this Fealty still remained incident to every Socage Tenure, yet the Omission of the Form was not without its Consequences ; for, as Lord Coke says, speaking of Homage, *Prudent Antiquity did, for the more Solemnity and better Memory and Observation of that which is to be done, express Substances under Ceremonies.*

2dly, Whereas in the antient Tenures the principal Reservation was of personal Services from the inferior Tenants, the Rent being generally trifling, such as Hens, Capons, Roses, Spurs, Hawks, &c. afterwards the Avarice or Necessity of the Lords incited them to convert these for the most part into Money, which tended greatly to weaken the Power of the Lord, and to raise the Freedom and Independency of the Tenant.

3dly, The dismembering Manors by Leafes for Years, as it flowed from the same Sources, so it produced the same Effects. These were probably very rare before the Reign of Edward I. at which time the Statute of *Glocester* secured the Estate of this Tenant.

4thly, The Estate of the Villain or Copyholder seems clearly, as I have said, to have originally been holden only at the Will of the Lord ; but the Law was afterwards altered, and in the Reign of Edward IV. some of the best Judges were of Opinion, that if the Copyholder was unlawfully ejected by his Lord, he should have an Action of Trespass against him at the Common Law,

From this Time the Estate of the Copyholder (which, as *Briton* tells us, was formerly a base Tenure) began to grow into Repute, and, though still distinguished in some Privileges from a Freehold, became the Possession of many opulent and powerful Persons.

By

By these and such like Means the Commonalty, by Degrees, shook off their Vassalage, and became more and more independent on their Superiors. Even Servants, in Process of Time, acquired a State of Freedom and Independency, unknown to this Rank in any other Nation ; and which, as the Law now stands, is inconsistent with a servile Condition.

But nothing hath wrought such an Alteration in this Order of People, as the Introduction of Trade. This hath indeed given a new Face to the whole Nation, hath in a great measure subverted the former State of Affairs, and hath almost totally changed the Manners, Customs, and Habits of the People, more especially of the lower Sort. The Narrowness of their Fortune is changed into Wealth ; the Simplicity of their Manners into Craft ; their Frugality into Luxury ; their Humility into Pride, and their Subjection into Equality.

The Philosopher, perhaps, will think this a bad Exchange, and may be inclined to cry out with the Poet,

— *Sævior armis*

*Luxuria incubuit.*—

*Nullum crimen abest, facinusque libidinis, ex quo Paupertas Romana perit.*

Again,

*Prima peregrinos obscæna pecunia mores*

*Intulit, & turpi fregerunt sæcula luxu*

*Divitiæ molles*—

But the Politician finds many Emoluments to compensate all the moral Evils introduced by Trade, by which the Grandeur and Power of the Nation is carried to a Pitch that it could never otherwise have reached ; Arts and Sciences are improved, and human Life is embellished with every Ornament, and furnished with every Comfort which it is capable of tasting.

In all these Assertions he is right ; but surely he forgets himself a little, when he joins the Philosopher

3

in

[ xii ]

in lamenting the Introduction of Luxury as a casual Evil ; for as Riches are the *certain* Consequence of Trade, so is Luxury the no less *certain* Consequence of Riches ; Nay, Trade and Luxury do indeed support each other, and this latter, in its turn, becomes as useful to Trade, as Trade had been before to the Support of Luxury.

To prevent this Consequence therefore of a flourishing Commerce is totally to change the Nature of Things, and to separate the Effect from the Cause. A Matter as impossible in the Political Body as in the Natural. Vices and Diseases, with like Physical Necessity, arise from certain Habits in both ; and to restrain and palliate the evil Consequences, is all that lies within the Reach of Art. How far it is the Business of the Politician to interfere in the Case of Luxury, we have attempted to shew in the following Treatise.

Now, to conceive that so great a Change as this in the People should produce no Change in the Constitution, is to discover, I think, as great Ignorance as would appear in the Physician, who should assert, that the whole State of the Blood may be entirely altered from poor to rich, from cool to inflamed, without producing any Alteration in the Constitution of the Man.

To put this in the clearest Light : There appear to me to be Four Sorts of Political Power ; that of Bodily Strength, that of the Mind, the Power of the Purse, and the Power of the Sword. Under the Second of these Divisions may be ranged all the Art of the Legislator and Politician, all the Power of Laws and Government. These do constitute the Civil Power ; and a State may then be said to be in good Order, when all the other Powers are subservient to this ; when they own its superior Excellence and Energy, pay it a ready Obedience, and all unite in Support of its Rule.

[ xiii ]

But so far are these Powers from paying such voluntary Submission, that they are all extremely apt to rebel, and to assert their own Superiority ; but none is more rebellious in its Nature, or more difficult to be governed, than that of the Purse or Money. Self-opinion, Arrogance, Insolence, and Impatience of Rule, are its almost inseparable Companions.

Now if these Assertions are true, what an immense Accession of this Power hath accrued to the Commonalty by the Increase of Trade ? for tho' the other Orders have acquired an Addition by the same Means, yet this is not in the same Proportion, as every Reader, who will revolve the Proposition but a Moment in his own Mind, must be satisfied.

And what may we hence conclude ? Is that Civil Power, which was adapted to the Government of this Order of People in that State in which they were at the Conquest, capable of ruling them in their present Situation ? Hath this Civil Power kept equal Pace with them in the Increase of its Force, or hath it not rather, by the Remissness of the Magistrate, lost much of its antient Energy ? Where is now that Power of the Sheriff, which could formerly awaken and arm a whole County in an Instant ? Where is that *Posse Comitatus*, which attended at his Beck ? What is become of the Constitutions of *Alfred*, which the Reader will find set forth at large in the following Treatise ? What of the antient Conservators of the Peace ? Have the Justices, on whom this whole Power devolves, an Authority sufficient for the Purpose ? In some Counties, perhaps, you may find an overgrown Tyrant, who lords its over his Neighbours and Tenants with despotic Sway, and who is as regardless of the Law as he is ignorant of it ; but as to the Magistrate of a less Fortune, and more Knowledge, every riotous independent Butcher or Baker,

with

with two or three thousand Pounds in his Pocket, laughs at his Power, and every Pettyfogger makes him tremble.

It is a common and popular Complaint, that the Justices of Peace have already too much Power. Indeed a very little is too much, if it be abused ; but, in truth, this Complaint proceeds from a Mistake of Business for Power : The Business of the Justice is indeed multiplied by a great Number of Statutes ; but I know not of any (the Riot Act perhaps excepted) which hath at all enlarged his Power. And what the Force of that Act is, and how able the Magistrate is, by means of the Civil Power alone, to execute it in any popular Commotion, I have myself experienced. But when a Mob of Chairmen or Servants, or a Gang of Thieves and Sharpers, are almost too big for the Civil Authority to suppress, what must be the Case in a seditious Tumult, or general Riot of the People ?

From what hath been said, I may, I think, conclude, that the Constitution of this Country is altered from its antient State.

2dly, That the Power of the Commonalty hath received an immense Addition ; and that the Civil Power having not increased, but decreased, in the same Proportion, is not able to govern them.

What may and must be the Consequences of this, as well as what Remedy can be applied to it, I leave to the Consideration of others : I have proceeded far enough already on the Subject, to draw sufficient Ill-will on myself, from unmeaning or ill-meaning People, who either do not foresee the mischievous Tendency of a total Relaxation of Government, or who have some private wicked Purpose to effect from public Confusion.

In plain Truth, the principal Design of this whole Work, is to rouse the CIVIL Power from its present lethargic

lethargic State. A Design which alike opposes those wild Notions of Liberty that are inconsistent with all Government, and those pernicious Schemes of Government, which are destructive of true Liberty. However contrary indeed these Principles may seem to each other, they have both the same common Interest ; or, rather, the former are the wretched Tools of the latter : for Anarchy is almost sure to end in some Kind of Tyranny.

Dr. Middleton, in his Life of Cicero, hath a fine Observation to my present Purpose, with which I will conclude this Preface.

‘ From the Railleries of the Romans,’ (says he) ‘ on the Barbarity and Misery of our Island, one cannot help reflecting on the surprizing Fate and Revolutions of Kingdoms : how Rome, once the Mistress of the World, the Seat of Arts, Empire and Glory, now lies sunk in Sloth, Ignorance and Poverty ; enslaved to the most cruel, as well as to the most contemptible of Tyrants, Superstition and Religious Imposture : while this remote Country, anciently the Jest and Contempt of the polite Romans, is become the happy Seat of Liberty, Plenty, and Letters ; flourishing in all the Arts and Refinements of Civil Life ; yet running perhaps the same Course, which Rome itself had run before it ; from virtuous Industry to Wealth ; from Wealth to Luxury ; from Luxury to an Impatience of Discipline and Corruption of Morals ; till by a total Degeneracy and Loss of Virtue, being grown ripe for Destruction, it falls a Prey at last to some hardy Oppressor, and, with the Loss of Liberty, losing every thing else, that is valuable, sinks gradually again into its original Barbarism.’

---

A N

# E N Q U I R Y

I N T O T H E

## C A U S E S of the late Increase of R O B B E R S, &c.

---

### I N T R O D U C T I O N.

**T**HE great Increase of Robberies within these few Years, is an Evil which to me appears to deserve some attention; and the rather as it seems (tho' already become so flagrant) not yet to have arrived to that Height of which it is capable, and which it is likely to attain: For Diseases in the Political, as in the Natural Body, seldom fail going on to their Crisis, especially when nourished and encouraged by Faults in the Constitution. In Fact, I make no Doubt, but that the Streets of this Town, and the Roads leading to it, will shortly be impassable without the utmost Hazard; nor are we threatned with seeing less dangerous Gangs of Rogues among us, than those which the *Italians* call the *Banditi*.

Should this ever happen to be the Case, we shall have sufficient Reason to lament that Remissness by which this Evil was suffered to grow to so great a Height. All Distempers, if I may once more resume the Allusion, the sooner they are opposed, admit of the easier and the safer Cure. The great

B

Difficulty

Difficulty of extirpating desperate Gangs of Robbers, when once collected into a Body, appears from our own History in former Times. *France* hath given us a later Example in the long Reign of *Cartouche*, and his Banditi; and this under an absolute Monarchy, which affords much more speedy and efficacious Remedies against these political Disorders, than can be administered in a free State, whose Forms of Correction are extremely slow and uncertain, and whose Punishments are the mildest and the most void of Terror of any other in the known World.

For my own Part, I cannot help regarding these Depredations in a most serious Light: Nor can I help wondering that a Nation so jealous of her Liberties, that from the slightest Cause, and often without any Cause at all, we are always murmuring at our Superiors, should tamely and quietly support the Invasion of her Properties by a few of the lowest and vilest among us: Doth not this Situation in reality level us with the most enslaved Countries? If I am to be assaulted and pillaged, and plundered; if I can neither sleep in my own House, nor walk the Streets, nor travel in safety; is not my Condition almost equally bad whether a licenced or unlicenced Rogue, a Dragoon or a Robber, be the Person who assaults and plunders me? The only Difference which I can perceive is, that the latter Evil appears to be more easy to remove.

If this be, as I clearly think it is, the Case, surely there are few Matters of more general Concern than to put an immediate End to these Outrages, which are already become so notorious, and which, as I have observed, do seem to threaten us with such a dangerous Increase. What indeed may not the Public apprehend, when they are informed as an unquestionable Fact, that there are at this Time a great Gang of Rogues, whose Number falls little short of a Hundred, who are incorporated in one Body, have Officers and a Treasury; and have reduced Theft

and Robbery into a regular System. There are of this Society of Men who appear in all Disguises, and mix in most Companies. Nor are they better versed in every Art of cheating, thieving, and robbing, than they are armed with every Method of evading the Law, if they should ever be discovered, and an Attempt made to bring them to Justice. Here, if they fail in rescuing the Prisoner, or (which seldom happens) in bribing or deterring the Prosecutor, they have for their last Resource some rotten Members of the Law to forge a Defence for them; and a great Number of false Witnesses ready to support it.

Having seen the most convincing Proofs of all this, I cannot help thinking it high Time to put some stop to the further Progress of such impudent and audacious Insults, not only on the Properties of the Subject, but on the National Justice, and on the Laws themselves. The Means of accomplishing this (the best which suggest themselves to me) I shall submit to the public Consideration, after having first enquired into the Causes of the present Growth of this Evil, and whence we have great Reason to apprehend its further Increase. Some of these I am too well versed in the Affairs of this World to expect to see removed; but there are others, which without being over sanguine, we may hope to remedy; and thus perhaps one ill Consequence, at least, of the more stubborn political Diseases, may cease.

S E C T. I.

*Of too frequent and expensive Diversions among the Lower Kind of People.*

FIRST then, I think, that the vast Torrent of Luxury which of late Years hath poured itself into this Nation, hath greatly contributed to produce,



( 4 )

among many others, the Mischief I here complain of. I aim not here to satirize the Great, among whom Luxury is probably rather a moral than a political Evil. But Vices no more than Diseases will stop with them; for bad Habits are as infectious by Example, as the Plague itself by Contact. In free Countries, at least, it is a Branch of Liberty claimed by the People to be as wicked and as profligate as their Superiors. Thus while the Nobleman will emulate the Grandeur of a Prince; and the Gentleman will aspire to the proper State of the Nobleman; the Tradesman steps from behind his Counter into the vacant Place of the Gentleman. Nor doth the Confusion end here: It reaches the very Dregs of the People, who aspiring still to a Degree beyond that which belongs to them, and not being able by the Fruits of honest Labour to support the State which they affect, they disdain the Wages to which their Industry would intitle them; and abandoning themselves to Idleness, the more simple and poor-spirited betake themselves to a State of Starving and Beggary, while those of more Art and Courage become Thieves, Sharpers and Robbers.

Could Luxury be confined to the Palaces of the Great, the Society would not perhaps be much affected with it; at least, the Mischiefs which I am now intending to obviate can never be the Consequence. For tho', perhaps, there is not more of real Virtue in the higher State, yet the Sense of Honour is there more general and prevalent. But there is a much stronger Reason. The Means bear no probable Proportion to the End: For the Loss of Thousands, or of a great Estate, is not to be relieved or supplied by any Means of common Theft or Robbery.—With regard to such Evils therefore the Legislature might be justified in leaving the Punishment, as well as the pernicious Consequence, to end in the Misery, Distress, and sometimes utter Ruin of

a

( 5 )

a private Family. But when this Vice descends downward to the Tradesman, the Mechanic, and the Labourer, it is certain to engender many political Mischiefs, and among the rest it is most evidently the Parent of Theft and Robbery, to which not only the Motive of Want but of Shame conduces: For there is no greater Degree of Shame than the Tradesman generally feels at the first Inability to make his regular Payments; nor is there any Difficulty which he would not undergo to avoid it. Here then the Highway promises, and hath, I doubt not, often given Relief. Nay I remember very lately a Highwayman who confessed several Robberies before me, his Motive to which, he assured me, (and so it appeared) was to pay a Bill that was shortly to become due. In this Case therefore the Public becomes interested, and consequently the Legislature is obliged to interpose.

To give a final Blow to Luxury by any general Prohibition, if it would be adviseable, is by no Means possible. To say the Truth, bad Habits in the Body Politic, especially if of any Duration, are seldom to be wholly eradicated. Palliatives alone are to be applied; and these too in a free Constitution must be of the gentlest Kind, and as much as possible adapted to the Taste and Genius of the People.

The gentlest Method which I know, and at the same Time perhaps one of the most effectual, of stopping the Progress of Vice, is by removing the Temptation. Now the two great Motives to Luxury, in the Mind of Man, are Vanity and Voluptuousness. The former of these operates but little in this Regard with the lower Order of People. I do not mean that they have less of this Passion than their Betters; but the apparent Impossibility of gratifying it this Way deters them, and diverts at least this Passion into another Channel; for we find it

B 3

puts

puts them rather on vying with each other in the Reputation of Wealth, than in the outward Appearance of Show and Grandeur. Voluptuousness or the Love of Pleasure is that alone which leads them into Luxury. Here then the Temptation is with all possible Care to be withdrawn from them.

Now what greater Temptation can there be to Voluptuousness, than a Place where every Sense and Appetite of which it is compounded, are fed and delighted; where the Eyes are feasted with Show, and the Ears with Music, and where Gluttony and Drunkenness are allured by every Kind of Dainty; nay where the finest Women are exposed to View, and where the meanest Person who can dress himself clean, may in some Degree mix with his Betters, and thus perhaps satisfy his Vanity as well as his Love of Pleasure?

It may possibly be said that these Diversions are cheap: I answer, that is one Objection I have to them: Was the Price as high as that of a Ridotto, or an Opera, it would, like these Diversions, be confined to the higher People only; besides the Cheapness is really a Delusion. Unthinking Men are often deceived into Expence, as I once knew an honest Gentleman who carried his Wife and two Daughters to a Masquerade, being told that he could have four Tickets for four Guineas; but found afterwards, that in Dresses, Masques, Chairs, &c. the Night's Entertainment cost him almost Twelve. I am convinced that many thousands of honest Tradesmen have found their Expences exceed their Computation in a much greater Proportion. And the Sum of seven or eight Shillings (which is a very moderate Allowance for the Entertainment of the smallest Family) repeated once or twice a Week through a Summer, will make too large a Deduction from the reasonable Profits of any low Mechanic.

Besides the actual Expence in attending these Places of Pleasure, the Loss of Time and Neglect of

of Business are Consequences which the inferior Tradesman can by no Means support. To be born for no other Purpose than to consume the Fruits of the Earth is the Privilege (if it may be really called a Privilege) of very few. The greater Part of Mankind must sweat hard to produce them, or Society will no longer answer the Purposes for which it was ordained. *Six Days shalt thou labour*, was the positive Command of God in his own Republic. A Severity, however, which the divine Wisdom was pleased somewhat to relax; and appointed certain Times of Rest and Recreation for his People. Such were the Feast of the unleavened Bread, the Feast of the Weeks, and the Feast of the Tabernacles. On which Occasions it is written, *Thou shalt rejoice before the Lord thy God, thou and thy Son and thy Daughter, and thy Servant, and thy Maid, and the Levite that is within thy Gates, and the Stranger, and the Fatherless, and the Widow* \*.

All other Nations have imitated this divine Institution. It is true among the *Greeks*, arising from the Nature of their Superstition, there were many Festivals; yet scarce any of these were universal, and few attended with any other than religious Ceremonies †. The *Roman* Calendar is thinner strewed with these Seasons of Idleness. Indeed there seems to have been one only Kind of universal Sport and Revelling amongst them, which they called the *Saturnalia*, when much too great Indulgence was given to all Kinds of Licentiousness. Public Scenes of Rendezvous they had none. As to the *Grecian* Women, it is well known they were almost intirely confined to their own Houses; where the very En-

\* *Exod.* Chap. xxxiv. *Deut.* Chap. xvi.

† The Gods, says *Plato*, pitying the laborious Condition to which Men were born, appointed holy Rites to themselves, as Seasons of Rest to Men; and gave them the Muses, with *Apollo* their Leader and *Bacchus*, to assist in the Celebrations, &c. *De Leg.* l. ii. p. 787. *Edit. Ficini.*



tainment of their finest Ladies was only Works of the finer Sort. And the *Romans* by the *Orchian Law*, which was made among many others for the Suppression of Luxury, and was published in the third Year of *Cato's* Censorship, thought proper to limit the Number of Persons who were to assemble even at any private Feast \*. Nay the Exhibitions of the Theatre were suffered only at particular Seasons, and on Holydays.

Nor are our own Laws silent on this Head, with Regard at least to the lower Sort of People, whose Diversions have been confined to certain stated Times. Mr. *Pulton* † speaking of those Games and Assemblies of the People which are lawful, says, that they are lawful at certain Places and Seasons of the Year, allowed by old and ancient Customs. The Statute of *Hen. VIII.* ‡ goes farther, and expressly enacts, that no Manner of Artificer or Craftsmen of any Handicraft or Occupation, Husbandman, Apprentice, &c. shall play at the Tables, Tennis, Dice, Cards, Bowls, &c. out of *Christmas* under the Penalty of 20s.

Thus we find that by divine as well as human Institution, as well by our own Laws as those of other Countries, the Diversions of the People have been limited and restrained to certain Seasons: Under which Limitations, *Seneca* calls these Diversions the necessary Temperament of Labour. 'Some Remission, says he, must be given to our Minds, which will spring up the better, and more brisk from Rest. It is with the Mind as with a fruitful Field, whose Fertility will be exhausted if we give it no Intermision. The same will accrue to the Mind by incessant Labours, whereas both from gentle Remission will acquire Strength. From

\* *Macrob. Saturnal.* lib. 2. c. xiii. Note, This *RIOT ACT* passed in one of the freest Ages of the *Roman Republic*.  
† *De Pace*, fol. 25. ‡ 33 *Hen.* VIII. c. ix.

' constant

' constant Labour arises a certain Dulness and Languor of the Spirits; nor would Men with such Eagerness affect them, if Sport and Merriment had not a certain natural Sweetness inherent in themselves; the frequent Use of which however will destroy all Gravity and Force in our Minds. Sleep is necessary to our Refreshment, but if this be continued Night and Day, it will become Death. There is a great Difference between the Remission of any Thing and its Dissolution. Lawgivers, therefore, instituted certain Holydays, that the People might be compelled by Law to Merriment, interposing this as a necessary Temperament to their Labours.\*

Thus the *Greek* and *Latin* Philosopher, tho' they derive the Institution differently, the one alledging a divine and the other a human Original, both agree that a necessary Relaxation from Labour was the only End for which Diversion was invented and allowed to the People. This Institution, as the former of these great Writers tells us, was grossly perverted even in his Time; but surely neither then, nor in any Age or Nation, until now, was this Perversion carried to so scandalous an Excess as it is at present in this Kingdom, and especially in and near the Metropolis, where the Places of Pleasure are almost become numberless: for besides those great Scenes of Rendezvous, where the Nobleman and his Taylor, the Lady of Quality and her Tirewoman, meet together and form one common Assembly, what an immense Variety of Places have this Town and its Neighbourhood set apart for the Amusement of the lowest Order of the People; and where the Master of the House, or Wells, or Garden, may be said to angle only in the Kennels, where baiting with the vilest Materials, he catches only the thoughtless and tasteless

\* *Sen. De Tranquill. Animi*, p. 167. Edit. *Lips.*  
Rabble.

( 10 )

Rabble? And these are carried on, not on a single Day, or in a single Week; but all of them during half, and some during the whole Year.

If a Computation was made of the Money expended in these Temples of Idleness by the Artificer, the Handicraft, the Apprentice, and even the common Labourer, the Sum would appear excessive; but without putting myself to that Trouble, I believe the Reader will permit me to conclude that it is much greater than such Persons can or ought to afford; especially as Idleness, its necessary Attendant, adds greatly to the Debtor's Side in the Account; and that the necessary Consequence must be Ruin to many, who from being useful Members of the Society will become a heavy Burden or absolute Nuisance to the Public. It being indeed a certain Method to fill the Streets with Beggars, and the Goals with Debtors and Thieves.

That this Branch of Luxury hath grown to its present Height, is owing partly to a Defect in the Laws; and this Defect may, with great Decency and Respect to the Legislature, be very truly imputed to the Recency of the Evil; for as our Ancestors knew it not, they may be well excused for not having foreseen and guarded against it. If therefore it should seem now necessary to be retrenched, a new Law will, I apprehend, be necessary for that Purpose; the Powers of the Magistrate being scarce extensive enough, under any Provision extant, to destroy a Hydra now become so pregnant and dangerous. And it would be too dangerous as well as too invidious a Task to oppose the mad Humours of the Populace, by the Force of any doubtful obsolete Law; which, as I have hinted before, could not have been directly levelled at a Vice which did not exist at the Time when the Law was made.

But while I am recommending some Restraint of this Branch of Luxury, which surely appears to be necessary, I would be understood to aim at the Retrenchment

( 11 )

trenchment only, not at the Extirpation of Diversion; nay, and in this Restraint, I confine myself entirely to the lower Order of People. Pleasure always hath been, and always will be, the principal Business of Persons of Fashion and Fortune, and more especially of the Ladies, for whom I have infinitely too great an Honour and Respect to rob them of any their least Amusement. Let them have their Plays, Operas, and Oratorios, their Masquerades and Ridottos; their Assemblies, Drums, Routs, Riots, and Hurricanes; their *Ranelagh* and *Vauxhall*; their *Bath*, *Tunbridge*, *Bristol*, *Scarborough*, and *Cheltenham*; and let them have their Beaus and Dangers to attend them at all these; it is the only Use for which such Beaus are fit; and I have seen in the Course of my Life, that it is the only one to which by sensible Women they are applied.

In Diversion, as in many other Particulars, the upper Part of Life is distinguished from the Lower. Let the Great therefore answer for the Employment of their Time, to themselves, or to their spiritual Governors. The Society will receive some temporal Advantage from their Luxury. The more Toys which Children of all Ages consume, the brisker will be the Circulation of Money, and the greater the Increase of Trade.

The Business of the Politician is only to prevent the Contagion from spreading to the useful Part of Mankind, the ΕΠΙΘΙΟΝΟΝ ΠΕΦΤΚΟΣ ΓΕΝΟΣ\*; and this is the Business of Persons of Fashion and Fortune too, in order that the Labour and Industry of the rest may administer to their Pleasures, and furnish them with the Means of Luxury. To the upper Part of Mankind Time is an Enemy, and (as they themselves often confess) their chief Labour is to kill it; whereas, with the others, Time and Money are almost synonymous; and as they have very little of each to spare, it becomes the Legislature, as much

\* Plato.

( 12 )

as possible, to suppress all Temptations whereby they may be induced too profusely to squander either the one or the other; since all such Profusion must be repaired at the Cost of the Public.

Such Places of Pleasure, therefore, as are totally set apart for the Use of the Great World, I meddle not with. And though *Ranelagh* and *Vauxhall*, by reason of their Price, are not entirely appropriated to the People of Fashion, yet they are seldom frequented by any below the middle Rank; and a strict Regard to Decency is preserved in them both. But surely two such Places are sufficient to contain all those who have any Title to spend their Time in this idle, though otherwise innocent Way. Nor should such a Fashion be allowed to spread into every Village round *London*, and by degrees all over the Kingdom; by which means, not only Idleness, but all Kinds of Immorality, will be encouraged.

