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THE *N*
C A S E
 OF THE
UNFORTUNATE
TRULY STATED.

The Second EDITION, with Additions.

By *W. Mason*

Given me by the Author



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L O N D O N:
 Printed for the AUTHOR;
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MDCCLXXIX

Oct. 14 1700
Anthony Hammond Esq

IN SENATE



TO THE
K I N G 's
Most EXCELLENT
M A J E S T Y.

Most Gracious Sovereign,

I, ONE of your Majesty's Subjects, having taken Notice of the Hardships and Difficulties that the unfortunate Part of your Subjects undergo, and the Damage that your Majesty and your Successors are likely to sustain, and the biggest Part of the Kingdom, thought it my Duty to lay their Case at your Majesty's Feet, and not only before your Royal Self, but the Kingdom in general: And as Queen Esther petition'd King Ahafuerus for the distress'd Jews, so is my Petition to your Sacred Majesty,
in

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in Behalf of the unfortunate and distress'd People of this Land; which, by the Laws now in Being, must either be starved in Gaol, or forced to fly out of their Native Country, to the great lessening of the Revenues of the Crown, and Damage to the Nation: And having observ'd the Charity, and Tender Affection, your Majesty has always shewn to all your Subjects, ever since they have been blest with your mild and gentle Government; I am apt to flatter my self that this small Treatise may meet with a favourable Reception: And that your Majesty may cast an Eye of Pity and Compassion on the Unfortunate, is all that is begged, from,

Dread SOVEREIGN,

Your most Dutiful,

and Loyal Subject,

W. M.



ADVERTISEMENT

TO THE

READER.



IF any Faults are inserted in this ensuing Treatise, I hope they will meet with a charitable Construction, not having any wilful Design to offend my KING, (to whom I entirely bear all true Allegiance that becomes a faithful Subject) nor my Country, whose Welfare I always heartily wish. And that they may never want a Protestant Prince to govern them, out of the Loins of his present Majesty KING GEORGE, is the hearty Wish of

Your Humble Servant,

W. M.



THE
C A S E
OF THE
UNFORTUNATE *Truly Stated;*

AND FIRST,

The REASONS *why they come to be so,*
and the Unavoidableness thereof.

THERE are abundance of young
Gentlemen that are Heirs to very
good Estates, and happen to come
of Age and Marry, during the Life
of their Parents, and have nothing to subsist on
but what their Parents please to allow them,
which often is but small; and they, having
been brought up in a handsome Manner, ac-
cording to the Rank and Fashion of their Fa-
milies, cannot think of living otherwise than
as they have been so brought up: And the
Allowance by their Parents being not sufficient

B. to

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to maintain them, and their growing Families, they are obliged to borrow large Sums of Money upon their Estates before they come to enjoy the same, (and when they do come to the Estate, perhaps it is tied to pay younger Brothers and Sisters Fortunes, which often obliges the Heir to farther encumber his Estate, to raise Money to pay the same :) The paying of Interest, and their Families enlarging, often cause these Gentlemen to labour a long Time under Difficulties, and a great many can never retrieve themselves, altho' ever so careful; so that they cannot avoid becoming insolvent, and the Insolvency of the Father in course brings the Children to be such also.

Another Casualty happens, which is as follows: Some Merchants Export abundance of Goods, and when the Return comes back, by Reason of some Disappointments he hath met with, he cannot raise Money to pay the Custom, and by that Means he is often obliged to deposit the Goods in a second Person's Hand, to pay the Duty; this often hinders him of the Sale; and Interest running on, what with the Loss of his Market, and the Payment of the Interest, the Profit of the Exportation and Importation is quite sunk, and in Time he becomes Insolvent.

Some Men are reduced by dealing in large Quantities of Goods, and meet with bad Markets, and yet are obliged to sell, although it be at a lesser Price than the Goods cost or lay the Grower or other Producer in, and especially

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cially at *Smithfield Market* in live Cattle, and also in all trading Goods and Merchandize of what kind soever; For the Case is thus, Those People that buy upon Credit commonly set a Day for Payment, which if they do not perform, their Credit sinks; which to prevent, they are obliged to comply with the Market, altho' it be to their Loss, with Hopes of meeting with better Success another Time, which they often miss of, and so, by Degrees, are reduced to Insolvency.

Other Persons there are, which are brought to Ruin by dealing beyond their Stock in Trade, and being obliged to give Credit, do take promissory Notes, or inland Bills, of such Persons with whom they deal; but not being able to stay for the Money, the Length such Notes or Bills have to run, are obliged to give a large Discount, to turn the same into ready Money; which Premium given for such Discount, often amounts to more than the Profit the Goods were sold for; by which Means, in Time, they become Insolvent.

Others there are possess of small Estates, the Income of which is too little to support their Families, and therefore borrow Money upon such Estates, to put themselves into some honest and lawful Employ, in order to gain something for an Addition to the Support of their Families: But they often meet with Losses in carrying on such Employ, and the Person who lends the Money upon their Estate, having taken Procuracy and Continuation, and the Interest of the

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Money running on, and the Largeness of their Families being more than they can support, they unavoidably become Insolvent.



Here follows an Account how the Poor become Poorer, within the Bills of Mortality.



HERE are Persons that lend small Sums of Money, commonly called Bommary People, Pawn-Brokers, and Tally-Men, and these People are as bad as Caterpillars. The Case is thus; A great many poor Persons have large Families of small Children, and by their hard Labour cannot get Bread, and other Sustenance for them; and it being a Heart-break to Parents, tho' never so poor, to see the Children crying for Bread, and their poor Bodies half naked, the readiest Way the Parents have, is to carry their own wearing Apparel to the Pawn-Broker, and there borrow about half the Value upon them, at 60 *per Cent.* That small Sum so borrow'd, is often eaten in the Family, before Money can be got to redeem the Apparel, and the 60 *per Cent.* running on, in a short Time the Cloaths are lost.

