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OBSERVATIONS

ON THE

VAGRANT ACT,

AND

SOME OTHER STATUTES,

AND ON

THE POWERS AND DUTIES

OF

Justices of the Peace.

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OBSERVATIONS

ON THE

VAGRANT ACT, &c.

PUBLIC attention has of late been called so forcibly, and so justly, to the consideration of cases arising under the new Vagrant Act, that it has naturally claimed, in an early period of the Session, the notice of Parliament. Motions of censure have been announced, and topics of justification have been suggested. On one side, the harshness of the enactments and the barbarous injustice of some proceedings founded on them have been forcibly displayed; while, on the other, it has been asserted, that in the Act in question, there is little that is new, all the enactments, except one, being taken from old statutes, and that it is even more merciful than the law which has been repealed; inasmuch as the highest punishment given by the

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present Act is two years' imprisonment, while the old law allowed, in certain cases, transportation for seven years. Of the clauses which are admitted to be new, namely, those against indecent exhibitions and indecent exposure of the person, the latter has occasioned the commitments so vehemently censured; and in answer to these censures, it is said that the fault was not in the statute, but in the misconstruction or misapprehension of magistrates.

That some portion of this Statute will be destroyed by the force of public opinion, is reasonably to be expected; but should the care of the Legislature proceed no further, the nation will have reason rather to grieve than to rejoice at their interference. The subject is now fairly under consideration: if the inquiry tends to a general examination and revision of all the laws by which extraordinary powers are vested in justices of the peace, in and out of Sessions, a great end will have been attained; but if nothing is effected beyond the diminution of some present pressure, the stifling of some piercing outcry, while the general evil remains rather sanctioned than redressed, the public will be great losers by the event, as their complaints will afterwards be treated as unreasonable displays of a dissatisfaction that no moderate or just attention will appease.

In the following pages, I shall first notice some leading features of the Vagrant Act, and then offer a few observations on some other statutes, and on the general system which, in many important instances, has entirely taken away the trial by jury, leaving the person and property of the subject at the mercy of a summary administrator, (sometimes without even an appeal to the session,) and unmeasurably extending the power of justices, while their responsibility has been reduced almost to nothing.

I do not think any portion of the Vagrant Act satisfactorily defended by the assertion, that clauses now censured have before passed the Legislature. It takes all blame from the individual who framed the Act, as to invention; but surely while he was searching with so much care for Acts of Vagrancy in former statutory provisions, it would have been reasonable to examine a little the justice and propriety of some of them; and while he was rejecting those which had become obsolete, it would have been well if he had extended his reform so far as to exclude also those by which certain modes of offence were too severely punished, or which, by their laxity and generality, might give birth to mistake or abuse.

---In the Vagrant Act, the following persons are termed idle and disorderly, and subjected,

on conviction before one justice on his own view, or by confession, or by the oath of one credible witness, to hard labour in the house of correction for any time not exceeding *one* calendar month.

1. Persons *threatening* to run away and leave their wives and children chargeable to the parish. 2. Persons able to work, refusing or neglecting, so that they or their families become chargeable. 3. Paupers, after removal, returning and becoming chargeable. And 4, Common prostitutes or night-walkers wandering in the public streets or highways, and not giving a good account of themselves.

As it is not my intention to make overstrained or fanciful objections to particular enactments, I shall offer but one observation on the preceding descriptions. It does seem most hard and unjust to punish, as in No. 1, a man for a hasty word or inconsiderate expression, followed by no act whatever. There is a ferocity in such a penalty which cannot be apologised for by any antiquity; and it is the more galling, as it exposes every man to punishment on the assertion of any discontented or spiteful individual.

The next head includes *rogues and vagabonds*, who are, 1, persons going about as alms-gatherers, under false pretence of loss by fire

or other casualty, or as collectors under any false pretence ; 2, bear-wards ; 3, *common stage players*, and all persons acting for hire, or causing to be performed any entertainment of the stage, not being licensed ; 4, pretended gypsies ; 5, fortune-tellers ; 6, persons using any subtle craft, means, or device, by palmistry, or otherwise, to deceive or impose upon any of his Majesty's subjects ; 7, *or playing or betting at any unlawful game* ; 8, running away and leaving family chargeable ; 9, wandering petty chapmen and pedlars, unlicensed ; 10, persons wandering abroad, and lodging in alehouses, barns, outhouses, or in the open air, *and not giving a good account of themselves* ; 11, *all persons openly exposing or exhibiting in any street, road, public place, or highway, any indecent exhibition*, 12, *or openly and indecently exposing their persons* ; 13, 14, 15, beggars of different descriptions ; 16, persons apprehended with implements, and *intending to break into houses*, 17, or having in possession any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to assault any person or persons, or *commit any other illegal act*, 18, or who *shall be found* in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or area, or in any enclosed yard, garden, or place, and *shall not be able to give a good ac-*

count of themselves, 19, or who shall frequent any river, canal, or navigable stream, dock, or basin, or any quay or warehouse, or the streets or highways leading thereto, or any place of public resort, the avenues leading thereto, or the streets, highways, or places adjacent, with intent to commit felony on the persons or property of any of his Majesty's subjects, 20, and all persons imposing or endeavouring to impose on any churchwarden or overseer, or upon a charitable institution or private individual, by any false or fraudulent representation, either verbally or in writing, with a view to obtain money, or some other advantage or benefit.

As I intend to close the analysis of this Statute (or rather to complete a transcript of the analysis by its author) before I offer any further remarks, I proceed to the head *incorrigible rogues*. These are, 1, rogues and vagabonds apprehended and escaping, 2, or refusing to go before a justice to be examined, 3, or giving a false account of themselves, after warning, 4, or (being committed under this Act) escaping from prison, 5, or not appearing at Session, if bound by recognizance, for offences against this act, 6, or having been committed as rogues and vagabonds and discharged, offending again.

To secure these various classes of dangerous

characters, it is enacted, “ that *any person* “ *whatsoever, without any warrant*, may apprehend and convey before a justice any offender, together with any horse, mule, ass, cart, caravan, or other vehicle in his possession or use.” Peace officers must, and all other persons, on the requisition of any justice, may be compelled to assist in such apprehension, under a penalty of twenty shillings; and they who do so apprehend, may have a reward, not exceeding five shillings, to be paid by the overseer of the parish where the offender was secured, on the order of the justice.

The justice is next required to inform himself, *by examination of the prisoner*, or of any other person upon oath, of the charge, and if proved, either to commit until the session for further adjudication, or definitively for not less than one, nor more than three months, to goal, or to the house of correction to hard labour.

If committed to the session, the rogue and vagabond may be further imprisoned for six calendar months; the incorrigible rogue for not less than six months, nor more than one year; and the incorrigible rogue offending again, for a term not exceeding two years, all kept to hard labour, and to be corrected by whipping at such times and lawful places during these terms, as, ac-

according to the nature of each person's delinquency, the justices in their discretion shall think fit.

The offences described under these various heads appear, on the first showing, (and most of them really are) eminently deserving of punishment; and if the way taken were direct and constitutional, little could be said on the subject; but, on examination of the several enactments, there will be found in some of them as much art and spirit of oppression in the wording and structure, as there has been tyranny, cruelty, and immorality, in the execution.

I shall not here discuss the wisdom or propriety of the restraints on dramatic entertainments; but in reference to the head 3, directed against common stage-players, will it be credited that police officers have, on more occasions than one, in the neighbourhood of London, entered into places where plays were about to be performed, and seized, not only the performers, the door-keepers, and the treasury, but the whole audience? Thus, young people in all stations of life, have had their morals purified, and their predisposition to vagrancy amended, by a night's lodging in a watch-house, and a morning's sequestration at the Brown Bear in Bow-street, or some equally edifying recess, amidst the oaths and scurrilities,

or the more offensive, and less improving, jests and narratives of the pickpockets, the prostitutes, and other vicious characters whom crime and misery collect in those abodes. In the morning, I think, the parties were dismissed, as we were gravely informed, with a suitable admonition from the Magistrate,—and to whom? Not to the officers, who had thus indecently and wantonly outraged every feeling of propriety and humanity, but to the disconcerted and distressed captives, who saw themselves thus reduced to a level with felons and mendicants; and while their hearts were swelling with grief and indignation at the treatment they had undergone, were insulted with boasts of the great mercy they had experienced.

It may be said, that the parties so apprehended were not of the inoffensive description I have supposed. I cannot assert any thing from personal knowledge, but Camden Town was the scene of one of these transactions; and I was informed that very young females, the daughters of respectable tradesmen in the place, were among the number thus disgracefully treated. Such persons, it may be said, should have kept their children at home, and not permitted them to be at such places. If there are minds capable of such an observation, I refrain from speaking my opinions of them;

but, whatever inclination may be felt to suppress all amusements and indulgences for the lower classes, I hope we are not yet come to the point of imprisoning, whipping, and condemning them to hard labour, for slight irregularities, attended with no violence, injury, or public scandal. If a player, who presents himself to perform at an unlicensed place, is liable to the severity of the law, I trust it will be thought, that disappointment and loss of the entrance-money are sufficient visitations on those who have attended merely to be amused by him; and that the sin of not having money or time enough to visit a Theatre Royal by seven o'clock, and return to a village near town an hour or two after midnight, does not lie so very heavily on the heads of these persons, that while going to a play at one place shall procure them the respectable titles of patrons and supporters of the drama, seeing the same play, worse represented, at another, shall bring upon them punishment and disgrace.