I cannot dismiss this Head, without mentioning a notorious Nuisance which hath lately arisen in this Town; I mean, those Balls where Men and Women of loose Reputation meet in disguised Habits. As to the Masquerade in the *Hay-market*, I have nothing to say; I really think it a silly rather than a vicious Entertainment: But the Case is very different with these inferiour Masquerades; for these are indeed no other than the Temples of Drunkenness, Leudness, and all Kind of Debauchery.

## S E C T. II.

Of DRUNKENNESS, a second Consequence of  
*Luxury among the Vulgar.*

**B**UT the Expence of Money, and Loss of Time, with their certain Consequences, are not the only Evils which attend the Luxury of the Vulgar. Drunkenness is almost inseparably annexed to the Pleasures of such People. A Vice by no means to  
be

( 13 )

be construed as a spiritual Offence alone, since so many temporal Mischiefs arise from it; amongst which are very frequently Robbery and Murder itself.

I do not know a more excellent Institution than that of *Pittacus*, mentioned by *Aristotle* in his *Politics*\*; by which a Blow given by a drunken Man, was more severely punished than if it had been given by one that was sober; for *Pittacus*, says *Aristotle*, considered the Utility of the Public, (as drunken Men are more apt to strike) and not the Excuse, which might otherwise be allowed to their Drunkenness. And so far both the Civil Law and our own have followed this Institution, that neither have admitted Drunkenness to be an Excuse for any Crime.

This odious Vice (indeed the Parent of all others) as History informs us, was first introduced into this Kingdom by the *Danes*, and with very mischievous Effects. Wherefore that excellent Prince *Edgar* the *Peaceable*, when he set about reforming the Manners of his People, applied himself very particularly to the Remedy of this great Evil, and ordered Silver or Gold Pins to be fixed to the Sides of their Pots and Cups, beyond which it was not lawful for any Person to drink †.

What Penalty was affixed to the Breach of this Institution, I know not; nor do I find any Punishment in our Books for the Crime of Drunkenness, till the Time of *Jac. I.* in the fourth Year of whose Reign it was enacted, ' That every Person lawfully  
' convicted of Drunkenness, shall, for every such  
' Offence, forfeit the Sum of Five Shillings, to be  
' paid within a Week next after his, her, or their  
' Conviction, to the Hands of the Churchwardens  
' of the Parish where, &c. to the Use of the Poor.  
' In Default of Payment, the Sum to be levied by  
' Distress, and, in Default of Distress, the Offen-

\* L. 2. c. 10.

† *Eachard*, p. 88.

der is to be committed to the Stocks, there to remain for the Space of six Hours \*.

For the second Offence they are to be bound to their good Behaviour, with two Sureties, in a Recognizance of Ten Pounds †.

Nor is only that Degree of Drunkenness forbidden, which Mr. Dalton describes, ' so as to stagger and reel to and fro, and where the same Legs which carry him into a House, cannot carry him out again †; ' for, by the same Act of Parliament, all Persons who continue drinking or tipling in any Inn, Victualling-house, or Ale-house, in their own City, Town or Parish (unless such as being invited by a Traveller, shall accompany him during his necessary Abode there; or except Labouring and Handicraftsmen in Cities, and Corporate and Market Towns, upon a working Day, for an Hour at Dinner-time, in Alehouses, where they take their Diet; and except Labourers and Workmen, who, during their Continuance in any Work, shall lodge or victual in any Inn, &c. or except for some urgent and necessary Occasion, to be allowed by two Justices of the Peace) shall forfeit the Sum of Three Shillings and Sixpence, for the Use of the Poor; to be levied as before, and, for Want of Distress, to be put in the Stocks for four Hours †.

This Act hath been still farther enforced by another in the same Reign §. By the latter Act, the Tipler is liable, whether his Habitation be within the same or any other Parish. 2dly, The Proof by one Witness is made sufficient; and, 3dly, A very extraordinary Clause is added, by which the Oath of the Party offending, after having confessed his own

\* Jac. I. chap. 5. chap. 7. sect. 5. † Jac. I. chap. 9.

† Ib. sect. 6. † Dalt. § 4 Jac. I. chap. 4. sect. 4. & § 21 Jac. I. chap. 7.

Crime,

Crime, is made Evidence against any other Offender, though at the same Time.

Thus we see the Legislature have taken the utmost Care not only to punish, but even to prevent this Vice of Drunkenness, which the Preamble of one of the foregoing Statutes calls a *loathsome* and *odious Sin*, and the Root and Foundation of many other enormous Sins, as Murder, &c. Nor doth the Wisdom of our Law stop here. Our cautious Ancestors have endeavoured to remove the Temptation, and, in a great measure, to take away from the People their very Power of offending this way. And this by going to the Fountain-head, and endeavouring to regulate and restrain the Scenes of these Disorders, and to confine them to those Uses for which they were at first designed; namely, for the Rest, Refreshment and Convenience of Travellers.

A cursory View of the Statutes on this Head will demonstrate of what Consequence to Society the Suppression of this Vice was in the Opinion of our Ancestors.

By the Common Law, Inns and Ale-houses might be kept *ad libitum*; but if any Disorders were suffered in them, they were indictable as a common Nuisance.

The first Reform which I find to have been made by Parliament, was in the Reign of Henry VII. \* when two Justices were empowered to suppress an Ale-house.

The Statute of Edward VI. † is the first which requires a precedent Licence. By this Act no Man can keep an Ale-house, without being licensed by the Sessions, or by two Justices; but now, by a late Statute, all Licences granted by Justices out of their Sessions are void ‡.

\* 11 H. VII. c. 28. sect. 11. † 5 Edw. VI. c. 25. ‡ 2 G. II.

By

By the Statute of *Charles I.* \* which alters the Penalties of that of *Edward VI.* the Punishment for keeping an Ale-house, or commonly selling Ale, Beer, Cyder and Perry, without a Licence, is to pay Twenty Shillings to the Use of the Poor, to be levied by Distress; which, if Satisfaction be not made within three Days, is to be sold. And if there be no Goods whereon to distrain, and the Money be not paid within six Days after Conviction, the Offender is to be delivered to the Constable, or some inferiour Officer, to be whipped. For the second Offence, he is to be committed to the House of Correction for a Month; and for the third, he is to be committed to the said House, till by Order of the Justices, at their General Sessions, he be discharged.

The Conviction is to be on the View of the Justice, Confession of the Party, or by the Oath of two Witnesses.

And by this Statute, if the Constable or Officer to whom the Party is committed to be whipt, &c. do not execute his Warrant, the Justice shall commit him to Prison, there to remain till he shall procure some one to execute the said Warrant, or until he shall pay Forty Shillings to the Use of the Poor.

The Justices, at the Time of granting the Licence, shall take a Recognizance from the Party, not to suffer any unlawful Games, nor other Disorders, in his House; which is to be certified to the Sessions, and the Justices there have a Power to proceed for the Forfeiture †.

By the Statute of *Jac. I.* ‡ Alehouse-keepers, who suffer Townsmen to sit tipling (unless in the Cases abovementioned ||) forfeit Ten Shillings to the Poor; the Distress to be sold within six Days; and if no

\* 3 *Car. I.* cap. 4. † 5 *E. VI. ubi sup.* ‡ Cap. 9. *ubi sup.* || *Supra*, p. 14. in the Case of *Tiplers.*  
Distress

Distress can be had, the Party is to be committed till the Forfeiture is paid.

Vintners, who keep Inns or Victualling-houses, are within this Act \*.

And by two several Statutes †, Alehouse-keepers, convicted of this Offence, are prohibited from keeping an Ale-house for the Space of three Years.

Justices of Peace likewise, for any Disorders committed in Ale-houses contrary to the Condition of the Recognizance, may suppress such Houses ‡; but then the Proceeding must be on the Recognizance, and the Breach of the Condition proved ||.

Now, on the concise View of these several Laws, it appears, that the Legislature have been abundantly careful on this Head; and that the only Blame lies on the Remissness with which these wholesome Provisions have been executed.

But though I will not undertake to defend the Magistrates of former Times, who have surely been guilty of some Neglect of their Duty; yet, on behalf of the present Commissioners of the Peace, I must observe, their Case is very different. What Physicians tell us of the animal Functions, will hold true when applied to Laws; Both, by long Disuse, lose all their Elasticity and Force. Froward Habits grow on Men, as they do on Children, by long Indulgence; nor will either submit easily to Correction in Matters where they have been accustomed to act at their Pleasure. They are very different Offices to execute a new or a well known Law, and to revive one which is obsolete. In the Case of a known Law, Custom brings Men to Submission; and in all new Provisions, the Ill-will, if any, is levelled at the Legislature, who are much more able to support it

\* 1 *Car. I.* cap. 4. † 7 *Jac. I.* cap. 10. 21 *Jac. I.* cap. 7. ‡ 5 *E. VI. ubi sup.* || *Salk.* 45.

C than

than a few, or a single Magistrate. If therefore it be thought proper to suppress this Vice, the Legislature must once more take the Matter into their Hands; and to this, perhaps, they will be the more inclined, when it comes to their Knowledge, that a new Kind of Drunkenness, unknown to our Ancestors, is lately sprung up amongst us, and which, if not put a stop to, will infallibly destroy a great Part of the inferior People.

The Drunkenness I here intend, is that acquired by the strongest intoxicating Liquors, and particularly by that Poison called *Gin*; which, I have great reason to think, is the principal Sustenance (if it may be so called) of more than an hundred thousand People in this Metropolis. Many of these Wretches there are, who swallow Pints of this Poison within the Twenty-four Hours; the dreadful Effects of which I have the Misfortune every Day to see, and to smell too. But I have no need to insist on my own Credit, or on that of my Informers; the great Revenue arising from the Tax on this Liquor (the Consumption of which is almost wholly confined to the lowest Order of People) will prove the Quantity consumed better than any other Evidence.

Now, besides the moral ill Consequences occasioned by this Drunkenness, with which, in this Treatise, I profess not to deal; how greatly must this be supposed to contribute to those political Mischiefes which this Essay proposes to remedy? This will appear from considering, that however cheap this vile Potion may be, the poorer Sort will not easily be able to supply themselves with the Quantities they desire; for the intoxicating Draught itself disqualifies them from using any honest Means to acquire it, at the same time that it removes all Sense of Fear and Shame, and emboldens them to commit every wicked and desperate Enterprize.  
Many

Many Instances of this I see daily: Wretches are often brought before me, charged with Theft and Robbery, whom I am forced to confine before they are in a Condition to be examined; and when they have afterwards become sober, I have plainly perceived, from the State of the Case, that the *Gin* alone was the Cause of the Transgression, and have been sometimes sorry that I was obliged to commit them to Prison.

But beyond all this, there is a political ill Consequence of this Drunkenness, which, though it doth not strictly fall within my present Purpose, I shall be excused for mentioning, it being indeed the greatest Evil of all, and which must, I think, awaken our Legislature to put a final Period to so destructive a Practice. And this is that dreadful Consequence which must attend the poisonous Quality of this pernicious Liquor to the Health, the Strength, and the very Being of Numbers of his Majesty's most useful Subjects. I have not enough of physical Knowledge, to display the ill Effects which such poisonous Liquors produce in the Constitution: For these I shall refer the Reader to *The Physical Account of the Nature of all distilled Spirituous Liquors, and the Effect they have on human Bodies* \*. And tho', perhaps, the Consequence of this Poison, as it operates slowly, may not so visibly appear in the Diminution of the Strength, Health and Lives of the present Generation; yet let a Man cast his Eyes but a Moment towards our Posterity, and there the dreadful Consequences must strike on the meanest Capacity, and must alarm, I think, the most sluggish Degree of Public Spirit. What must become of the Infant who is conceived in *Gin*? with the poisonous

\* This was composed by a very learned Divine, with the Assistance of several Physicians, and published in the Year 1736. The Title is, *Distilled Spirituous Liquors the Bane of the Nation.*



( 20 )

Distillations of which it is nourished both in the Womb and at the Breast. Are these wretched Infants (if such can be supposed capable of arriving at the Age of Maturity) to become our future Sailors, and our future Grenadiers? Is it by the Labour of such as these, that all the Emoluments of Peace are to be procured us, and all the Dangers of War averted from us? What could an *Edward* or a *Henry*, a *Marlborough* or a *Cumberland*, effect with an Army of such Wretches? Doth not this polluted Source, instead of producing Servants for the Husbandman, or Artificer; instead of providing Recruits for the Sea or the Field, promise only to fill Alms-houses and Hospitals, and to infect the Streets with Stench and Diseases?

In solemn Truth, there is nothing of more serious Consideration, nor which more loudly calls for a Remedy, than the Evil now complained against. For what can be more worthy the Care of the Legislature, than to preserve the Morals, the Innocence, the Health, Strength and Lives of a great Part (I will repeat, the most useful Part) of the People? So far am I, in my own Opinion, from representing this in too serious or too strong a Light, that I can find no Words, or Metaphor, adequate to my Ideas on this Subject. The first Inventer of this diabolical Liquor may be compared to the Poisoner of a Fountain, whence a large City was to derive its Waters; the highest Crime, as it hath been thought, of which Human Nature is capable. A Degree of Villainy, indeed, of which I cannot recollect any Example: But surely if such was ever practised, the Governors of that City could not be thought blameless, did they not endeavour, to the utmost, to withhold the Citizens from drinking the poisonous Draught; and if such a general Thirst after it prevailed, as, we are told, possessed the People of

*Athens*

( 21 )

*Athens* at the Time of the Plague\*, what could justify the not effectually cutting off all Aqueducts, by which the Poison was dispersed among the People?

Nor will any thing less than absolute Deletion serve on the present Occasion. It is not making Men pay 50 *l.* or 500 *l.* for a Licence to poison; nor enlarging the Quantity from two Gallons to ten, which will extirpate so stubborn an Evil. Here may, perhaps, be no little Difficulty. To lay the Axe to the Still-head, and prohibit all Distillery in general, would destroy the Chymist. If distilling this or that Spirit was forbidden, we know how easily all partial Prohibitions are evaded; nay the Chymist (was the Matter confined to him) would soon probably become a common Distiller, and his Shop no better than a Gin-shop; since what is more common than for Men to adopt the Morals of a Thief at a Fire, and to work their own private Emolument out of a public Mischief. Suppose all spirituous Liquors were, together with other Poison, to be locked up in the Chymists or Apothecaries Shops, thence never to be drawn, till some excellent Physician calls them forth for the Cure of nervous Distempers! Or suppose the Price was to be raised so high, by a severe Impost, that Gin would be placed entirely beyond the Reach of the Vulgar! Or perhaps the Wisdom of the Legislature may devise a better and more effectual Way.

But if the Difficulty be really insuperable, or if there be any political Reason against the total Demolition of this Poison, so strong as to countervail the Preservation of the Morals, Health and Beings of such Numbers of his Majesty's Subjects, let us, however, in some measure, pal-

\* Ἐδρασαν ἐς φρένας ἀπαύσω τῆ δίκῃ ἐνυπόχρητοι. They ran into the Wells, being constantly possessed by an inexhausted Thirst. *Thucydid.* p. 112. *Edit. Hudsoni.*

liate the Evil, and lessen its immediate ill Consequences, by a more effectual Provision against Drunkenness than any we have at present, in which the Method of Conviction is too tedious and dilatory. Some little Care on this Head is surely necessary: For tho' the Encrease of Thieves, and the Destruction of Morality; though the Loss of our Labourers, our Sailors, and our Soldiers, should not be sufficient Reasons, there is one which seems to be unanswerable, and that is, the Loss of our Gin-drinkers: Since, should the drinking this Poison be continued in its present Height during the next twenty Years, there will, by that Time, be very few of the common People left to drink it.

S E C T. III.

*Of GAMING among the Vulgar; a third Consequence of their Luxury.*

I Come now to the last great Evil which arises from the Luxury of the Vulgar; and this is Gaming: A School in which most Highwaymen of great Eminence have been bred. This Vice is the more dangerous, as it is deceitful, and, contrary to every other Species of Luxury, flatters its Votaries with the Hopes of increasing their Wealth; so that Avarice itself is so far from securing us against its Temptations, that it often betrays the more thoughtless and giddy Part of Mankind into them; promising Riches without Bounds, and those to be acquired by the most sudden as well as easy and indeed pleasant Means.

And here I must again remind the Reader, that I have only the inferiour Part of Mankind under my Consideration. I am not so ill-bred as to disturb the Company at a polite Assembly; nor so ignorant of our Constitution, as to imagine, that there is a  
suffi-

sufficient Energy in the executive Part to controul the Oeconomy of the Great, who are beyond the Reach of any, unless capital Laws. Fashion, under whose Guidance they are, and which created the Evil, can alone cure it. With Patience therefore must we wait, till this notable Mistress of the Few shall, in her good time, accomplish so desirable a Change: In fact, till Great Men become wiser or better; till the Prevalence of some laudable Taste shall teach them a worthier Manner of employing their Time; till they have Sense enough to be reasoned, Modesty enough to be laughed, or Conscience enough to be frightened out of a silly, a shameful and a sinful Profligacy, attended with horrid Waste of Time, and the cruel Destruction of the Families of others, or of their own.

In the mean time we may, I think, reasonably desire of these great Personages, that they would keep their favorite Vice to themselves, and not suffer others, whose Birth or Fortune gives them no Title to be above the Terrour of the Laws, or the Censure of their Betters, to share with them in this Privilege. Surely we may give Great Men the same Advice, which *Archer*, in the Play, gives to the Officers of the Army; *To kick out all—in Red but their own.* What Temptations can Gamesters of Fashion have, to admit *inferiour* Sharpers into their Society? Common Sense, surely, will not suffer a Man to risque a Fortune against one who hath none of his own to stake against it.

I am well apprized that this is not much the Case with Persons of the first Figure; but to Gentlemen (and especially the younger Sort) of the second Degree, these Fellows have found much too easy an Access. Particularly at the several public Places (I might have said Gaming Places) in this Kingdom, too little Care is taken to prevent the promiscuous Union of Company; and Sharpers of the lowest Kind



( 24 )

have frequently there found Admission to their Superiours, upon no other Pretence or Merit than that of a laced Coat, and with no other Stock than that of Assurance.

Some few of these Fellows, by luckily falling in with an egregious Bubble, some thoughtless young Heir, or more commonly Heirefs, have succeeded in a manner, which, if it may give some Encouragement to others to imitate them, should, at the same time, as strongly admonish all Gentlemen and Ladies to be cautious with whom they mix in public Places, and to avoid the Sharper as they would a Pest. But much the greater Part of such Adventurers have met with a more probable and more deserved Fate; and having exhausted their little Fund in their Attempts, have been reduced to a Dilemma, in which it required more Judgment and Resolution than are the Property of many Men, and more true Sense of Honour than belongs to any debauched Mind, to extricate themselves by honest Means. The only Means, indeed, of this Kind, are to quit their assumed Station, and to return to that Calling, however mean and laborious, to which they were born and bred.

But besides that the Way to this is often obstructed with almost insuperable Difficulties; and false Shame, at its very Entrance, dashes them in the Face, how easily are they dissuaded from such disagreeable Thoughts by the Temptations with which Fortune allures them, of a Possibility, at least, of still supporting their false Appearances, and of retrieving all their former Hopes? How greedily, may we imagine, this enchanting Alternative will be embraced by every bold Mind, in such Circumstances? for what but the Danger of the Undertaking can deter one, who hath nothing of a Gentleman but his Dress, to attain which he hath already divested himself of all Sense of Honesty? How  
easy

( 25 )

easy is the Transition from Fraud to Force? from a Gamester to a Rogue? Perhaps, indeed, it is civil to suppose it any Transition at all.

From this Source, therefore, several of our most notable Highwaymen have proceeded; and this hath likewise been the Source of many other Depredations on the honest Part of Mankind. So mischievous have been this Kind of Sharpers in Society, that they have fallen under the particular Notice of the Legislature: for a Statute in the Reign of Queen *Anne*, reciting, ' That divers lewd and dissolute  
' Persons live at great Expences, having no visible  
' Estate, Profession or Calling, to maintain themselves, but support those Expences by Gaming only; ' enacts, ' That any two Justices of the Peace  
' may cause to be brought before them all Persons  
' within their respective Limits, whom they shall  
' have just Cause to suspect to have no visible Estate, Profession or Calling, to maintain themselves  
' by, but do, for the most part, support themselves  
' by Gaming; and if such Persons shall not make  
' the contrary appear to such Justices, they are to be  
' bound to their good Behaviour for a Twelve-  
' month; and, in Default of sufficient Security, to  
' be committed till they can find such Security;  
' which Security (in case they give it) is to be forfeited on their playing or betting at any any one  
' Time for more than the Value of 20 Shillings \*.

As  
\* 9 *Annæ*, chap. 14. sect. 6, 7. It would be of great Service to the Public, to extend this Statute to idle Persons and Sharpers in general; for many support themselves by Frauds, and cheating Practices, even worse than Gaming; and have the Impudence to appear in the Dress of Gentlemen, and at public Places, without having any Pretensions of Birth or Fortune, or without any honest or visible Means of Livelihood whatever. Such a Law would not be without a Precedent; for such is the excellent Institution mentioned by *Herodotus*, in his *Euterpe*.—  
' *Amasis* (says that Historian) established a Law in *Egypt*,  
' that

( 26 )

As to Gaming in the lower Classes of Life; so plainly tending to the Ruin of Tradesmen, the Destruction of Youth, and to the Multiplication of every Kind of Fraud and Violence, the Legislature hath provided very wholesome Laws \*.

By the 33d of *Henry VIII.* 'Every Artificer, Craftsman of any Handycraft or Occupation, Husbandman, Labourer, Servant at Husbandry, Journeyman or Servant of Artificer, Mariners, Fishermen, Watermen, or any Serving Men, are prohibited from playing at Tables, Dice, Cards, &c. out of *Christmas*, and in *Christmas* are permitted to play only in their Masters Houses, or in his Presence, under the Penalty of 20 s. And all Manner of Persons are prohibited from playing at any Bowl or Bowls, in any open Place out of their Garden or Orchard, under the Penalty of 6 s. 8 d.

'The Conviction to be by Action, Information, Bill, or otherwise, in any of the King's Courts; one Half of the Penalty to the Informer.

'Provided that Servants may play at any Times with their Masters, or by their Licence; and all Persons, who have 100 l. *per Annum*, Freehold, may give their Servants, or others, resorting to their Houses, a Licence to play within the Precinct of their Houses, Gardens, or Orchard.

'that every *Egyptian* should annually declare before the Governor of the Province, by what Means he maintained himself; and all those who did not appear, or who could not prove that they had some lawful Livelihood, were punished by Death. This Law *Solon* introduced into *Athens*, where it was long inviolably preserved as a most just and equitable Provision.' *Herod. Edit. Hudsoni, p. 174.* This Punishment is surely too severe; but the Law, under a milder Penalty, is well worthy to be adopted.

\* By a Statute made in the Reign of *Edward IV.* now repealed, Playing at several Games therein mentioned, was punished by two Years Imprisonment, and the Forfeiture of 10 l. and the Master of the House was to be imprisoned for three Years, and to forfeit 20 l. A great Sum in those Days!

( 27 )

By this Statute likewise, 'No Person whatever, by himself, Factor, Deputy, Servant, or other Person, shall, for Gain, keep, &c. any Common, House, Alley, or Place of Bowling, Coyting, Clash-Coys, Half-Bowl, Tennis, Dicing-Table, or Carding, or any other Manner of Game, prohibited by any Statute heretofore made, or any unlawful Game invented or made, or any other new unlawful Game hereafter to be invented or made: the Penalty is 40 s. *per Day*, for keeping the House, &c. and 6 s. 8 d. for every Person haunting and playing at such House. These Penalties to be recovered, &c. as above.

'And all Leases of Gaming-houses, Alleys, &c. are made void at the Election of the Lessee."

Farther by the said Statute, 'Power is given to all Justices of Peace, Mayors, or other Head-Officers, in every City, &c. to enter suspected Houses and Places, and to commit the Keepers of the said Houses, and the Persons there haunting, resorting, and playing, to Prison; and to keep them in Prison, till the Keepers have found Sureties to enter into a Recognizance to the King's Use, no longer to keep such House, &c. and the Persons there found, to be bound by themselves, or with Sureties, &c. at the Discretion of the Justice, &c. no more to haunt the said Places, or play at any of the said Games.'

And now by the Statute of *George II.* this last Clause is enforced, by giving the Justice the same Power on the Information of two Persons, as he had before on View; and, by a more explicate Power, to take Sureties or not of the Party, at his Discretion.

Lastly, The Statute of *Henry VIII.* enjoins the Justices, &c. to make due Search weekly, or once *per Month*, at the farthest, under the Penalty of for-

forfeiting 40 s. for every Month, during their Neglect.

Thus stands the Law, by which it may appear, that the Magistrate is armed with sufficient Authority to destroy all Gaming among the inferiour People ; and that, without his Neglect or Connivance, no such Nuisance can possibly exist.

And yet, perhaps, the Fault may not so totally lie at his Door; for the Recognizance is a mere Bugbear, unless the Party who breaks it, should be sued thereon ; which, as it is attended with great Expence, is never done ; so that though many have forfeited it, not a single Example of an Estreat hath been made within my Remembrance.

Again, it were to be wished, that the Statute of George II. had required no more than one Witness to the Information: for even one Witness, as I have found by Experience, is very difficult to be procured.

However, as the Law now is, seeing that the general Bent of the People opposes itself to this Vice, it is certainly in a great measure within the Magistrate's Power to suppress it, and so to harass such as propose find their Account in it, that these would soon be discouraged from the Undertaking ; nor can I conclude without observing, that this hath been lately executed with great Vigour within the Liberty of Westminster.

There are, besides, several other Provisions in our Statute Books against this destructive Vice. By the Statute of Queen Anne \*, whoever cheats at Play, forfeits five Times the Sum won by such Cheating, shall be deemed infamous, and suffer such corporal Punishment as in Case of Perjury: And whoever

\* 9 Anne, chap. 14. by which the Statute of 16 C. II. is enlarged and made more severe.

wins

wins above 10 l. at any one Sitting, shall likewise forfeit five Times the Sum won. Going Shares with the Winner, and Betting on his Side, are in both Instances, within the Act.

