A

Second LETTER

TO A

MEMBER of PARLIAMENT,

CONCERNING

The BILL *for Regulating the Nightly* WATCH.

(Price 4*d.*)

A SECOND

LETTER

TO A

Member of Parliament

Concerning the

BILL

FOR

Regulating the Nightly WATCH.

WITH SOME

Considerations of the Deputy-Steward's CONDUCT; and a Caution to the Inhabitants of *Westminster*, against Paying any Fines or Amercements.

Licet superbus ambules Pecunia,
Fortuna non mutat Genus.
Videsne sacram metiente te viam
Cum bis ter Ulnarum Toga.
Ut Ora vertat huc & huc euntium
Liberrima Indignatio? Horat. Epod. 4.

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A

Second Letter

TO A

MEMBER of PARLIAMENT, &c.

WHEN you first engag'd me to send you my Thoughts concerning *The Bill for regulating the Nightly Watch*, I little imagined that that Letter should occasion you the Trouble of Reading a Second; but being challenged, in Print, to point

out any Miſconduct in the preſent Deputy-Steward, I am forced to entertain you on ſo abject a Subject as the Clerk of *Cutlers-Hall*, and to enter into a Conſideration of his Capacity; which will appear a very ſtrong Argument for the Bill, and is that which nothing but the abuſive Expreſſions Two of his Friends, or he, have beſtow'd on me, could tempt me to do; it being otherwiſe, as I mention'd in my former, fitter to be urged in private Converſation, than for a Publication.

The Papers I here intend to obſerve on, are,

First,

First, a Pamphlet printed by *Roberts* in *Warwick-Lane*, in Anſwer to my former Letter.

The other is, A Letter printed in the *Whitehall Evening-Poſt*, of the 3d and 5th of *March*. 'Tis an unfiniſh'd Piece, and the Author has not yet kept his Word, in giving us the Remainder. Both Mr. *Cotton*'s Advocates agree in abuſing every Body who is for the Bill, and in commending Mr. *Cotton*, and boldly aſſerting his Conduct to be unexceptionable. To anſwer Perſons with foul Language, is a ſure Sign, that the Author has a bad Cauſe to defend, and is himſelf

an

an ill-bred Fellow. Whatever Provocations Mr. *Cotton*, or his Friends, may give, from me they shall have no Return of such Treatment. But I will alledge Facts that are undeniable, and leave my Readers, if they can, to find Names as severe as they deserve. And since Mr. *Cotton*, or his Friends, have printed abusive Untruths, he can blame no Body but himself, for seeing Truths that are disadvantageous to him publish'd in the same Manner; nor can it be imputed to me, if any one should hereafter question his Abilities as a Solicitor, because I prove him unqualify'd for a Steward.

The

The Author of the Pamphlet printed by *Roberts*, has perhaps gone as far in Scandal as any Writer whatsoever; for, *Page* 12. he abuses the Justices, and tells us also, *that few or none of them contribute to the Watch.* In the next Page he is as scurrilous on the whole Body of Justices at the Quarter-Sessions; and in the last Page, after having told us, *that Mr.* Cotton *might, if he pleases, be in the Commission of the Peace,* he concludes thus; *But with that I question whether he would put his Character or Estate on a Level with some Dozens of some Men, who, as 'tis said and believ'd, have promis'd*

mis'd themſelves and their Friends ſeveral beneficial Employments in the Management under the Act, when paſt. If this Author means the Juſtices, (and who elſe can he mean, they being to have the Management of the Watch, by this Bill) 'tis certainly the moſt inſolent Aſſertion that ever was, and fit for them to puniſh in an exemplary Manner.

The Gentlemen of the Bar, it ſeems, cannot 'ſcape this Author's Rage, becauſe ſome were concern'd in promoting this Bill; for he tells us, *that ſeveral of them have endeavour'd to be Clerks to Companies in the City, and that Mr.* Cotton

ton *may, when he pleaſes, be advanc'd to that Character.* Both which, I'm well aſſur'd, are utterly falſe.