I do not suppose it will be maintained that the imprisonment of these persons was legal: there were, "i' th' olden time," laws against minstrels, jugglers, and bear-wards, and the very clause under which these notable captures were made is taken literally from the 17th

Geo. II. c. 5; but until the present times, it never was heard of that the spectators or audience of the bear-ward, the minstrel, the juggler, or the strolling player, if they abstained from all riotous behaviour, were treated as criminals, or lost their liberty for a moment. Whence, then, arises the difference at the present day? Are mistakes of the law more frequent as the age becomes more experienced?—No. The effect is produced by those numerous enactments which by impunity render justices of peace and their officers enterprising; which, by entrusting great powers in the hands of rash and uninformed people, give them audacity in their aggression, and screening their acts from popular opinion, by taking away the trial by jury, facilitate oppression, and leave no means of reaching the oppressor.

Passing over gypsies, fortune-tellers, and palmisters, I shall say one word about persons playing or betting at any unlawful game. It is not my intention here to speak of the hue and cry which has been raised about gaming; but whatever may be the punishment due to gamblers, is it not strange, and evidently excessive, to give a magistrate the power of treating as a rogue and vagabond any man, not taken in the act, or at the time and place of play, but convicted, on the justice's view, or the

evidence of one credible witness, of having played or betted at an unlawful game? It may be doubted whether or not such a conviction would be valid; but, even if the defendant can procure bail to the session, the issue is uncertain; and, if he cannot, the decision of the session in his favour will only exempt him from further punishment; but he has neither solace nor compensation for the past. The enactment is not new; but with the feeling at this time prevalent, it is miserable to think that there is no nobleman or gentleman, no military or naval officer, no tradesman, artizan, or mechanic, whose safety and character may not be made to depend on the oath of a discarded servant, or disappointed hanger-on, who shall qualify himself as a credible witness, and, not in open court, or before a jury, but in a justice's private room, make a charge which cannot be answered at the moment, and which sends the accused to instant and odious punishment. But this supposes a regular and ordinary course of proceeding, leaves out of sight any personal, professional, or political aversion in the mind of the justice, and does not even contemplate the violence to which any gentleman may be subjected from a complainant, who, assuming the full powers of this act, may dare to apprehend him without a warrant, to convey him with his

horse or other vehicle before a justice, and have him searched, that his money and other property may be taken, to pay expenses.

We come now to the eleventh and twelfth heads, the avowed innovations, the clauses relating to indecent exhibitions, and indecent exposures of the person. If a contrivance had been resorted to for making edicts peculiarly tyrannical by their generality and ambiguity, it could not have been better effected than by these clauses. Considering how much men, and women too, differ in their notions of decency and indecency, how often one man considers himself far within the line, when another deems him shamelessly beyond it, by what criterion is a person to know when he is or when not subjecting himself to the punishments of this act? What precise idea is conveyed to the mind by the curious phrase, "exposing or *exhibiting* any indecent *exhibition*?" If meant, according to the popular sense, of a show for money, I must say I never saw nor heard of such a thing in the streets or highways, in town or country. Perhaps I may be thought to assert too much: I do now recollect that I have seen Punch bestow wholesome, though not very decent correction on his wife, the showman making his naked wrist represent a portion of poor Joan's person, which certainly ought never "to meet the eye

of vulgar light." If, therefore, the exhibitor cannot, for squeaking through a comb, be deemed a minstrel, or if his little drama cannot make him a common player, or if there is no other way to bring him (and the technical phrase was never better applied) within the *mischief* of this Act, let him beware how he slaps his own wrist, for he and his whole apparatus will be conveyed before a justice, a natural enemy to Punch, to be dealt with according to law. Perhaps too the peep-shows, for I never looked into one, may contain something indecent, and servant-maids may have more for their halfpenny than we know of. Babylon is a favourite exhibition, and we know who appeared in scarlet there. Is the Act really aimed at such things, or is there in it a covert intention to subject to the power of village reformers in the commission, the offensive and indecent spectacles of Maid Marian and Jack in the Green, and enable their pious worships to send to the house of correction the presumptuous offender who shall make an immodest display of the intended prize at a smock race? Among the notions that have been entertained of indecent exhibitions, I remember to have heard that a message was once sent to the proprietor of a beautiful mansion near Hyde-park Corner, complaining of a bas-relief over his drawing-room

window: he took no notice of the application: the passers-by, having heard of the circumstance, gazed for a-while at the supposed enormity, but finding nothing to wonder at, except the absurdity of noticing the thing at all, they withdrew their observation, and were much more amused and informed by scrutinizing the pictures of the Belle-Sauvage, the Goose and Gridiron, and the Bull and Mouth, on the panels of the stage coaches. And as I am in the neighbourhood of Hyde-park Corner, let me not forget the Green Man, the Achilles, the odiously indecent exhibition which ought long ago to have been sent to the house of correction, or to the breeches-makers', for so, during several weeks we were continually informed by puritanical gentlemen, and nervous ladies, who imbibed their delicacy from the daily press. Now is it really meant by this statute to embody all these follies into causes of punishment, and so give to every old woman's whim the force of a law; or was the clause, as I much suspect, purposely left insensible and inoperative, in order, when the present Act shall expire in September next, to perform on it the process of grafting, of which I shall say more anon, and so give it an extension and effect which the boldest contriver of such acts would not at first dare to express? The proceeding,

I should apprehend in the present instance, would be to add only a few words, which, under the mistaken notion that the enactment was in substance an old one, would occasion no alarm. The clause thus engrafted might stand, "Any person exposing or exhibiting in any street, road, highway, or *other place*, any indecent exhibition," and then all the caricature shops, pamphlet shops, toy shops, snuff shops, all exhibition rooms, where specimens of ancient and modern art, pictures, statues, or bronzes, are displayed, would be at once withdrawn from the investigation of juries, and turned over to the summary jurisdiction of a justice of the peace. Let no man say, "this is a mere phantom of the writer's imagination:" I engage to point out shortly, in the very Act now before me, and in others afterwards, some very curious specimens of similar management.

The clause respecting indecent exposure of the person has, fortunately I hope for the nation, occasioned the present inquiry. The shocking and disgusting instances of oppression which have occurred under it are said to have arisen from misconstruction; but who are they who have misconstrued?—the guardians of the night, who for the reward of five shillings, or even without reward, and in the mere wantonness of subaltern power, will misconstrue any thing?—

or the learned and well-informed magistrates, who have patronised the oppression, and sanctioned the insolence of these men, by granting convictions on their false, absurd, and ridiculous charges; who have sent individuals to the House of Correction for indecent exposure of their persons, in the dark, in a public place, where there was no one but themselves, and in the sight and view, of only one witness, who was to gain money by swearing he had seen, what the state of the night, even if his charge were true, must have rendered imperceptible?

Nothing is more easy than to rouse indignation, in the truly moral people of this country, against practices that may offend, and, in some degree, contaminate female purity; but, on the other hand, the law is, upon the best of principles, extremely careful in requiring ample proof of crimes which it is easy to charge, and of which the accused cannot, without the utmost difficulty, prove his innocence. Under the Vagrant Act, however, the proof in these cases is admitted with the utmost facility, where all means of defence are excluded. A man and woman are accused by one interested individual, their mouths are closed, and there is no by-stander who can vindicate them. If they deny their guilt with the strongest asseverations, they are told, that such conduct is no more than

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might be expected: if witnesses to character are offered, they are told, with the archness peculiar to a police-office, that honesty is not in question, and that, of course, the parties do not apprise their friends of their private propensities; the facility of questioning the accuser's character and motives, which a trial by jury would afford, are taken away, and a summary conviction sends them at once to prison, and to hard labour.

A great evil in this enactment is, that it engages the police in all cases to appear as witnesses, and stimulates them to a determined positiveness, by the hope of reward. This experiment had long been tried in criminal law; but the monstrous iniquities it produced rendered its abolition indispensable; and the present attempt to revive it in some part, is not a very hopeful characteristic of this new branch of the statute. I am not unaware that the Vagrant Act of the 17 Geo. II. gave higher rewards than the recent one; but that act contained no such clause as the present, and there was another very remarkable difference: in that, the rewards were to be paid by the treasurer of the county, and the acts of each individual justice would pass under the revision of the whole session at least once in every year; in this, they are paid by the overseers of parishes, and, what-

ever may be their extent, they are never heard of in the aggregate, but the overseer's account is passed in the usual manner, and the justice's order is a sufficient voucher.

The legislators in both houses, who pass these statutes, who know the pressures on middle and lower life only by the information of newspapers and the reports of committees, can have no conception of the extensive means of tyranny and extortion they have put into the hands of those who never were, and never will be, sparing in the use of them. They know not the insolence and oppression exercised by the guardians of the night toward those unfortunate creatures, whom, for stipulated considerations, they tolerate and protect, and those unguarded persons whom vice or wine may lead to communicate with them. When the present system shall grow to maturity, their means will have become so much extended, that, not only those miserable beings, who seem to have forfeited even the compassion of mankind, but every man and woman who are found, at a distance from home, at midnight, will become the unresisting objects of insult and rapacity.

How terrible the operations of this part of the statute may be rendered, a few recent instances may serve to explain. I pass by that which first instigated public inquiry, and to

which I have already adverted, nor will I dwell on one subsequently submitted to public notice, where a young man and woman were abused and threatened with imprisonment, because a kiss had passed between them at the moment of taking leave at the young woman's own door; but I shall shortly advert to two cases, which did not come within this act, and show what would have been the consequence if they had.