By the same Act, all Securities for Money won at Play, are made void ; and if a Mortgage be made on such Account, the Mortgagee doth not only lose all Benefit of it, but the Mortgage immediately enures to the Use of the next Heir\*.

By this Law Persons who have lost above 10 l. and have actually paid it, may recover the same by Action within three Months ; and if they do not sue for it within that Time, any other Person may †. And the Defendant shall be liable to answer a Bill for discovering such Sum lost, upon Oath.

By 18 George II. † whoever wins or loses 10 l. at Play, or by Betting at any one Time, or 20 l. within 24 Hours, is liable to be indicted, and shall be fined five Times the Value of the Money lost.

By 12 George II. || the Games of Pharaoh, the Ace of Hearts, Basset, and Hazard, are declared to be Lotteries ; and all Persons who set up, maintain, and keep them, forfeit 200 l. and all who play at them, forfeit 50 l. The Conviction to be before one Justice of Peace, by the Oath of one Witness, or Confession of the Party. And the Justice neglecting his Duty, forfeits 10 l. Note, The Prosecution against the Keeper, &c. may be for a Lottery, on the 8 George I. where the Penalty is 500 l.

The Act of 18 George II. includes the Game of Roly Poly, or other prohibited Game at Cards or Dice, within the Penalties of the abovementioned.

\* Ibid. sect. 1. † Ibid. sect. 2. ‡ Chap. 34. || Chap. 28.

I have

( 30 )

I have given this short Sketch of these several Acts, partly for the Use and Encouragement of Informers, and partly to insinuate to certain Persons with what Decency they can openly offend against such plain, such solemn laws, the severest of which many of themselves have, perhaps, been the Makers of. How can they seriously answer either to their Honour or Conscience giving the pernicious Example of a Vice, from which, as the Legislature justly says in the Preamble to the 16th of *Charles II.*

‘ Many Mischiefs and Inconveniences do arise, and  
 ‘ are daily found in the encouraging of sundry idle  
 ‘ and disorderly Persons in their dishonest, lewd,  
 ‘ and dissolute Course of Life; and to the circum-  
 ‘ venting, deceiving, cousening, and debauching  
 ‘ of many of the younger Sort, both of the Nobi-  
 ‘ lity and Gentry and others, to the Loss of their  
 ‘ precious Time, and the utter Ruin of their Estates  
 ‘ and Fortunes, and withdrawing them from noble  
 ‘ and laudable Employments and Exercises!’ Will  
 a Nobleman, I ask, confess that he can employ his Time in no better Amusement; or will he frankly own that he plays with any other View than that of Amusement? Lastly, What can a Man who sins in open Defiance of the Laws of his Country, answer to the *Vir bonus est Quis?* Can he say,

*Qui consulta Patrum, Qui Leges Juraque servat?*

Or can he apply that celebrated Line,

*Oderunt peccare boni Virtutis Honore*

to himself, who owes to his Greatness, and not to his Innocence, that he is not deterred from such Vices—*Formidine Pœnæ?*

S E C T.

( 31 )

## S E C T. IV.

*Of the Laws that relate to the PROVISION for the Poor.*

HAVING now run through the several immediate Consequences of a general Luxury among the lower People, all which, as they tend to promote their Distresses, may be reasonably supposed to put many of them of the bolder Kind upon unlawful and violent Means of relieving the Mischiefs which such Vices have brought upon them; I come now to a second Cause of the Evil, in the improper Regulation of what is called the Poor in this Kingdom, arising, I think, partly from the Abuse of some Laws, and partly from the total Neglect of others; and (if I may presume to say it) somewhat perhaps from a Defect in the Laws themselves.

It must be Matter of Astonishment to any Man to reflect that in a Country where the Poor are, beyond all Comparison, more liberally provided for than in any other Part of the habitable Globe, there should be found more Beggars, more distressed and miserable Objects than are to be seen throughout all the States of *Europe*.

And yet undoubted as this Fact is, I am far from agreeing with Mr. *Shaw*\*, who says, ‘ There are few, if any, Nations or Countries where the Poor are more neglected, or are in a more scandalous nasty Condition than in *England*. Whether (says he) this is owing to that natural inbred Cruelty for which *Englishmen* are so much noted among Foreigners, or to that Medley of Religions which are so plentifully sown, and so carefully cherished among us; who think it enough to take Care of themselves, and take a secret Pride

\* Vol. II. p. 1.

‘ and

( 32 )

and Pleasure in the Poverty and Distresses of those of another Persuasion, &c.'

That the Poor are in a very nasty and scandalous Condition is, perhaps too true; but sure the general Charge against the People of *England*, as well as the invidious Aspersions on particular Bodies of them, is highly unjust and groundless. Nor do I know that any Nation hath ventured to fix this Character of Cruelty on us. Indeed our Inhospitallity to Foreigners hath been sometimes remarked; but that we are cruel to one another is not, I believe, the common, I am sure it is not the true Opinion. Can a general Neglect of the Poor be justly charged on a Nation in which the Poor are provided for by a Tax frequently equal to what is called the Land-Tax, and where there are such numerous Instances of private Donations, such Numbers of Hospitals, Alms-houses, and charitable Provisions of all Kinds?

Nor can any such Neglect be charged on the Legislature; under whose Inspection this Branch of Policy hath been almost continually from the Days of Queen *Elizabeth* to the present Time. Inasmuch that Mr. *Shaw* himself enumerates no less than thirteen Acts of Parliament relating to the indigent and helpless Poor.

If therefore there be still any Deficiency in this Respect, it must, I think, arise from one of the three Causes abovementioned; that is, from some Defect in the Laws themselves, or from the Perversion of these Laws; or, lastly, from the Neglect in their Execution.

I will consider all these with some Attention.

The 43d of *Eliz.* \* enacts:

*First*, That the Churchwardens of every Parish, and two substantial Householdiers at least, shall be yearly appointed to be Overseers of the Poor.

\* Chap. iii.

*Secondly*,

( 33 )

*Secondly*, That these Overseers shall, with the Consent of two Justices of the Peace, put out Apprentices the Children of poor People. And all married or unmarried Persons who have no Means or Trade to maintain themselves shall be put to work.

*Thirdly*, That they shall raise by a Parochial Tax a convenient Stock of Flax, Hemp, Wool, Thread, Iron, and other Ware and Stuff, to set the Poor to work.

*Fourthly*, That they shall from the same Tax provide towards the necessary Relief of the Lame, Impotent, Old, Blind, and others, being poor and not able to work.

*Fifthly*, That they shall out of the same Tax put the Children of poor Persons Apprentices.

That these Provisions may all be executed, that Act vested the Overseers with the following Powers; and enforced the executing them by the following Penalties.

I. The Overseers are appointed to meet once at least every Month in the Church after Divine Service; there, says the Act, to consider of some good Course to be taken, and some meet Order to be set down in the *Premises*. And to do this they are enjoined by a Penalty: For every one absenting himself from such Meeting without a just Excuse to be allowed by two Justices of the Peace, or being negligent in his Office, or in the Execution of the Orders aforesaid, forfeits 20 s.

And after the End of their Year, and after other Overseers nominated, they are within four Days to make and yield up to two Justices of the Peace a true and perfect Account of all Sums of Money by them received or assessed, and of such Stores as shall be in their Hands, or in the Hands of the Poor to work, and of all other Things concerning their Office, &c. And if the Churchwardens and Overseers refuse to account, they are to be committed by

D

two

two Justices till they shall have made a true Account.

II. The Overseers and Churchwardens, both present and subsequent, are empowered by Warrant from two Justices to levy all the Monies assessed, and all Arrearages of those who refuse to pay, by Distress and Sale of the Refusers Goods; and the subsequent Overseers may, in the same Manner, levy the Money and Stock in the Hands of the Precedent: And for want of Distress the Party is to be committed by two Justices, without Bail, till the same be paid.

III. They have a Power to compel the Poor to work; and such as refuse or neglect the Justice may commit to the House of Correction or common Goal.

IV. The Overseers may compel Children to be Apprentices, and may bind them where they shall see convenient; 'till the Man-child shall attain the Age of 24, or the Woman-child the Age of 21, or till the Time of her Marriage; the Indenture to be as effectual to all Purposes as the Covenant of one of full Age.

V. They have a Power to contract with the Lord of the Manor\*, and on any Parcel of Ground on the Waste, to erect at the general Charge of the Parish convenient Houses of Dwelling for the impotent Poor; and to place several Inmates in the same Cottage, notwithstanding the Statute † of Cottages.

VI. They can compel the Father and Grandfather, Mother and Grandmother, and Children of every poor, old, blind, and impotent Person, or of any other Person not being able to work (provided

\* This must be done by Consent and Order of Sessions.

† These Cottages are never after to be applied to any other Use.

such

such Father, &c. be of sufficient Ability) at their own Charges to relieve and maintain such poor Person in such Manner and after such Rate, as shall be assessed by the Sessions, under the Penalty of 20 s. for every Month's Omission.

VII. If no Overseers be named, every Justice within the Division forfeits 5 l.

So far this Statute of *Elizabeth*, by which the Legislature may seem very fully to have provided, *First*, For the absolute Relief of such Poor as are by Age or Infirmity rendered unable to work; and *Secondly*, For the Employment of such as are able.

The former of these, says Lord *Hale* in his Discourse on this Subject, 'seems to be a Charity of more immediate Exigence; but the latter (*viz.* the Employment of the Poor) is a Charity of greater Extent, and of very great and important Consequence to the public Wealth and Peace of the Kingdom, as also to the Benefit and Advantage of the Poor.' And this, as Mr. *Shaw* observes, 'Would prevent the Children of our Poor being brought up in Laziness and Beggary, whereby Beggary is entailed from Generation to Generation: This is certainly the greatest Charity; for though he who gives to any in Want, does well, yet he who employs and educates the Poor, so as to render them useful to the Public, does better; for that would be many hundred thousand Pounds *per Ann.* Benefit to this Kingdom.'

Now the former of these Provisions hath, perhaps, though in a very slovenly and inadequate Manner, been partly carried into Execution; but the latter, I am afraid I may too boldly assert, hath been utterly neglected and disregarded. Surely this is a most scandalous Perversion of the Design of the Legislature, which through the whole Statute seems to have had the Employment of the able Poor chiefly under their Consideration: For to this Purpose only

D 2

almost



( 36 )

almost every Power in it is established, and every Clause very manifestly directed. To say the Truth, as this Law hath been perverted in the Execution, it were, perhaps, to be wished it had never been made. Not because it is not our Duty to relieve real Objects of Distress; but because it is so much the Duty of every Man, and I may add, so much the Inclination of most *Englishmen*, that it might have been safely left to private Charity; or a public Provision might surely have been made for it in a much cheaper and more effectual Manner.

To prove the Abuse of this Law, my Lord *Hale* appeals to all the populous Parishes in *England*, (he might, I believe, have included some which are not over populous) ' Indeed, says he, there are Rates made for the Relief of the impotent Poor; and it may be the same Relief is also given in a narrow Measure unto some others that have great Families, and upon this they live miserably, and at best from Hand to Mouth; and if they cannot get Work to make out their Livelihood, they and their Children set up a Trade of Begging at best; but it is rare to see any Provision of a Stock in any Parish for the Relief of the Poor; and the Reasons are principally these: 1. The generality of People that are able, are yet unwilling, to exceed the present necessary Charge; they do choose to live for an Hour rather than project for the future; and although possibly trebling their Exhibition in one gross Sum at the Beginning of the Year, to raise a Stock, might in all probability render their future yearly Payments, for seven Years together, less by half, or two thirds, than what must be without it; yet they had rather continue on their yearly Payments, Year after Year, though it exhaust them in time, and make the Poor nothing the better at the Year's end. 2. Because those Places, where there are most Poor, consist for the most Part of Tradesmen whose Estates lie principally

( 37 )

' pally in their Stocks, which they will not endure to be searched into to make them contributory to raise any considerable Stock for the Poor, nor indeed so much as to the ordinary Contributions: But they lay all the Rates to the Poor upon the Rents of Lands and Houses, which alone, without the Help of the Stocks, are not able to raise a Stock for the Poor, although it is very plain that Stocks are as well by Law rateable as Lands, both to the Relief and raising a Stock for the Poor. 3. Because the Churchwardens and Overseers, to whom this Power is given, are Inhabitants of the same Parish, and are either unwilling to charge themselves or to displease their Neighbours in charging more than they needs must towards the Poor: And although it were to be wished and hoped that the Justices of the Peace would be forward to enforce them if they might, though it may concern them also in point of present Profit; yet if they would do any thing herein, they are not empowered to compel the Churchwardens and Overseers to do it, who most certainly will never go about it to burden, as they think, themselves, and displease their Neighbours, unless some compulsory Power were not only lodged by Law, but also executed by some that may have a Power over them to enforce it; or to do it, if they do it either partially or too sparingly. 4. Because People do not consider the Inconvenience that will in Time grow to themselves by this Neglect, and the Benefit that would in a little Time accrue to them by putting it in Practice, if they would have but a little Patience.'

To these I will add a fifth Reason: Because the Churchwardens and Overseers are too apt to consider their Office as a Matter of private Emolument. To waste Part of the Money raised for the Use of the Poor in Feasting and Riot, and too often to pervert

the Power given them by the Statute to foreign, and sometimes to the very worst of Purposes.

The above Considerations bring my Lord *Hale* to complain of some Defects in the Law itself; 'in which,' says he, 'there is no Power from the Justices of the Peace, nor any superintendent Power, to compel the raising of a Stock where the Churchwardens and Overseers neglect it.

'The Act chargeth every Parish apart, where it may be they are liable to do little towards it; neither would it be so effectual as if three, four, five, or more contiguous Parishes did contribute towards the raising of a Stock proportionably to their Poor respectively.

'There is no Power for hiring or erecting a common House, or Place, for their common Workhouse; which may be, in some Respects, and upon some Occasions, useful and necessary.'

As to the first of these, I do not find any Alteration hath been made, nor if there was, might it possibly produce any desired Effect. The Consequence, as it appears, would be only making Churchwardens of the Justices of Peace, which many of them are already, not highly to the Satisfaction of their Parishes; too much Power vested in one Man being too apt perhaps to beget Envy.

The second and third do pretty near amount to one and the same Defect; And this, I think, is at present totally removed. Indeed, in my Lord *Hale's* own Time, though probably after he had written this Treatise, a Workhouse was erected in *London* under the Powers given by the Statute made in the 13 and 14 of \**Charles II.* and I believe with very good Success.

Since that Time other Corporations have followed the Example, as the City of *Bristol* in the Reign of

\* Chap. xii.

King

King *William* \*, and that of *Worcester* in the Reign of Queen *Anne* †, and in other Places.

And now by a late Statute, made in the Reign of King § *George I.* the Power of erecting Workhouses is made general over the Kingdom.

Now either this Method, proposed by Lord *Hale*, is inadequate to the Purpose; or this Act of Parliament hath been grossly perverted: For certain it is that the Evil is not removed, if indeed it be lessened, by the Erection of Workhouses. Perhaps, indeed, one Objection which my Lord *Hale* makes to the Statute of *Eliz.* may here recur; seeing that there is nothing compulsory, but all left to the Will and Direction of the Inhabitants.

But in Truth the Method itself will never produce the desired Effect, as the excellent Sir *Josiah Child* well observes ‡,—'It may be objected, says he, that this Work (the Provision for the Poor) may as well be done in distinct Parishes, if all Parishes were obliged to build Workhouses, and employ their Poor therein, as *Dorchester* and some others have done with good Success. I answer, that such Attempts have been made in many Places to my Knowledge, with very good Intents and strenuous Endeavours; but all that I ever heard of proved vain and ineffectual.' For the Truth of which, I believe, we may appeal to common Experience.

And, perhaps, no less ineffectual would be the Scheme proposed by this worthy Gentleman, tho' it seems to promise fairer than that of the learned Chief Justice; yet neither of them seem to strike at the Root of the Evil. Before I deliver any Sentiments of my own, I shall briefly take a View of the many subsequent Provisions with which the

\* 8 & 9 *W. III.* c. xxx.  
§ 9 *George I.* chap. i.

† 2 *Annæ*, c. viii.  
‡ *Essay on Trade*, c. ii.  
D 4                      ensured



Legislature have from Time to Time enforced and strengthened the foregoing Statute of *Elizabeth*.

The Power of putting out Children \* Apprentices is enforced by the 3d of † *Charles I.* which enacts, ' that all Persons to whom the Overseers shall bind ' Children by Virtue of the Statute of *Eliz.* may receive and keep them as Apprentices.' But there yet wanted, as Lord *Hale* says, a *sufficient Compulsory for Persons to take them*; wherefore it is enacted, by 8 and 9 ‡ *Will. III.* ' That all Persons to whom ' Apprentices are appointed to be bound by the ' Overseers with the Consent of the Justices, shall ' receive them, and execute the other Part of the Indenture, under the Penalty of 10*l.* for refusing, ' to be recovered before two Justices, on the Oath of ' one of the Churchwardens or Overseers.'

The Power of setting the Poor to Work is enlarged by 3 || *Charles I.* This Act gives the Churchwardens and Overseers of the Poor a Power, with the Consent of two Justices, or of one, if no more Justices shall be within their Limits, to set up and occupy any Trade for the setting the Poor to work.

The Power of relieving the impotent Poor (*i. e.* of distributing the public Money) the only one which hath much exercised the Minds of the Parish Officers, the Legislature seems to think rather wanted restraining than enlarging; accordingly, in the Reign of King § *William* they made an Act to limit the Power of the Officers in this Respect. As the Act contains the Sense of Parliament of the horrid Abuse

\* See 7 *Jac. I.* c. iii. which directs the Manner of putting out Apprentices, in Pursuance of any Gifts made to Corporations, &c. for that Purpose.

† Chap. iv. sect. 22. p. 8. the same Clause is in 21 *Jac.* c. xxviii. par. 33. ‡ Chap. xxx. sect. 6.

|| Chap. iv. sect. 22. *ubi supra.* § 3 and 4 *W.* and *M.* c. xi. sect. 11.

of

of the Statute of *Elizabeth*, I will transcribe Part of a Paragraph from it *verbatim*.

' And whereas many Inconveniences do daily arise ' in Cities, Towns Corporate, and Parishes, where ' the Inhabitants are very numerous by Reason of ' the unlimited Power of the Churchwardens and ' Overseers of the Poor, who do frequently upon ' frivolous Pretences (but chiefly for their own private Ends) give Relief to what Persons and Number they think fit, and such Persons being entred into the Collection Bill, do become after that a great Charge to the Parish, notwithstanding the Occasion or Pretence of their Collection oftentimes ceases, by which Means the Rates for the Poor are daily increased, contrary to the true Intent of a Statute made in the 43d Year of the Reign of her Majesty Queen *Elizabeth*, intituled, *An Act for the Relief of the Poor*; for remedying of which, the Statute enacts, that for the future, a Book shall be provided and kept in every Parish (at the Charge of the same Parish) wherein the Names of all Persons receiving Collection, &c. shall be registered, with the Day and Year of their first receiving it. This Book to be yearly, or oftener, viewed by the Parishioners, and the Names of the Persons who receive Collection shall be called over, and the Reason of the receiving it examined, and a new List made; and no other Person is allowed to receive Collection but by Order of a Justice of Peace, &c. except in case of pestilential Diseases or Small Pox \*.'

The 8th and 9th of the same King, reciting the Fear of the Legislature, *that the Money raised only for the Relief of such as are as well impotent as poor, should be misapplied and consumed by the idle, sturdy, and dis-*

\* The same Statute in another Part charges the Overseers, &c. with applying the Poores Money to their own Use.

*orderly*

*orderly Beggars,* ' enacts that every Person, his  
 ' Wife, Children, &c. who shall receive Relief  
 ' from the Parish shall wear a Badge marked with  
 ' the Letter P, &c. in Default of which, a Justice  
 ' of Peace may order the Relief of such Persons to  
 ' be abridged, suspended, or withdrawn, or may  
 ' commit them for 21 Days to the House of Cor-  
 ' rection, there to be kept to hard Labour. And  
 ' every Churchwarden or Overseer who relieves any  
 ' one without such a Badge, being convicted before  
 ' one Justice, forfeits 20 s.

Whether the Justices made an ill Use of the Power  
 given them by the Statute of the 3d and 4th of  
 King *William*, I will not determine; but the Parlia-  
 ment thought proper afterwards to abridge it for by  
 the 9th of \* *George I*, the Justices are forbidden ' to  
 ' make any Order for the Relief of a poor Person, 'till  
 ' Oath is first made of a reasonable Cause; and that  
 ' Application hath been made to the Parishioners at  
 ' the Vestry, or to two Officers, and that Relief  
 ' hath been refused. Nor can the Justice then give  
 ' his Order, 'till he hath summoned the Overseers to  
 ' shew cause why Relief should not be given.

By the same Statute, ' Those Persons to whom  
 ' the Justices order Relief, are to be registered in the  
 ' Parish Books, as long only as the Cause of the Re-  
 ' lief continues. Nor shall any Parish Officer be al-  
 ' lowed any Money given to the unregistered Poor,  
 ' unless on the most emergent Occasion. The Pe-  
 ' nalty for charging such Money to the Parish Ac-  
 ' count is 5 l. The Conviction is to be before two  
 ' Justices.'

Lastly, That the Parish may in all possible Cafes  
 be relieved from the Burden of the Poor, whereas  
 the Statute of *Elizabeth* obliges the Father, Mother,  
 &c. and Children, if able, to relieve their poor  
 Children and Parents; so, by the 5th of *George I*. †

\* Chap. 30. sect. 2.

† Chap. 8.

it

it is provided, ' That where any Wife or Child shall  
 ' be left by the Husband or Parents a Charge to  
 ' any Parish, the Churchwardens or Overseers may,  
 ' by the Order of two Justices, seize so much of  
 ' the Goods and Chattles, and receive so much of the  
 ' annual Rents and Profits of the Lands and Tene-  
 ' ments of such Husband or Parent, as the Justices  
 ' shall order, towards the Discharge of the Parish;  
 ' and the Sessions may empower the Churchwardens  
 ' and Overseers, to dispose thereof, for the provid-  
 ' ing for the Wife and bringing up the Children,  
 ' &c.'

Such is the Law that relates immediately to the  
 Maintenance of the impotent Poor; a Law so very  
 ample in its Provision, so strongly fortified with en-  
 forcing Powers, and so cautiously limited with all  
 proper Restraints, that, at first Sight, it appears suffi-  
 ciently adequate to every Purpose for which it was in-  
 tended, but Experience hath convinced us of the con-  
 trary.

And here I am well aware of the delicate Dilemma  
 to which I may seem reduced; since how shall I  
 presume to suppose any Defects in a Law, which the  
 Legislature seems to have laboured with such incef-  
 sant Diligence? But I am not absolutely driven to  
 this disagreeable Necessity, as the Fault may so  
 fairly be imputed to the Non-execution of the Law;  
 and indeed to the ill Execution of the Statute of  
*Elizabeth*, my Lord Chief Justice *Hale* chiefly im-  
 puts the imperfect Provision for the Poor in his  
 Time.

Sir *Josiah Child*, it is true, speaks more boldly, and  
 charges the Defects on the Laws themselves: One  
 general Position, however, which he lays down, *That*  
*there never was a good Law made, that was not well*  
*executed*, is surely very questionable. So therefore  
 must be his Opinion, if founded on that Maxim;  
 and this Opinion, perhaps, he would have changed,  
 had

had he lived to see the later Constitutions on this Head.

But whatever Defects there may be in the Laws, or in the Execution of them, I much doubt whether either of these Great Men hath found the Means of curing them. And this I am the more forward to say, as the Legislature, by a total Neglect of *both* their Schemes, seem to give sufficient Countenance to my Assertion.

In a Matter then of so much Difficulty, as well as so great Importance, how shall I venture to deliver my own Opinion? Such, indeed, is the Difficulty and Importance of this Question, that Sir *Josiah Child* thinks, *if a whole Session of Parliament were employed on this single Concern, it would be Time spent as much to the Glory of God, and Good of this Nation, as in any thing that noble and worthy Patriots of their Country can be engaged in.*

However, under the Protection of the candid, and with Deference to the learned Reader, I will enter on this Subject, in which, I think, I may with Modesty say, I have had some Experience; and in which I can with Truth declare, I have employed no little Time. If any Gentleman, who hath had more Experience, hath more duly considered the Matter, or whose superior Abilities enable him to form a better Judgment, shall think proper to improve my Endeavours, he hath my ready Consent. Provided the End be effected, I shall be contented with the Honour of my Share (however inconsiderable) in the Means. Nay, should my Labours be attended only with Neglect and Contempt; I think I have learned (for I am a pretty good Historian) to bear such Misfortunes without much Repining.

By THE POOR, then, I understand such Persons as have no Estate of their own to support them, without Industry; nor any Profession or Trade, by which,

which, with Industry, they may be capable of gaining a comfortable Subsistence.

This Class of the People may be considered under these three Divisions:

*First*, Such Poor as are unable to work.

*2dly*, Such as are able and willing to work.

*3dly*, Such as are able to work, but not willing.

As to the *First* of these, they are but few. An utter Incapacity to work must arise from some Defect, occasioned either by Nature or Accident. Natural Incapacities are greatly the most, (perhaps the only) considerable ones; for as to accidental Maims, how very rarely do they happen, and, I must add, how very nobly are they provided for, when they do happen! Again, as to natural Incapacities, they are but few, unless those two general Circumstances, one of which must, and the other may befall all Men; I mean, the Extremes of Youth and Age: for, besides these, the Number of Persons who really labour under an utter Incapacity of Work, will, on a just Inspection, be found so trifling, that two of the *London* Hospitals might contain them all. The Reader will be pleased to observe, I say of those who *really labour*, &c. for he is much deceived, who computes the Number of Objects in the Nation, from the great Number which he daily sees in the Streets of *London*. Among whom I myself have discovered some notorious Cheats, and my good Friend Mr. *Welch*, the worthy High Constable of *Holborn* Division, many more. Nothing, as I have been well informed, is more common among these Wretches, than for the *Lame*, when provoked, to use their Crutches as Weapons instead of Supporters; and for the *Blind*, if they should hear the *Beadle* at their Heels, to outrun the *Dogs* which guided them before. As to Diseases to which Human Nature is universally liable, they sometimes (though very rarely; for Health is the happy Portion of Poverty) befall the Poor; and at all such Times

Times

Times they are certainly Objects of Charity, and entitled by the Law of God to Relief from the Rich.