The injurious Expreſſions he is pleaſed to beſtow on me, are too many to be here repeated; only, Sir, give me Leave to obſerve, That there was no ſort of Provocation given; for, ſaying that Mr. *Cotton* was Clerk to the Company of *Cuttlers*, cannot be call'd one, becauſe 'tis Truth; and the ſpeaking Truth can never be a juſt Reaſon for giving ill Language. The great Encomium beſtow'd on Mr. *Cotton*, will, I believe, Sir, be found as ill grounded, as his Cen-

ſures of others; and, if you'll pleaſe to favour me with your Patience, I ſhall endeavour to prove, and, I think, fully,

Firſt, That the Grant of the Office of Deputy-Steward of *Weſtminſter* to Mr. *Cotton*, is a void Grant; becauſe he is but a Solicitor.

Secondly, That if, as (one of his Advocates allows,) Miſconduct be a Reaſon for turning him out, he ought to be remov'd.

Thirdly, That the continuing him in, muſt be attended with fatal Conſequences.

To prove that the Grant of the Office of Deputy-Steward of *Weſtminſter*, to Mr. *Cotton*, is

is void, I muſt only demand, that this ſelf-evident Propoſition be allow'd me, *viz.* That if the Law forbids a Perſon from pleading a Cauſe for want of Capacity, the ſame Law forbids him ſitting as Judge in the Cauſe. This being allow'd; as Mr. *Cotton*, by Law, was unqualify'd to plead a Cauſe before any of the former Stewards of *Weſtminſter*, in the Court where he's now Judge, and, were he remov'd, would be unqualify'd to plead before his Succeſſor; it neceſſarily follows, that he is uncapable of being Steward or Judge of the Court, and that the Grant of the Office to him, is as void as

as if it had been granted to an Infant, an Idiot, or a Madman.

Mr. *Cotton*'s Advocates, I know, urge in his Favour, That there are many Inſtances of Attorneys keeping Courts; but this will little avail them: For, Firſt, an Attorney and a Solicitor are very different Characters: An Attorney's Buſineſs lyes in the Common Law Courts; and the Courts of the City of *Weſtminſter* are guided by Common Law ſolely. A Solicitor's Buſineſs is in *Chancery*, where every Thing goes according to the Rules of Equity, and not of Law.

Farther: The Character of a Solicitor is, in the Eye of the Law, very

very inferior to that of an Attorney; and we know that a great Man, who is the Ornament of the Law, ſaid, *That a Solicitor was but a Runner between the Clerk in Court and the Client.*

Again: We are to diſtinguiſh between Court-Leets and Court-Barons: The former are Courts of Record, and the Steward is Judge. In Court-Barons we muſt likewiſe diſtinguiſh between that which is now properly call'd the Court-Baron, and which was chiefly inſtituted for the Trying of Cauſes, and that which is aptly call'd, the *Copy-holders Court*: In the firſt the Steward alſo ſits as Judge

Judge of Matters of Law; in the last, his Office is altogether ministerial; and therefore in both the first Cases, the Office ought to be fill'd by a Barrister at Law; in the last it need not. Accordingly, we find throughout *England*, that nothing of Consequence is done in the Courts held by Attorneys; no Amercements are impos'd, or if impos'd for Form, they are not levied. Were that the Case here in *Westminster*, who would be concern'd who held so insignificant an Office? Nor is there in *England*, I believe, an Instance of any Trials in Court-Barons, of Actions, where the Steward,

Steward is not a Barrister, *Westminster* only excepted. Thus, as I said before, the judicial Part of the Business, in Courts where Attorneys are Stewards, being intirely lost in such Courts, they can be no Authority for a Solicitor's being Steward, where they are preserv'd and exercis'd in the highest degree.