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The poor Person then is obliged to go to the Tally-man, and he sells him a Piece of Stuff for Four Pounds, which is not worth above Two, and takes his Money in at Three or Four Shillings *per Week*, and has two other Persons bound for Payment thereof. When this is made into Cloaths for Husband, Wife, or Children, these poor Persons finding the World to frown upon them in this Manner, are willing to put themselves into some honest Employ, but having neither Money nor Friends, are forced to go to the Bommary-Man, and he lends them Thirty-Six Shillings, and takes a Note of their Hand for Forty Shillings, which the poor Man is obliged to comply with, and pays it in at Two Shillings *per Week*, and gets one or two poor Men to be bound with him for Performance thereof. These People, called Bommaries, commonly sell Liquors, and every Time the poor Man comes to pay in his weekly Money, he must spend something; and if he do not, and should not keep his exact Payment, nor make a Treat at their House, then immediately a *Bailiff* is sent for, the poor Man and his Securities are arrested, and sent to Gaol, there to starve, as more or less are every Week buried out of such Gaols, and their Wives and Children become a Charge to the Parishes; And the Tally-men do the same: Thus the King loses his Subjects, and the Parishes are punish'd by being burdened with the Poor.

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There are other Casualties which happen in this Kingdom unavoidably, *viz.* Our Laws giving Liberty to Tradesmen to take what Apprentices they please, there is every Year a large Number coming out of their Apprenticeships, which are obliged to set up their Trade with such small Fortunes as their Parents are able to give them, (which often is very small) and it often happens that before they can get into a Custom sufficient to support their Families, the Charge of their House-keeping, Rent, Parish-Rates, and other Casualties, eat up that small Fortune they had to begin the World with, and of necessity they must become Insolvent.

Some are reduced by having large Families, and their Trade is not sufficient to support them.

Others by being themselves and Families visited with Sickness.

Some by being bound for other Men.

Some by Losses by Fire.

Some by Casualties in Cattle.

Some by Losses at Sea.

Some by contracting bad Debts.

Some by buying large Quantities of Goods, and the Markets falling upon their Hands.

Some undone by bad Servants.

Some by extravagant Children.

And many other Casualties, incident to Men in a trading Country, which are unavoidable.

Some

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Some indeed seek their own Ruin, who ought not to be pitied, as by Idleness, Gaming, Whoring, and Drunkenness; they indeed may deserve the Title of Rogues, because they may properly be said to be such to their Creditors, and Wives, and Children. — But for the former Casualties, which are unavoidable, the Laws now in Being seem to be pretty severe; for if a Man becomes Insolvent by Casualties which are unavoidable, he must either perish in Gaol, or fly the Kingdom, and it may be presumed a Man will choose the latter. And it is credibly reported; That large Numbers of the Subjects of this Kingdom are gone out of this Nation, and carried off large Effects with them, since the Act made in a late Session of Parliament, which makes it *Death for a Man to be seen in Disguise; to affront a Bailiff, or hinder him in executing any Process in Suffolk Place in the County of Surrey;* so that the Riches of the Nation are carried out, and the King loses his Subjects.

It is at a moderate Computation computed, that Four Thousand Men fail in this Kingdom every Year, by Casualties unavoidable; and suppose, that One Thousand compounded with their Creditors, or were cleared by the Statutes of Bankruptcy, and One Thousand were kept in Prison, the other two Thousand used to live together in *Suffolk Place in Surrey,* till they could make up with their Creditors or died in that Place: And all this Time took Care of their Wives and Children, and kept them off
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the Parishes, by their Hand-Labour and lawful Callings; and in the War-time a great many went into the Army, and so became serviceable to the Crown and Kingdom in general: And others that remained there, paid all their Taxes and Duties to the Crown that were laid upon them, equal with other Subjects that were not Insolvent throughout the Kingdom. Neither was it ever proved that they were ever disaffected to his Majesty or the present Constitution: But not being willing to be carried into Gaols to be starved, (the Law not being in this Kingdom as it is in other Kingdoms, which is, that if a Creditor puts a Debtor in Gaol, he must allow him a Maintenance to support Life) they did defend themselves against *Bailiffs*, but never opposed any Warrants of the Peace.

And it is observable, that the biggest Part of the People that are kept in close Prisons, within the Bills of Mortality for Debt, are kept in by Tally-Men, and Bommary-Men, and morose Creditors.

The Usage these unfortunate Persons meet with that are carried into Gaol, is as follows: The Officers or *Bailiffs* are commonly Men of very indifferent Characters. Some of them have been brought up Tradesmen, but fail'd by Reason of Drunkenness, Debauchery and Idleness, and so get in to be *Bailiffs* to shun working and getting their Bread by lawful Employments. In the War-Time by a Law the Followers were called Vagabonds, and Hundreds of them were

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were press'd into the Wars. Some of them indeed are honest Men, but the most Part are generally Unnatural, Hard-hearted, full of Barbarity, Inhuman, and have no Affection to their Fellow-Creatures; prophane Swearers and Curfers, Breakers of the Sabbath, and, in short, as Inhuman as the Canibals; nay worse, for the Canibals eat not Men until they are dead, but these almost eat them alive. For the first Question, when they have a Man in Custody, is, *D——n you, have you any Money? if not, I will carry you to Gaol.* The poor Prisoner not being willing to go till he has sent to see if he can get Bail, thereupon gives him Money: The *Bailiff* then carries him up into a Garret and locks him in, where is a nasty stinking Bed not fit for a human Body to lie in; for which, he makes him pay two Shillings for the first Night, and twelve Pence *per* Night afterwards, and double Price for every Thing he eats and drinks, and the next Day Civility Money. By-and-by comes the poor Prisoner's Wife with a heavy Heart. (Cries Catchpole immediately) *D——n you, have you brought any Money?* The Wife helps the Husband to what she can; but when Bail cannot be got, and Catchpole hath fleeced the Prisoner of that that should have gone to the Creditor, or to support his poor distressed Family, then is he carried to Gaol, where he comes under the Turnkey's Cruelty, who commonly is an old Thief, or a thorow-paced *Bailiff*, which is as bad, and not qualified to be one until he has

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gone through all the Scenes of Roguery: And when he takes upon him that Office, he resolves to be ten times harder-hearted than a *Bailiff*; for he can see the Mother and Children come crying to the poor Father with empty hungry Bellies, and the Father looking upon them with ghastly and broken-hearted Looks, to see that he cannot help his young Ones nor Himself; nay, he can immediately take a Cudgel and beat the poor Soul into a nasty stinking Hole, starve him to Death with Hunger, and see the poor Mother with her Infants go weeping away. How this agrees with our Christian Religion, I leave the World to judge.