Upon the whole, this first Class of the Poor is so truly inconsiderable in Number, and to provide for them in the most ample and liberal Manner would be so very easy to the Public; to support and cherish them, and to relieve their Wants, is a Duty so positively commanded by Our Saviour, and is withal so agreeable and delightful in itself, affording the most desirable Object to the strong Passion of Pity; nay, and in the Opinion of some, to Pride and Vanity also; that I am firmly persuaded it might be safely left to voluntary Charity, unenforced by any compulsive Law. And if any Man will profess so little Knowledge of Human Nature, and so mean and unjust an Opinion of the Christianity, I might say the Humanity, of his Country, as to affect a contrary Opinion, notwithstanding all I have said, let him answer the following Instance, which may be called an Argument *à posteriori*, for the Truth of my Assertion. Such, I think, is the present Bounty to Beggars; for, at a Time when every Man knows the vast Tax which is raised for the Support of the Poor, and when all Men of Property must feel their Contributions to this Tax, Mankind are so forward to relieve the Appearance of Distress in their Fellow-creatures, that every Beggar, who can but moderately well personate Misery, is sure to find Relief and Encouragement; and this, though the Giver must have great Reason to doubt the Reality of the Distress, and when he can scarce be ignorant that his Bounty is illegal \*, and that he is encouraging a Nuisance. What then must be the Case, when there should be no such Tax, nor any such Contribution; and when, by relieving a known

\* This was forbidden by many Statutes, and by the Act of 27 Henry VIII. every Person giving any Money in Alms, but to the common Boxes and common Gatherings in every Parish, forfeits twelve Times as much as he gives. and

and certain Object of Charity, every good Man must be assured, that he is not only doing an Act which the Law allows, but which Christianity and Humanity too exact of him?

However, if there be any Person who is yet unwilling to trust the Poor to voluntary Charity, or if it should be objected, that there is no Reason to lay the whole Burden on the worthier Part of Mankind, and to excuse the covetous Rich; and that a Tax is therefore necessary to force open the Purfes of these latter; let there be a Tax then, and a very inconsiderable one would effectually supply the Purpose\*.

I come now to consider the *second* Class. These are in Reason, tho' not in Fact, equally Objects of the Regard of the compassionate Man, and much more worthy the Care of the Politician; and yet, without his Care, they will be in a much worse Condition than the others: for they have none of those Incitements of Pity which fill the Pockets of the artful Beggar, and procure Relief for the Blind, the Lame, and other visible Objects of Compassion: Such therefore, without a Law, and without an honest and sensible Execution of that Law, must languish under, and often perish with Want. A melancholy and dreadful Reflection! and the more so, as they are capable of being made not only happy in themselves, but highly useful to the Service of the Community.

To provide for these, seems, as I have said, to have been the chief Design of the Statute of *Elizabeth*, as well as of several Laws enacted since; and that this Design hath hitherto failed, may possibly have arisen from one single Mistake, but a Mistake

\* The Reader is desired to consider the Author here as speaking only of the impotent Poor, and as hoping that some effectual Means may be found out of procuring Work, and consequently Maintenance for the able and industrious. which

which must be fatal, as it is an Error in the first Concoction. The Mistake I point at is, that the Legislature have left the whole Work to the Overseers. They have rather told them what they are to do (*viz.* to employ the industrious Poor) than how they shall do it. It is true, the original Act directs them, by a parochial Tax, to raise a convenient Stock of Flax, Hemp, Wool, Thread, Iron, and other Ware and Stuff, to set the Poor to Work. A Direction so general and imperfect, that it can be no Wonder, considering what sort of Men the Overseers of the Poor have been, that it should never have been carried into Execution.

To say the Truth, this Affair of finding an universal Employment for the industrious Poor, is of great Difficulty, and requires Talents not very bountifully scattered by Nature among the whole human Species. And yet difficult as it is, it is not I hope impracticable, seeing that it is of such infinite Concern to the Good of the Community. Hands for the Work are already supposed, and surely Trade and Manufacture are not come to so low an Ebb, that we should not be able to find Work for the Hands. The Method of adapting only seems to be wanting. And though this may not be easy to discover, it is a Task surely not above the Reach of the *British* Parliament, when they shall think proper to apply themselves to it. Nor will it, I hope, be construed Presumption in me to say, that I have myself thought of a Plan for this Purpose, which I am ready to produce, when I shall have any Reason to see the least Glimpse of Hope, that my Labour in drawing it out at length would not be absolutely and certainly thrown away.

The last, and much the most numerous Class of Poor, are those who are able to work, and not willing. This likewise hath fallen under the Eye of the Legislature, and Provisions have been made concerning it; which, if in themselves efficacious, have at

have at least failed of producing any good Effect, from a total Neglect in the Execution.

By the 43 *Eliz.* the Churchwardens and Overseers, or greater Part of them, with the Consent of two Justices, shall take Order for the setting to Work the Children of all such Parents as they shall think not able to maintain them; as also, all such married or unmarried Persons, as shall have no Means to maintain themselves, nor any ordinary Trade or Calling whereby to get their Living.

Besides this Power of compelling the Poor to work, the Legislature hath likewise compelled them to become, 1. Apprentices, and, 2. Servants. We have already seen the Power of the Overseers, with the Assistance of the Justices, to put poor Children Apprentices; and likewise to oblige their Masters to receive them. And long before, a Compulsion was enacted \* on poor Persons to become Apprentices; so that any Householder, having and using Half a Ploughland in Tillage, may compel any poor Person under Twenty-one and unmarried, to serve as an Apprentice in Husbandry, or in any other Kind of Art, Mystery, or Science (before expressed in the Act †:) and if such Person, being so required, refuse to become an Apprentice, one Justice of Peace may compel him, or commit him to Prison, there to remain till he will be bound.

2dly, The Poor are obliged to become Servants:

By the 5th of *Eliz.* † it is enacted, ' That every Person being unmarried, and every other Person under the Age of 30, who hath been brought up in any of the Sciences, &c. of Clothiers, Woollen Cloth Weavers, Tuckers, Fullers, Clothworkers, Shearmen, Dyers, Hosiers, Taylors, Shoemakers, Tanners, Pewterers, Bakers, Brewers,

\* 5 *Eliz.* c. 4. § 35. † *Viz.* Every Trade then used. † Chap. 4. § 4.

E Grovers,



Glovers, Cutlers, Smiths, Farriers, Curriers,  
 Sadlers, Spurriers, Turners, Tappers, Hatmak-  
 ers or Felmakers, Butchers, Cooks, or Millers,  
 or who hath exercised any of these Trades by the  
 Space of three Years or more; and not having in  
 Lands, Rents, &c. an Estate of 40 s. clear yearly  
 Value, Freehold, nor being worth in Goods 10 l.  
 and so allowed by two Justices of the County,  
 where he hath most commonly inhabited, or by  
 the Mayor, &c. nor being retained with any Per-  
 son in Husbandry, nor retained in any of the a-  
 bove Sciences, or in any other Art or Science; nor  
 lawfully retained in Household, or in any Office,  
 with any Nobleman, Gentleman, or others; nor  
 having a convenient Farm, or other Holding, in  
 Tillage, whereupon he may lawfully employ his  
 Labour, during the Time that he shall con-  
 tinue unmarried, or under the Age of Thirty, up-  
 on Request made by any Person using the Art or  
 Mystery, wherein the Person so required hath been  
 exercised as aforesaid, shall be retained.

And every Person between the Age of Twelve  
 and Sixty, not being lawfully retained in the se-  
 veral Services mentioned in the Statute \*, nor be-  
 ing a Gentleman born, or a Scholar in either Uni-  
 versity or in any School, nor having an Estate of  
 Freehold, of 40 s. per Annum Value, nor being  
 worth in Goods 10 l. nor being Heir to 10 l. per  
 Annum, or 40 l. in Goods; nor being a necessary  
 or convenient Servant lawfully retained; nor hav-  
 ing a convenient Farm or Holding, nor otherwise  
 lawfully retained, shall be compelled to be retained  
 to serve in Husbandry, by the Year, with any Per-  
 son using Husbandry within the same Shire.

Every such Person refusing to serve upon Re-  
 quest, or covenanting to serve, and not serving;

\* Ibid. § 7.

or departing from his Service before the End of  
 his Term, unless for some reasonable Cause to be  
 allowed before a Justice of the Peace, Mayor, &c.  
 or departing at the End of his Term without a  
 Quarter's Warning given before two Witnesses,  
 may be committed by two Justices of the Peace to  
 Prison, there to remain without Bail or Mainprize,  
 till he shall become bound to his Master, &c. to  
 serve, &c. \*

Nor shall any Master in any of the Arts and  
 Sciences aforesaid, retain a Servant for less than a  
 Year †; nor shall any Master put away a Ser-  
 vant retained by this Act within his Term, nor at  
 the End of the Term without a Quarter's Warn-  
 ing, under the Penalty of 40 s. †

Artificers, &c. are compellable by a Justice  
 of the Peace, or the Constable or other Head-Offi-  
 cer of a Township, to serve in the Time of Hay  
 or Corn Harvest. The Penalty of Disobedience  
 is Imprisonment in the Stocks by the Space of two  
 Days and one Night ||.

Women between the Age of 12 and 40, may  
 be obliged, by two Justices, to enter into Service  
 by the Year, Week, or Day; or may be com-  
 mitted quousque §.

The Legislature having thus appointed what Per-  
 sons shall serve, have gone farther, and have direc-  
 ted a Method of ascertaining how they shall serve:  
 for which Use principally is that excellent Constitu-  
 tion of 5 Elizabeth \*\*, That the Justices of the  
 Peace, with the Sheriff of the County, if he con-  
 veniently may, the Mayor, &c. in Towns Corpo-  
 rate, shall yearly within six Weeks of Easter, as-  
 semble together, and, with the Assistance of such

\* Ib. sect. 5, 6, 9. † Ib. sect. 3. ‡ Ib. sect.  
 5, 6, 8. || Ib. sect. 28. § Ib. sect. 24. \*\* Ib.  
 sect. 15.

' discreet Persons as they shall think proper to call to  
 ' them, and respecting the Plenty or Scarcity of the  
 ' Time, and other Circumstances, shall, within the  
 ' Limits of their Commission, rate and appoint the  
 ' Wages of Artificers, Labourers, &c. by the Year,  
 ' Month, Week, or Day, with or without Meat  
 ' and Drink.' Then the Statute enumerates several  
 Particulars, in the most explicate Manner, and con-  
 cludes with these general Words: ' and for any  
 ' other kind of reasonable Labour and Service.'

' These Rates are appointed to be engrossed in  
 ' Parchment, and certified into Chancery, before  
 ' the 12th Day of July; and before the first Day of  
 ' September, several printed Proclamations, contain-  
 ' ing the Rates, and a Command to all Persons to  
 ' observe them, are to be sent to the Sheriff and  
 ' Justices, and to the Mayor, &c. These Procla-  
 ' mations are to be entered of Record with the Clerk  
 ' of the Peace, to be fixed up in the Market-Towns,  
 ' and to be publickly proclaimed in all the Mar-  
 ' kets till Michaelmas \*.

' And if any Person, after the said Proclamations  
 ' shall be so sent down and published, shall, by any  
 ' secret Ways or Means, directly or indirectly retain  
 ' or keep any Servant, Workman, or Labourer, or  
 ' shall give any greater Wages, or other Commodi-  
 ' ty, contrary to the true Intent of the Statute, or  
 ' contrary to the Rates assessed, he shall forfeit 5 l.  
 ' and be imprisoned by the Space of ten Days †.

' And every Person who is retained, or takes any  
 ' Wages contrary to the Statute, shall be imprisoned  
 ' 21 Days ‡: And every such Retainer, Promise,  
 ' Gift and Payment, or Writing and Bond for  
 ' that Purpose, are made absolutely void.

' Every Justice of Peace, or Chief Officer, who  
 ' shall be absent at the Rating of Wages, unless the

\* Ib. sect. 16. † Ib. sect. 18. ‡ Ib. sect. 19, 20.  
 ' Justices

' Justices shall allow the reasonable Cause of his Ab-  
 ' sence, forfeits 10 l. \*

That this Statute may from time to time be  
 carefully and diligently put in Execution, ' The  
 ' Justices are appointed to meet twice a Year, to  
 ' make a special and diligent Enquiry of the Bran-  
 ' ches and Articles of this Statute, and of the good  
 ' Execution of the same, and severely to correct  
 ' and punish any Defaults: for which Service they  
 ' are allowed 5 s. per Day †. No inconsiderable  
 Allowance at that Time!

But all this Care of the Legislature proved, it  
 seems, ineffectual; for 40 Years after the making  
 this Statute, we find the Parliament complaining,  
 ' That the said Act had not, according to the true  
 ' Meaning thereof, been duly put in Execution;  
 ' and that the Rates of Wages for poor Artificers,  
 ' Labourers, and other Persons, had not been rated  
 ' and proportioned according to the politic Intention  
 ' of the said Act ‡. A Neglect which seems to  
 have been occasioned by some Doubts raised in *West-*  
*minster-hall*, concerning the Persons who were the  
 Subjects of this Law. For the clearing therefore  
 any such Doubt, this subsequent Statute gives the  
 Justices an express Power ' to rate the Wages of any  
 ' Labourers, Weavers, Spinsters, and Workmen or  
 ' Workwomen whatsoever, either working by the  
 ' Day, Week, Month, Year, or taking any Work  
 ' at any Person's Hands whatsoever, to be done by  
 ' the Great, or otherwise ||.

And to render the Execution of this Law the  
 more easy, the Statute of James I. enacts, 1. ' That  
 ' in all Counties where General Sessions are kept in  
 ' several Divisions, the Rating Wages at such re-  
 ' spective General Sessions, shall be as effectual with-

\* Ib. sect. 17. † Ib. sect. 37, 38. ‡ Preamble  
 to 1 Jac. c. 6. || Ib. sect. 3.

in the Division, as if they had been rated at the Grand General Session \*.

2. The Method of certifying the Rates in Chancery appearing, I apprehend, too troublesome and tedious, such Certificate is made no longer necessary, but the Rates being assessed and engrossed in Parchment, under the Hands and Seals of the Justices, the Sheriff, or Chief Officer of Towns Corporate, may immediately proclaim the same †.

And whereas Wool is the great Staple Commodity of this Kingdom, and the Woollen Trade its principal Manufacture, the Parliament have given particular Attention to the Wages of Artificers in this Trade.

For, 1. By the Statute of James I. †, 'No Clothier, being a Justice of Peace in any Precinct or Liberty, shall be a Rater of Wages for any Artizan depending upon the making of Cloth.'

2. 'Clothiers not paying so much Wages to their Workmen or Workwomen, as are rated by the Justices, forfeit 10 s. for every Offence ‥.'

3. By a late Statute §, 'All Persons anywise concerned in employing any Labourers in the Woollen Manufactory, are required to pay the full Wages or Price agreed on, in Money, and not in Goods, Truck, or otherwise; nor shall they make any Deduction from such Wages or Price, on account of any Goods sold or delivered previous to such Agreement. And all such Wages are to be levied, on Conviction, before two Justices, by Distress; and, for Want of Distress, the Party is to be committed for six Months, or until full Satisfaction is made to the Party complaining. Besides which the Clothier forfeits the Sum of 100 L. \*\*'

\* Ib. sect. 5. † Ib. sect. 6. ‡ Ib. sect. 7.  
‖ Ib. sect. 7. § 12 Geo. I. c. 34. sect. 3. \*\* Ib. sect. 4.

4. By the same Statute, 'All Contracts, By-laws, &c. made in unlawful Clubs, by Persons brought up in, or exercising the Art of a Wooll-comber or Weaver, for regulating the said Trade, settling the Prices of Goods, advancing Wages, or lessening the Hours of Work, are declared to be illegal, and void; and any Person concerned in the Woollen Manufactures, who shall knowingly be concerned in such Contract, By-law, &c. or shall attempt to put it in Execution, shall, upon Conviction before two Justices, suffer three Months Imprisonment \*.'

But long before this Act, a general Law was made †, to punish all Conspiracies for raising Wages, limiting Hours of Work, &c. among Artificers, Workmen, and Labourers; and if such Conspiracy was to extend to a general Advance of Wages all over the Kingdom, any Insurrection of a Number of Persons, in Consequence of it, would be an overt Act of High Treason.

From this cursory View it appears, I think, that no Blame lies at the Door of the Legislature, which hath not only given the Magistrate, but even private Persons, with his Assistance, a Power of compelling the Poor to work; and, 2dly, hath allotted the fullest Powers, and prescribed the most effectual Means for ascertaining and limiting the Price of their Labour.

But so very faulty and remiss hath been the Execution of these Laws, that an incredulous Reader may almost doubt whether there are really any such existing. Particularly as to that which relates to the rating the Wages of Labourers; a Law which at first, it seems, was too carelessly executed, and which hath since grown into utter Neglect and Disuse.

Hath this total Disuse arisen, in common with the Neglect of other wholesome Provisions, from Want

\* Ib. sect. 1. † 2 & 3 E. VI. c. 15.



of due Attention to the Public Good? or is the Execution of this Law attended with any extraordinary Difficulty? or, lastly, are we really grown, as Sir *Josiah Child* says, wiser than our Forefathers, and have discovered any Fault in the Constitution itself; and that to retrench the Price of Labour by a Law is an Error in Policy?

This last seems to me, I own, to be very strange Doctrine, and somewhat of a Paradox in Politics; however, as it is the Sentiment of a truly wise and great Man, it deserves a fair Discussion. Such I will endeavour to give it; since no Man is more inclined to respect the Opinions of such Persons, and as the Revival of the Law, which he opposes, is, I think, absolutely necessary to the Purpose I am contending for.

I will give the Passage from Sir *Josiah* at length. It is in Answer to this Position, *That the Dearness of Wages spoils the English Trade.* 'Here, says he, the Author propounds the making a Law to retrench the Hire of poor Mens Labour, (an honest charitable Project, and well becoming an Usurer!) The Answer to this is easy. *First*, I affirm, and can prove, he is mistaken in Fact; for the *Dutch*, with whom we principally contend in Trade, give generally more Wages to all their Manufacturers, by at least Twopence in the Shilling, than the *English*. *Secondly*, Wherever Wages are high, universally throughout the whole World, 'tis an infallible Evidence of the Riches of that Country; and wherever Wages for Labour run low, it is a Proof of the Poverty of that Place. *Thirdly*, It is Multitudes of People, and good Laws, such as cause an Encrease of People, which principally enrich any Country; and if we retrench by Law the Labour of our People, we drive them from us to other Countries that give better Rates; and so the *Dutch* have drained us of our  
Seamen

Seamen and Woollen Manufacturers, and we the *French* of their Artificers and Silk-manufacturers; and many more we should, if our Laws otherwise gave them fitting Encouragement; of which more in due Place. *Fourthly*, If any particular Trades exact more here than in *Holland*, they are only such as do it by virtue of Incorporations, Privileges, and Charters, of which the Cure is easy, by an Act of Naturalization, and without compulsory Laws. It is true, our Great Grandfathers did exercise such Policy, of endeavouring to retrench the Price of Labour by a Law (altho' they could never effect it;) but that was before Trade was introduced into this Kingdom; we are since, with the rest of the Trading World, grown wiser in this Matter, and I hope shall so continue.\*

To this I reply, 1. That the making such a Law is not only an honest, but a charitable Project; as it proposes, by retrenching the Price of poor Mens Labour, to provide Labour, and consequently Hire for all the Poor who are capable of Labour. In all Manufactures whatever, the lower the Price of Labour is, the cheaper will be the Price to the Consumer; and the cheaper this Price is, the greater will be the Consumption, and consequently the more Hands employed. This is likewise a very charitable Law to the poor Farmer, and never more necessary than at this Day, when the Rents of Lands are rated to the highest Degree. The great Hopes which the Farmer hath, (indeed his common Relief from Ruin) is of an Exportation of Corn. This Exportation can not be by Law, unless when the Corn is under such a particular Price. How necessary then is it to him, that the Price of Labour should be confined within moderate Bounds, that the Exportation of Corn, which is of such general Advantage to the Kingdom, should turn, in any considerable manner, to his private Profit? And what Reason is there to imagine, that  
this

\* Preface to his Discourse on Trade.

this Power of limiting Wages should be executed in any dishonest or uncharitable Manner? Is it not a Power entrusted to all the Justices of the County, or Division, and to the Sheriff, with the Assistance of grave, sober, and substantial Persons, who must be sufficient Judges of the Matter, and who are directed to have Regard to the Plenty and Scarcity of the Times? Is it to be suspected, that many Persons of this Kind should unite in a cruel and flagitious Act, by which they would be liable to the Condemnation of their own Consciences, to the Curses of the Poor, and to be reproached by the Example of all their neighbouring Counties? Are not much grosser Exorbitancies to be feared on the other Side, when the lowest Artificers, Husbandmen, and Labourers, are made Judges in their own Cause; and when it is left to their own Discretion, to exact what Price they please for their Labour, of the poor Farmer or Clothier; of whom if they cannot exact an extravagant Price, they will fly to that Alternative which Idleness often prefers, of Begging or Stealing? *Lastly*, Such a Restraint is very wholesome to the poor Labourers themselves; of whom Sir *Josiah* observes \*,

‘ that they live better in the dearest Countries for Provisions, than in the cheapest, and better in a dear Year than in a cheap, especially in relation to the public Good; for, in a cheap Year, they will not work above two Days in a Week; their Humour being such that they will not provide for a hard Time, but just work so much, and no more, as may maintain them in that mean Condition to which they have been accustomed.’ Is it not therefore, upon this Concession, demonstrable, that the poor Man himself will live much better (his Family certainly will) by these Means? Again, many of the Poor, and those the more honest and industrious,

\* Discourse on Trade, p. 17.

will

will probably gain by such a Law: for, at the same time that the impudent and idle, if left to themselves, will certainly exact on their Masters; the modest, the humble, and truly laborious, may often (and so I doubt not but the Case is) be oppressed by them, and forced to accept a lower Price for their Labour, than the Liberality of Gentlemen would allow them.

*2dly*, The two Assertions contained in the next Paragraph both seem to me suspicious. First, That the *Dutch* and other Nations have done all that in them lies, to draw from us our Seamen, and some of our Manufacturers, is certainly true; and this they would do at any Price: but that the *Dutch* do in general give more Wages to their Manufacturers than the *English*, is, I believe, not the Fact. Of the Manufactures of *Holland*, the only considerable Article which we ourselves take of them, except Linen, are Toys; and to this we are induced, not because the *Dutch* are superior to our Workmen in Genius and Dexterity, (Points in which they are not greatly celebrated) but because they work much cheaper. Nor is, *2dly*, The immediate Transition from Trade to Manufacture altogether so fair. The *Dutch*, it is true, are principally our Rivals in Trade in general, and chiefly as Carriers; but not so in Manufacture, particularly in the Woollen Manufacture. Here our chief Rivals are the *French*, amongst whom the Price of Labour is known to be considerably lower than with us. To this, among other Causes, (for I know there are others, and some very scandalous ones) they owe their Success over us in the *Levant*. It is indeed a Truth which needs no Comment nor Proof, that where Goods are of equal Value, the Man who sells cheapest will have the most Custom; and it is as certainly true, that he who makes up his Goods in the cheapest Manner, can sell them so,

*3dly*,

( 60 )

3dly, Sir *Josiah* asserts, 'That wherever Wages are high universally throughout the World, 'tis an infallible Evidence of the Riches of that Country; and wherever Wages for Labour run low, it is a Proof of the Poverty of that Place.'—If this be true, the Concession will do him no Service; for it will not prove, that to give high Wages is the Way to grow rich; since it is much more probable, that Riches should cause the Advance of Wages, than that high Wages should produce Riches. This latter, I am sure, would appear a high Solecism in private Life, and I believe it is no less so in public.

4thly, His next Assertion, *That to retrench by Law the Labour of our People, is to drive them from us*, hath partly received an Answer already. To give this Argument any Force, our Wages must be reduced at least below the Standard of other Countries; which is, I think, very little to be apprehended; but, on the contrary, if the Labourer should carry his Demands ever so little higher, as may be reasonably expected, the Consumption of many Manufactures will not only be confined to our own People, but to a very few of those People.

Thus, I hope, I have given a full Answer to this great Man, whom I cannot dismiss, without observing a manifest Mistake of the Question, which runs thro' all his Arguments; all that he advances concluding indeed only to the *Quantum* of Wages which shall be given for Labour. He seems rather to argue against giving too little, than against regulating what is to be given; so that his Arguments are more proper for the Consideration of the Justices at their Meeting for settling the Rates of Wages, than for the Consideration of the Legislature, in a Debate concerning the Expediency of the above Law. To evince the Expediency of which, I appeal to the concurrent Sense of Parliament in so many different Ages; for this is not only testified expressly in the  
above

( 61 )

above Statutes of *Elizabeth* and *James*, but may be fairly implied from those of *Edward VI.* and *George I.* above recited.

I have moreover, I think, demonstrated, 1. The Equity of this Law; and that it is as much for the Service of the Labourer as of his Master. 2. The Utility of it to Trade: I shall only add, the Necessity of it, in order to execute the Intention of the Legislature, in compelling the Idle to work; for is it not the same Thing to have the Liberty of working or not at your own Pleasure, and to have the absolute Nomination of the Price at which you will work? The Idleness of the common People in this Town is, indeed, greatly to be attributed to this Liberty; most of these, if they cannot exact an exorbitant Price for their Labour, will remain idle. The Habit of exacting on their Superiors is grown universal, and the very Porters expect to receive more for their Work than the Salaries of above Half the Officers of the Army amount to.

I conclude then, that this Law is necessary to be revived, (perhaps with some Enlargements) and that still upon one Account more; which is, to enable the Magistrate clearly to distinguish the Corrigible from the Incorrigible in Idleness: for when the Price of Labour is once established, all those Poor who shall refuse to labour at that Price, even at the Command of a Magistrate, may properly be deemed incorrigibly idle.