The Second Thing I propos'd was, the Consideration of Mr. *Cotton*'s Misconduct in the Office of Deputy-Steward of *Westminster*. To enter into all the Particulars, would be tedious, and telling him how to correct his Errors: Therefore, Sir, I shall here only observe,

 First,

First, That in the *Daily-Post*, of the 15th of *March*, the following Advertisement was publish'd, *viz.*

"WHEREAS a Letter in "the *Whitehall Even-* "*ing-Post*, and a Pamphlet, "have been lately publish'd, con- "cerning a Letter to a Member "of P-----t, on the Debate of "Regulating the Nightly Watch; "and neither of those Papers "attempt to answer the Reasons "that were offer'd, but in very "gross and vulgar Terms abuse "the Justices, and the Author "of the Letter, and as absurd-

ly

"ly commend the present D...ty "St..d; 'Till his Capacity is more "at large consider'd and expos'd, (as "it certainly shall, since his two "Champions press so much to "have his Abilities brought to "the Test) Two *Quæries* are "here propos'd; to which, if "the D.....ty St.....d cannot "give such Answers as will prove "he has acted according to Law, "every Body must allow he's ca- "pable of the Office; and if no "Answer is given, 'twill be rea- "sonable to make the same Con- "clusion.

"1st. By the Statute of the "36th of *Edward* III. Chap. 15.

'tis

"'tis enacted, *That all the Pro-*
"*ceedings in the Courts of Justice*
"*shall be enter'd and enroll'd in*
"*Latin.*

"*Quære.* Have all the Proceed-
"ings, since the C...k to the
"Company of C....ers has been
"D...ty St....d of the Court-
"Leet at *W....ter*, been record-
"ed in *Latin* or *English?*

"*2dly.* By *Magna Charta*, all
"Amercements in Court-Leets
"ought to be afferr'd.

"*Quære.* Whether, since the pre-
"sent D....ty St....d has got
"that Office, the Amercements
"in the Court-Leet of *W...ter*
"have been afferr'd, or not?

And

And to this no Answer was ever given, nor indeed can; for I my self saw the Rolls in Mr. *Wilcox* the late High-Bayliff's Custody, (with whom I had a long and intimate Acquaintance) and know therefore that they had those Defects. If Mr. *Cotton* perus'd or wrote the Dean and Chapter's Case concerning the Bill, his Ignorance is still the more remarkable; because therein this Expression is us'd more than once, *viz.* the City and Borough of *Westminster*: Whereas Lord *Coke*, in his Commentary on *Littleton*, Fol. 109, tells us, *That* Westminster *is still a City, because it had once a Bishop.*

Is

Is not this Man an able and learn'd Steward, who knows not the Stile of his own Court!

3*dly*. The Consequence of continuing the Clerk of *Cutlers-Hall* in Office, must be, 1*st*. According to the Opinion of *Kitchin*, and the Resolutions in the 2d of *Edw*. III. Fol. 10; and the 20th of *Edw*. IV. Fol. 5, *&c*. That the Liberty may be seiz'd into the Hands of the Crown for the Steward's Deficiencies; so his Principals run a Hazard of losing their Franchise, but he requires nothing; for no Judge can be punish'd for Ignorance, as is expresly resolv'd in the fore-cited Book. 2*dly*. That if the Inhabitants refuse

fuse to pay Fines or Amercements, (as 'tis to be hoped all will) they can never be recover'd; for not being impos'd according to Law, if the High Bailiff distreins in an Action of Trespass, he'll be cast, and pay Costs, for endeavouring to get *Six and Eightpence*. And, *Lastly*, If the Grant of the Office of Steward of *Westminster*, to the Clerk of *Cutler's-Hall*, is (as I am persuaded it is) void; then are all the Proceedings there null, and *coram non Judice*; and the Justices of the Peace, by Virtue of the Statute, may and should appoint Constables for the Liberty of *Westminster*. For a Court-

Court-Leet held before one uncapable, is no Court in the Eye of the Law. I am,

SIR,

Your most Humble Servant,

N. M.

FINIS.