The Case being then in this Manner stated, *Quer.* Whether the Laws of this Land might not be made more consistent with the Law of God and Christianity, if we compare them with what our blessed Saviour says in the Words of the Gospel, when he speaks of the last Judgment, *MATT. xxv. 31.* to the End of that Chapter? *viz. And when the Son of Man cometh in his Glory, and all the holy Angels with him; then shall he sit upon the Throne of his Glory. Ver. 32. And before him shall be gathered all Nations, and he shall separate them one from another, as the Shepherd separateth the Sheep from the Goats. Ver. 33. And he shall set the Sheep on the Right, and the Goats on the Left. Ver. 34. Then shall the King say to them on his Right-Hand, Come, ye blessed of my Father, inherit ye the Kingdom prepared for you from the Foundations of the World.*
Ver.

Ver. 35. For I was an Hungry, and ye gave me Meat; I Thirsted, and ye gave me Drink; I was a Stranger, and ye took me in. Ver. 36. Naked, and ye cloathed me; I was Sick, and ye visited me; I was in Prison, and ye came unto me. Ver. 37. Then shall the Righteous answer him, saying, Lord, when saw we thee an Hungred, and fed thee, or Athirst, and gave thee Drink? Ver. 38. And when saw we thee a Stranger, and lodged thee, or Naked, and cloathed thee? Ver. 39. Or when saw we thee Sick, or in Prison, and came unto thee? Ver. 40. And the King shall answer and say unto them, Verily, I say unto you, Inasmuch as ye have done it unto one of the least of these my Brethren, ye have done it unto me. Ver. 41. Then shall he say unto them on the Left-Hand, Depart from me, ye Cursed, into everlasting Fire, which is prepared for the Devil and his Angels. Ver. 42. For I was an Hungred, and ye gave me no Meat; I Thirsted, and ye gave me no Drink. Ver. 43. I was a Stranger, and ye lodged me not; I was Naked, and ye cloathed me not; Sick, and in Prison, and ye visited me not. Ver. 44. Then shall they also answer him, saying, Lord, when saw we thee an Hungred, or Athirst, or a Stranger, or Naked, or Sick, or in Prison, and did not minister unto thee? Ver. 45. Then shall he answer them, and say, Verily, I say unto you, Inasmuch as ye did it not to one of the least of these, ye did it not to me. Ver. 46. And these shall go into everlasting Pain, and the Righteous into Life eternal.

It is observable that the People of *England* are always upon their Guard, in making Laws, that they do not give the Crown'd Head too much Power to be Arbitrary over them, for fear of Passive Obedience and Non-Resistance: But they, at the same time, are for Laws to give themselves Arbitrary Power over one another to make the poor Debtors passive: But was the Crown'd Head to put any of the Subjects in a Gaol, as they do each other, and close confined within Stone Walls, till pined and starved to Death, and give no Reason for it, they presently would fly in the Face of such Government, and even fall to Rebellion: Therefore as they are not willing to be arbitrarily governed, they ought to have no Power to be arbitrary over their Fellow Subjects; for the Golden Rule is the best of Rules, and if every Subject would follow that, there would not be so many Thousands of Poor starving to Death in Gaols daily as there are: But when grim Death looks them in the Face, they may fear departing out of this Life; for how doth any hard-hearted Creditor know but God may pronounce the Curse of the 109th Psalm on them and their Posterity, as *David* in that Psalm hath desired, from ver. 6th, to ver. 16th?

Verse 6. *Set thou a wicked Man over him; and let Satan stand at his Right-Hand.*

7. *When he shall be judged, let him be condemned, and let his Prayer become Sin.*

8. *Let his Days be few, and let another take his Office.*

9. *Let*

9. *Let his Children be Fatherless, and his Wife a Widow.*

10. *Let his Children be continually Vagabonds, and beg: Let them seek their Bread also out of their desolate Places.*

11. *Let the Extortioner catch all that he hath; and let the Stranger spoil his Labour.*

12. *Let there be none to extend Mercy unto him; neither let there be any to favour his Fatherless Children.*

13. *Let his Posterity be cut off, and in the Generation following let their Name be blotted out.*

14. *Let the Iniquity of his Fathers be remembered with the Lord; and let not the Sin of his Mother be blotted out.*

15. *Let them be before the Lord continually, that he may cut off the Memory of them from the Earth.*

16. *Because that he remembered not to shew Mercy, but persecuted the poor and needy Man, that he might even slay the broken in Heart.*

I cannot help taking Notice of several Instances of these Curses that have and do daily happen amongst us; for we often see some Fathers scrape, and moil, and toil, overreach, out-wit, and use secret covetous Ways to get large Fortunes for their Children; and if a poor Man owes them Money, will be very severe upon him: And in a short time Death snatches them away; and after they are gone, their Children in a few Years waste and confound what their griping Fathers have got, and become

become Miserable; then the Wife is a Widow, the Children Fatherless, and become Vagabonds, and beg their Bread; and they come out of their Places like Men destroyed; and the Extortioner hath catched all that they had; and few or none will shew Mercy to them although Fatherless. And how do we know but these Afflictions have happened for the Sins of the Fathers? for it is said in Scripture, *That the Sins of the Fathers shall fall on the Children to the third and fourth Generation*; therefore if a Man doth not shew Mercy to the Poor for the sake of his own Soul, yet, unless he is worse than a Brute Beast, he ought to do it for the sake of his Children.

I cannot think how any Body can go to Church or Meeting, where the Word of God is preached, and Prayers of all Sorts are said, particularly the Prayer in the Litany, where we say (*Have Pity on all Prisoners and Captives*) when we will not have Pity on them our selves. Why it is such an absurd Expression to the most wise God, that it is enough to provoke him to send down his immediate Vengeance to destroy us. But I am afraid a great deal of the Hardheartedness and Barbarity of the Subjects to each other, is very much owing to the Clergy and Ministers of the Gospel here in England, for it is very rare that they take Notice in any of their Sermons of the Duty we owe to one another, by forgiving one another our Debts, as we hope to have God to forgive us our Debts due to him; for if we be not of a for-

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forgiving Temper, how can we expect God to forgive us? And Christ himself saith, *A new Commandment I give you, that ye love one another, for that is the fulfilling the Law and the Prophets*: And we do shew a deal of this last Commandment by keeping one another in Gaol, and starving each other to Death: But although our Hearts are so hardened, I hope it will not be long ere our Legislature will amend the Law, to put it out of our Powers to use our Fellow Creatures in such Manner. But the Severity of the Laws of *England* for imprisoning Men for Debt, will in a few Years dispeople this Nation very much; for as there is no Place of Asylum allowed as Men fail, they will fly into other Countries.