For these the Legislature have, by several Acts of Parliament, provided a Punishment, by Commitment to *Bridewell* either for more or less Time: And a very severe Punishment this is, if being confirmed in Habits of Idleness, and in every other vicious Habit, may be esteemed so.

These Houses are commonly called Houses of Correction, and the Legislature intended them certainly for Places of Correction of Idleness at least:

for in many Acts, where Persons are ordered to be committed to *Bridewell*, it is added, *There to be kept to hard Labour*; nay, in the Statute of *Jac. I.* \* these Houses of Correction are directed 'to be built with a convenient Backside adjoining, together with Mills, Turfis, Cards, and such like necessary Implements, to set Rogues and other idle People on Work.' Again, in the same Statute, Authority is given to the Master or Governor, 'to set to work such Rogues, Vagabonds, idle and disorderly Persons, as shall be brought or sent unto the said House, (being able) while they shall continue in the said House; and to punish them, by putting Fetters on them and by Whipping; nor are the said Rogues, &c. to have any other Provision than what they shall earn by their Labour.'

The Erection of these Houses, as is usual with new Institutions, did at first greatly answer the good Purposes for which they were designed, inasmuch that my Lord *Coke* observes, 'that upon the making of the Statute 39 *Eliz.* for the Erection of Houses of Correction, and a good Space after, whilst Justices of Peace and other Officers were diligent and industrious, there was not a Rogue to be seen in any Part of *England*.' And again he prophesies, that 'from the Erection of these Houses we shall have neither Beggar nor idle Person in the Commonwealth †.'

But this great Man was a much better Lawyer than he was a Prophet; for whatever these Houses were designed to be, or whatever they at first were,

\* Chap. 4. These Houses were first begun to be erected *Ann. 13 Eliz.* the Prison for Idleness being, before that Time the Stocks. In the 11th Year of *Henry VII.* Vagabonds, Beggars, &c. are ordered to be set three Days and three Nights in the Stocks.

† 2 *Inst.* 729.

the

the Fact is, that they are at present in general; no other than Schools of Vice, Seminaries of Idleness, and Common-shores of Nastiness and Disease. As to the Power of Whipping, which the Act of *James I.* vests in the Governor, that, I believe, is very seldom used, and perhaps when it is, not properly applied. And the Justice in very few Instances (in none of Idleness) hath any Power of ordering such Punishment\*.

And with Regard to Work, the Intention of the Law is, I apprehend, as totally frustrated. Inasmuch that they must be very lazy Persons indeed who can esteem the Labour imposed in any of these Houses as a Punishment. In some, I am told, there is not any Provision made for Work. In that of *Middlesex* in particular, the Governor hath confessed to me that he hath had no Work to employ his Prisoners, and hath urged as a Reason, that having generally great Numbers of most desperate Felons under his Charge, who, notwithstanding his utmost Care, will sometimes get access to his other Prisoners, he dares not trust those who are committed to hard Labour with any heavy or sharp Instruments of Work, lest they should be converted into Weapons by the Felons.

What good Consequence then can arise from sending idle and disorderly Persons to a Place where they are neither to be corrected nor employed; and where with the Conversation of many as bad, and sometimes worse than themselves, they are sure to be improved in the Knowledge, and confirmed in the Practice of Iniquity? Can it be conceived that such Persons will not come out of these Houses much more idle and disorderly than they went in? The Truth of

\* By the last Vagabond Act, which repeals all the former, Rogues and Vagabonds are to be whipt, OR sent to the House of Correction.

this

( 64 )

this I have often experienced in the Behaviour of the Wretches brought before me; the most impudent and flagitious of whom, have always been such as have been before acquainted with the Discipline of Bridewell: A Commitment to which Place, tho' it often causes great Horror and Lamentation in the Novice, is usually treated with Ridicule and Contempt by those who have already been there.

For this Reason, I believe, many of the worthiest Magistrates have, to the utmost of their Power, declined a rigorous Execution of the Laws for the Punishment of Idleness, thinking that a severe Reprimand might more probably work the Conversion of such Persons than the committing them to *Bridewell*. This I am sure may with great Certainty be concluded, that the milder Method is less liable to render what is bad worse, and to complete the Destruction of the Offender.

But this is a Way of acting, however worthy be the Motive, which is sometimes more justifiable to a Man's own Conscience, than it would be in the *Court of King's Bench*, which requires the Magistrate to execute the Laws entrusted to his Care, and in the Manner which those Laws prescribe. And besides the Indecency of shewing a Disregard to the Laws in being, nothing surely can be more improper than to suffer the Idleness of the Poor, the Cause of so much Evil to the Society, to go entirely unpunished.

And yet should the Magistrate do his Duty as he is required, will the Intent and Purpose of the Legislature be answered? The Parliament was, indeed, too wise to punish Idleness barely by Confinement. Labour is the true and proper Punishment of Idleness, for the same Reason which the excellent Dr. *Swift* gives why Death is the proper Punishment of Cowardice. Where then is the Remedy? Is it to enforce the Execution of the Law as it now stands,

( 65 )

stands, and to reform the present Conduct of the several *Bridewells*? This would I believe be as difficult a Work as the cleansing the *Augean* Stables of old; and would require as extraordinary a Degree of Political, as that did of Natural Strength, to accomplish it. In Truth, the Case here is the same as with the Overseers before, the Trust is too great for the Persons on whom it devolves: And tho' these Houses are, in some Measure, under the Inspection of the Justices of Peace, yet this in the Statute is recommended in too general a Manner to their Care, to expect any good Fruits from it. As to the true and faithful Account which they are to yield to the Justices, at the Sessions, of the Persons in their 'Custody,' this is at present little more than Matter of Form; nor can it be expected to be any other in the Hurry of a public Sessions, and when the Stench arising from the Prisoners is so intolerable that it is difficult to get any Gentlemen to attend the Court at that Time. In the last Vagrant Act indeed two Justices are appointed twice, or oftener, every Year to examine into the State and Nature of Houses of Correction, &c. yet as it gives them no Power but of reporting to the Sessions, I believe it hath not produced any good Effect: For the Business of the Sessions is so complicated and various, that it happens, as in all Cases where Men have too much to do, that they do little or nothing effectually. Perhaps, indeed if two or more Justices of the Peace were appointed to meet once every Month at some convenient Place, as near as possible to the *Bridewell*, there to summon the Governor before them, to examine the Accounts of his Stock and Implements for Work, and to make such Orders (under what Restrictions the Parliament shall think proper) as to such Justices shall seem requisite; this might afford a Palliative at least. In short, the great Cure for Idleness is Labour; and this is its only proper Punishment;



ment; nor should it ever be in the Power of the idle Person to commute this Punishment for any other.

In the Reign of \* *Edward VI.* a most severe Law, indeed, was made for the Punishment of Idleness.—  
‘ If any Person (says the Statute) shall bring to  
‘ two Justices of Peace any runagate Servant, or any  
‘ other, which liveth idly and loiteringly by the Space  
‘ of three Days, the said Justices shall cause the said  
‘ idle and loitering Servant or Vagabond to be  
‘ marked with an hot Iron on the Breast with the  
‘ Letter V, and adjudge him to be Slave to the same  
‘ Person that brought and presented him, to have to  
‘ him, his Executors and Assigns for two Years,  
‘ who shall take the said Slave and give him Bread,  
‘ Water, or small Drink, and refuse Meat, and cause  
‘ him to work by beating, chaining, or otherwise,  
‘ in such Work and Labour as he shall put him, be  
‘ it never so vile. And if such Slave absent himself  
‘ from his Master within the Term, by the Space of  
‘ fourteen Days, he shall be adjudged by two Jus-  
‘ tices of the Peace to be marked on the Forehead  
‘ or the Ball of the Cheek, with a hot Iron, with the  
‘ Sign of an S, and shall be adjudged to be Slave  
‘ to his said Master for ever; and if the said Slave  
‘ shall run away a second Time he shall be adjudged  
‘ a Felon.’

This Statute lived no longer than two Years, indeed it deserved no longer a Date; for it was cruel, unconstitutional, and rather resembling the cruel Temper of a *Draco*, than the mild Spirit of the *English Law*. But, *est Modus*; there is a Difference between making Men Slaves, and Felons, and compelling them to be Subjects; in short, between throwing the Reins on the Neck of Idleness, and riding it with Spurs of Iron.

\* 1 *Ed. VI.* 13 Rep.

Thus

Thus have I endeavoured to give the Reader a general Idea of the Laws which relate to this single Point of employing the Poor; and, as well as I am able to discern, of their Defects, and the Reasons of those Defects. I have likewise given some Hints for the Cure, and have presumed to offer a Plan, which, in my humble Opinion, would effectually answer every Purpose desired.

But 'till this Plan shall be produced; or (which is more to be expected) 'till some Man of greater Abilities, as well as of greater Authority, shall offer some new Regulation for this Purpose; something, at least, ought to be done to strengthen the Laws already made; and to enforce their Execution. The Matter is of the highest Concern; and imports us not only as we are good Men and good *Christians*; but as we are good *Englishmen*. Since not only preserving the Poor from the highest Degrees of Wretchedness, but the making them useful Subjects, is the Thing proposed; *a Work*, says Sir *Josiah Child*\*, which would redound some hundreds of thousands per Ann. to the public Advantage. Lastly, it is of the utmost Importance to that Point which is the Subject Matter of this Treatise, for which Reason I have thought myself obliged to give it a full Consideration. ‘ The Want of a due Provision, says Lord † *Hale*, for Education and Relief of the  
‘ Poor in a Way of Industry, is that which fills the  
‘ Goals with Malefactors, and fills the Kingdom  
‘ with idle and unprofitable Persons that consume  
‘ the Stock of the Kingdom without improving it,  
‘ and that will daily increase, even to a Defolation  
‘ in Time. And this Error in the first Concoction  
‘ is never remediable but by Gibbets and whip-  
‘ ping.’

\* Page 88. † At the End of his Discourse touching the Relief the of Poor,

F 2

In



In serious Truth, if proper Care should be taken to provide for the present Poor, and to prevent their Encrease by laying some effectual Restraints on the Extravagance of the lower Sort of People, the remaining Part of this Treatise would be rendered of little Consequence ; since few Persons, I believe, have made their Exit at *Tyburn*, who have not owed their Fate to some of the Causes before mentioned. But as I am not too sanguine in my Expectations on this Head, I shall now proceed to consider of some Methods to obviate the Frequency of Robberies, which if less efficacious, are perhaps much easier than those already proposed. And if we will not remove the Temptation, at least we ought to take away all Encouragement to Robbery.

S E C T. V.

*Of the Punishment of RECEIVERS OF STOLEN GOODS.*

NOW one great Encouragement to Theft of all Kinds is the Ease and Safety with which stolen Goods may be disposed of. It is a very old and vulgar, but a very true Saying, ' that if there were no Receivers, there would be no Thieves.' Indeed could not the Thief find a Market for his Goods, there would be an absolute End of several Kinds of Theft ; such as Shop-lifting, Burglary, &c. the Objects of which are generally Goods and not Money. Nay Robberies on the Highway would so seldom answer the Purpose of the Adventurer that very few would think it worth their while to risque so much with such small Expectations.

But at present, instead of meeting with any such Discouragement, the Thief disposes of his Goods with almost as much Safety as the honestest Tradesman :

man : For first, if he hath made a Booty of any Value, he is almost sure of seeing it advertised within a Day or two, directing him *to bring the Goods to a certain Place where he is to receive a Reward* (sometimes the full Value of the Booty) *and no Questions asked.* This Method of recovering stolen Goods by the Owner, a very learned Judge formerly declared to have been, in his Opinion, a Composition of Felony. And surely if this be proved to be carried into Execution, I think it must amount to a full Conviction of that Crime. But, indeed, such Advertisements are in themselves so very scandalous, and of such pernicious Consequence, that if Men are not ashamed to own they prefer an old Watch or a Diamond Ring to the Good of the Society, it is pity some effectual Law was not contrived to prevent their giving this public Countenance to Robbery for the future.

But if the Person robbed should prove either too honest, or too obstinate, to take this Method of recovering his Goods, the Thief is under no Difficulty in turning them into Money. Among the great Number of Brokers and Pawn-brokers several are to be found, who are always ready to receive a gold Watch at an easy Rate, and where no Questions are asked, or, at least, where no Answer is expected but such as the Thief can very readily make.

Besides, the clandestine Dealers this Way who satisfy their Consciences with telling a ragged Fellow, or Wench, that *they hope* they came honestly by Silver, and Gold, and Diamonds ; there are others who scorn such pitiful Subterfuges, who engage openly with the Thieves, and who have Warehouses filled with stolen Goods only. Among the *Jews* who live in a certain Place in the City, there have been, and perhaps still are, some notable Dealers this Way, who in an almost public Manner have carried on a Trade for many Years with *Rotterdam*, where they have their Warehouses and Factors, and  
whither

whither they export their Goods with prodigious Profit, and as prodigious Impunity. And all this appeared very plainly last Winter in the Examination of one *Cadosa a Jew*, in the Presence of the late excellent Duke of *Richmond*, and many other Noblemen and Magistrates.

What then shall we say? Is not this Mischief worthy of some Remedy, or is it not capable of it? The noble Duke (one of the worthiest of Magistrates as well as of the best of Men) thought otherwise, as would have appeared, had his valuable Life, for the Good of Mankind, been prolonged.

Certain it is, that the Law as it now stands is ineffectual to cure the Evil. Let us see therefore, if possible, where the Defect lies.

At the Common Law, any one might lawfully (says Lord *Hale*) have received his own Goods from the Felon who stole them\*. But if he had received them upon Agreement not to prosecute, or to prosecute faintly, this would have been Theftbote punishable by Imprisonment and Ransom.

But in neither of the foregoing Cases would the Receiver of the Goods have become an Accessary to the Felon. So if one Man had bought another's Goods of the Thief, though he had known them to be stolen, if he had given the just Value for them, he would not have become an Accessary †. But if he had bought them at an Undervalue, this, Sir *Richard Hyde* held, would have made him an Accessary. My Lord *Hale* differs from his Opinion, and his Reason to some Readers may seem a pleasant one; for if there be any odds (says he) he that gives more, benefits the Felon more than he that gives less than Value. However this, his Lordship thinks, may be a Misdemeanor punishable by Fine and Imprisonment; but

\* Hist. P. C. vol. 1. p. 546. 619. *ib.*

† Hist. P. C. *ubi supra.*

that

that the bare receiving of Goods knowing them to be stolen makes not an Accessary.

So says the great Lord *Hale*, and so indeed was the Law; though the Judges seem not to have been unanimous in their Opinion. In the Book of *Affizes*\*, *Scrope* is said to have held otherwise; and though *Shard* there quashed an Appeal of Felony for receiving stolen Goods only, yet I cannot help observing, that the Reporter of the Case hath left a Note of Astonishment at the Judgment of the Court. This, says he, was wonderful! and wonderful surely it is, if he who receives, relieves, comforts, or assists a Felon, shall be an Accessary, that he shall not be so, who knowingly buys the Goods of the Felon; which is generally, I believe, the strongest Relief, Comfort and Assistance, which can be given him, and without the Hope and Expectation of which, he would never have committed the Theft or Robbery.

It is unnecessary, however, to enter further into this Controversy; since it is now expressly declared by Statute †, 'That the Receivers of stolen Goods, knowing them to be stolen, shall be deemed Accessaries after the Fact.'

But this Statute, though it removed the former Absurdity of the Law, was not sufficient to remedy the Evil; there yet remaining many Difficulties in bringing these pernicious Miscreants to Justice, consistent with legal Rules. For,

1. As the Offence of the Accessary is dependent on that of the Principal, he could not be tried or outlawed, till after the Conviction or Attainder of the Principal; so that however strong Evidence there might be against the Receiver, he was still safe, unless the Thief could be apprehended.

\* 27 Affiz. 69.

† 3 & 4 W. and M. c. 9.

F 4

2. I

( 72 )

2. If the Thief on his Trial should be acquitted, as often happens through some Defect of Evidence in the most notorious Cafes, the Receiver, being only an Accessary, tho' he hath confessed his Crime, or though the most undeniable Evidence could be brought against him, must be acquitted likewise.

3. In Petit Larceny there can be no such Accessary \*: for tho' the Statute says, that a Receiver of stolen Goods, knowing, &c. shall be an Accessary after the Fact, that is, legally understood to mean only in Cafes where such Accessary may be by Law; and that is confined to such Felonies as are to receive Judgment of Death, or to have the Benefit of Clergy. Now, for Petit Larceny, which is the Stealing Goods of less Value than a Shilling, the Punishment at Common Law is Whipping; and this was properly enough considered as too trifling an Offence to extend the Guilt to Criminals in a second Degree. But since Juries have taken upon them to consider the Value of Goods as immaterial, and to find upon their Oaths, that what is proved to be worth several Shillings, and sometimes several Pounds, is of the Value of Tenpence, this is become a Matter of more Consequence. For Instance; If a Pickpocket steal several Handkerchiefs, or other Things, to the Value of Twenty Shillings, and the Receiver of these, knowing them to be stolen, is discovered, and both are indicted, the one as Principal, the other as Accessary, as they must be; if the Jury convict the Principal, and find the Goods to be of as high Value as a Shilling, he must receive Judgment of Death; whereas, by finding the Goods (which they do upon their Oaths) to be of the Value of Tenpence, the Thief is ordinarily sentenced to be whipt, and returns immediately to his Trade of picking Pockets, and the Accessary is of course discharged, and of

\* Cro. Eliz. 750. Hale, Hist. Vol. 1. p. 530, 618.  
course

( 73 )

course returns to his Trade of receiving the Booty. Thus the Jury are perjured, the Public highly injured, and two excellent Acts of Parliament defeated, that two Miscreants may laugh at their Prosecutors, and at the Law.

The two former of these Defects are indeed remedied by a later Statute \*, which enacts, 'That the Buyers and Receivers of stolen Goods, knowing them to be stolen, may be prosecuted for a Misdemeanour, and punished by Fine and Imprisonment, though the principal Felon be not before convicted of Felony.'

This last Statute is again repeated in the 5th of Queen Anne †; and there the Power of the Court to punish in the Case of the Misdemeanour, is farther encreased to any other corporal Punishment, which the Court shall think fit to inflict, instead of Fine and Imprisonment; and, in the Case of the Felony, the Accessary is to receive Judgment of Death; but the Benefit of Clergy is not taken away. Lastly, By the Statute of George II. ‡ the Receivers of stolen Goods, knowing, &c. are to be transported for 14 Years. And by the same Statute, every Person taking Money or Reward, directly or indirectly, under Pretence or upon Account of helping any to stolen Goods, unless such Person apprehend and bring to his Trial the Felon, and give Evidence against him, is made guilty of Felony without Benefit of Clergy.

And thus stands the Law at this Day; which, notwithstanding the repeated Endeavours of the Legislature, Experience shews us, is incapable of removing this deplorable Evil from the Society.

The principal Defect seems, to me, to lie in the extreme Difficulty of convicting the Offender; for,

1. Where the Thief can be taken, you are not at Liberty to prosecute for the Misdemeanour.

\* 3 and 4 W. and M. c. 9. † Chap. 31. ‡ Chap. 11.  
2. The

( 74 )

2. The Thief himself, who must be convicted before the Accessary is to be tried, cannot be a Witness.

3. Without such Evidence it is very difficult to convict of the Knowledge, that the Goods were stolen; which, in this Case, can appear from Circumstances only. Such are principally, 1. Buying Goods of Value, of Persons very unlikely to be the lawful Proprietors. 2dly, Buying them for much less than their real Value. 3dly, Buying them, or selling them again, in a clandestine Manner, concealing them, &c. None of these are commonly liable to be proved; and I have known a Man acquitted, where most of these Circumstances have appeared against him.

What then is to be done, to extirpate this stubborn Mischief? to prove the pernicious Consequence of which, I need, I think, only appeal to the Sense of Parliament, testified in so many repeated Acts, and very strongly expressed in their Preambles.

First, Might it not be proper to put an effectual Stop to the present scandalous Method of compounding Felony, by public Advertisements in the News Papers? Might not the inserting such Advertisements be rendered highly criminal in the Authors of them, and in the Printers themselves, unless they discover such Authors?

2dly, Is it impossible to find any Means of regulating Brokers and Pawnbrokers? If so, What Arguments are there against extirpating entirely a Set of Miscreants, which, like other Vermin, harbour only about the Poor, and grow fat by sucking their Blood?

3dly, Why should not the receiving stolen Goods, knowing them to be stolen, be made an original Offence? by which means the Thief, who is often a poultry Offender in Comparison of the Receiver, and sometimes his Pupil, might, in little Felonies, be

( 75 )

be made a Witness against him: for thus the Trial of the Receiver would in no Case depend on the Trial or Conviction of the Thief.

4thly, Why may not the bare buying or taking to Pawn stolen Goods, above a certain Value, be made Evidence of receiving with Knowledge, &c. unless the Goods were bought in Market overt, (no Broker's or Pawnbroker's Shop to be reputed such Market overt) or unless the Defendant could prove, by a credible Witness to the Transaction, that he had good Cause to regard the Seller or Pawner of the Goods to be the real Owner. If 20 s. was the Value limited, it would answer all the Purposes contended for; and would in nowise interfere with the honest Trade (if indeed it ever be so) between the Pawnbroker and the Poor.

If none of these Methods be thought possible or proper, I hope better will be found out. Something ought to be done, to put an End to the present Practice, of which I see daily the most pernicious Consequences; many of the younger Thieves appearing plainly to be taught, encouraged and employed by the Receivers.

## S E C T. VI.

*Of Laws relating to VAGABONDS.*

**T**HE other great Encouragement to Robbery, beside the certain Means of finding a Market for the Booty, is the Probability of escaping Punishment.

First, then, The Robber hath great Hopes of being undiscovered: And this is one principal Reason, why Robberies are more frequent in this Town, and in its Neighbourhood, than in the remoter Parts of the Kingdom.

Who-

Whoever indeed considers the Cities of *London* and *Westminster*, with the late vast Addition of their Suburbs; the great Irregularity of their Buildings, the immense Number of Lanes, Alleys, Courts and Bye-places; must think, that, had they been intended for the very Purpose of Concealment, they could scarce have been better contrived. Upon such a View, the whole appears as a vast Wood or Forest, in which a Thief may harbour with as great Security, as wild Beasts do in the Desarts of *Africa* or *Arabia*.

Here, according to the Method I have hitherto pursued, I will consider, what Remedy our Laws have applied to this Evil, and whether, and wherein these Remedies appear defective.

There is no Part of our antient Constitution more admirable than that which was calculated to prevent the Concealment of Thieves and Robbers. The Original of this Institution is given to *Alfred*, at the End of his Wars with the *Danes*, when the *English* were very much debauched by the Example of those Barbarians, and betook themselves to all Manner of Licentiousness and Rapine. These Evils were encouraged, as the Historians say, by the vagabond State of the Offenders, who, having no settled Place of Abode, upon committing any Offence, shifted their Quarters, and went where it was difficult to discover them. To remedy this Mischief, therefore, *Alfred* having limited the Shires or Counties in a better Manner than before, divided them into Hundreds, and these again into Tithings, Decennaries, or ten Families \*.

Over

\* ' By these ten Families (says the Annotator to *Rapin*)  
' we are not to understand ten House-keepers, but ten  
' Lords of Manors, with all their Vassals, Tenants, La-  
' bourers, and Slaves; who, though they did not all live  
' under their Lord's Roof, were all counted Part of his Fa-  
' mily.

Over every one of these Tithings or Decennaries, there was a Chief, called the Tithingman or Burghholder, who had a Power to call a Court, and to try small Offences; the greater being referred to that Court, which was in like manner established over every Hundred.

Every one of these Heads of Families were Pledges to each other for the Behaviour of all their Family; and were likewise reciprocally Pledges for each other to the Hundred.

If any Person was suspected of a Crime, he was obliged to find Security for his good Behaviour out of the same Hundred and Tithing. This if he could not find, he had Reason to apprehend being treated with great Severity; and if any accused Person, either before or after his finding Bail, had fled from Justice, the whole Tithing and Hundred should pay a Fine to the King.

In Case of the Default of Appearance in a Decenner, his nine Pledges had one and thirty Days to bring the Delinquent forth to Justice. If this failed, then the Chief of those Decenners, by the Vote of that and the Neighbour Decennaries, was to purge himself both of the Guilt of the Fact, and of being Parties to the Flight of the Delinquent. And if they could not do this, then they were by their own Oaths to acquit themselves, and to bind themselves to bring the Delinquent to Justice as soon as they could; and, in the mean time to pay the Damage out of the Estate of the Delinquent; and

' mily. As there were no little Freeholders in those Times,  
' nor for long after, ten such Families must occupy a large  
' Space of Ground, and might well constitute a rural Tith-  
' ing.' But this rural Tithing would be larger than the  
' Hundred itself; and the very Name and Office of a Tith-  
' ingman continued in Parishes to this Day, shews that Lords  
' of Manors could not be here meant.

if



( 78 )

if that were not sufficient, then out of their own Estate\*.

Every Subject in the Kingdom was registred in some Tithing; only Persons of the first Rank had the Privilege (says Mr. *Rapin* †) that their single Family should make a Tithing, for which they were responsible. All Archbishops, Bishops, Earls, Barons, and all (says *Bracton*) who have Sok and Sah, Tol and Team, and these Kinds of Liberties, ought to have under their FRIDHBURGH, all their Knights, Servants, Esquires; and if any of them prove delinquent, the Lord shall bring him to Justice, or pay his Fine ‡.

The Master of the Family was answerable for all who fed at his Board, and were of his Livery, and for all his Servants of every Kind, even for those who served him for their Food only, without Wages. These were said to be of his Manupast; so were his Guests; and if a Man abode at any House but two Nights, the Master of that House was answerable for him ||.

In a word, says *Bracton*, every Man, as well Freemen as others, ought to belong to some Frankpledge, (*i. e.* to some Decenna) unless he be a Traveller, or belong to the Manupast of some other; or unless he gives some countervailing Security to the Public, as Dignity, (*viz.* Nobility) Order, (Knighthood, or of the Clergy) or Estate, (*viz.* either Freehold in Land, or personal Effects (*res immobiles*) if he be a Citizen.