The first is that of an officer of rank in the British army, who was travelling in one of the short stages to London, in a state of extreme ill health. His destination happened to be to the public-office in Bow-street, for the purpose of making an affidavit. The passengers left the coach in High-street, St. Giles's, except one, a female child, who, with the officer, went on to Bow-street. When he had transacted his business, he returned, and in two or three days afterward, was called from his sick bed to attend a magistrate at the public office, on a charge of having indecently exposed his person to this child. Her evidence was, that when every body else had left the coach, this gentleman had shifted his position, and gone to another seat: he had neither spoken to her nor touched her, but she saw some portion of his person which she described, and that was all. On this the gentleman, without being heard in explanation,

was ordered to find bail to the session. Anxious to avoid the necessity of applying to his friends on such an affair, he offered to deposit the amount of the recognizance; but this was rejected: he prayed for a hearing, but was told it could be of no use; and while his bail was sent for, he was shut up in a miserable room with all those whom guilt or need had sent to the same place. He was bailed, and, as the scene of the offence was not laid in any street or public place, so that he could be convicted as a rogue and vagabond, and as he was, fortunately, rich enough to get his case removed into the court above, his trial was brought before a jury at Westminster, and on his proving that he was the victim of a complaint which had kept him for years in a state of torment, and that the seat of that complaint, and the suddenness and violence of its attacks, obliged him to wear a dress of peculiar construction; and on the other hand, as nothing appeared against him but the very feeble story of the child, in whose company he had not been above three minutes, he was acquitted. But, had circumstances brought him within the fangs of the Vagrant Act, his conviction would have been certain, and it is extremely probable, that his appeal to the session would have been attended with a less favourable result than he obtained from the trial by a jury.

Another case, which occurred about two years ago, is still more remarkable. A wealthy, respectable old gentleman, in a very infirm state of health, was apprehended in Hyde-Park by one of the under-keepers and some assistants, with a squalid, shirtless wretch of the very lowest order, charged with indecent and loathsome practices. The gentleman was taken to a police-office, where his rank in society, his abode and his circumstances were well known. Hearing the nature of the charge, he requested a private examination; it was refused—he was put to the bar in the public room, and the depositions taken against him. He was ordered to find bail, and although no doubt could be entertained of his wealth and respectability, he was detained until inquiry could be made into the sufficiency of his sureties, and had not even the means allowed him of sending home to his distressed and agitated family. At length he was bailed to the next Westminster Session; the poor wretch who was taken at the same time, having no bail, was sent to Tothill-fields Bridewell, and the daily prints, of course, gave unbounded publicity to the case. The gentleman's solicitor, Mr. Harmer, without delay obtained a certiorari to remove any indictment which might be preferred against him, *whether alone or with another or others*, into the court of

King's Bench. At the Session, an indictment was found against him and the pauper, and the certiorari being duly lodged, no further measures were taken for the defence, the record ceasing to be in the legal possession of the court. The magistrates, however, instead of looking into books, laid their heads together: some were of opinion that the man in custody must be tried there, although the record as against the other had been removed; others, who knew the law better, were of a contrary opinion; and although there was a sufficient number of persons in custody to occupy the court during the whole of that and the following day, yet, as if for fear that time should be allowed for the justices to recollect themselves, or for counsel to receive instructions for arguing the case, the trial was called on immediately, and the poor creature undefended, (for with him the gentleman had nothing in common but a false accusation), was found guilty, and sentenced to six months imprisonment. On the following morning, counsel, having received instructions, moved the court to discharge this unfortunate creature from his illegal sentence. It was shown, and indeed it stood upon first principles, that they had no jurisdiction over the indictment, could not legally impanel a jury on it, could administer no effectual oath;

in fine, were not a court to try the offender. All this was not denied; but it was answered that they would not “blow hot and cold;” they would not “assert a jurisdiction one day and recede from it on another:” in short, they would not undo the wrong they had done, and so the poor wretch remained irremovably in prison. The trial and the motion were, of course, both published, and thus the feelings of the principal sufferer and his family and friends were again violated and tortured.

At length his day came. A special jury was struck, and took a view of the place where the accusers described themselves and the parties accused to have been: it was evident, that from the situation described, the witnesses could not have seen what they asserted, even if it had passed; it also appeared, that the place where the supposed offenders had transacted their indecencies was one of studied publicity; that, at noon-day, they had so stationed themselves, to act the most disgraceful scene, that no one passing on the opposite and much frequented bank of the Serpentine River, could have avoided seeing them; it was proved too, that the fellows who fabricated this charge had spent nearly an hour from their first seizing the defendant, in conveying him to the nearest place of confinement, not a quarter of a mile off, with the evident

design of affording him an opportunity of offering to redeem himself by money. It further appeared, that he stated to them, and to the justice, who he was, and where he lived, which was in one of the best and most opulent neighbourhoods in the metropolis; that being in exceedingly infirm health, he had for some time been in the habit of taking an airing in his carriage, with his lady and a favourite little dog; that on the day in question, tempted by the fineness of the weather, he had walked out with his dog, which had strayed from him in the park; that fearing some ill would happen to the animal, he had intreated the first poor person he saw to assist in searching for him, and that the accident, which so placed these two individuals near each other, was seized by the wretched prosecutors, as a foundation for their most odious charge. The jury were unanimously rising to acquit, when the Lord Chief Justice, in kindness to the defendant, recommended to his learned counsel just to give some evidence of his having gone out with a dog: the fact was instantly and most satisfactorily shown, and further, that the animal had returned late at night, scared and dirty, and without his collar. The defendant was acquitted. What would have been his fate if he had not been rich enough to remove the record,

and have the ground viewed by a jury, is perhaps doubtful, considering the spirit which was manifested in the case; but had the present Vagrant Act then existed, it is morally certain that this unfortunate and infirm gentleman would have received his death-warrant in a condemnation to the Tread-mill.

I have used, in a former page, the word "ingrafting" to describe the manner in which, under the semblance of re-enacting an old clause, the legislature is surprised into the use of terms which give it an unthought-of latitude, or an unforeseen direction; and if I show this by several instances in the Vagrant Act, the reader will know how to judge of the assertions made in defence of it, that it contains no novelty, except the atrocious clauses I have just been noticing.

The 23d Geo. 3. c. 88. makes a rogue and vagabond of "any person who shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent *feloniously* to assault any person:" the new act totally alters this provision, by omitting the important word "*feloniously*," and adding the still more important words, or "*commit any other illegal act.*" To what dreadful extent the power of a justice over any man who carries a stick may be extended by this clause, it is difficult to conjecture;

but let me suppose that some worshipful person has an avenue of walnut-trees ; what difficulty can he find in convicting under this clause all the young people in the parish, on his own view, for that is sufficient ? He sees them with sticks ; their intentions are entirely in his construction ; and if they were to knock down a walnut, it would be an unlawful act.

Again, the same statute of George 3. denominates rogues and vagabonds, “ All persons “ who shall be found in or upon any dwelling- “ house, warehouse, &c., or in any enclosed “ yard or garden, or area, *belonging to any house,* “ *with intent to steal any goods or chattels.*” The more recent statute says, “ who shall be found “ in or upon any dwelling-house, &c. or in any “ enclosed yard, garden, or *place,*” omitting the words “ *belonging to any house,*” and substituting for the words *with intent to commit felony* those terms of glorious uncertainty, “ *and shall “ not be able to give a good account of themselves.*” In plain English, therefore, this clause imports, that if any man shall be in any enclosure, and not give such a reason for his being there as will satisfy his worship, he is a rogue and vagabond, and if he does not surrender into custody when required by the justice, who on his own view condemns him, he is an *incorrigible rogue.* I say, give such a reason as will satisfy

the justice, because this clause has been solemnly construed so at session.

Again the 54 Geo. 3. c. 37. and several former statutes, which gave the very exorbitant power of apprehending any persons frequenting places of public resort, the avenues leading thereto, and the streets, highways, and other places adjacent, with intent to commit felony on the persons and property of his majesty's subjects, limited the operation of this power to suspected persons and reputed thieves, and the officer who attempted to convict them was held to strict proof that he knew them to have been apprehended and examined, on reasonably well founded charges of felony on former occasions. The new act dispenses with these requisites, and enables the officer to convict any one, whatever may have been his previous course of life; if he can only swear that he believes he intended to commit felony. And what makes this clause the more extraordinary, and shows the confiding negligence which sometimes accompanies these very important acts through the two houses, the old clause in its very words is re-enacted in the 3 Geo. 4. c. 55, the Vagrant Act being c. 40 of the same session.