N. B. *Credit is always Voluntary, and therefore the Plaintiff should not be Judge, Jury, and Executioner himself; for Imprisonment is a Punishment, and if pined to Death, it is worse than Hanging.*

A F A B L E.

When the Tongue petitioned Jupiter that he might not always be troubled to call for Liquor for nourishing the Body, but that the Body might call for it self: Jupiter answered, That he was a Member of the Body made for that and other Purposes, and therefore he must do his Duty; but because he petitioned in that unreasonable

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unreasonable Manner, he should have his Punish-
ment; for whenever the Body wanted Moisture,
he should find a burning Heat at the End.*

The M O R A L.

*Men are all made for particular Uses and Ser-
vices to each other.*

And this Fable seems to be verified upon
the Rich Man and *Lazarus* in *Luke xvi.* for
that Tongue that denied *Lazarus* when he
called for Sustenance, wanted a Dip of his
Finger to cool it.

Now, we in this Kingdom profess our selves
to be Christians, and acknowledge our selves
to be the happiest People in the World, as
being a free People, and under the mildest
and best of Governments, by reason we have
free Liberty of exercising our holy Religion in
the Manner that agrees best to our Capacities
and Understandings: And our Laws in this
Land are made very wholesom and good in
every Respect, to encourage the Practice of
Christian Duty, in order to attain the Felicity
of a future State, which every Man that pro-
fesseth himself to be a Christian, must believe
there is one; and every Christian no doubt,
doth or ought to do the things in this Life to
obtain a happy one in the World to come,
and to avoid by Faith and good Works in
this Life the Torments of Hell. Now, as we
would

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would evade the Torments of Hell, and the
Miseries thereof in another World, sure no
Man can expect to escape the Miseries there,
that keeps his Fellow Creature in a Hell upon
Earth; nor sure, no Man can say he is a
Christian, that doth the Act of a Barbarian.
For I take a Gaol, for the time a Man remains
in it in this Life, to be worse than Hell it
self; and for this Reason, in Hell a Soul only
feels its own Pain; but in this Hell on Earth,
a Man feels not his own Hunger and Cold
only, but he sees the Misery of his poor Wife
and Children, coming Daily with hungry starved
Bellies, looking upon their distressed Father,
with Tears, and Sighs, and Sobs, and grievous
Lamentations, to see themselves half starved,
and the Father almost starved too, confined by
a merciless Creditor. This makes the Woman
a Widow before she is, and the Children Fa-
therless before they are so, and have no Re-
medy nor no Help to ease themselves, but their
Shrieks, and Cries, and Prayers to God that
he will help them and revenge their Wrong;
which no Doubt, according to the Scripture
before set forth, he will. And I think this is
sufficient to prove, that this Hell upon Earth,
is worse than the Hell in a future State; and
I wish every hard-hearted Creditor here, doth
not prepare a future Hell for himself, by mak-
ing one here on Earth. For how can such a
Man say that Part of the Prayer taught by our
Saviour, *LUKE xi. 4. And forgive us our Sins,*
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for we also forgive every one that is indebted to us.

It would be a happy Day, to see the Laws of this Land such, as to put it out of the Power of a merciless Creditor to make a Hell in this World for his Fellow Creature.

Quer. If small Debts under forty Shillings might not better be recovered by a Court of Conscience, as in the City of London? For Hundreds of poor Men have been kept in Prison by inferior Courts, within the Bills of Mortality, for several Months together, for so small Sums as five or six Shillings, and their Wives and Children have been kept by the Parish all the while they were in Prison, and some of them have died there for such small Debts: So the King has lost a Subject, and the Parish burthened with the Charge of his Family; and this caused by the Stupidness of a morose Creditor.

The Act that was made to prevent vexatious Suits, and for preventing the Bodies of Men being imprisoned for Debts under forty Shillings, hath had several ill Effects: For when a Copy of a Writ is served upon a poor working Man, who can neither Read nor Write, nor read Print, he doth not know what it doth mean, and so neglects to order an Attorney to appear in the Time limited by the said Act; the Plaintiff then entering an Appearance for him, by Virtue of the same, Judgment is got, and the Man carried into Execution, with an additional Charge of about four Pounds added to his

his Debt, which was under forty Shillings: And many lie starving in Gaol on that Account at this time.

One general Objection is, That it is inconvenient, if not dangerous, to alter the Course of our Laws, though some suffer thereby through their Severity. To this it may be said, That

It is our Duty as much to stop the Course, or alter bad Laws, as it is to make good Ones.

Quer. Whether the King may not suffer in his Revenue; and in Case of a War, in Case the Natives of the Kingdom fly into other Countries, and some of them die in Gaol?

And First, Suppose two thousand Subjects quit the Kingdom every Year, in ten Years the King loses twenty thousand Men, and in twenty Years he loses forty thousand Men; and suppose each Man takes a Son with him or a Servant, which then will make up the Number eighty Thousand: It cannot be supposed that eighty thousand Souls can live in this Kingdom without paying forty Shillings each annually to the Crown, by Taxes and Duties that are imposed upon the Subject, which amount to one hundred sixty thousand Pounds *per Annum*; which one hundred sixty thousand Pounds will fall so much short to the Publick Revenue. And suppose in the Kingdom, where that eighty thousand Men reside, that a War should break out between that Kingdom and this, and but half of the eighty thousand should be forced

into the Service of that Nation against this; then in that Case, that Nation wherein they live will receive that one hundred sixty thousand Pounds *per Annum*, which should have been paid in to the Revenue here, and have forty, if not eighty thousand of our own King's Subjects to fight against him. This, I think, will be strengthning another Nation and weakening our own.

Now, suppose our Laws were milder, and not to put Men in Gaol for Debt, upon their surrendering their All to their Creditors; every Gentleman's Son that should happen to fail in the World, might make his Majesty a very good Officer; and every Man of a meaner Rank that happens to fail, and his Sons, will make private Centinels; and others that had got over their Difficulties, and raised themselves in the World, would be able to pay towards the Support of the Publick, and be an Augmentation of the Revenues of the Crown; and it may be supposed, that the Poor of any Nation are a great Part of the Support thereof.