By the Laws of *Edward the Confessor*, every Person, of the Age of 12 Years, ought to be sworn in a View of Frankpledge, *That he will neither become a Thief himself, nor be anywise accessory to Theft.*

\* *Bacon's Histor. Disc.* p. 43. † *Dissertation on the Government of the Anglo-Saxons.* ‡ *Bract. L.* 3. De Corona, chap. 10. || *Bract. ubi sup. Brit.* 19 b.

This

( 79 )

This Court, *Briton*\* tells us, was to be holden twice a Year, which was afterwards reduced to once a Year by *Magna Charta*; and no Man, says the *Mirror*, was, by an ancient Ordinance, suffered to remain in the Kingdom, who was not enrolled in *Decenna*, and had Freemen for his Pledges †.

Such was this excellent Constitution, which even in *Alfred's* Time, when it was in its Infancy, wrought so admirable an Effect, that *Ingulphus* says, a Traveller might have openly left a Sum of Money safely in the Fields and Highways, and have found it safe and untouched a Month afterwards ‡. Nay, *William of Malmesbury* tells us, the King ordered Bracelets of Gold to be hung up in the Cross-ways, as a Proof of the Honesty of his People, none ever offering to meddle with them ||.

But this Constitution would have been deficient, if it had only provided for the incorporating the Subjects, unless it had confined them to the Places where they were thus incorporated.

And therefore by the Laws of *Alured* or *Canute*, it was rendered unlawful for any of the Decenners to depart from their Dwelling, without the Consent of their Fellow-Pledges; nor were they at Liberty to leave the Country, without the Licence of the Sheriff or Governor of the same §.

And if a Person, who fled from one Tithing, was received in another, the Tithing receiving him should answer for his Deed (*i. e.* by Amercement) if he was there found \*\*.

‘Before this Order was established,’ says *Rapin*, ‘the meaner Sort of People might shift their Quarters, by reason of their Obscurity, which prevented them from being taken Notice of. But it was im-

\* *Brit.* 36 b. † *Mirr.* chap. 1. sect. 17. & chap. 5. sect. 1. ‡ *Script.* post *Bedam*, p. 870. || *Ib.* p. 44. § *Bacon*, p. 44. \*\* *Brit.* ubi supra.

‘ pos-



possible for them to change their Habitation, after they were obliged to bring a Testimonial from their Tithing, to enable them to settle and be registred in another \*.

Whilst this antient Constitution remained entire, 'Such Peace,' says Lord Coke, 'was preserved within the Realm, as no Injuries, Homicides, Robberies, Thefts, Riots, Tumults, or other Offences, were committed; so as a Man, with a white Wand, might safely have ridden, before the Conquest, with much Money about him, without any Weapon, through England †.' Nay even in the tumultuous Times of William the Conqueror, the Historians tell us, there was scarce a Robber to be found in the Kingdom.

This View of Frankpledge remained long after the Conquest: for we find it twice repeated in one Chapter of Magna Charta †; and there particularly it is said, *Fiat autem visus de Frankpleg sic videlicet QUOD PAX NOSTRA TENEATUR.* Nay, Bracton, who wrote after that Time, and Fleta after him, speak of Frankpledge as then subsisting.

The Statute of Marlborough likewise, which was made the 52d of Henry III. mentions the same Court; as doth Briton, who wrote still later, in many Places. And in the 17th of Edward II. an Act was made, called, *The Statute for the View of Frankpledge* †.

Nay, in the Reign of Henry IV. we find an Amercement for not coming to a View of Frankpledge; and there the whole Court of King's Bench were of Opinion, that every Man, as well Masters as Servants, were obliged to repair to this Court §;

\* Rapin, ubi sup. † 2 Instit. 73. ‡ Chap. 33. § But this Matter was before that transferred from the Decennary Court to the Leets and Sheriff's Town. § Hil. 3 H. IV. Pl. 19.

and

tho' then possibly it was degenerated, and become little more than Form.

But in Process of Time, this Institution dwindled to nothing; so that Lord Coke might truly say, *Quod vera institutio illius curiae evanuit & veluti umbra ejusdem adhuc remanet*; and a little after, speaking of the Frankpledge, the Decennarii, and the Decenna, he says, 'They are Names continued only as Shadows of Antiquity \*.' Nay, this great Man himself (if, after a most careful and painful Perusal of all he hath writ, as well here as in his 4th Institute, and other Places on the Subject, I may be allowed to say so) seems to have no very clear Idea concerning them; and might have fairly owned, of the Original of the Leet and Frankpledge, what one of the Sages doth of an Hundred, in the Book of Henry VII. 'That a Hundred had existed above a hundred Years; and therefore, as to the true Definition of a Hundred, and whether it was composed of a hundred Towns, or a hundred Lordships, and whether it had antiently more or less Jurisdiction, he frankly owned that he knew nothing of the Matter †.'

The Statute of Marlborough ‡ had perhaps given a fatal Blow to the true and ancient Use of the View of Frankpledge; of which, as Lord Coke says †, the Sheriffs had made an ill Use: for, in the 3d Year of the succeeding King §, we find the Legislature providing against notorious Felons, and such as be openly of evil Fame, that they shall not be admitted to Bail; and, in the 13th, the Statute of Winchester entirely altered the Law, and gave us a new Constitution on this Head.

\* 2 Inst. 72, 73. † 8 H. VII. 3 b. ‡ Chap. 24. By which Justices in Eyre are forbidden to amerce Townships, because all of twelve Years old were not sworn. § 2 Instit. 147. § Westminster, 1. chap. 15.

G

1. By

( 82 )

1. By this Act the whole Hundred is made answerable in Case of Robberies.

2. In order to prevent the Concealment of Robbers in Towns, it is enacted, 1. That the Gates of all walled Towns shall be shut from Sun-setting to Sun-rising. 2. A Watch is appointed, who are to arrest all Strangers. 3. No Person is to lodge in the Suburbs, nor in any Place out of the Town, unless his Host will answer for him. 4. The Bailiffs of Towns shall make Enquiry once within 15 Days at the farthest, of all Persons lodged in the Suburbs, &c. and of those who have received any suspicious Persons.

3. To prevent the Concealment of Robbers without the Towns, it is enacted, That the Highways leading from one Market-Town to another, shall be enlarged, and no Bushes, Woods, or Dykes, in which Felons may be concealed, shall be suffered therein.

4. Felons are to be pursued by Hue and Cry.

This Statute, says Lord Coke, was made against a Gang of Rogues then called *Roberdsmen*, that took their Denomination of one *Robin Hood*, who lived in *Yorkshire* in the Reign of *Richard I.* and who, with his Companions, harbouring in Woods and Desarts, committed a great Number of Robberies and other Outrages on the Subject. From this Arch-thief a great Number of idle and dissolute Fellows, who were called *Drawlatches*, *Ribauds*, and *Roberdsmen*, took their Rise, and infested this Kingdom for above a Century, notwithstanding the many Endeavours of the Legislature from time to time to suppress them.

In all these Laws, the principal Aim visibly was, to prevent idle Persons wandering from Place to Place, which, as we have before seen, was one great Point of the Decenary Constitution.

In

( 83 )

Thus by a Law made in the 34th Year of *Edward III.* A Labourer departing from his Service into another County was to be burned in the Forehead with the Letter F. And by the same Statute, if a Labourer or Servant do fly into a City or Borough, the Chief Officer, on Request, was to deliver him up.

Again, in the 7th Year of *Richard II.* the Justices of Peace are ordered to examine Vagabonds; and, if they have no Sureties for their good Behaviour, to commit them to Prison.

In the 11th Year of *Henry VII.* it was enacted, That Vagabonds and idle Persons should be set on the Stocks three Days and three Nights, and have no other Sustenance but Bread and Water, and then shall be put out of the Town; and whosoever gave such idle Persons Relief, forfeited 12 *d.*

By 22 *Henry VIII.* Persons calling themselves *Egyptians* shall not come into the Realm, under Penalty of forfeiting their Goods; and, if they do not depart within 15 Days after they are commanded, shall be imprisoned.

By the 1 and 2 *Philip and Mary* †, *Egyptians* coming into the Kingdom, and remaining here a Month, are made guilty of Felony without Benefit of Clergy.

And those who bring them into the Realm, forfeit 40 *l.*

By the 5 *Eliz.* the Crime of Felony without Clergy is extended to all who are found in the Company of *Egyptians*, or who shall counterfeit, transform, or disguise themselves as such.

By 22 *Henry VIII.* A Vagabond taken begging shall be whipped, and then sworn to return to the Place of his Birth, or last Abode for three Years, there to put himself to Labour.

† Chap. 4.

G 2

By

( 84 )

By 27 *Henry VIII.* A valiant Beggar, or sturdy Vagabond, shall be whipped for the first Offence, and sent to the Place of his Birth, &c. for the second, the upper Part of the Gristle of his right Ear cut off; and if after that he be taken wandering in Idleness, &c. he shall be adjudged and executed as a Felon.

I shall mention no more Acts (for several were made) between this and the 39th *Elizabeth*, when the former Acts concerning Vagabonds were all repealed, and the several Provisions against them were reduced to one Law.

This Act, which contained many wholesome Provisions, remained in Force a long time, but at length was totally repealed by the 12th of Queen *Anne*; as this was again by the 13 *George II.* which last mentioned Statute stands now repealed by another made about six Years ago\*.

I have taken this short View of these repealed Laws, in order to enforce two Considerations. First, That the Removal of an Evil, which the Legislature have so often endeavoured to redress, is of great Importance to the Society. 2dly, That an Evil which so many subsequent Laws have failed of removing, is of a very stubborn Nature, and extremely difficult to be cured.

Here I hope to be forgiven, when I suggest, that the Law hath probably failed in this Instance, from Want of sufficient Direction to a single Point. As on a former Head, the Disease seems to be no other than *Idleness*, so here *Wandering* is the Cause of the Mischief, and that alone to which the Remedy should be applied. This, one would imagine, should be the chief, if not sole Intent of all Laws against Vagabonds, which might, in a synonymous Phrase, be called Laws against Wanderers. But as the Word

\* 17 *George II.* c. 5.

itself

( 85 )

itself hath obtained by vulgar Use a more complex Signification, so have the Laws on this Head had a more general View than to extirpate this Mischief; and by that means, perhaps, have failed of producing such an Effect.

I will therefore confine myself, as I have hitherto done on this Head, to the single Point of preventing the Poor from Wandering, one principal Cause of the Encrease of Robbers; as it is the chief Means of preserving them from the Pursuit of Justice. It being impossible for any Thief to carry on his Trade long with Impunity among his Neighbours, and where not only his Person, but his Way of Life, must be well known.

Now to obviate this Evil, the Law, as it now stands, hath provided in a twofold manner. 1. By way of Prevention; and, 2dly, By way of Remedy.

As to the first, the Statute of *Elizabeth* declares\*, That no Person retained in Husbandry, or in any Art or Science in the Act mentioned †, after the Time of his Retainer is expired, shall depart out of any City, Parish, &c. nor out of the County, &c. to serve in any other, unless he have a Testimonial under the Seal of the City or Town Corporate, or of the Constable or other Head-Officer, and two other honest Householders of the City, Town or Parish, where he last served, declaring his lawful Departure, and the Name of the Shire and Place where he served last. This Certificate is to be delivered to the Servant, and registred by the Parson for 2 *d.* and the Form of it is given in the Act.

And no Person is to be retained in any other Service, without shewing such Testimonial to the Chief Officer of the Town Corporate, and in every other Place to the Constable, Curate, &c. on Pain of Im-

\* 5 *Eliz.* c. 4. sect. 10. in Force though not in Use.  
† *i. e.* in almost every Trade.

prisonment, till he procure a Testimonial; and, if he cannot procure such Testimonial within 21 Days, he shall be whipped and treated like a Vagabond; so shall he be if found with a forged Testimonial. And those who receive him without shewing such Testimonial as aforesaid, forfeit 5 l.

As to the 2d, the Law hath been extremely liberal in its Provisions. These are of two Sorts; 1. Simply compulsory; and, 2. Compulsory with Punishment. Under the former Head may be ranged the several Acts of Parliament relating to the Settlement, or rather Removal of the Poor.

As these Statutes, tho' very imperfectly executed, are pretty generally known, (the Nation having paid some Millions to Westminster-Hall for their Knowledge of them) I shall mention them very slightly in this Place.

The Statute of Elizabeth, together with the wise Execution of it, having made the Poor an intolerable Burden to the Public, Disputes began to arise between Parishes to whose Lot it fell to provide for certain Individuals: for the Laws for confining the Poor to their own Homes, being totally disregarded, these used to ramble wherever Whim or Convenience invited them. The Overseers of one Parish were perhaps more liberal of the Parochial Fund than in another; or sometimes probably the Overseer of the Parish A was a Friend or Relation of a poor Person of the Parish of B, who did not choose to work. From some such Reason, the Poor of one Parish began to bring a Charge on another.

To remedy such Inconveniencies, immediately after the Restoration\*, a Statute was made, by which if any poor Man, likely to be chargeable, came to inhabit in a foreign Parish, unless in a Tenement of 10 l. a Year, the Overseers might complain to

\* 13 and 14 Car. II. c. 12.

one

one Justice within 40 Days, and then two Justices were to remove the poor Person to the Place of his last legal Settlement.

By a second Act\*, the 40 Days are to be reckoned after Notice given in Writing to the Churchwarden or Overseer by the poor Person, containing the Place of his Abode, Number of his Family, &c.

But by the same Statute, the executing a public annual Office during a Year, or being charged with, and paying to the public Taxes, &c. or (if unmarried and not having a Child) being lawfully hired into any Parish, and serving for one Year, or being bound Apprentice by Indenture, and inhabiting, &c. are all made good Settlements without Notice.

By a third Statute†, Persons bringing a Certificate signed by the Overseers, &c. and allowed by two Justices, cannot be removed till they become chargeable.

By a fourth‡, no such Certificate Person shall gain a Settlement by any other Act, than by bona fide taking a Lease of a Tenement of 10 l. per Annum, or by executing an annual Office.

By a fifth§, no Apprentice or hired Servant of Certificate Person shall, by such Service or Apprenticeship, gain any Settlement.

By a sixth¶, no Person by any Purchase, of which the Consideration doth not bona fide amount to 30 l. shall gain any Settlement longer than while he dwells on such Purchase.

So much for these Laws of Removal, concerning which there are several other Acts of Parliament and Law Cases innumerable.

And yet the Law itself is, as I have said, very imperfectly executed at this Day, and that for several Reasons.

\* 3 and 4 W. and M. c. 11. See 1 Jac. II. c. 17.  
† 8 and 9 W. III. c. 30. ‡ 9 and 10 W. III. c. 11.  
§ Geo. I. c. 7.  
¶ 12 Anne, c. 18. G 4 1. It

1. It is attended with great Trouble: for as the Act of *Ch.* 2d *very wisely* requires two Justices, and the Court of King's Bench requires them both to be present together, (tho' they seldom are so) the Order of Removal is sometimes difficult to be obtained, and more difficult to be executed; for the Parish to which the Party is to be removed (perhaps with a Family) is often in a distant County; nay, sometimes they are to be carried from one End of the Kingdom to another.

2. It is often attended with great Expence, as well for the Reason aforesaid, as because the Parish removing is liable to an Appeal from the Parish to which the Poor is removed. This Appeal is sometimes brought by a wealthy and litigious Parish against a poor one, without any Colour of Right whatever.

3. The Removal is often ineffectual: for as the Appeal is almost certain to be brought, if an Attorney lives in the Neighbourhood; so is it almost as sure to succeed, if a Justice lives in the Parish. And as for Relief in the King's Bench, if the Justices of Peace will allow you to go thither, (for that they will not always do) the Delay as well as the Cost is such, that the Remedy is often worse than the Disease.

For these Reasons, it can be no wonder that Parishes are not very forward to put this Law in Execution. Indeed, in all Cases of Removal, the Good of the Parish, and not of the Public, is consulted; nay, sometimes the Good of an Individual only; and therefore the poor Man, who is capable of getting his Livelihood by his Dexterity at any Handicraft, and likely to do it by his Industry, is sure to be removed with his Family; especially if the Overseer, or any of his Relations, should be of the same Occupation; but the idle Poor, who threaten to rival no Man in his Business, are never taken any  
notice

notice of, till they become actually chargeable; and if by Begging or Robbing they avoid this, as it is no Man's Interest, so no Man thinks it his Duty to apprehend them.

It cannot therefore be expected, that any Good of the Kind I am contending for, should be effected by this Branch of the Law; let us therefore, in the second Place, take a view of that which is expressly levelled at Vagrants, and calculated, as it appears, for the very Purpose of suppressing Wanderers.

To survey this Branch will be easy, as all the Laws concerning Vagrants are now reduced into one Act of Parliament; and it is the easier still, as this Act is very clearly penned, and (which is not always the Case) reduced to a regular and intelligible Method.

By this Act then three Degrees of Offences are constituted:

*First*, Persons become idle and disorderly within the Act, by, 1. Threatning to run away and to leave their Wives or Children to the Parish. 2. Unlawfully returning to the Place from whence they have been legally removed by the Order of two Justices, without bringing a Certificate, &c. 3. Living idle without Employment, and refusing to work for usual and common Wages. 4. By begging in their own Parishes.

*Secondly*, Persons by, 1. Going about as Patent-Gatherers, or Gatherers of Alms under Pretence of Loss by Fire, or other Casualty; or, 2. Going about as Collectors for Prisons, Goals, or Hospitals. 3. Being Fencers and Bearwards. 4. Or common Players of Interludes, &c. 5. Or Minstrels, Jugglers. 6. Pretending to be Gypsies, or wandering in such Habit. 7. Pretending to Physiognomy, or like crafty Science, &c. 8. Using any subtle Craft to deceive and impose on any of his Majesty's Subjects. 9. Playing or sitting at unlawful Games. 10. Running away, and leaving Wives or Children, where-  
by



( 90 )

by they become chargeable to any Parish. 11. Wandering abroad as petty Chapmen or Pedlars, not authorized by Law. 12. Wandering abroad and lodging in Alehouses, Barns, Out-houses, or in the open Air, not giving a good Account of themselves. 13. Wandering abroad and begging, pretending to be Soldiers, Mariners, seafaring Men, or pretending to go to work at Harvest. 14. Wandering abroad and begging, are to be deemed Rogues and Vagabonds.

*Thirdly*, 1. End-gatherers offending against the 13 George I. entitled, *An Act for the better Regulation of the Woollen Manufactures, &c.* being convicted of such Offence; 2. Persons apprehended as Rogues and Vagabonds escaping, or, 3. refusing to go before a Justice, or, 4. refusing to be examined on Oath, or, 5. refusing to be conveyed by a Pass, or, 6. on Examination giving a false Account of themselves after Warning of the Punishment. 7. Rogues and Vagabonds escaping out of the House of Correction, &c. or, 8. those who having been punished as Rogues and Vagabonds, shall offend again as such, are made incorrigible Rogues.

Now as to the *first* of these three Divisions, it were to be wished, that Persons who are found in Ale-houses, Night-houses, &c. after a certain Hour at Night, had been included; for many such, tho' of very suspicious Characters, taken up at Privy Searches, fall not under any of the above Descriptions. Some of these I have known discharged, against whom capital Complaints have appeared, when it hath been too late. Why might not the Justice be entrusted with a Power of detaining any suspicious Person, who could produce no known Housekeeper, or one of Credit, to his Character, for three Days, within which Time he might, by Means of an Advertisement, be viewed by Numbers who have been lately robbed? Some such have been, I know, confined upon an old Statute as  
Persons

( 91 )

Persons of evil Fame, with great Emolument to the Public.

But I come to the *second* Head, namely, of Vagabonds: And here I must observe, that *Wandering* is of itself made no Offence: so that unless such Wanderer be either a petty Chapman, or a Beggar or Lodger in Ale-houses, &c. he is not within the Act of Parliament.

Now, however useful this excellent Law may be in the Country, it will by no means serve the Purpose in this Town: for tho' most of the Rogues who infest the Public Roads and Streets, indeed almost all the Thieves in general, are Vagabonds in the true Sense of the Word, being Wanderers from their lawful Place of Abode, very few of them will be proved Vagabonds within the Words of this Act of Parliament. These Vagabonds do indeed get their Livelihood by Thieving, and not as petty Beggars or petty Chapmen; and have their Lodging not in Alehouses, &c. but in private Houses, where many of them resort together, and unite in Gangs, paying each 2 *d.* per Night for their Beds.

The following Account I have had from Mr. *Welch*, the High Constable of *Holbourn*; and none who know that Gentleman, will want any Confirmation of the Truth of it.

That in the Parish of *St. Giles's* there are great Numbers of Houses set apart for the Reception of idle Persons and Vagabonds, who have their Lodgings there for Twopence a Night: That in the above Parish, and in *St. George, Bloomsbury*, one Woman alone occupies seven of these Houses, all properly accommodated with miserable Beds from the Cellar to the Garret, for such Twopenny Lodgers: That in these Beds, several of which are in the same Room, Men and Women, often Strangers to each other, lie promiscuously, the Price of a double Bed being no more than Three-pence,



' pence, as an Encouragement to them to lie toge-  
 ' ther: That as these Places are thus adapted to  
 ' Whoredom, so are they no less provided for Drun-  
 ' kenness, Gin being sold in them all at a Penny  
 ' a Quartern; so that the smallest Sum of Money  
 ' serves for Intoxication: That in the Execution of  
 ' Search-Warrants, Mr. *Welch* rarely finds less than  
 ' Twenty of these Houses open for the Receipt of all  
 ' Comers at the latest Hours: That in one of these  
 ' Houses, and that not a large one, he hath num-  
 ' bered 58 Persons of both Sexes, the Stench of  
 ' whom was so intolerable, that it compelled him in  
 ' a very short time to quit the Place.' Nay, I can  
 add, what I myself once saw in the Parish of *Shore-*  
*ditch*, where two little Houses were emptied of near  
 seventy Men and Women; amongst whom was one  
 of the prettiest Girls I had ever seen, who had been  
 carried off by an *Irishman*, to consummate her Mar-  
 riage on her Wedding-night, in a Room where sever-  
 al others were in Bed at the same time.

If one considers the Destruction of all Morality,  
 Decency and Modesty; the Swearing, Whoredom,  
 and Drunkenness, which is eternally carrying on in  
 these Houses, on the one hand; and the excessive Po-  
 verty and Misery of most of the Inhabitants on the  
 other, it seems doubtful whether they are more the  
 Objects of Detestation, or Compassion: for such is  
 the Poverty of these Wretches, that, upon search-  
 ing all the above Number, the Money found upon  
 all of them (except the Bride, who, as I afterwards  
 heard, had robbed her Mistress) did not amount to  
 One Shilling; and I have been credibly informed,  
 that a single Loaf hath supplied a whole Family  
 with their Provisions for a Week. Lastly, if any  
 of these miserable Creatures fall sick (and it is al-  
 most a Miracle, that Stench, Vermin, and Want  
 should ever suffer them to be well) they are turned  
 out in the Streets by their merciless Host or Hostess,  
 where,

where, unless some Parish Officer of extraordinary  
 Charity relieves them, they are sure miserably to pe-  
 rish, with the Addition of Hunger and Cold to their  
 Disease.

This Picture, which is taken from the Life, will  
 appear strange to many; for the Evil here described,  
 is, I am confident, very little known, especially to  
 those of the better Sort. Indeed this is the only Ex-  
 cuse, and I believe the only Reason, that it hath  
 been so long tolerated: for when we consider the  
 Number of these Wretches, which, in the Out-skirts  
 of the Town, amounts to a great many Thousands\*,  
 it is a Nuisance which will appear to be big with e-  
 very moral and political Mischief. Of these the ex-  
 cessive Misery of the Wretches themselves, oppres-  
 sed with Want, and sunk in every Species of De-  
 bauchery, and the Loss of so many Lives to the  
 Public, are obvious and immediate Consequences.  
 There are some more remote, which, however, need  
 not be mentioned to the Discerning.

Among other Mischiefs attending this wretched  
 Nuisance, the great Increase of Thieves must ne-  
 cessarily be one. The Wonder in fact is, that we  
 have not a thousand more Robbers than we have;  
 indeed, that all these Wretches are not Thieves, must  
 give us either a very high Idea of their Honesty, or  
 a very mean one of their Capacity and Courage.

Where then is the Redress? Is it not *to binder*  
*the Poor from wandering*, and this by compelling the  
 Parish and Peace Officers to apprehend such Wan-  
 derers or Vagabonds, and by empowering the Magi-  
 strate effectually to punish and send them to their Ha-  
 bitations? Thus if we cannot discover, or will not en-  
 courage any Cure for Idleness, we shall at least com-

\* Most of these are *Irish*, against the Importation of  
 whom a severe Law was made in the Reign of *Hen. VI.*  
 and many of the repealed Vagrant Acts contained a Clause  
 for the same Purpose.

( 94 )

pel the Poor to starve or beg at home : for there it will be impossible for them to steal or rob, without being presently hanged or transported out of the way.

## S E C T. VII.

*Of apprehending the Persons of Felons.*

**I** Come now to a third Encouragement which the Thief flatters himself with, *viz.* in his Hopes of escaping from being apprehended.

Nor is this Hope without Foundation: How long have we known Highwaymen reign in this Kingdom after they have been publicly known for such? Have not some of these committed Robberies in open Day-light, in the Sight of many People, and have afterward rode solemnly and triumphantly through the neighbouring Towns without any Danger or Molestation. This happens to every Rogue who is become eminent for his Audaciousness, and is thought to be desperate; and is in a more particular Manner the Case of great and numerous Gangs, many of which have for a long time committed the most open Outrages in Defiance of the Law. Officers of Justice have owned to me that they have passed by such with Warrants in their Pockets against them without daring to apprehend them; and indeed they could not be blamed for not exposing themselves to sure Destruction: For it is a melancholy Truth, that at this very Day, a Rogue no sooner gives the Alarm, within certain Purlieus, than twenty or thirty armed Villains are found ready to come to his Assistance.

On this Head the Law may seem not to have been very defective in its Cautions; *First*, by vesting not only the Officers of Justice, but every private Man, with Authority for securing these Miscreants, of which Authority it may be of Service to the Officers, as well as to the Public in general, to be more particularly informed.