One more instance, and this also appears to me a new description, framed with most deceptive subtlety. It is this: "*All persons im-*

*“posing, or endeavouring to impose upon any
 “churchwarden or overseer of the poor, or
 “upon a charitable institution, or private indi-
 “vidual, by any false and fraudulent representa-
 “tion, either verbally or in writing, with a
 “view to obtain money or some other advantage
 “or benefit.”* Persons in or out of parliament
 who might read this clause cursorily, would
 imagine that, if severe, it was well intended, and
 had no other object than to protect the parochial
 purse, the benevolent fund, and the pockets of
 the humane against unprincipled impostors. But
 reading only the words in italics, and they are
 all that contain any operative meaning, it will
 be seen that every one who not only should
 commit the acts supposed, but who should
 tell a falsehood to borrow a horse, offer himself
 at the door of a theatre with a last year's ticket,
 or do a thousand other things equally ordinary
 and frivolous (if considered as subjects of cri-
 minal law), might be visited with all the seve-
 rity of this statute; not to mention, that all the
 care which has been taken to define the crime
 of obtaining money or goods by false pretences,
 and the anxious solicitude always evinced to
 leave the finding of the intent to cheat and de-
 fraud to a jury, together with the numerous
 decisions that a mere untruth is not a false
 pretence, are by this apparently well intended

clause entirely done away ; and although the sentence cannot be extended to transportation, neither can the accused have the inestimable benefit of a trial by jury. But should this clause be allowed to remain in force, even in its limited sense, every man who knows any thing of the management of parochial funds, and the daily untruths told by persons seeking relief, to those who administer them, must tremble at depositing in any hands, the wild and extravagant powers which are given by this clause.

I may perhaps be thought to have asserted unadvisedly, that the vigilance of parliament may, on some occasions, be accidentally and sometimes designedly surprised. I refer to the clauses I have cited, and to some which I shall produce hereafter, and inquire whether any one will believe that they could possibly have passed had their effect been duly considered ; but I remember the following fact, communicated to me by one who was personally engaged in it. At the time of passing the Police Act, 1 and 2 Geo. 4. c. 118, it was thought desirable to put down, in a summary way, the nuisance of selling newspapers and other wares, by blowing horns, and making other noises in the streets. A member of parliament thought the measure too strong, and wished to have the clause withdrawn. One of the promoters of the bill inti-

mated, that, perhaps there might be no objection, if the clause were confined to the Lord's Day. The member agreed to this: the words "on Sunday" were inserted in the margin of the Bill; but the clause remained as it was, and was continued the next time, probably without a struggle.

Before I take leave of this very extraordinary statute, I shall notice one more section, the 7th, and conclude this part of my subject with some remarks very justly conceived and happily expressed by my friend, Mr. R. B. Comyn, in a pamphlet published by him last year, in the form of a letter to Lord Folkestone. I wish the leisure of that learned gentleman had permitted him to exert his talents in a more detailed investigation, as he would have rescued me from the performance of a task to which I am never able to devote unmixed attention, and which I can only execute at moments snatched from other avocations, or retrenched from the hours of repose.

The section runs thus: "And whereas it often happens that persons who are in possession of money or other property, commit acts of vagrancy; be it therefore enacted, that every justice of the peace, by whom any person shall be adjudged to be a rogue and vagabond, or incorrigible rogue, shall order such rogue and

“ vagabond or incorrigible rogue to be searched,
 “ and his or her trunks, boxes, bundles, parcels or
 “ packages to be inspected, in the presence of
 “ the said justice, and shall also search or cause
 “ to be searched, the persons so offending, to-
 “ gether with any cart, car, caravan, or other
 “ vehicle which may have been found in his, her,
 “ or their possession or use ; and it shall and may
 “ be lawful for the said justice, to order any money
 “ which may be then found, to be paid, or so much
 “ of such other effects found with or upon such
 “ rogue and vagabond or incorrigible rogue, to be
 “ sold, and applied for and towards the expense
 “ of apprehending, conveying to gaol or to the
 “ house of correction, and maintaining such rogue
 “ and vagabond or incorrigible rogue, during the
 “ time for which he or she may be committed,
 “ returning the overplus (if any there be), after
 “ deducting the charges of such sale, to the said
 “ rogue and vagabond, or incorrigible rogue.”

On this clause, and some which I have ad-
 verted to, Mr. Comyn says, “ Thus then, is it
 at the *discretion* of any justice of the peace to
 suspect, to seize, to examine, to imprison, any
 one of his majesty’s subjects ;—to seize and sell
 his effects ;—to break into any house where he
 may be entertained, *provided he be poor* : thus
 is it competent to any one man, *without any*
warrant, to seize another, unless that other be

pleased to give a good account of himself: and thus are the justice and his agents protected by the awful penalty of treble costs*. I speak not of those parts of this act where the offence is *defined*; but I complain of its want of definition. I complain that, whereas, heretofore, no man could be apprehended but for the commission of an offence, or at least for such a manifestation of his evil intention as rendered immediate precaution necessary for the welfare of the public,

* Given by s. 20 in these words: "That in all cases where proceedings shall be had against any justice or justices of the peace, constable, or other person, for or on account of any matter or thing whatsoever done, commanded, or expressed by him or them, in the execution of his or their duty or office, whether such proceedings be by action, motion, rule to show cause, indictment, information, affidavit, certiorari, or any other application or process which may occasion or subject him, or either or any of them, to trouble or expenses under this act, the said justice, or justices, constable, or other person, if he or they shall recover or be exculpated, shall have any sum not exceeding treble costs awarded to him or them, by the judge, court, or jurisdiction wherein such proceedings shall have been had, commenced, or determined, to be paid to the said justice, or justices, constable or other person, by the person or persons so having proceeded, who shall discontinue his suit, or become non-suit, or shall have a verdict against him, or shall have his application in any manner whatsoever dismissed or ended, unless the judge or court shall certify that there was a reasonable cause for such proceeding, information, or complaint."

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the being suspected by a magistrate, and the inability or refusal, upon examination, to give what that magistrate shall deem a good account, now draws down all the penalties of a substantive offence absolutely committed; and puts the alleged offender in as bad a predicament, in respect of imprisonment and forfeiture, as if he had been tried by a jury and sentenced by a judge. What then becomes of our old maxims that an Englishman's house is his castle,—that his person and property are free and at his own disposal,—that no man is bound to criminate himself; and the many other topics of our late national pride and exultation. The *poor man* (to say the least) must remember that his lodging is liable to be broken into: his more opulent neighbour must live in dread of the awful scrutiny into his trunks and packages, or the sudden seizure and sale of his beasts and carriages; whilst the whole community must bear in mind, that the freedom of their persons depends upon the discretion and integrity of the king's justices of the peace. But when once suspected, seized, examined, convicted, imprisoned, and stripped of his money and effects, the unhappy sufferer may console himself with the recollection that, after the payment of all expenses of the law, he will, at the expiration of his term of hard imprisonment, be enabled to visit the world again

with the surplus of his forfeited property, “if any there be.”

One of the defences made for this act is, in my judgment, even more extraordinary than the act itself; that the sixth clause gives a discretion either to commit or discharge the person brought before a justice, although an act of vagrancy be proved. It is new to me to learn that the power to be partial diminishes the probability of a judge's being unjust. It is a curious guarantee for the safety of those whom a justice may happen to dislike, that those who are more favoured may be dismissed with impunity. It must be truly edifying, at the time of an election, for the people to be informed, that, if with one colour in their hats, they carry bludgeons in their hands, they will be sent to the house of correction; but if they wear the adverse favour, his good worship will do them no harm, *even although an act of vagrancy may be proved*. How wonderfully it must exalt our morals and our patriotism to know, that if a miserable English stroller were to murder Hamlet at half-a-crown per box-ticket, he might spend his next six months in the house of correction, whilst a foreigner, who might refine us with the voluptuous sensibilities of *la folle journée*, at half-a-guinea for a *billet*, would be dismissed from the office

with a smile in return for his *congé*, although *an act of vagrancy had been proved*.

It may be too late, at such a distant period from the first enactment, to inquire into the consistency or policy of loading with the same opprobrious names, and subjecting to the same punishment, persons whose offences differ so widely both in their origin and their probable effects as those enumerated in the *vagrant act*; but if that statute is to remain in its present, or any thing approaching to its present extent, it would be candour to the objects, and charity to the administrators of it, to shorten and simplify the act into a brief declaration, that all persons wherever they may be, or whatever doing, may be seized by any person with or without warrant or authority, and if they cannot give such an account of themselves as will satisfy the next justice of the peace, shall be described and punished as rogues and vagabonds; and if they dislike such treatment and escape, or give untrue answers before the justice, he being the only judge of their verity, then, as incorrigible rogues.

But should the awakened sense of the legislature and the strong expression of public opinion prevail so far as to cause a revision of this obnoxious act, little will have been done for

liberty and the true spirit of the law, unless the whole system of convictions before justices of the peace, their general powers and authorities, their jurisdiction in and out of session, their duties and their immunities, are carefully reviewed.

Perhaps it is not known to all who discuss the present state of this question, that beside the commitment of all persons charged with felonies and misdemeanours, besides the ample and general authorities entrusted by the poor-laws; beside their share in the administration of the revenue-laws, and many other branches of inquisitorial and ministerial jurisdiction, justices have power judicially to alter and take away the possession of freehold property*; to confiscate vessels and their cargoes†; to break into houses on suspicion of misdemeanours‡; to arrest and imprison for small trespasses§; to fine from 500*l.* down to 5*s.*||; and to imprison for indefinite terms, as, until large fines be paid, or for determinate periods, from two years downwards; and all this, in every case, without the finding of any one fact by a jury, and in some (though

* 57 Geo. 3. c. xxix.

† 22 Geo. 2. c. 49 s. 12. and by the Police Act.

‡ By various statutes against gaming, lotteries, &c. the Police Act and some others.

§ 1 Geo. 4. c. 56.

|| In very numerous acts.

not many) without even the miserable and inadequate resource of an appeal to the session.

As it is not my intention, and indeed the labour would be immoderate, to notice all these statutes, I shall content myself with directing attention to some of the most prominent, assured that if I shall be able to excite the feeling I wish to see prevalent in those who can, with beneficial effect, take these matters into their consideration, I shall have done quite enough to answer the purpose I had in throwing together these observations.