Quer. *Whether Trade in general will not suffer by so many Artificers going out of the Kingdom?*

We have a Precedent, which I think it proper to insert, which is as follows: When the *French* persecuted their Protestant Subjects for their Religion, about forty or fifty Years ago, abundance of their Artificers fled into this Kingdom; particularly the Weavers of fine Silk, and other Branches of Trades, which depended upon

upon the Weaving Business. Our Government at that time, was so kind and wise, (as I may say) to give these distressed People a very great Indulgency, as to assist them with Money, and gave them all the Encouragement that was proper, till they could settle themselves in their several Trades, especially in the Weaving of Silks; and these People were called *French Refugees*, and are so called to this Day. The Advantage the Kingdom has received by it, is as follows:

First, They found Means, by the Assistance of our Merchants, to get Raw Silk imported into this Kingdom, and in a short time got their Engines and Materials ready for working, and so set themselves to work. The Natives of this Kingdom immediately put their Children 'Prentices to them; other ingenious Men seeing their Art of working, became Masters of their Art, even as good as themselves, and do at this Day make as fine wrought Silks as the *French* themselves can do. This hath in a very great measure advanced our Merchants in their Traffick, and very great Estates have been got by importing of Raw Silk, in exchange of our Woollen Manufactures; whereof vast Quantities are exported every Year into *Turky* and *Italy*, and a great many of our Poor are daily employed in manufacturing of the said Raw Silk: And where there was one employed in the Woollen Manufactory, before the Silk Trade was set up, there are ten now employed, which does tend very much to the enriching of our

our Nation. And France thereby hath lost a considerable Branch of the manufacturing of Silk, which occasions that great Numbers of their Poor want Employment; and their Merchants have lost the Benefit of exporting their Silk Manufactures, and sending them over into England, and we enjoy the Benefit thereof.

This Precedent aforesaid, in a great measure may induce every Body to believe, that where any Law is too severe, and prosecuted so far as to cause the Natives of any Kingdom to fly their Country, it must be a very great Damage to the Trade and Riches of that Country; and especially this which is an Island, and the Riches whereof depend upon Trade in general.

Another Consideration is, that if two thousand Men fly out of this Kingdom every Year, those Men, it may be reasonably supposed, may carry out of the Land with them, one Man with another, five hundred Pounds in Money or Effects; for few Men fail, but have some Effects in their Hands either more or less, and they know that a Statute of Bankrupt cannot lay hold of them in another Land. The Loss of this computed, going out of the Land annually, amounts to one Million of Money per Annum. And the Creditor loses all his Debt; and this must impoverish the Kingdom in time: Whereas, it would be the contrary, if the Debtors could stay in the Kingdom and out of a Prison; for if a Man's Effects will pay but half of his Debts, yet, according to the old Proverb,

Proverb, *Half a Loaf is better than no Bread*, and a Million of Money will be kept in the Kingdom, and the King keep his Subjects; for let a Subject be never so poor, if he hath his Health and his Limbs, he may be serviceable both to his King and Country.

Quer. *If all sorts of Artificers go out of this Kingdom annually, and by their so going, other Nations make themselves Masters of our Arts and Mysteries, whether in time our Merchants will not suffer in their Trade and Traffick, and all Trade in general, as in the Case of France, before recited?*

And in Case abundance of poor Men fly out of the Kingdom that have no Money nor any Effects, yet to be sure they have Wives and Children, which in course they must leave behind them; which unavoidably must be kept at the Charge of such Parishes where they are left. And every Gentleman's Estate, by the Laws of this Land, are tied to support the Poor in what Parishes soever they happen to fall. (And I believe that every Gentleman finds the Parochial Taxes heavy enough already, without forcing them out of the Land to make them higher.) For if a Man stays in the Kingdom, and out of a Prison, he may work to support a Family from the Parish, or at least may be made so to do.

And let a Subject be of what Station soever, rich or poor, and out of a Gaol, in this Kingdom, he adds to his Majesty's Revenue; and I hope his Majesty has no Subject, or at least will not

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not have any, that shall do any Act or Deed to lessen the Revenues of the Crown, or the Number of his Majesty's Subjects; for (as I said before) Numbers have already fled the Kingdom, and carried off their Effects.

We have several Instances in this Kingdom, that a great many Men have failed, and been entirely out of a Capacity to pay their Creditors their just Demands; yet these Creditors have had Compassion upon such Persons, by Reason their Misfortunes came by Accidents unavoidable; and having had Compassion on their Families, have refused to put them in Gaol, but have given them Liberty to try their Fortunes in the World, to see if they could retrieve themselves, which they have done, and paid every Creditor to a Farthing, with Interest for their Money, and were very serviceable all the time to their King and Country. Some of which have done it by being in the Army, some have done it by an honest Industry, and others have done it by their hard Labour.--- But we have no such Instances of Persons that have been kept in Gaol; for it is impossible for a Man to exercise his Faculties there, let them be ever so good; for when a Man is in Gaol, if he had a Friend that would put him into a Way to exercise his Faculties, he cannot do it without paying all his Debts, which no Man cares to do, to lessen his own Family's Circumstances to strengthen another's.

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UNFORTUNATE *truly Stated.* 25

In those Countries, where they do not keep Men in Gaol for Debt, unless the Creditor allows them a Maintenance there, every Creditor has an equal Dividend of the Debtor's Estate and Effects: But with us in *England*, where any Man fails that is not within the Description of a Bankrupt, that is not a Trader, or owes not a hundred Pounds to one Man, or a hundred and fifty to two; that Creditor that catches the Debtor first, gets all his Debt, and the rest of the Creditors get nothing, which so vexes the latter, that they will never agree with the Debtor; which if the Law were so, that the Debtor might surrender up his All to be equally divided amongst all his Creditors, then and in that Case, the Creditors themselves would be more mild to the Debtor, and more readily give him his Liberty to go to work for his Family.