*First,*

( 95 )

*First*, By \* *Westminster* I. Persons of evil Fame are to be imprisoned without Bail. By the Statute of *Winchester* †, suspicious Night-walkers are to be arrested and detained by the Watch. A Statute made in † 5 *Ed.* III. reciting that many Manlaughters, Felonies, and Robberies had been done in Times past, enacts, that if any Person have an evil Suspicion of such Offenders, they shall be incontinently arrested by the Constable, and shall be delivered to the Bailiff of the Franchise, or to the Sheriff, to be kept in Prison till the coming of the Justices. The 34 || *Edw.* III. gives Power to the Justices of Peace, *inter alia*, to enquire of Wanderers, and such as will not labour, and to arrest and imprison suspicious Persons, and to take Sureties of the good Behaviour of Persons of evil Fame, to the Intent, says the Statute, that the People be not by such Rioters, &c. troubled nor endamaged, nor the Peace blemished, nor Merchants nor others passing by the Highways of the Realm disturbed, nor put in Peril by such Offenders.

*Secondly*, By the Common Law every Person who hath committed a Felony may be arrested and secured by any private Man present at the said Fact, though he hath no general nor particular Authority, *i. e.* though he be no Officer of Justice, nor have any Writ or Warrant for so doing; and such private Man may either deliver the Felon to the Constable, secure him in a Goal, or carry him before a Magistrate §. And if he refuses to yield, those who arrest may justify beating \* him; or in case of absolute Necessity killing him †.

Nor is this Arrest merely allowed; it is enjoined by Law, and the Omission without some good Ex-

\* *Westm.* I. chap. xv. † *Winton.* chap. iv.  
 † 5 *Edw.* III. c. xiv. || 34 *Edw.* III. c. i.  
 § *Hale's Hist.* P. C. vol. I. 587. v. II. 77.  
 \* *Pult.* 10. a. † *Hale's Hist.* v. I. 588.

cuse is a Misdemeanor punishable by Amercement or Fine and Imprisonment\*.

Again every private Man may arrest another on Suspicion of Felony, though he was not present at the Fact †. But then if the Party arrested should prove innocent, two Circumstances are necessary to justify the Arrest. 1<sup>st</sup>, A Felony must be actually committed; and 2<sup>dly</sup>, there must be a reasonable Cause of Suspicion ‡; and common Fame hath been adjudged to be such Cause ¶.

But in this latter Case my Lord Hale advises the private Person, if possible, to have recourse to the Magistrate and obtain his Warrant, and the Assistance of the § Constable; for this Arrest is not required by Law, nor is the Party punishable for neglecting it; and should the Person arrested, or endeavoured to be arrested, prove innocent, the Party arresting him, &c. will, in a great Measure, be answerable for the ill Consequence; which if it be the Death of the innocent Person occasioned by Force or Resistance, this will, at least, be Manslaughter; and if the other should be killed in the attempt, this likewise will amount to Manslaughter only\*.

Again, any private Person may justify arresting a Felon pursued by Hue and Cry. This, as the Word imports, is a public Alarm raised all over the Country, in which the Constable is first to search his own Vill or Division, and then to raise all the neighbouring Vills about who are to pursue the Felon with Horse and † Foot. And this Hue and Cry may either be after a Person certain, or on a Robbery committed where the Person is not known; and in the latter

\* Hale, vol. I. 588. v. II. 77, 76.

† Lamb. 1. 2. c. 3. Dalt. 403. Hale's Hist. v. 1. 588. 3 Hen. VII. c. 1. ‡ Hale's Hist. v. 2. 80.

¶ Dalt. 407. 5 H. VII. 4, 5. § Hale's Hist. v. 2. 76. \* Hale's Hist. v. 2. 82.—3—4. † Hale's Hist. v. 2. 101.

case, those who pursue it may take such Persons as they have probable Cause to suspect, \* Vagrants, &c.

This Method of Pursuit lies at the Common Law, and is mentioned by *Bracton* †; and it is enforced by many Statutes, as by † *Westm.* 1. 'All are to be ready at the Summons of the Sheriff, and at the Cry of the County, to arrest Felons as well within Franchises as without.' By 4 *Edw.* 1. 'Hue and Cry is ordered to be levied for all Murders, Burglaries, Men slain, or in Peril to be slain, and all are to follow it.' And lastly, the Statute of *Winton* enacts as we have seen before.

And this Pursuit may be raised, 1. By a private Person; 2. By the Country without an Officer. 3. By an Officer without a Warrant. 4. By the Warrant of a Magistrate. And this last, if it can be obtained, is the safest Way: for then all who assist are enabled by the Statutes 7 and 21 *Jac.* to plead the general Issue ¶.

The Common Law so strictly enjoined this Pursuit, that if any Defect in raising it lay in the Lord of the Franchise, the Franchise should be seized into the King's Hands; and if the Neglect lay in the Bailiff, he should have a heavy Fine, and a Year's Imprisonment, or suffer two Years Imprisonment without a Fine §. And now by a very late \*\* Statute, 'if any Constable, Headborough, &c. of the Hundred where any Robberys shall happen, shall refuse or neglect to make Hue and Cry after the Felons with the utmost Expedition, as soon as he shall receive Notice thereof, he shall for every such Refusal and Neglect forfeit 5*l.* half to the King and half to the Informer.'

\* Hale's Hist. v. 2. 103. † Lib. 3. c. 1.

‡ Cap. 9. § *Fleta*, 1. 1. c. 24. ad Init. ¶ Hale's Hist. v. 1. 465. v. 2. 99, 100. \*\* 8 *Geo.* II. c. 16.

( 98 )

Now Hue and Cry is of three different Kinds :  
 1. Against a Person certain by Name. 2. Against a Person certain by Description. 3. On a Robbery, Burglary, &c. where the Person is neither known, nor capable of being described.

When a Hue and Cry is raised, every private Man is not only justified in pursuing ; but may be obliged by Command of the Constable to pursue the Felon, and is punishable, if he disobey, by Fine and Imprisonment \*. And in this Case whether a Felony was committed or not, or whether the Person arrested (provided he be the Person named or described by the Hue and Cry) be guilty or innocent, or of evil or good Fame, the Arrest is lawful and justifiable, and he who raised the Hue and Cry is alone to answer for the Justice of it †.

In this Pursuit likewise the Constable may search suspected Houses, if the Doors be open ; but breaking the Door will not be justifiable, unless the Felon be actually in the House ; nor even then unless Admittance hath been first demanded and denied ‡. And what the Constable may do himself will be justifiable by any other in his Assistance, at least, by his Command §. Indeed a private Person may justify the Arrest of an Offender by the Command of a Peace Officer ; for he is bound to be aiding and assisting to such Officer, is punishable for his Refusal, and is consequently under the Protection of the Law §.

Lastly, a private Person may arrest a Felon by Virtue of a Warrant directed to him : for though he is not bound to execute such Warrant, yet if he doth, it is good and justifiable \*\*.

\* *Hale's Hist.* v. 1. 588. v. 2. 104. † 29 *Ed.* III.  
 39. 35 *Hen.* IV. Pl. 24. *Hale's Hist.* v. 2. 101—2.  
 ‡ *Ib.* 102, 103. § *Pult.* 6. 15.  
*Hale's Hist.* v. 2. 86. \*\* *Dalt.* 408. *Hale's Hist.*  
 v. 2. 86.

Thirdly,

( 99 )

Thirdly, Officers of public Justice may justify the Arrest of a Felon by Virtue of their Office, without any Warrant. Whatever therefore a private Person may do as above, will certainly be justifiable in them.

And as the arresting Felons, &c. is more particularly their Duty, and their Fine will be heavier for the Neglect, so will their Protection by the Law be the greater : For if, in arresting those that are *probably suspected*, the Constable should be killed, it is Murder ; on the other Hand, if Persons pursued by these Officers for Felony, or *justifiable Suspicion* thereof, shall resist or fly from them ; or being apprehended shall rescue themselves, resist, or fly ; so that they cannot *otherwise* be apprehended or re-apprehended, and are *of Necessity* slain, it is no Felony in the Officers, or in their Assistants, tho' possibly the Parties killed are innocent ; for by resisting the King's Authority in his Officers, they draw their own Blood on themselves \*.

Again, To take a Felon or suspected Felon, the Constable without any Warrant may break open the Door. But to justify this, he must shew ; 1. That the Felon, &c. was in the House. 2. That his Entry was denied. 3. That it was denied after Demand and Notice that he was Constable †.

Lastly, A Felon may be apprehended by Virtue of a Warrant issuing from a Magistrate lawfully authorized ; in the Execution of which the Officer hath the same Power, and will, at least, have the same Protection by Law as in the Arrest *Virtute Officii*. And this Warrant, if it be specially directed to him, the Constable may execute in any Part within the Jurisdiction of the Magistrate ; but he is only obliged to execute it within the Division for which he is Constable, &c.

\* *Dalt.* 409. 13 *Ed.* IV. 4, & 9. 5 to 92. *Hale's Hist.* v. 2. 86. 90, 91. † *Ib.* v. 1. 581. v. 2. 110.  
 H 2 In

In the Execution of a Warrant for Felony, the Officer may break open the Doors of the Felon or of any Person where he is concealed; and the breaking the Doors of the Felon is lawful at all Events, but in breaking those of a Stranger the Officer acts at his Peril: for he will be a Trespasser if the Felon should not be there\*.

Such are the Powers which the Law gives for the apprehending Felons (for as to the particular Power of Sheriffs and Coroners, and the Process of superior Courts, they may well be passed by in this Place.) Again, these Powers we see are enforced with Penalties; so that not only every Officer of Justice, but every private Person is obliged to arrest a known Felon, and may be punished for the Omission.

Nor doth the Law stop here. The apprehending such Felons is not only authorized and enjoined, but even encouraged, with Impunity to Persons guilty themselves of Felony, and with Reward to others.

By 3 and 4 of † William and Mary, Persons guilty of Robbery in the Highway, Fields, &c. who, being out of Prison, shall discover any two Offenders to be convicted of such Robbery, are entitled to his Majesty's Pardon of such Robberies, &c. as they shall have then committed.

By 10 and 11 of † William III. this is extended to Burglary, and such Felonies as are mentioned in the Act.

By the same Act all Persons who shall apprehend a Felon for privately stealing Goods to the Value of 5 s. out of Shop, Warehouse, Coach-house, or Stable, by Night or by Day (provided the Felon be

\* Hale's Hist. v. 1. 582. v. 2. 117. 5 Co. 91 b.  
† Chap 8. ‡ Chap. 23.

convicted

convicted thereof) shall be entitled to a Certificate which may be assigned once, discharging such Apprehender or his Assignee from all Parochial Offices in the Parish or Ward where such Felony was committed. This Certificate is to be enrolled by the Clerk of the Peace, and cannot be assigned after it hath been used.

If any Man be killed by such House-breaker, &c. in the Attempt to apprehend him, his Executors or Administrators shall be entitled to such Certificate.

By the 3 and 4 of \* W. and M. whoever shall apprehend and prosecute to Conviction any Robber on the Highway, shall receive of the Sheriff 40 l. within a Month after the Conviction for every Offender; and in case of the Death or Removal of the Sheriff, the Money to be paid by the succeeding Sheriff within a Month after the Demand and Certificate brought. The Sheriff on Default forfeits double the Sum, to be recovered of him by the Party, his Executors, &c.

And if the Person be killed in this Attempt by any such Robber, the Executors of such Person, &c. are entitled to the Reward, under the like Penalty.

Again, by the same Act the Horse, Furniture, Arms, Money, or other Goods, taken with such Highwaymen, are given to the Apprehender who shall prosecute to Conviction, notwithstanding the Right or Title of his Majesty, any Body Politic or Lord of Franchise, or of those who lent or let the same to hire to such Robber, with a saving only of the Right of such Persons from whom such Horses, &c. were feloniously taken.

By a Statute of Queen Anne, the 40 l. Reward is extended to Burglary and House-breaking.

But tho' the Law seems to have been sufficiently provident on this Head; there is still great Difficulty in carrying its Purpose into Execution, arising from the following Causes.

\* Chap. 8. ubi supra.



*First*, With Regard to private Persons, there is no Country, I believe, in the World, where that vulgar Maxim so generally prevails, that what is the Business of every Man is the Business of no Man; and for this plain Reason, that there is no Country in which less Honour is gained by serving the Public. He therefore who commits no Crime against the Public, is very well satisfied with his own Virtue; far from thinking himself obliged to undergo any Labour, expend any Money, or encounter any Danger on such Account.

*2dly*, The People are not entirely without Excuse from their Ignorance of the Law: For so far is the Power of apprehending Felons, which I have above set forth, from being universally known, that many of the Peace Officers themselves do not know that they have any such Power, and often from Ignorance refuse to arrest a known Felon 'till they are authorized by a Warrant from a Justice of Peace. Much less then can the compulsory Part to the private Persons carry any Terror of a Penalty of which the Generality of Mankind are totally ignorant; and of inflicting which they see no Example.

*Thirdly*, So far are Men from being animated with the Hopes of public Praise to apprehend a Felon, that they are even discouraged by the Fear of Shame. The Person of the Informer is in Fact more odious than that of the Felon himself; and the Thief-catcher is in Danger of worse Treatment from the Populace than the Thief.

Lastly, As to the Reward, I am afraid that the Intention of the Legislature is very little answered: For not to mention that the Prosecutor's Title to it is too often defeated by the foolish Lenity of Juries, who by acquitting the Prisoner of the Burglary and finding him guilty of the simple Felony only, or by finding the Goods to be less than the Value of 5 s. both often directly contrary to Evidence, take the Case entirely

entirely out of the Act of Parliament; and sometimes even when the Felon is properly convicted, I have been told that the Money does not come so easily and fully to the Pockets of those who are entitled to it as it ought.

With Regard to the first and fourth of these Objections, I chuse to be silent: To prescribe any Cure for the former, I must enter into Disquisitions very foreign to my present Purpose; and for the Cure of the latter, when I consider in whose Power it is to remedy it, a bare Hint will, I doubt not, suffice.

The second Objection, namely, the Excuse of Ignorance, I have here endeavoured to remove by setting forth the Law at large.

The third therefore only remains, and to that I shall speak more fully, as the Opinion on which it is founded is of the most pernicious Consequence to the Society; for what avail the best of Laws, if it be a Matter of Infamy to contribute towards their Execution? The Force of this Opinion may be seen in the following Instance. We have a Law by which every Person who drives more than six Horses in a Waggon forfeits as many Horses as are found to exceed that Number. This Law is broken every Day, and generally with Impunity: For though many Men yearly venture and lose their Lives by stealing Horses, yet there are very few who dare seize a Horse, where the Law allows and encourages it, when by such Seizure he is to acquire the Name of an Informer: So much worse is this Appellation in the Opinion of the Vulgar than that of Thief; and so much more prevalent is the Fear of popular Shame than of Death.

This absurd Opinion seems to have first arisen from the Statute of 18 \* Eliz. entitled, *An Act to redress Disorders in common Informers.* By this

\* Chap. 5.



( 104 )

Statute it appears, that very wicked Utes had been made of penal Statutes by these Informers, whom my Lord *Coke* calls \* *Turbidum Hominum Genus* ; and says, ' That they converted many penal Laws which were ' obsolete, and in time grown impossible or inconvenient to be performed, into Snares to vex and intangle the Subject.'

By the Statute itself it appears, that it was usual at that Time among these Persons to extort Money of ignorant and fearful People by the Terror of some penal Law ; for the Breach of which the Informer either instituted a Process, or pretended to institute a Process, and then brought the timorous Party to a Composition.

This Offence therefore was by this Act made a high Misdemeanor, and punished with the Pillory.

Now who that knows any thing of the Nature or History of Mankind, doth not easily perceive here a sufficient Foundation for that Odium to all Informers which hath since become so general: For what is more common than from the Abuse of any thing to argue against the Use of it, or to extend obloquy from Particulars to Universals ?

For this the common Aptitude of Men to Scandal will sufficiently account ; but there is still another and stronger Motive in this Case, and that is the Interest of all those who have broken or who intend to break the Laws. Thus the general Cry being once raised against Prosecutors on penal Laws, the Thieves themselves have had the Art and Impudence to join it, and have put their Prosecutors on the Footing of all others : Nay I much question whether in the Acceptation of the Vulgar, a Thief-catcher be not a more odious and contemptible Name than even that of Informer.

\* 3 Inf. c. 87.

Nothing

( 105 )

Nothing, I am sensible, is more vain than to encounter popular Opinion with Reason ; nor more liable to Ridicule than to oppose general Contempt, and yet I will venture to say, that if to do Good to Society be laudable, so is the Office of a Thief-catcher ; and if to do this Good at the extreme Hazard of your Life be honourable, then is this Office honourable. True, it may be said ; but he doth this with a View to a Reward. And doth not the Soldier and the Sailor venture his Life with the same View ? For, who as a Great Man lately said, serves the Public for nothing ?

I know what is to be my Fate in this Place, or what would happen to one who should endeavour to prove that the Hangman was a great and an honourable Employment. And yet I have read in *Tournesfort*, of an Island in the *Archipelago*, where the Hangman is the first and highest Officer in the State: Nay in this Kingdom the Sheriff himself (who was one of the most considerable Persons in his County) is in Law the Hangman, and Mr. *Ketch* is only his Deputy.

If to bring Thieves to Justice be a scandalous Office, what becomes of all those who are concerned in this Business, some of whom are rightly thought to be among the most honourable Officers in Government ? If on the contrary this be, as it surely is, very truly honourable, why should the Post of Danger in this Warfare alone be excluded from all Share of Honour ?

To conclude a Matter, in which tho' serious, I will not be too tedious : What was the great *Pompey* in the Piratic War \* ? What were *Hercules*, *Theseus*,

\* *Cicero* in his Oration *pro Lege Manilia* calls this, if I remember rightly, *Bellum Turpe* ; but speaks of the Extirpation of these Robbers as of the greatest of all *Pompey's* Exploits.

and

and other the Heroes of old, *Deorum in Templo recepti*—Were they not the most eminent of Thieft-catchers?

S E C T. VII.

*Of the Difficulties which attend Prosecutions.*

**I** Now come to a fourth Encouragemant which greatly holds up the Spirits of Robbers, and which they often find to afford no deceitful Consolation; and this is drawn from the Remissness of Prosecutors, who are often,

- 1. Fearful, and to be intimidated by the Threats of the Gang; or,
- 2. Delicate, and cannot appear in a public Court; or,
- 3. Indolent, and will not give themselves the Trouble of a Prosecution; or,
- 4. Avaricious, and will not undergo the Expence of it; nay perhaps find their Account in compounding the Matter; or,
- 5. Tender-hearted, and cannot take away the Life of a Man; or,

Lastly, Necessitous, and cannot really afford the Cost, however small, together with the Loss of Time which attends it.

The first and second of these are too absurd, and the third and fourth too infamous to be reasoned with. But the two last deserve more particular Notice, as the fifth is an Error springing originally out of a good Principle in the Mind, and the sixth is a Fault in the Constitution very easily to be remedied.

With Regard to the former of these, it is certain, that a tender-hearted and compassionate Disposition, which inclines Men to pity and feel the Misfortunes of others, and which is, even for its own Sake, incapable of involving any Man in Ruin and Misery, is of all Tempers of Mind the most amiable; and tho'

tho' it seldom receives much Honour, is worthy of the highest. The natural Energies of this Temper are indeed the very Virtues principally inculcated in our excellent Religion; and those, who because they are natural, have denied them the Name of Virtues, seem not, I think, to be aware of the direct and impious Tendency of a Doctrine that denies all Merit to a Mind which is naturally, I may say necessarily, good.

Indeed the Passion of Love or Benevolence whence this admirable Disposition arises, seems to be the only human Passion that is in itself simply and absolutely good; and in *Plato's* Commonwealth or (which is more) in a Society acting up to the Rules of *Christianity*, no Danger could arise from the highest Excess of this Virtue; nay the more liberally it was indulged, and the more extensively it was expanded, the more would it contribute to the Honour of the Individual, and to the Happiness of the whole.

But as it hath pleased God to permit human Societies to be constituted in a different Manner, and Knaves to form a Part, (a very considerable one, I am afraid) of every Community, who are ever lying in wait to destroy and ensnare the honest Part of Mankind, and to betray them by means of their own Goodness, it becomes the good-natured and tender-hearted Man to be watchful over his own Temper; to restrain the Impetuosity of his Benevolence, carefully to select the Objects of this Passion, and not by too unbounded and indiscriminate an Indulgence to give the Reins to a Courser, which will infallibly carry him into the Ambuscade of the Enemy.

Our Saviour himself inculcates this Prudence among his Disciples, telling them, that he *sent them forth like Sheep among Wolves: Be ye therefore, says he, wise as Serpents, but innocent as Doves.*

For

( 108 )

For Want of this Wisdom, a benevolent and tender-hearted Temper very often betrays Men into Errors not only hurtful to themselves, but highly prejudicial to the Society. Hence Men of invincible Courage, and incorruptible Integrity, have sometimes falsified their Trust; and those, whom no other Temptation could sway, have paid too little Regard to the Sanction of an Oath, from this Inducement alone. Hence likewise the Mischief which I here endeavour to obviate, hath often arisen; and notorious Robbers have lived to perpetrate future Acts of Violence, through the ill-judging Tenderness and Compassion of those who could and ought to have prosecuted them.

To such a Person I would suggest these Considerations:

*First*, As he is a good Man, he should consider, that the principal Duty which every Man owes, is to his Country, for the Safety and Good of which all Laws are established; and therefore his Country requires of him to contribute all that in him lies to the due Execution of those Laws. Robbery is an Offence not only against the Party robbed, but against the Public, who are therefore entitled to Prosecution; and he who prevents or stifles such the Prosecution, is no longer an innocent Man, but guilty of a high Offence against the Public Good.

*Secondly*, As he is a good-natured Man, he will behold all Injuries done by one Man to another with Indignation. What *Cicero* says of a Pirate, is as true of a Robber, that he is *hostis humani generis*; and if so, I am sure every good-natured Man must be an Enemy to him. To desire to save these Wolves in Society, may arise from Benevolence; but it must be the Benevolence of a Child or a Fool, who, from Want of sufficient Reason, mistakes the true Objects of his Passion, as a Child doth when a Bugbear appears to him to be the Object of Fear. Such Tender-

( 109 )

derheartedness is indeed Barbarity, and resembles the meek Spirit of him who would not assist in blowing up his Neighbour's House, to save a whole City from the Flames. 'It is true,' said a late learned Chief Justice\*, in a Trial for Treason, 'here is the Life of a Man in the Case, but then you' (speaking to the Jury) 'must consider likewise the Misery and Desolation, the Blood and Confusion, that must have happened, had this taken Effect; and put one against the other, I believe that Consideration which is on Behalf of the King will be much the stronger.' Here likewise is the Life of a Man concerned; but of what Man? Why, of one who being too lazy to get his Bread by Labour, or too voluptuous to content himself with the Produce of that Labour, declares War against the Properties, and often against the Persons of his Fellow Subjects; who deprives his Countrymen of the Pleasure of travelling with Safety, and of the Liberty of carrying their Money or their ordinary Conveniences with them; by whom the Innocent are put in Terror, affronted and alarmed with Threats and Execrations, endangered with loaded Pistols, beat with Bludgeons and hacked with Cutlasses, of which the Loss of Health, of Limbs, and often of Life, is the Consequence; and all this without any Respect to Age, or Dignity, or Sex. Let the good-natured Man, who hath any Understanding, place this Picture before his Eyes, and then see what Figure in it will be the Object of his Compassion.

I come now to the last Difficulty which obstructs the Prosecution of Offenders; namely, the extreme Poverty of the Prosecutor. This I have known to be so absolutely the Case, that the poor Wretch who hath been bound to prosecute, was under more Concern than the Prisoner himself. It is true that the necessary Cost on these Occasions is extremely small; two Shillings, which are appointed by Act of Par-

\* Lord Chief Justice Pratt.

( 110 )

liament for drawing the Indictment, being, I think, the whole which the Law requires; but when the Expence of Attendance, generally with several Witnesses, sometimes during several Days together, and often at a great Distance from the Prosecutor's Home; I say, when these Articles are summed up, and the Loss of Time added to the Account, the whole amounts to an Expence which a very poor Person, already plundered by the Thief, must look on with such Horror (if he should not be absolutely incapable of the Expence) that he must be a Miracle of Public Spirit, if he doth not rather choose to conceal the Felony, and sit down satisfied with his present Loss; but what shall we say, when (as is very common in this Town) he may not only receive his own again, but be farther rewarded, if he will agree to compound it?

Now how very inconsiderable would be the whole Cost of this Suit either to the County or the Nation; If the Public, to whom the Justice of Peace gives his whole Labour on this Head *gratis*, was to defray the Cost of such Trials (by a kind of *forma pauperis* Admission) the Sum would be so trivial, that nothing would be felt but the good Consequences arising from such a Regulation?

I shall conclude this Head with the Words of my Lord *Hale*: 'It is,' says he, 'a great Defect in the Law, to give Courts of Justice no Power to allow Witnesses against Criminals their Charges; whereby,' says he, 'many poor Persons grow weary of their Attendance, or bear their own Charges therein, to their great Hindrance and Loss.'

S E C T.

( 111 )

S E C T. IX.

*Of the TRIAL and CONVICTION of FELONS.*

**B**UT if notwithstanding all the Rubs which we have seen to lie in the Way, the Indictment is found, and the Thief brought to his Trial, still he hath sufficient Hopes of escaping, either from the Caution of the Prosecutor's Evidence, or from the Hardiness of his own.

In Street Robberies the Difficulty of convicting a Criminal is extremely great. The Method of discovering these is generally by means of one of the Gang, who being taken up, perhaps for some other Offence, and, thinking himself in Danger of Punishment, chooses to make his Peace at the Expence of his Companions.

But when, by means of his Information, you are made acquainted with the whole Gang, and have, with great Trouble, and often with great Danger, apprehended them, how are you to bring them to Justice? for though the Evidence of the Accomplice be ever so positive and explicit, nay ever so connected and probable, still, unless it be corroborated by some other Evidence, it is not sufficient.