I proceed, therefore, to the 1st Geo. IV. c. 56, commonly called, the Small Trespass Act. This statute directs that if any person or persons shall wilfully or maliciously do or commit any damage, injury, or spoil, to or upon any building, fence, hedge, gate, stile, guide-post, mile-stone, tree, wood, underwood, orchard, garden, nursery-ground, crops, vegetables, plants, land, or other matter or thing growing or being thereon, *or to or upon real or personal property, of any nature or kind soever*, and shall be thereof convicted within four calendar months next after the committing of such injury, before any justice of the peace, every person so offending, and being thereof convicted as aforesaid, shall forfeit and pay to the person or persons aggrieved, such a sum of money as

shall appear to such justice to be a reasonable satisfaction and compensation for the damage, or injury, or spoil so committed, not exceeding, in any case, the sum of five pounds ; but if any such damage, injury, or spoil shall have been done or committed as aforesaid, to or upon any church, chapel, bridge, building, common way, *or other property whatsoever, whether real or personal, of a public nature, or wherein any public right is concerned*, it shall and may be lawful to and for any such justice to proceed against and convict the offender or offenders, within the time aforesaid, and in the manner aforesaid, in any sum not exceeding five pounds, as to such justice shall seem just and reasonable, at the instance, and upon the information, of any person prosecuting such offender or offenders, and to order and direct one moiety of the sum to be paid for such offence, to be paid to the person so prosecuting, and the other moiety to and for the use of the poor ; and in default of payment of the sum in which any such offender or offenders shall have been so convicted as aforesaid, *together with all costs, charges, and expenses attending such conviction as aforesaid*, such justice shall and may commit such offender or offenders to the common gaol or house of correction, there to be

kept to hard labour, for any time not exceeding three calendar months, and offenders may be apprehended and taken before a justice without any warrant.

The first thing that occurs on reading this enactment is its manifest tricking and insincerity; the same characteristic which I have had occasion to notice in the former statute. This bill was no doubt recommended to the Legislature, and hastily adopted by many members, on a supposition that it extended only to the protection of buildings and fences, or of trees, woods, and growing vegetables; few gentlemen imagining that by a dexterous turn, it would be applied *to real and personal property of any nature and kind soever*. If no deception was intended, all the antecedent particulars were needless, for words more generally descriptive could not be found than those here employed; combined with those in the latter part of the clause, they extend to every thing, from the parish church to the glasses and tobacco-pipes in the ale-house; the justice has sweeping jurisdiction over them all, rating the damage at any sum he pleases within five pounds, and giving costs without stint, or imposing three months' imprisonment, with hard labour, if the trespasser submits quietly; but if he is refrac-

tory, and dares to appeal, his penance and purgation are extended to twice that period. If the offender be a male, and under sixteen years of age, the justice can commit only for six weeks; but if he appeals, I do not find that the power of the session is abridged on account of his youth.

An anonymous reviewer of Mr. Comyn's Letter to Lord Folkestone has anticipated many of the remarks which I should have thought it necessary to offer on this statute.

“ The culprit who has damaged, spoiled, or
 “ injured any of the articles comprehended in
 “ these two great classes of public and private
 “ property, is to be apprehended and carried
 “ before a magistrate; no warrant or official
 “ sanction is required; the complaining owner,
 “ his servants, or any persons acting under his
 “ authority, or called upon by him for assist-
 “ ance, may seize and detain the aggressor;
 “ nor is this power bestowed only during pre-
 “ sent emergency, and to suppress outrage
 “ actually going on; it is ‘ for the more easy
 “ bringing of offenders against this act to jus-
 “ tice,’ and extends to those who shall *have*
 “ committed, as well as those who shall *be* com-
 “ mitting, offences. It is not even necessary
 “ that the fact should be recent, for conviction
 “ may take place any time within four calendar

“ months: a labourer may be dragged before
 “ the justice in August for having cut a turf in
 “ May; a servant for having carved his name
 “ on the kitchen table at his former place; or
 “ an apprentice for a window broken while he
 “ was at school. Can any thing be more un-
 “ popular, and more substantially oppressive,
 “ than a law which allows the prosecution of
 “ such trifling injuries to remain four months
 “ suspended? Can discord and disorder be
 “ more effectually promoted than by enabling
 “ any private individual to arrest another, at
 “ his own time, and in his own manner, for a
 “ trespass which, at the worst, is not in itself
 “ seriously important, which is easily feigned or
 “ exaggerated, and, if real, may, in many in-
 “ stances, have escaped the transgressor’s me-
 “ mory, and been maliciously recollected by
 “ the complainant?”

Then having noticed the conviction and ap-
 peal, he proceeds :—“ If the mischiefs provided
 “ against by this Act are multifarious and
 “ loosely described, it will be owned that our
 “ legislators have been no niggards of discre-
 “ tionary power to those who administer re-
 “ dress; and we may reasonably ask, in the
 “ words of Mr. Comyn’s letter, if it be ‘ pru-
 “ dent to invest the justice with the power of
 “ determining the several questions—whether

“ ‘ a trespass have been committed ; whether
 “ ‘ that trespass were malicious or even *wilful* ;
 “ ‘ what is a fair compensation ; and whether
 “ ‘ the injury be too great for the limits of his
 “ ‘ narrow jurisdiction ;’ then whether the in-
 “ jury were committed ‘ under a fair and reason-
 “ ‘ able supposition of right ;’ in case of con-
 “ viction, at what time the penalty and costs
 “ shall be paid ; and lastly, ‘ whether *he be*
 “ ‘ *satisfied* with the security which the defend-
 “ ‘ ant offers for prosecuting the appeal against
 “ ‘ his judgment *with effect* ? Are we prepared,’
 “ the writer continues, ‘ to admit, that all these
 “ ‘ considerations, which have been heretofore
 “ ‘ the occupation of several departments of our
 “ ‘ jurisprudence, are wisely entrusted to the
 “ ‘ discretion, discernment, and impartiality of
 “ ‘ one single country ’squire ?’ ‘ I am far,’ he
 “ adds, ‘ from wishing to impeach the respect-
 “ ‘ ability, or to undervalue the services of the
 “ ‘ unpaid magistracy’ of the country ! ‘ But
 “ ‘ (he argues) if some persons have objected to
 “ ‘ the discretionary power of punishment, even
 “ ‘ as vested in the twelve judges of England,
 “ ‘ men regularly schooled in legal principles and
 “ ‘ judicial practice, and unaffected by local in-
 “ ‘ terest or prejudice, how much more danger-
 “ ‘ ous is it to entrust a similar authority with
 “ ‘ gentlemen who are ‘ not peculiarly addicted
 “ ‘ to legal investigation ;’ who ‘ are resident

“ among the people for and against whom they
 “ are called upon to act ; not altogether un-
 “ acquainted with the cares and heats of elec-
 “ tions ; and sometimes sufficiently versed in
 “ the local state of politics, even though they
 “ have the good fortune to keep aloof from the
 “ petty squabbles and cabals of the neighbour-
 “ hood, or are so happy as to feel none of the
 “ heart-burnings occasioned by vestries, ca-
 “ nals, rates, and road bills.’ ”

“ The exemptions given by this statute are
 “ no less remarkable than its other provisions.
 “ First, the act, it is said, shall not extend to
 “ any case in which the *damage claimed* shall
 “ exceed five pounds. We do not understand,
 “ with Lord Folkestone’s correspondent, that
 “ the justice is precluded, by this enactment,
 “ from interfering where the damage really ex-
 “ ceeds five pounds. We apprehend that any
 “ claimant may enforce the summary rigours of
 “ the statute, if he will only confine his claim to
 “ the prescribed amount ; and the magistrate is
 “ not called upon to inquire whether the case
 “ demanded a larger compensation. Secondly,
 “ the statute is not to take effect where it shall
 “ appear ‘ to the satisfaction of the justice or
 “ ‘ justices,’ that the offender acted under ‘ a
 “ ‘ fair and reasonable supposition’ of right.
 “ As it is observed in the passage we just now
 “ quoted, the discretion, and perhaps the im-

“partiality, of a single justice, may be often
 “severely tasked by the question, What is a
 “reasonable supposition of right? a question
 “which, in cases, for example, of disputed pos-
 “session, or of assumed custom or privilege,
 “will present much greater difficulties than
 “ought to exist, where a quarter of a year’s
 “liberty is made dependent on the opinion of
 “a solitary private gentleman. Thirdly, the
 “act does not give jurisdiction over trespasses
 “committed in hunting, or by a qualified and
 “certificated person in pursuit of game; a
 “most considerate reservation,—for how would
 “a keen fox-hunter survive the affront of being
 “forcibly dragged from the chase by a posse of
 “rustics, to await the judgment, perhaps, of a
 “brother sportsman, for having done damage,
 “injury, and spoil, to a matter or thing grow-
 “ing or being upon land? But while our legis-
 “lators were contemplating the vexations to
 “which gentlemen might be exposed in the
 “prosecution of their sports, it would have
 “been well if they had also considered the op-
 “pression which might be practised on humble
 “individuals, by a similar abuse of the law
 “they were preparing*.”