As the Laws of the Land now stand, every Man that becomes Insolvent, if he came of the best Families of the Land, though his Misfortunes came by Impossibilities of avoiding, yet he is put in a worse Condition than a Felon or a Vagabond, or a sturdy Beggar; for according to our Laws at present, there is a Gaol Delivery for Felons every six Weeks or oftner within the Bills of Mortality, and twice every Year throughout the Kingdom; and a Vagabond or a Beggar have their Liberty to walk where they please. But if a Debtor be the Son of a Peer, the Son of a Knight, the Son of a Merchant, or the Son of a Gentleman,

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and has had the best of Parents, the best of Education, and the tenderest bringing up, yet he shall be left to the Power of a merciless Creditor, to be starved to Death within Stone Walls. Quer. *Whether this be not as bad as the Spanish Inquisition?*

It is observable, that there are about four hundred Bailiffs belonging to the inferior Courts, within the Bills of Mortality, excluding the City of London; and every one keeps a private Prison within his own House. And many of these Men are like Foxes seeking out for their Prey; for where-ever they can hear of any Difference between poor People, they immediately persuade one to let them Nap (as they call it) the other, which the silly People for Revenge are quickly persuaded to; no sooner has he got the Defendant in Custody, but he persuades him to Nap the Plaintiff; Revenge being sweet, the Defendant orders that; no sooner is this done, but Catchpole turns Solicitor betwixt them both, to make up the Breach, which is soon done; for he having fleeced them both of their Money, which should have been employed to support their Families, they have none left for Law: So the Quarrel is ended, and the poor People almost ruined.

It is remarkable, that there are but few Families in this Kingdom, of the trading Part of the People, if every Man of them would look back for the Space of forty or fifty Years last past, but may find that one or more Branches of his Family has failed in that

that time; and I believe no Man will venture to say, that he can secure all his Posterity for the time to come from failing.

It may be said, How shall those Persons be known that happen to fail by their own Faults, as by Idleness, Drunkenness, Whoring and Gaming; because they ought not to have the same Clemency shewed them, as Persons that fail through unavoidable Losses?

This is very easily answered, which is, That there is no Man that lives in any Parish, but his Neighbours must know his Life and Conversation; and they being enquired of by the Commissioners to be appointed for that Purpose, they will soon find which Man failed by Unavoidableness, and who failed by his own Folly. But, suppose one or two of the Guilty should escape Punishment, for a Gaol is a Punishment; yet according to the Scripture, *better some few Guilty should escape Punishment, than one innocent Man should suffer.*

It is observable, by the Laws of this Land, That where the King loses a Subject by any Casualty of what Kind soever, the Death of such a Person shall be enquired into which Way it came, by the Coroner and a Jury of twenty-four Men, that the King may know how he came to lose a Subject. But no Provision hath been yet made by any Law, for the King to know how he loses his Subjects that are put in Prison for Debt, which daily perish therein; whose lingering

Deaths may be said to be worse than the Life which is lost in the Twinkling of an Eye.

Quer. If some small inferior Courts were not so much encouraged, whether that would not occasion the People to recover their small Debts at the Sheriff's County Courts, which are held Monthly; the Proceedings whereof are very good; for there the Officer summons the Defendant to appear at the Charge only of one Groat (and does not imprison the Body) and if he doth not end with the Plaintiff immediately, the Proceedings are against the Goods, and not against the Body: So that the poor Man hath Time and Liberty to work for his Family, and most commonly by that Means doth not only support his Family, but gets Money to pay his Debt; so the Creditor is paid, and the Parish not burdened. And in case any Debt is sued for in any of the said Courts, which the Defendant ought not to pay, the poor Man will receive as much Justice there, as in any of the inferior Courts whatsoever. And in case of a Tryal in the said Courts, the Charge thereof is but small, and I never heard of any poor Person that was ruined thereby. But there are thousands of Instances of poor Persons being ruined by the Proceedings of some inferior Courts?

There is in most Kingdoms a Place of Refuge for the Distressed and Unfortunate to fly to; and it was so in the Time of the Jewish Law appointed by God himself, even in the Case of Murder.

I have taken Notice of his late Majesty's most gracious Speech from the Throne, to both Houses of Parliament, how he recommends to them the Care of the Poor; that they will make such further Laws as shall be for the Employment of them; which shews the tender Affection, and compassionate Regard his most sacred Majesty had for them as well as for the Rich: And I think none so poor, as the distressed Men that are forced to fly from their Homes and Habitations for Debt, occasioned by Losses which could not be avoided; and are forced to hide and skulk about, and afraid every Man they meet is a Bailiff; while the poor Wife sits at home, with a heavy, sorrowful Heart, and her poor Children looking upon her, often crying *what is the Matter? what do you cry for so?* Which adds more to her Sorrow, to think what must become of her and her poor Babes. And I am afraid some such Women have been forced to sacrifice that Honour of the Marriage-Bed, that all the Temptations in the World would never have made them to have done, had not Poverty slipt in, or the Husband had his Liberty to have staid at home to work for his Family. And every Man that is forced to fly from his Home, (as aforesaid) may say, as our Saviour said, *Matt. viii. 20. The Foxes have Holes, and the Birds of the Heaven have Nests, but he hath not whereon to rest his Head.*

It hath been said in this Kingdom, that every Man's House is his Castle, but of late Years it

is not so; for if a Bailiff breaks the Door of a House and arrests a Man, he only is obliged to pay for the Damage of such Door. And that is very often done; for where a Bailiff hath ten or twenty Guineas to arrest a Man, he will venture the Risk of breaking a Door.

Another Grievance is, that Actions of Debt are often brought on Bonds, and where an Action has been brought for five hundred or a thousand Pounds, the Bailiffs have made the Defendant give five Guineas, and ten Guineas, to take their Word for two or three Days or a Week, or according as the Return of the Writ was, which is often more than the Attorney gets by the Cause. And Men in Trade or otherwise, who are in Credit, will choose to give Money rather than be immediately carried to a Spunging-House, which would blast their Credit; though at the same time perhaps they are very good Men.

Quer. If this Grievance might not be removed by the Plaintiff's being obliged to give the Defendant Notice in Writing to pay the Debt, or put in Bail by such a Day; which if the Defendant neglects to do, then the Plaintiff to be at Liberty to make an Arrest, or to proceed to Execution against his Effects.

However in all Cases whatsoever, if there is any Grievance that ought to be removed, the Way to remove it is, to take away the Cause from whence it proceeds, and the Grievance ceases in Course: And that in this Case, if our Legislature should think fit to make a Law, that

that upon every Debtor's surrendering up his All upon any Insolvency, that the Creditor should not have it in his Power to keep the Person becoming so insolvent in Prison; then and in that Case, there would be no need of a privileged Place for a Debtor to fly to. Neither would there be any Riots, Assaults, or any other Abuses upon Bailiffs. Neither would the King suffer by his Subjects flying out of their native Country.