Now how is this corroborating Evidence to be obtained in this Case? Street Robberies are generally committed in the dark, the Persons on whom they are committed are often in Chairs and Coaches, and if on Foot, the Attack is usually begun by knocking the Party down, and for the Time depriving him of his Senses. But if the Thief should be less barbarous, he is seldom so incautious as to omit taking every Method to prevent his being known, by flapping the Party's Hat over his Face, and by every other

other Method which he can invent to avoid Discovery.

But indeed any such Methods are hardly necessary: for when we consider the Circumstance of Darkness, mentioned before, the extreme Hurry of the Action, and the Terror and Consternation in which most Persons are in at such a Time, how shall we imagine it possible, that they should afterwards be able, with any (the least) Degree of Certainty, to swear to the Identity of the Thief, whose Countenance is, perhaps, not a little altered by his subsequent Situation, and who takes care as much as possible he can, by every Alteration of Dress, and otherwise, to disguise himself.

And if the Evidence of the Accomplice be so unlikely to be confirmed by the Oath of the Prosecutor, what other Means of Confirmation can be found? for as to his Character, if he himself doth not call Witnesses to support it (which in this Instance is not incumbent on him to do) you are not at Liberty to impeach it. The greatest and most known Villain in *England*, standing at the Bar equally *rectus in curia* with the Man of the highest Estimation, if they should be both accused of the same Crime.

Unless therefore the Robbers should be so unfortunate as to be apprehended in the Fact, (a Circumstance which their Numbers, Arms, &c. renders ordinarily impossible) no such Corroboration can possibly be had; but the Evidence of the Accomplice standing alone and unsupported, the Villain, contrary to the Opinion, and almost direct Knowledge of all present, is triumphantly acquitted, laughs at the Court, scorns the Law, vows Revenge against his Prosecutors, and returns to his Trade with a great Increase of Confidence, and commonly of Cruelty.

In a Matter therefore of so much Concern to the Public, I shall be forgiven, if I venture to offer my Sentiments.

The

The Words of my Lord *Hale* are these: 'Tho' a *particeps criminis* be admissible as a Witness in Law, yet the Credibility of his Testimony is to be left to the Jury; and truly it would be hard to take away the Life of any Person upon such a Witness that swears to save his own, and yet confesseth himself guilty of so great a Crime, unless there be also very considerable Circumstances, which may give the greater Credit to what he swears \*.'

Here I must observe, that this great Man seems rather to complain of the Hardship of the Law, in taking away the Life of a Criminal on the Testimony of an Accomplice, than to deny that the Law was so. This indeed he could not well do; for not only the Case of an Approver, as he himself seems to acknowledge, but many later Resolutions would have contradicted that Opinion.

2dly, He allows that the Credibility of his Testimony is to be left to the Jury: and so is the Credibility of all other Testimonies. They are absolute Judges of the Fact; and God forbid that they should in all Cases be tied down by positive Evidence against a Prisoner, though it was not delivered by an Accomplice.

But surely, if the Evidence of an Accomplice be not sufficient to put the Prisoner on his Defence, but the Jury are directed to acquit him, though he can produce no Evidence on his Behalf, either to prove an *Alibi*, or to his Character, the Credibility of such Testimony cannot well be said to be left to a Jury. This is virtually to reject the Competency of the Witness: For to say the Law allows him to be sworn, and yet gives no Weight to his Evidence is, I apprehend, a mere Play of Words, and conveys no Idea.

\* *Hale's Hist.* v. 1. 305.

I

In



( 114 )

In the third Place, This great Man asserts the Hardship of such Conviction—Now if the Evidence of a supposed Accomplice should convict a Man of fair and honest Character: It would, I confess, be hard; and it is a Hardship of which, I believe, no Experience can produce any Instance. But if on the other Hand, the Testimony of an Accomplice with every Circumstance of Probability attending it against a Vagabond of the vilest Character, and who can produce no single Person to his Reputation, is to be absolutely rejected, because there is no positive Proof to support it; this I think, is in the highest Degree hard (I think I have proved how hard) to the Society.

I shall not enter here into a Disquisition concerning the Nature of Evidence in general; this being much too large a Field; nor shall I examine the Utility of those Rules which our Law prescribes on this Head. Some of these Rules might perhaps be opened a little wider than they are, without either Mischief or Inconvenience; and I am the bolder in the Assertion, as I know a very learned Judge who concurs with this Opinion. There is no Branch of the Law more bulky, more full of Confusion and Contradiction, I had almost said of Absurdity, than the Law of Evidence as it now stands.

One Rule of this Law is, that no Man interested shall be sworn as a Witness. By this is meant pecuniary Interest; but are Mankind governed by no other Passion than Avarice? Is not Revenge the sweetest Morsel, as a Divine calls it, which the Devil ever dropped into the Mouth of a Sinner? Are not Pride, Hatred, and the other Passions, as powerful Tyrants in the Mind of Man; and is not the Interest which these Passions propose to themselves by the Enjoyment of their Object, as prevalent a Motive

( 115 )

tive to Evil as the Hope of any pecuniary Interest whatever.

But to keep more closely to the Point—Why shall not any Credit be given to the Evidence of an Accomplice?—My Lord *Hale* tells us, that he hath been guilty of a great Crime: and yet if he had been convicted and burnt in the Hand, all the Authorities tell us, that his Credit had been restored; a more miraculous Power of Fire than any which the *Royal Society* can produce. The same happens, if he be pardoned.

Again, says Lord *Hale*, he swears to save his own Life. This is not altogether so: For when once a Felon hath impeached his Companions, and is admitted an Evidence against them, whatever be the Fate of his Evidence, the Impeacher always goes free. To this, it is true, he hath no positive Title, no more hath he, if a single Felon be convicted on his Oath. But the Practice is as I mention, and I do not remember any Instance to the contrary.

But what Inducement hath the Accomplice to perjure himself, or what Reason can be assigned why he should be suspected of it? That he himself was one of the Robbers appears to a Demonstration; that he had Accomplices in the Robbery is as certain. Why then should he be induced to impeach A and B, who are innocent, and not C and D, who are guilty? Must he not think that he hath a better Chance of convicting the Guilty than the Innocent. Is he not liable if he gives a false Information, to be detected in it? One of his Companions may be discovered and give a true Information, what will then become of him and his Evidence? And why should he do this? From a Motive of Friendship? Do the worst of Men carry this Passion so much higher than is common with the best? But he must not only run the Risk of his Life but of his Soul too. The very

( 116 )

Mention of this latter Risque may appear ridiculous, when it is considered of what Sort of Persons I am talking. But even these Persons can scarce be thought so very void of Understanding as to lose their Souls for nothing, and to commit the horrid Sins of Perjury and Murder without any Temptation, or Prospect of Interest, nay even against their Interest. Such Characters are not to be found in History, nor do they exist any where but in dis-tempered Brains, and are always rejected as Monsters, when they are produced in Works of Fiction: for surely we spoil the Verse rather than the Sense by saying, *Nemo gratis fuit Turpissimus*. Under such Circumstances, and under the Caution of a good Judge, and the Tenderness of an *English* Jury, it will be the highest Improbability that any Man should be wrongfully convicted; and utterly impossible to convict an honest Man: For I intend no more than that such Evidence shall put the Prisoner on his Defence, and oblige him either to controvert the Fact by proving an *Alibi*, or by some other Circumstance; or to produce some reputable Person his Character. And this brings me to consider the second Fortress of the Criminal in the Hardiness of his own Evidence.

The usual Defence of a Thief, especially at the *Old Bailey*, is an *Alibi*\*: To prove this by Perjury is a common Act of *Newgate* Friendship; and there seldom is any Difficulty in procuring such Witnesses. I remember a Felon within this Twelvemonth to have been proved to be in *Ireland* at the Time when the Robbery was sworn to have been done in *London*, and acquitted; but he was scarce gone from the Bar, when the Witness was himself arrested for a Robbery committed in *London* at that very Time when he swore both he and his Friend were in *Dublin*: For which Robbery, I think, he was tried and executed. This kind of

\* I. e. That he was at another Place at the Time.

Baron

( 117 )

Defence was in a great Measure defeated by the late Baron *Thompson*, when he was Recorder of *London*, whose Memory deserves great Honour for the Services he did the Public in that Post. These Witnesses should always be examined with the utmost Care and Strictness, by which Means the Truth (especially if there be more Witnesses than one to the pretended Fact) will generally be found out. And as to Character, tho' I allow it to have great Weight, if opposed to the single Evidence of an Accomplice, it should surely have but little where there is good and strong Proof of the Fact; and none at all, unless it comes from the Mouths of Persons, who have themselves some Reputation and Credit.

## S E C T. X.

*Of the Encouragement given to Robbers by frequent Pardons.*

I Come now to the sixth Encouragement to Felons, from the Hopes of a Pardon, at least with the Condition of Transportation.

This I am aware, is too tender a Subject to speak to. To pardon all Crimes where the Prosecution is in his Name, is an undoubted Prerogative of the King. I may add, it is his most amiable Prerogative, and that which as *Livy* observes\*, renders Kingly Government most dear to the People: For in a Republic there is no such Power. I may add farther, that it seems to our excellent Sovereign to be the most favourite Part of his Prerogative, as it is the only one which hath been carried to its utmost Extent in the present Reign.

\* Dec. i. l. 2. cap. 3. Esse Gratiae Locum esse Beneficii; & irasci et ignoscere posse (*Regem scilicet*) inter amicum atque inimicum Discrimen nosse, Legem rem surdam inexorabilem esse; &c.

Here

Here therefore I beg to direct myself only to those Persons who are within the Reach of his Majesty's sacred Ear. Such Persons will, I hope, weigh well what I have said already on the Subject of false Compassion, all which is applicable on the present Occasion: And since our King (as was with less Truth said of another \*) is of all Men the truest Image of his Maker in Mercy, I hope too much Good-nature will transport no Nobleman so far as it once did a Clergyman in Scotland, who in the Fervour of his Benevolence prayed to God that he would graciously be pleased to pardon the poor Devil.

To speak our fairly and honestly, tho' Mercy may appear more amiable in a Magistrate, Severity is a more wholesome Virtue; nay Severity to an Individual may, perhaps, be in the End the greatest Mercy, not only to the Public in general, for the Reason given above; but to many Individuals for the Reasons to be presently assigned.

To consider a human Being in the Dread of a sudden and violent Death; to consider that his Life or Death depend on your Will; to reject the Arguments which a good Mind will officiously advance to itself; that violent Temptations, Necessity, Youth, Inadvertency have hurried him to the Commission of a Crime which hath been attended with no Inhumanity; to resist the Importunities, Cries, and Tears of a tender Wife, and affectionate Children, who, though innocent, are to be reduced to Misery and Ruin by a strict adherence to Justice. These altogether form an Object which whoever can look upon without Emotion, must have a very bad Mind; and whoever by the Force of Reason can conquer that Emotion must have a very strong one.

And what can Reason suggest on this Occasion? First, that by saving this Individual, I shall bring

\* By Dryden of Charles II. † Disc. 1. 3. c. 3. many

many others into the same dreadful Situation. That the Passions of the Man are to give Way to the Principles of the Magistrate. Those may lament the Criminal, but these must condemn him. It was nobly said by Bias to one who admired at his shedding Tears whilst he pass'd Sentence of Death, ' Nature ' exacts my Tenderness, but the Law my Rigour. The elder Brutus \*, is a worthy Pattern of this Maxim; an Example, says Machiavel, most worthy of being transmitted to Posterity. And Dionysius Halicarnassensis † calls it a great and wonderful Action, of which the Romans were proud in the most extraordinary Degree. Whoever derives it therefore from the Want of humane and paternal Affections is unjust; no Instances of his Inhumanity are recorded. ' But ' the Severity, says Machiavel, was not only profitable ' but necessary; ' and why? Because a single Pardon granted ex mera Gratia & Favore, is a Link broken in the Chain of Justice, and takes away the Concatenation and Strength of the whole. The Danger and Certainty of Destruction are very different Objects, and strike the Mind with different Degrees of Force. It is of the very Nature of Hope to be sanguine, and it will derive more Encouragement from one Pardon, than Diffidence from twenty Executions.

It is finely observed by Thucydides †, ' that though ' civil Societies have allotted the Punishment of ' Death to many Crimes, and to some of the inferior Sort, yet Hope inspires Men to face the Danger; and no Man ever came to a dreadful End, ' who had not a lively Expectation of surviving his ' wicked Machinations.'—Nothing certainly can

\* He put his two Sons to Death for conspiring with Tarquin.

Neither Livy nor Dionysius give any Character of Cruelty to Brutus; indeed the latter tells us, that he was superior to all those Passions which disturb Human Reason. Τὸν ἐπιλαλοῦντων τὰς λογισμῶς πρὸς τὰ δὴν κάλλει.

† Page 272. Edit. Hudson. † P. 174. Edit. Hudson.

more contribute to the raising this Hope than repeated Examples of ill grounded Clemency: For as *Seneca* says, *Ex Clementia omnes idem sperant* \*.

Now what is the principal End of all Punishment: Is it not as Lord † *Hale* expresses it, 'to deter Men from the Breach of Laws, so that they may not offend, and so not suffer at all? And is not the inflicting of Punishment more for Example, and to prevent Evil, than to punish?' And therefore, says he, presently afterwards, 'Death itself is necessary to be annexed to Laws in many Cases by the Prudence of Law-givers, though possibly beyond the single Merit of the Offence simply considered.' No Man indeed of common Humanity or common Sense can think the Life of a Man and a few Shillings to be of an equal Consideration, or that the Law in punishing Theft with Death proceeds (as perhaps a private Person sometimes may) with any View to Vengeance. The Terror of the Example is the only Thing proposed, and one Man is sacrificed to the Preservation of Thousands.

If therefore the Terror of this Example is removed (as it certainly is by frequent Pardons) the Design of the Law is rendered totally ineffectual; The Lives of the Persons executed are thrown away, and sacrificed rather to the Vengeance than to the Good of the Public, which receives no other Advantage than by getting rid of a Thief, whose Place will immediately be supplied by another. Here then we may cry out with the † Poet:

————— *Sevior Ense* —————  
*Parcendi Rabies* —————

This I am confident may be asserted, that Pardons have brought many more Men to the Gallows than they have saved from it. So true is that Sentiment of *Machiavel*, That Examples of Justice are more merciful than the unbounded Exercise of Pity §.

\* *De Clementia*, lib. 1. c. 1. † *Hale's Hist.* v. 1. p. 13. ‡ *Claudian.* § In his Prince.

## S E C T. XI.

*Of the Manner of Execution.*

**B**UT if every Hope which I have mentioned fails the Thief: If he should be discovered, apprehended, prosecuted, convicted, and refused a Pardon; what is his Situation then? Surely most gloomy and dreadful, without any Hope, and without any Comfort. This is, perhaps, the Case with the less practised, less spirited, and less dangerous Rogues; but with those of a different Constitution it is far otherwise. No Hero sees Death as the Alternative which may attend his Undertaking with less Terror, nor meets it in the Field with more imaginary Glory. Pride, which is commonly the uppermost Passion in both, is in both treated with equal Satisfaction. The Day appointed by Law for the Thief's Shame is the Day of Glory in his own Opinion. His Procession to *Tyburn*, and his last Moments there, are all triumphant; attended with the Compassion of the meek and tender-hearted, and with the Applause, Admiration, and Envy of all the bold and hardened. His Behaviour in his present Condition, not the Crimes, how atrocious soever, which brought him to it, are the Subject of Contemplation. And if he hath Sense enough to temper his Boldness with any Degree of Decency, his Death is spoke of by many with Honour, by most with Pity, and by all with Approbation.

How far such an Example is from being an Object of Terror, especially to those for whose Use it is principally intended, I leave to the Consideration of every rational Man; whether such Examples as I have described are proper to be exhibited must be submitted to our Superiors.

That

The great Cause of this Evil is the Frequency of Executions: The Knowledge of Human Nature will prove this from Reason; and the different Effects which Executions produce in the Minds of the Spectators in the Country where they are rare, and in *London* where they are common, will convince us by Experience. The Thief who is hanged to Day hath learnt his Intrepidity from the Example of his hanged Predecessors, as others are now taught to despise Death, and to bear it hereafter with Boldness from what they see to Day.

One Way of preventing the Frequency of Executions is by removing the Evil I am complaining of: For this Effect in Time becomes a Cause; and greatly increases that very Evil from which it first arose. The Design of those who first appointed Executions to be public, was to add the Punishment of Shame to that of Death; in order to make the Example an Object of greater Terror. But Experience hath shewn us that the Event is directly contrary to this Intention. Indeed a competent Knowledge of Human Nature might have foreseen the Consequence. To unite the Ideas of Death and Shame is not so easy as may be imagined. All Ideas of the latter being absorbed by the Former. To prove this, I will appeal to any Man who hath seen an Execution, or a Procession to an Execution; let him tell me when he hath beheld a poor Wretch, bound in a Cart, just on the Verge of Eternity, all pale and trembling with his approaching Fate, whether the Idea of Shame hath ever intruded on his Mind? Much less will the bold daring Rogue who glories in his present Condition, inspire the Beholder with any such Sensation.

The Difficulty here will be easily explained, if we have Recourse to the Poets; (for the good Poet and the good Politician do not differ so much as some who know nothing of either Art affirm; nor would

*Homer*

*Homer* or *Milton* have made the worst Legislators of their Times :) The great Business is to raise Terror, and the Poet will tell you, that Admiration or Pity, or both, are very apt to attend whatever is the Object of Terror in the human Mind. This is very useful to the Poet, but very hurtful on the present Occasion to the Politician, whose Art is to be here employed to raise an Object of Terror, and, at the same time, as much as possible, to strip it of all Pity and all Admiration.

To effect this, it seems that the Execution should be as soon as possible after the Commission and Conviction of the Crime; for if this be of an atrocious Kind, the Resentment of Mankind being warm, would pursue the Criminal to his last End, and all Pity for the Offender would be lost in Detestation of the Offence. Whereas, when Executions are delayed so long as they sometimes are, the Punishment and not the Crime is considered; and no good Mind can avoid compassionating a Set of Wretches, who are put to Death we know not why, unless, as it almost appears, to make a Holiday for, and to entertain the Mob.

*Secondly*, It should be in some degree private. And here the Poets will again assist us. Foreigners have found fault with the Cruelty of the *English* Drama, in representing frequent Murders upon the Stage. In fact, this is not only cruel, but highly injudicious: A Murder behind the Scenes, if the Poet knows how to manage it, will affect the Audience with greater Terror than if it was acted before their Eyes. Of this we have an Instance in the Murder of the King in *Macbeth*, at which, when *Garrick* acts the Part, it is scarce an Hyperbole to say, I have seen the Hair of the Audience stand an End. Terror hath, I believe, been carried higher by this single Instance, than by all the Blood which hath been spilt on the Stage.—To the Poets I may add the Priests, whose Politics have never

I

ver



( 124 )

ver been doubted. Those of *Egypt* in particular, where the sacred Myſteries were firſt deviſed, well knew the Uſe of hiding from the Eyes of the Vulgar, what they intended ſhould inſpire them with the greateſt Awe and Dread. The Mind of Man is ſo much more capable of magnifying than his Eye, that I queſtion whether every Object is not leſſened by being looked upon; and this more eſpecially when the Paſſions are concerned: for theſe are ever apt to fancy much more Satisfaction in thoſe Objects which they affect, and much more of Miſchief in thoſe which they abhor, than are really to be found in either.

If Executions therefore were ſo contrived, that few could be preſent at them, they would be much more ſhocking and terrible to the Crowd without Doors than at preſent, as well much more dreadful to the Criminals themſelves, who would thus die in the Preſence only of their Enemies; and where the boldeſt of them would find no Cordial to keep up his Spirits, nor any Breath to flatter his Ambition.

3dly, The Execution ſhould be in the higheſt degree ſolemn. It is not the Eſſence of the Thing itſelf, but the Dreſs and Apparatus of it, which make an Impreſſion on the Mind, eſpecially on the Minds of the Multitude to whom Beauty in Rags is never a deſirable, nor Deformity in Embroidery a diſagreeable Object.

*Montagne*, who, of all Men, except only *Ariſtotle*, ſeems beſt to have underſtood Human Nature, enquiring into the Cauſes why Death appears more terrible to the better Sort of People than to the meaner, expreſſes himſelf thus: 'I do verily believe; that it is thoſe terrible Ceremonies and Preparations wherewith we ſet it out, that more terrify us than the Thing itſelf; a new and contrary Way of Living, the Cries of Mothers, Wives and Children, the Viſits of aſtoniſhed and afflicted Friends,

( 125 )

' the Attendance of pale and blubbered Servants, a dark Room ſet round with burning Tapers, our Beds environed with Phyſicians and Divines, in fine, nothing but Ghaſtlineſs and Horror round about us, render it ſo formidable, that a Man almoſt fancies himſelf dead and buried already \*.'

' If the Image of Death, ſays the ſame Author, was to appear thus dreadful to an Army, they would be an Army of whining Milk-ſops; and where is the Difference but in the Apparatus? Thus in the Field (I may add, at the Gallows) what is encountered with Gaiety and Unconcern, in a Sick-bed becomes the moſt dreadful of all Objects.'

In *Holland*, the Executions (which are very rare) are incredibly ſolemn. They are performed in the Area before the Stadthouſe, and attended by all the Magiſtrates. The Effect of this Solemnity is inconceivable to thoſe who have not obſerved it in others, or felt it in themſelves; and to this, perhaps more than to any other Cauſe, the Rareneſs of Executions in that Country is owing.

Now the following Method, which I ſhall venture to preſcribe, as it would include all the three Particulars of Celerity, Privacy, and Solemnity, ſo would it, I think, effectually remove all the Evils complained of, and which at preſent attend the manner of inflicting capital Punishment.

Suppoſe then, that the Court at the *Old Bailey* was, at the End of the Trials, to be adjourned during four Days; that, againſt the Adjournment-day, a Gallows was erected in the Area before the Court; that the Criminals were all brought down on that Day to receive Sentence; and that this was executed the very Moment after it was pronounced, in the Sight and Preſence of the Judges.

\* *Montagne*, Eſſay 19.

Nothing

Nothing can, I think, be imagined (not even Torture, which I am an Enemy to the very Thought of admitting) more terrible than such an Execution; and I leave it to any Man to resolve himself upon Reflection, whether such a Day at the *Old Baily*, or a Holiday at *Tyburn*, would make the strongest Impression on the Minds of every one.

Thus I have, as well as I am able, finished the Task which I proposed, have endeavoured to trace the Evil from the very Fountain-head, and to shew whence it originally springs, as well as all the Supplies it receives, till it becomes a Torrent, which at present threatens to bear down all before it.

And here I must again observe, that if the former Part of this Treatise should raise any Attention in the Legislature, so as effectually to put a Stop to the Luxury of the lower People, to force the Poor to Industry, and to provide for them when industrious, the latter Part of my Labour would be of very little Use; and indeed all the Pains which can be taken in this latter Part, and all the Remedies which can be devised, without applying a Cure to the former, will be only of the palliative Kind, which may patch up the Disease, and lessen the bad Effects, but never can totally remove it.

Nor, in plain Truth, will the utmost Severity to Offenders be justifiable, unless we take every possible Method of preventing the Offence. *Nemo ad supplicia exigenda provenit, nisi qui remedia consumpsit*, says *Seneca* \*, where he represents the Governors of Kingdoms in the amiable Light of Parents. The Subject, as well as the Child, should be left without Excuse before he is punished: for, in that Case alone, the Rod becomes the Hand either of the Parent or the Magistrate.

\* De Clementia, Lib. 2. Fragm.

All Temptations therefore are to be carefully removed out of the Way; much less is the Plea of Necessity to be left in the Mouth of any. This Plea of Necessity is never admitted in our Law; but the Reason of that is, says Lord *Hale*, because it is so difficult to discover the Truth. Indeed that it is not always certainly false, is a sufficient Scandal to our Polity; for what can be more shocking than to see an industrious poor Creature, who is able and willing to labour, forced by mere Want into Dishonesty, and that in a Nation of such Trade and Opulence.

Upon the whole, something should be, nay must be done, or much worse Consequences than have hitherto happened, are very soon to be apprehended. Nay, as the Matter now stands, not only Care for the Public Safety, but common Humanity, exacts our Concern on this Occasion; for that many Cart-loads of our Fellow-creatures are once in six Weeks carried to Slaughter, is a dreadful Consideration; and this is greatly heightened by reflecting, that, with proper Care and proper Regulations, much the greater Part of these Wretches might have been made not only happy in themselves, but very useful Members of the Society, which they now so greatly dishonour in the Sight of all Christendom.

F I N I S.

ERRATA.

- Page 26, in the Note, for 174, read 158.
- Page 76, Line 11. Add, For by *wandering* from one Part to another, and often shifting his Quarters, he may almost avoid the Possibility of being discovered.
- Ibid. Line 14. After the Words this Evil, add, namely the *wandering* of the Poor.
- Page 80, in the Notes, for Town read Tourn.

## To the PUBLIC.

**T**HE rude Behaviour and Insolence of Servants of all Kinds is become a general Complaint: for which Insolence the Law has given no other Power of punishing than by turning them away; and this would be often Punishment enough, if the Servant could not easily provide himself with another Place: But here they find no Manner of Difficulty; for many Persons are weak enough to take Servants without any Character; and if this be insisted on, there is an ingenious Method in this Town of obtaining a false Character from one who personates the former Master or Mistress: To obviate all this, an Office is erected in the *Strand*, opposite *Cecil-Street*, where the best Servants in every Capacity are to be heard of; and where the Public may be assured, that no Servant shall ever be register'd, who cannot produce a real good Character from the last Place in which he or she actually lived; the Method of ascertaining which may be seen at the said Office; where Estates, Houses, Lodgings, and every thing else to be sold or lett, are carefully register'd; and where consequently they may be heard of, by those who desire to hire or purchase the same.

*Note,* This Office is established by a Society of Gentlemen on the Principles recommended by *Montagne* in his *Essays*, and must soon become of the highest Utility to the Public. Nay, that great Author laments the Want of such an Office, as a great Defect in the *French* Government. We have thought it therefore not improper to recommend this Office at the End of a Work, in which the Public Utility is sincerely intended, as it seems to deserve the Encouragement of all, who think the Public Utility worthy of their Regard.