The examination of this proviso leads na-

* New Edinburgh Review, Vol. V. p. 316.

turally to some consideration of the powers intrusted to magistrates by the game laws. In mentioning this part of our system, it will not, I trust, be expected by any one who knows me, however slightly, that I shall augment the tide of abuse so commonly thrown out against the country gentlemen who are anxious to defend this fugitive portion of their rights. I have no interest in the question, for I do not possess land enough for a partridge's nest to lie on, and am so absolute a cockney that I never discharged a fowling-piece, nor rode a hunting in my life; yet, in this, as in other cases, I can see and respect those rights and privileges in which I have not the hope, nor, perhaps, the wish to share, and regard with indignation those attacks, which, if they could be successfully directed against one class or species of privilege or property, would gain strength by every fresh success, and in time overwhelm and envelope all. I think that the power to possess and preserve the game, as at present claimed and exercised by the proprietors, is as much their property, as the freehold, in right of which it is exercised, or the horse on which the sportsman pursues his favourite amusement. The arguments and invectives by which this right is assailed, might, without change in their essence, and with little variation in their form,

be urged to the abolition of all other seignorial rights, of all claims and duties in respect of the possession of land, tithes, the various incidents of copyhold tenure, and finally, of all exclusive appropriation; and their success would lead to an agrarian law, or the recognition of a supposed natural right to take all that opportunity can present and strength can acquire. When maxims of injustice are once reduced to practice by those whom numbers will render confident, and inconsiderateness will make sanguine, the boldest man who ever raised a popular storm in the hope of profiting by its agitations, ought to tremble for the consequences. If I wanted a better motive, this very fear would make me an earnest advocate for a just, mild, and temperate use of power, both in the creation and enforcement of any system which is to bear upon the rights, property, or liberty, of the more numerous and unprivileged class, whether they be in industry or in mendicancy, whether innocent or delinquent.

I do not agree with a modern French writer, that to the preservation of game is owing the presence of the nobility and gentry of Great Britain, during so great a portion of the year, at their country seats. The pursuit of game is welcome as a recreation, but the attachment of

a country gentleman to the scenes of his youth and infancy is secured by stronger affections and higher associations of ideas than belong to the preservation or pursuit of animals of the chase. Still less do I agree with those who have determined, that in aid of the general security afforded by law, and the ample means of protection and punishment given by numerous statutes, those diabolical engines called spring-guns may, in any case, be legally used for the safeguard of such property, or rather (for such is the true sense of the question) be employed vindictively, and by way of punishment, to maim or kill on the spot, without remorse, any person, drunk or sober, infant or adult, male or female, whose licentious foot shall have strayed, whether by design or accident, in daylight or darkness, beyond the point where the proprietor shall have fixed a board announcing his decree of death against all transgressors. It does seem the very sublime of mockery and insult, to tell the people of this country that the Christian religion is parcel of the law of the land, and in the same breath, that they may be shot like polecats if it can only be proved that they have received warning to avoid their fate. A great deal has been said by those who have decided this question, on the legality of keeping these *machines infernales*,

because if it were not legal to keep them, it would not be trespass to remove them. Surely this argument, if well founded, addresses itself to the legislature ; and they who can empower a justice to send any man to the house of correction who shall carry a bludgeon *for any illegal purpose*, could have very little notion of justice or equality, if they would not enable the same officer to remove, as a nuisance, that reproach to humanity, that standing proclamation of premeditated murder, which, as I am informed, is not to be found in any other country in Europe.

But (if what I have just said is a digression) to return, the numerous penalties inflicted by the game laws on persons offending, the authorities given against those who are suspected of having offended, or intending to offend, are so ample, and the powers of imprisonment confided to justices of the peace so numerous, that it does seem like throwing an additional weight into a scale already too preponderant, to give sportsmen an exemption from the summary process designed to place in the reach of all persons a compensation not exceeding five pounds, for any wilful or malicious trespass on their real or personal property.

I cannot help imagining how a poor peasant must be edified, how highly and solemnly im-

pressed with veneration for the equity and benignity of the law, when convicted in the sum of twenty shillings, and what costs his worship may direct, for trespassing on the property of a gentleman, under circumstances which may very easily be imagined. Suppose him summoned before a justice for taking turnips in a field, breaking through the hedge, and trampling over other turnips, the property of the 'squire. The poor delinquent might say in his defence, that he was extremely sorry; that till within a week, he had a little patch of cabbages of his own, but the 'squire in the heat of the chase had found it necessary to break down his fence, gallop over his ground, destroy his cabbages, and thus leave him and his family destitute of that which he had treasured as a necessary of life. He had, therefore, for an immediate supply, the 'squire being gone to town, so that he could not ask permission, taken the liberty to furnish himself to a very small extent, and without intending any injury. The Justice would answer him with "wise saws and modern instances." "A man *must be taken to intend* " *that which he does*, and if he commits an injury with his eyes open, no man can say he does not intend it; as to the 'squire having done you some damage, you cannot avail yourself of that plea, *no man is permitted to*

“*take the law into his own hands*; God forbid
 “he should! wild work indeed we should then
 “have of it!—The case is clear; the defence
 “too shallow to deserve a thought; the damage
 “is very moderately estimated at twenty shil-
 “lings, and you must pay it with the costs of
 “the summons, service, and hearing.”—“But,
 “your worship,” the defendant might say, “I
 “cannot pay the money; five and twenty shil-
 “lings are as much as I earn in three weeks,
 “and what I receive on Saturday night is al-
 “ways paid away before Monday noon; if your
 “worship would grant me a summons against
 “the ’squire, I could prove damage to the
 “amount of fifty shillings, and would gladly
 “pay him his claim out of it, and declare my-
 “self sorry for what I have done.”—“I have
 “no authority,” the magistrate would reply,
 “to institute any proceeding against a gentle-
 “man for trespass committed in sporting; in
 “such cases, *mischief may be done unintention-*
 “*ally*; but the wisdom of the law refers that to
 “the constitutional tribunal of the country;
 “you may bring your action; *the law, thank*
 “*God, is open to every man*—you profess sor-
 “row, but it is too late; you say you cannot
 “pay for the damage you have done, *you must*
 “*suffer in your person, if you cannot in your*
 “*purse*; take him away.” I need hardly add,

that the prisoner cannot without absolute ruin; while it is certain that he can gain no benefit; present himself at the magnificent portal of Westminster Hall for redress.

This may be deemed an extreme case ; but it is within the contingency of the statute, and the true way to try any legislative ordinance is to suppose an extreme case. I do not say that all justices are narrow-minded, tyrannical, overbearing, or cruel ; most happy should I be if my experience would enable me to affirm that none are so. I do not insinuate that sportsmen delight in doing wanton mischief to their poor neighbours ; on the contrary, I firmly believe, that any one who should do an injury without making prompt and ample compensation would be brought to reason and justice by the undisguised scorn of his free, open-hearted associates : but still the contrary case is possible, and actions are tried for trespasses committed in the chase which have a better foundation than the mere spleen or pride of the plaintiffs.

I quit now the examination of those statutes, which have evidently a general extent and diffusive application, (although the subject is far from being exhausted), to notice some which appear, and some which really are, local and limited in their objects.

The reform of the common people seems to

be a favourite project in these times, and, as, in every reform, one must see something of the temper, habits, and propensities of the reformers, so I observe, with regret, in these attempts a manifestation of a gloomy, austere, and unsocial temper, an inclination to break up the accustomed forms of popular intercourse, to render difficult, if not impossible, the enjoyment of ordinary indulgences, and to enforce, in appearance at least, a rigid, formal, inflexible piety, and an unintermitting attention to the externals of exact religious observance. For this purpose, charity and benevolence are by many persons converted into engines of torture. The divines proclaiming from their pulpits the imperious duty of renouncing all worldly amusement, and even declining the acquaintance of those who are not prepared to make the same sacrifice; while ladies assume also the task of ghostly directors, and stationing themselves at the bedside for the apparent purpose of giving charitable aid to distress, din into the ears of excruciated sufferers, and even of lying-in women, the terrors of everlasting perdition, and the dangers of dying in sin. However fit and necessary such exhortations might be from proper persons, and in a well selected time, the praise of benevolence and true piety can scarcely be awarded to those

who have been known to enhance the supposed total of their merits by enumerating the suicides they have caused, and the milk-fevers they have produced.

The same spirit prevails to a great extent in our modern legislation, and has a strong influence in the execution of it. The observance of the Sabbath is a never failing point, with persons who wish to gratify their pride or latent disposition to tyranny, by overbearing those around them, and it is only a portion of the same spirit which occasions the severe restrictions laid on many of the usual modes of social intercourse.

To the production of this effect generally, the recent act for licensing ale-houses (3 Geo. IV. c. 77) is powerfully conducive. The authority exercised by the justice over the publican is founded on an enactment directing a recognizance to be entered into at the time of taking out a license, the first violation of which incurs a penalty not exceeding five pounds, with costs, or a month's imprisonment; the second, ten pounds, with costs, or two months; and the third, a fine not exceeding one hundred pounds, or forfeiture of the recognizance, and the license is at the same time to be declared void; but for this last adjudication a jury must be impannelled.

The recognizance, among other very useful regulations, binds the publican not to keep open his house, nor permit or suffer any drinking or tippling in any part of his premises during the usual hours of divine service on Sundays; nor to keep open his house or premises during late hours of the night, or early in the morning, for any other purpose than the reception of travellers.