Nor the Revenues of the Crown be lessened. Neither would Trade suffer by Artificers going abroad.

Neither would our Merchants Traffick be lessened by exporting our *English* Manufactures.

Neither would our Parishes be burdened with so many Poor.

Neither would the King ever want Soldiers in time of War.

Neither would any foreign Nation have it in their Power to bring a Subject of the King of *England* to fight against him.

Neither would a Million of Money be carried out of the Land annually.

Neither would a merciless Creditor run the Risk of God's Judgment.

Neither would the poor unfortunate Man perish in Prison, *but the Tears of the Poor would be wiped from their Eyes.*

And the Bailiffs and Turnkeys work for their Bread.

Neither would the Wife be a Widow before she is so.

Neither

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Neither would the Children be Fatherless before they are so.

Neither would the Tears, the Cries, and the Groans of the Innocent fly up before the great God, crying out for Justice.

And then it may be hoped, that at the last Day we all may receive that great Saying of the King of Heaven: *Come, ye Blessed of my Father, inherit ye the Kingdom prepared for you from the Foundation of the World.*



T H E



A Short

NARRATIVE

Of the Ancient

Common Law of ENGLAND,

T O

Preserve Mens Bodies from Imprisonment, and how and when alter'd.

IT is evidently, and undeniably plain, that (by the Ancient Common Law of the Land) the Bodies of any of the People of *England* could not, at the Suit of any Subject, be Arrested, Inprisoned, or any of them Outlawed for Debt, or Damages, (or any Thing thereunto relating) as clearly appears; not only by our ancient Laws, but by the Authority of these two great Sages of the Law, the Lord Chief Justice *Coke*, in his Third Report, *Fol. 11 and 12*, and the Lord *Dyer*, *Anno 23 Eliz.*

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305 b. the which by *Magna Charta*, Chap. 29. (that great Expofitor of our ancient Laws) was, in Affirmation of our ancient Laws, with great and wary Circumfpection, provided againft, and not only, (not fo much as thought on before the Conqueft) but was abhorred, in the leaft, to be practifed from that Time; and the Time of the Birth of that explanatory Law, which was in the Ninth Year of the Reign of King *Henry* the Third, until many Ages after, there being Variety of great, weighty, and pregnant Reafons for the Prefervation of that greateft Liberty and Privilege of the Subject, (the Freedom of their Perfons from Imprifonment) and as well thofe ancient Laws before the Conqueft, as the Laws, until the making of the great Charter, (and Three-score Years after) were, in that Particular, (with all ftudious and fedulous Care) inviolably obferved, as an eminent and fignal Badge of the Immunity and heroick Freedom of the *Englifh* Nation, who were then defervedly called (*Libera Gens*) and liv'd fo, and in fo great and happy Splendor, to the envious Admiration of the reft of the Chriftian World, and to the eternal Honour of our Anceftors, without being fubject to any fuch Imprifonment, not only all the Time of *William* the Conqueror's Reign, (which was above Twenty Years, but One Hundred Fourfcore and Fourteen Years after his Death, and until the Statute of *Westminfter* the Second, Chap. 11. made in the Thirteenth Year of King *Edward* the Firft, in-

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vented a *Capias*, and a new Procefs of Outlawry, which (from that Time) was full fo many Years: The Statute of the Two and Fiftieth of *Henry* the Third, Chap. 23. (although the firft that ever made any *Englifh* Man's Power fubject to fuch Arrest) yet it being only againft Bailiffs of particular Lords, I lay no great Strefs on; but the Breach and Inroad being once made into and upon the Common Law, by the Statute of *Westminfter* the Second, gave Encouragement to the unhappy Production of another Statute, made in the 25th Year of the Reign of King *Edward* Chap. 77. by which it was Enacted, That fuch Procefs fhould be made in Debt, and Detinue of Chattels, and by Procefs of Exigent it was then ufed in Writ of Accompt; which were two fuch keen Laws, that they not only invaded, but cut afunder the choicelt Liberty of the Subject, by fubmitting the Perfons of the then free People of *England* to the Cruelty of Imprifonment for Debt and Damages; but the fame wife King *Edward* the Third, of whom the Lord Chief Juftice *Coke*, in the fecond Part of his *Inftitutes*, Fol. 29. gives this Character, That King *Henry* the Second, *Edward* the Firft, and *Edward* the Third, were all of them Princes of great Fortitude, Wifdom, and Juftice, that govern'd by their Laws; but that in the Reign of *Edward* the Third the Laws did principally flourish, who, faith he, was a noble, wife, and warlike Prince. This prudent Prince, I fay, looking deliberately into

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the Wounds those Statutes had given to the Honour and Happiness of the Kingdom, and to that ancient and most venerable Part of the Common Law, which preserved his Subjects Persons from Imprisonment, and the very many Kings Reigns, and Ages, without any the least Interruption, which that glorious and famous Liberty had prosperously continued; and, as it were, repenting of the making of the said bitter Statute, of the Twenty-fifth Year of his own Reign, and he and his Parliament finding the mischievous Inconveniencies and Dishonour that it had put upon the People, and resolving to file those Shackles from off the Subjects Feet, and to reinvest them into the Liberty and Freedom of their Persons from Imprisonment, according to the Common Law of the Land, by that gracious healing Statute made in the Two and Fortieth Year of the Reign of the same King *Edward* the Third, *Chap. i.* those two Razor-metal'd, cutting, rigorous Laws were, as to such Imprisonment as aforesaid, by the Opinion of many, and by the general Construction of Law, and the true Intendment thereof, repealed, which declared, That the great Charter should be holden and kept in all Points; and if any Statute be made to the contrary, that it should be holden for null; which said last mention'd Statute was, according to common Construction, intended fully to restore the Brightness and Lustre of the ancient Common Law, and to support and maintain the Strength and Vigour of that Standard