To those readers who have neither feeling for the wants, nor sympathy in the enjoyments of the industrious and humble classes, I cannot urge, with any hope of success, that these restraints are not wholesome, reasonable, incapable of being abused, and irksome only to the idle and vicious. If, in the gloom of their political melancholy, they have convinced themselves, that, because the people must be governed, no rule of government can be too strict and severe; if they have strained their religious zeal to the pitch of believing that the sanctity and repose of the Sabbath are incompatible with rational recreation and moderate enjoyment; or if, without adopting these extremes, they have heated their imaginations with reports of the midnight carousals of merry mendicants, or the assemblages of lawless ruffians, who at their *flash-houses*, as they are called, dissipate the produce of one crime, while they

plan the execution of others ; if the reader's mind is pre-occupied with such views of the subject, this part of my observations will appear in his eyes worse than tedious or useless. But if I address any who, uninfected with the political and religious punctiliousness of the day, can see the propriety and possibility of restraining excess and curbing licentiousness, without ruthlessly destroying some of the best and most cherished popular enjoyments, to them at least, I shall not appear quite unreasonable, though I should fail to carry their opinions with me in all points.

Society must always be considered by politicians as a mixture of the bad with the good ; to derive advantage from both, and to regulate all without violence to national character, forms the highest reach of the art of governing. Good and bad are not contrasted in politics as they are in morals ; many deviations from that exactness of regulation which a strict morality would enforce, are, in society, not only tolerable, but often indirectly useful and beneficial. Against these observations a formidable battery of book-authorities may be ranged ; but, to write an essay and to rule a country require talents widely different, and, it is much to be feared, and much to be deprecated, that in many late regulations, the one talent has been mistaken for the other.

“The English,” says Mr. George Chalmers in his Estimate, “are a hard-working and a free-spending people:” the character is judiciously and forcibly drawn. The pride of an Englishman, in the use of money, is divided between the expense he can afford to bestow on his own family, and the reputation he shall derive from it among his neighbours. The toils of the day are compensated by the club, or other social meeting of the evening; and he who has, with decent pride, and honest satisfaction, indulged himself, his well-dressed wife, and blooming children with a short excursion on a Sunday, finds his pleasure mutilated, if he is restrained from the luxury of a country tavern while in their company, and the satisfaction of meeting at night with his equals, and comparing notes on the enjoyments, the expenses and the adventures of the day. But, no! says the legislative precisian, all this must not be!—nightly pleasures lead to daily sins, and the Sabbath ceases to be kept holy, if any man presumes to think of un-reverend amusements.

Acting on this principle, and fortified by the new act of Parliament, the justices in Middlesex, in their respective districts, have issued their edict that eleven o’clock at night is the just medium between late and early, at which public-houses must be closed.

To those who have wine cellars, and beer cellars, and cellarets, and liqueur cases, always well stocked, in their own houses, who, if their fancy leads, can sustain the evening revel till scared from it by the light of morning, there will appear no great mischief in this regulation; but all who know, and will recollect, or, not knowing, will condescend to be informed, that the public-house is the wine cellar, and the beer cellar of the lower, ay, and of the better classes to a very great extent, will pause before they pronounce too decidedly in favour of the restriction. If the late hours to which modern luxury has driven many who are employed about the great and the opulent are considered; if that consideration should be accompanied with a thought, that they who have toiled for their betters, may, themselves, want refreshment, or benefit by recreation, perhaps the wisdom of such close restraint may be still more decidedly questioned.

I do not know whether the modern Puritans ever frequent places of public entertainment or not; but if any one concerned in the framing of these laws should happen to be at a play-house on a benefit night, let him, from his box, cast a glance on the delighted tenants of the pit and galleries; and, when he sees them at one o'clock in the morning (for to that time the late hours

adopted in polite life have driven those entertainments), exhausted and fatigued with the pressure of their neighbours and the expression of their own joys, if he can omit to reflect with pity and regret that many of those honest creatures, after a walk perhaps of two or three miles, must retire to rest without even a draught of beer to allay their thirst, he must be made of more obdurate materials than befit the composition of an English gentleman. "Let them stay at home!" the tyrant of social life may exclaim; "let them read the Bible, attend to family exercise, drink tea, and go to bed!" the Puritan may cry. If these are the principles by which the country is to be governed, I have of course mistaken the matter.

But I confess, my opinions go much further: I am no enemy to those forms of social intercourse, where internal regulation, general communication, limited contest and unrestrained hilarity, keep parties together always till a certain period of the night, varying according to the convenience and business of each individual, and leading in some undoubtedly to protracted enjoyments, and what the statute calls tippling at late hours. If not an advocate for the practice, I am decidedly hostile to the legislative or magisterial restraint. If there are evils in these societies called clubs, there are much greater to

be apprehended from the suppression of those means of familiar intercourse by which men are enabled to know their neighbours, to appreciate their good qualities, to measure their talents, and to mark their faults. "Talk not to me of the merits of these ale-house assemblies," says the fierce reformer, with his act of Parliament in one hand, and the report of a committee in the other; "they are the nurseries of sedition, and the hot-beds of crime: in them, men are taught to meditate plots against the government; in them, the arrangements are made for robbery and assassination!" Are you quite sure of that, good sir?—Can you recollect whether the late murder, which has so long been the talk of the whole nation, was contrived in a public ale-house meeting, or in the abodes and private lodgings of the parties?—Was the Cato-street conspiracy arranged and matured in a club-room; or at a private and obscure apartment engaged for the occasion?

From the observations I have been enabled to make on the feelings and principles of the British people, I am persuaded, that if opportunity tempts them too easily to the commission of small crimes, nothing but working on them in private can bring them to unite in the perpetration of enormities. Individuals may be found every where who can excite themselves to a pitch of murderous reso-

lution ; but if the least intimation of their propensities were let loose in a promiscuous meeting, every mode of expression, from mild censure to deep and bitter execration, would restrain the communication, if it could not repress the design.

But, if I have advocated without success the cause of good fellowship, let me at least implore a little compassion for mere necessity. Many are obliged to pursue those callings to which the wants of the opulent devote them till hours beyond midnight ; I will, for a moment, concede, that cold tea, or dead beer, is good enough for them ; yet let me suppose a sudden illness or accident to demand relief by immediate applications. Is it not monstrous that no publican would dare, under the most pressing solicitations, to supply a little brandy for the occasion ? The watchman, deserving the name perhaps in that single instance, would be upon the look-out, and as he would be entitled to half the penalty, would not fail in laying his information.

These are not fancied cases. I have seen numerous informations under the present statute for offences of the slightest description, or for acts of positive merit, tortured into grounds of accusation ; and I have much reason to believe that the terror of the increasing penalty on every complaint, has induced many publicans to pay

compositions rather than face a justice, though they knew the menaced charge to be unfounded.

Among the curiosities of this act is the form of conviction. On these forms in general, I shall hereafter make a few observations ; their laxity and generality are, in most instances, sufficiently odious, but under this act the conviction is made to specify no offence. It is in these most extraordinary words :

Middlesex.—Be it remembered, That on this
 day of in the year A. B. of
 was duly convicted before us, C. D. and E. F.
 two of his majesty's justices of the peace for
 the county or city of of an offence against
 the condition of a recognizance entered into by
 the said A. B. on obtaining a licence to
 sell ale, beer, or other exciseable liquors by re-
 tail, whereby he, she, or they has or have for-
 feited the sum of this being the first
 [or, second offence, as the case shall happen to
 be] besides the costs and expenses of this con-
 viction, which costs and expenses we the said
 justices of the peace do hereby ascertain and
 assess at the sum of pursuant to the sta-
 tute in such case made and provided. Given
 under our hands and seals the day and year
 above written.

Mr. Bayes commends his prologue because "it will suit any other play as well as this," and the person who drew this form may pique himself on an invention which shall fit every possible case, and put it out of the power of the accused to know what he has to answer. It may be for not keeping true assize, or fraudulently adulterating his liquor, or using false measures, or getting drunk, or allowing others to do so, or permitting some sedentary game, as cards or dice, or some active sport, as bull or bear-beating, or cock-fighting, or in short for a failure in any one of the numerous particulars specified in the recognizance, and, what is better, if the informer shall by evidence be beaten from the point on which he founded his accusation, he may, from the appellant's evidence, extract and substantiate another charge. This very proceeding I witnessed a short time ago. A publican in Mary-le-bone had been convicted in the form above specified. The charge was supported by the evidence of a watchman, who swore that the publican had, at a quarter before twelve o'clock, kept his house open, and admitted a man and two women of the town, and he asserted that another watchman saw it as well as he, but this man was not called for the prosecution. He was examined for the appellant, and proved that what the other

had sworn was utterly untrue ; the house had been shut up before eleven, and no person had gone in after that hour but one female whom he well knew, an industrious, hard-working woman ; that she had by much persuasion got the people within to open the door, and had returned in less than three minutes. One would suppose that this flat contradiction of an only witness would have ended the case, especially as the court declared, that they disbelieved the former testimony, and believed the last ; but it was insisted, that if the conviction failed as to the offence intended to be proved, yet there was a breach of the recognizance in the very evidence produced for the appellant. It then became necessary to examine the woman for whom the door had been opened ; she stated that she was the sister of a laundress in the neighbourhood, and well known to the publican, and that this woman, finding herself nearly fainting with the fatigue of ironing in hot weather till almost midnight, had requested her to obtain, if possible, a little beer ; that with much difficulty she had prevailed on one of the servants to open the door, and draw some beer, the master and mistress being in bed, and the bar closed ; and that the whole transaction had not occupied two minutes. The servant confirmed the fact, and the appeal was allowed, so that

the publican was only put to about ten pounds expense on this inquiry, after the same facts had been detailed at the session, which were at first given in evidence before the justice at the office.