Standard of Law and Justice, the great Charter, which not only asserts his Majesty's just Rights and Prerogative Royal, but defends and preserves the Freedom and just Liberties of the People, which, as the same Author in his Preface to his second Institute tells us, hath been confirmed by Two and Thirty Acts of Parliament; and not only so, but by the Statute of the Twenty-fifth of *Edward* the First, the same is to be taken as the Common Law: But the setting up, and Creation of the great Numbers of Offices and Officers, and the Herds of Persons, which those most severe Laws, *Westminster* the Second, and the Statute of the Twenty-fifth of *Edward* the Third, had most advantageously preferred, almost in every City, Town, and Village in the Kingdom, had so fixed, fastened, and riveted such Multitudes of Persons, many of them of very great and eminent Quality and Interest, in Places of great and tempting Gain, which had made so deep an Impression upon the Minds of that prevalent and powerful Part of the Kingdom, who had thereby plentifully enrich'd themselves, that notwithstanding the said Statute of the Two and Fortieth of *Edward* the Third, so intentionally compos'd, as aforesaid, for the manumitting of the People of *England*, as well from the Thraldom of a Prison, as otherwise to preserve their Liberty, they went on to imprison the Bodies of the Subjects, which hath ever since been practised, not only by Virtue of those two Laws, *Westminster* the Second,

Second, and the Twenty-fifth of *Edward* the Third, but that of *Acton Burnell*, and the Statute *de Mercatoribus*, touching Arrests upon Statutes Staple, and Merchant, and by other Laws built upon them, which, contrary to the ancient Common Law, as is very plain, doth continue the Invasation of Imprisonment against, and upon all the Freeborn Subjects of *England*, except Peers; so that it is indisputably clear, how great an Intrenchment the Imprisonment of Mens Persons is, upon the Honour of the ancient Common Law, of which, as the Lord Chief Justice *Coke* saith, the great Charter is declaratory; and, as a late Writer, from good Authority, tells us, did not grant any thing *de novo*, but that thereby our ancient Laws and Liberties were only repealed and confirmed; and, indeed, all those our Ancestors maintained, not only with indefatigable prudential Care and Industry, but with the vast Expence of Blood and Treasure; witness the more than Twenty Years intestine bloody Civil War in the Reign of King *John*, and, in the End, the Confirmation of those Laws and Liberties, by the same King, in the Face of the Nobility, and other the great Men of the Kingdom, and of an infinite Number of other Free People of *England*, as saith *Brittaine*, *Fol. 219.* so that there wants nothing to make it fully demonstrable, that by our Ancestors Magnanimity, and resolv'd Courage, in maintaining the ancient Common Law, they and their Posterity were not only established in their

their just Rights, but were preserved from such Imprisonment for Debt, or Damages, or any thing thereunto relating, two Hundred and Fourteen Years after the Conquest, which now is inflicted upon many Thousand of his Majesty's good, loyal, and faithful Subjects, to the utter Ruin of them, their Families, and Relations.

But if we cast our Eyes back into the Reigns of the *Saxon* Kings, we shall find that those martial, wise, and wary Princes, King *Ina*, King *Ethelston*, and after them all the *Saxon* Kings, according to the ancient *British* Laws, were so very tender of the Imprisonment of Mens Persons, that they did not punish their very Bondmen with it; and King *Alfred* displac'd and imprison'd one of his Judges for daring so to do: And when the Government devolved, and came to the *Normans*, *William* the Conqueror, *William Rufus*, and *Henry* the First, took such exact Care to preserve this Liberty uninfring'd, that in their Reigns not any Person was imprison'd, although for mortal Crime itself, unless he were first attainted upon the Verdict of Twelve Men. And additional to all this, many Ages after the Conquest, by the ancient Common Law, the Writ *de Odio & Alia* was given to a Man that was imprison'd, altho' for a heinous Crime, for the Death of a Man; yet the Law, in that golden Age, in Favour, and out of an high Esteem it had for the Liberty of a Man, and that his Body should not be detain'd in Prison until the Justices in *Eyre* should come, he might sue out

out this Writ, directed to the Sheriff; and altho' the Offence, for which he was committed, was notailable by Law, yet the ancient Common Law did so highly hate and abominate the long Imprisonment of Men, that it gave him this Writ for his Relief, which appears by *Bracton*, in his Third Book, *Fol.* 121. and by *Fleta* in his First Book, *Chap.* 14. and with whom also *Glanvel* agreeth, in his Fourteenth Book, *Chap.* 3. And the *Mirror of Justice*, a Book of great Antiquity and Estimation in the Law, as well as the Books before cited, *Chap.* 5. *Seet.* 1. complains of the Imprisonment of Mens Persons as an Abuse, altho' it had been for breaking of a Gaol. Now for that it is clear as the Light, how highly valuable, and dearly precious, the Liberties of Mens Persons were, by the Common Laws of the Land, all Debts and Damages being to be properly had out of the Estate of the Debtor, and not his Person; It is very odd, that the Law is so very kind to a Beast, as to take provisional Care for a Replevin to enlarge him, and yet a Man should be retain'd in Durance, under a perishing Condition; nay, and without so much as any definitive Time by Law set for his Releasement.

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Upon the whole, therefore, I will take the Liberty to add the following humble Proposals, which, I conceive, will equally promote the Liberty of the Subject, and the Security of the Creditor, and then submit the whole to the Consideration of those Gentlemen, who have so lately undertaken this charitable and most excellent Work.

Suppose a Clause in a Bill was to make Provision, that all Debts under ten Pounds, should be determined by Commissioners to be nominated, and residing in the Parishes throughout the Kingdom. This would prevent Thousands of Families falling to be a Parish Charge, making a Provision to oblige the Debtor to comply with the Commissioners Determination, by weekly Payments or otherwise; for who can be better Judges than a Man's Neighbours, who generally must know his Circumstances?

Suppose if any Person fails, and is willing to surrender up his All on Oath; that the said Commissioners shall have Power to cause the said Persons to be brought before them, and the Creditors to attend to shew Cause why he ought to be Imprisoned, and the Debtor to make his Defence; and if it should appear the Insolvency happened by Casualties that were unavoidable, and not by Extravagancy, the Commissioners to certify the same in the *Gazette*, forbidding any Person to Arrest or Imprison

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such Person for Debt or Damages contracted before such a Day, upon the Penalty of keeping him and his Family, at so much *per* Day as the Commissioners shall award.

This last Clause will save Men from being pined in Gaol, and the Parishes from being burthened; and also will give the Debtor a Reputation that he may the better for the future support his Family.

But if it should appear to the said Commissioners, that the Insolvency happens by the Extravagancy of the Debtor, then the Commissioners to advertise the contrary; but to have it in their Power to award some small Maintenance as they shall judge reasonable.

I shall conclude with the following Address to the Reader, recommending the whole of what has been said, still more closely to his serious Consideration.



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