Some may perhaps think that a beneficial effect results from this statute, in its keeping the streets clear during the night. They who think so, should take the trouble to look from their carriage windows, when returning from the opera, or a party; and while they survey the chilly solitude which prevails at one or two o'clock in the morning, let them reflect whether their persons or their dwellings are more secure under these circumstances, than they were, when the streets were fully peopled with those who were running after or retiring from their business or amusements. I remember being told when I was a youth, by an old gentleman who had long lived in town, that there were not above two hours in the four-and-twenty, during which the tide of society was intermitted, and in those two hours all the burglaries were committed. The operation of this statute, and the regulations enforced under it, will, before long, reduce the streets of London, during many hours of the night, to that dreary solitude; and as soon as time shall have permitted new associations in wickedness to be formed, in secret

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haunts, unchecked by observation, we shall hear of the frequent perpetration of those frightful enormities, which, because they are now rare, appear prodigious and unnatural.

On the portion of the publican's recognizance which relates to the Sabbath, I shall be very sparing of observation. The temper of the times, and particularly of some sects which have a prevailing influence, tends rather to a Judaical than a Christian observance of that great day. Considering, that it is the only time in which, consistently with their duties in other respects, the shop-keeping and labouring classes can enjoy any relaxation, or invigorate themselves by wholesome exercise, I think much ought to be left to good taste, to religious feeling, and to pious example; and very little, beyond the avoiding of gross impropriety, enforced by legislation or superintended by the magistracy. Prayer, public and private, reading and meditation on the word of God, are undoubtedly the proper employment of all Christians on that day; but convenience, the forms and usages of society, and even the calls of necessity, require that the divine should operate most, and the magistrate least on such a subject. True piety is quiet, contented, modest, unobtrusive. He who attends divine worship, from honest and sincere motives, twice or even thrice every

Sunday, is entitled to applause ; but if his spleen is excited when he sees that others do not partake in his pious propensities, it is much to be feared that the blossoms of his holiness are infected by the canker of pride, and that the best fruit of his pharisaical self-sufficiency will only be animosity and persecution.

To the shutting of public houses during the time of morning service, that is, from about eleven till half past one, no man can object ; but when the necessities of many of the humbler class who live in town, and of all who migrate on a Sunday, to taste the sweet air of the country, are considered, it may be doubted whether severe restriction can, with propriety, be extended further. To those who dine at six o'clock, or later, the inconvenience arising from a more rigid observance may appear slight and trivial ; to the sufferer it is serious, and, by comparison, galling. The benevolence, as well as the rigour, of legislation should be equal to all ; but if some portions of society have their small faults purged with fire, while others, from the same source, have propensities of a like nature cherished and encouraged only by a genial heat, the contrast will ever occasion gloomy submission and ill-restrained discontent.

But even if it should be generally felt that, during the usual times of divine service, both

morning and evening, all access to the cellars of the poor should be denied, and all attempts to approach a house of hospitality repelled, those usual hours ought surely to be fixed by known law, and not left to the caprice of local regulation or particular influence. I found this observation on a fact which occurred within my own knowledge.

A village near the metropolis happened to be blessed with the presence of a very pious justice, who with some of his neighbours, thinking that the regular service performed by the rector or vicar was inadequate to their spiritual needs, formed a subscription, and paid a minister of their own, to give evening service in the parish church, which began at six and lasted till past eight. So far as this related to themselves, it was extremely proper, and there could be no possible objection. But it happened that the worshipful justice could not be contented with his evening exercise of piety, unless the whole parish, containing several thousand inhabitants, were at least as much incommoded as he was edified. Accordingly, having duly conned and construed the statute, he sent forth the beadles on Sunday evening, on cruises of discovery among the public-houses, and prepared I know not how many informations. This holy zeal was so little seconded in his own neighbour-

hood, that the established minister refused to have any thing to do with his informations, and he could not find a justice to sit with him (the statute requiring two) without coming to a police-office in town. There I had the honour of seeing this godly personage leading his own causes as advocate, in some degree supporting them as witness, and deciding upon them as judge. He apologized, with a flood of eloquence, for his appearing in that situation, and then calling the beadles, as witnesses, proved that divers publicans, some of them residing, I think, three-quarters of a mile from the church, had wickedly, during, what he was pleased to call, the *usual* hours of divine service, supplied wayfaring persons with pints of beer, contrary to the form of the statute in such case made and provided. It was proved by the beadles, that there was no disorder, no revelry, no tippling, no irregularity whatever, in any of the houses, and that they had all been shut up during the supposed *usual* hours of divine service. One honest Boniface (and he looked the character very well) remonstrated with the bench in this fashion. "Please your worships," said he, "I have kept my house many years, "and there never was a complaint made against "it. It is frequented by the very best of com- "pany, and it is only a few Sundays ago, that

“ some magistrates of the county did me the
 “ honour to dine at my house. They sat down
 “ at five, and an excellent dinner I gave them.
 “ But now, your worships, what was I to do?
 “ When these gentlemen called for more wine,
 “ at six or seven o’clock, was I to say, ‘ Why,
 “ gentlemen, the church bell has done ringing,
 “ I can give you no more at present ; but if you
 “ will sit still till eight o’clock, my whole cellar
 “ is at your service?’ If I had used them so,
 “ should I ever have seen their faces again?
 “ Would you yourselves bear such treatment
 “ from a landlord?’ The eloquence of mine
 host had no more effect than my own. One
 half of the court (to wit, his worship the pro-
 moter of the informations) came determined on
 convicting, the other half would not stand out,
 and therefore the parties were convicted, and
 entered into recognizances to try their appeal.
 Nothing further was done. A light, I believe,
 came upon his worship from above, (I do not
 mean from Heaven, but from some high autho-
 rity here on earth), the convictions were never
 drawn up, and the recognizances were dis-
 charged. If the magistrate who is the hero of
 this anecdote should see or be informed of this
 publication, he will recognize the fact : he will
 also perceive, that I have treated him with
 levity, because I think his conduct excessively

ridiculous; but with no severity, because, as no great harm came of his officiousness, I feel no hostility against him.

I address myself, on this part of my subject, to those real statesmen, whose enlightened minds and vigorous understandings qualify them to defend our unrivalled establishment against the encroachments of puritanism on the one hand, and of libertinism on the other; and I implore them not to aid the cause of both, by lending themselves to the speculations or fantasies of either. If there are any who, in this matter, halt between two opinions, and incline to think that the cause of the church may be aided by a little excess on the side of strict observance, I would only entreat them to go back in recollection to those times when the hierarchy was discarded, the nobility destroyed, the constitution subverted, and the sovereign himself murdered, and consider by what class of religious professors all those dreadful changes were first moved, and ultimately accomplished.

Quitting this topic, I come now to the police of the metropolis; but as the scope of this pamphlet is limited, I shall not enter in a general dissertation on the subject. I must, however, observe the extraordinary difference which prevails between that part of the metropolis which is in the city of London, having only its

ancient, known, established police, and that in the county, which, for the last two and thirty years, has had a system made on purpose for it, of stipendiary magistrates, continually struggling for, and obtaining, augmentations of power and jurisdiction, while crime is not, even by their own accounts, at all decreased, or the real cause of good government at all advanced.

In the city, the magistracy is composed almost entirely of men of business, unacquainted with the mechanism of legal proceedings, and informed only by attendance at their offices and in session, or by assisting occasionally on juries, of the nature of trials, the rules of evidence, or the manners and usages of courts. In the county, on the contrary, almost every police justice is a barrister, and it is understood that, from that class alone, future vacancies are to be supplied. Yet, strange to say, there are very few cases indeed sent for trial at session from the Mansion-house or Guildhall, in which the prisoners are not convicted, while in the county, it is frightful to look at the number of instances in which judges are obliged to declare their wonder that the prisoners were ever committed.

I entertain very strong opinions on the causes of this remarkable difference, a difference already noticed, and which I trust will be fear-

lessly proved by the legislature. I should most unwillingly contribute, by any public observation of mine, to augment any prejudice on this subject; but I am convinced that a great deal indeed is requisite to render the establishment useful, and that that great deal ought not to consist in the augmentation of powers.

Until the year 1792, there were no police offices, as they are now called. The justices of peace in Middlesex acted, as they do in other places, without any salaries; but as they had a right to certain fees, and convictions on penal statutes afforded considerable emolument, a few men, under the common description of *trading justices*, carried on an active, and, it was thought, a lucrative traffic. The rapid growth of the metropolis, both in extent and population, which was then in progress and has since made such wonderful advances, rendered a regular police, and the abolition of the offices conducted under the degrading name I have cited, not merely desirable, but indispensable. An office had been formed in Bow-street, then called, I think, the Rotation office, and the system which had most beneficially prevailed there, under several successive magistrates, encouraged government to try the experiment of adding seven new ones, including that in Union-street, Southwark, but exclusive of the Thames Police, which was called

into being seven years afterward, by the statute 39 and 40 Geo. 3, c. 87.

At the time of passing the first act (32 Geo. 3, c. 53) an opportunity occurred of forming an establishment of justices in Middlesex, which should have been of the most respectable character, and perfectly congenial with the spirit of the British constitution. The plan was degraded, in the first place, by considering the offices merely as police stations, and not investing them with a more evidently judicial appellation. As mere agents of police, the justices were placed below those of other counties, but if they were to exercise, and to be the probable means of extending, the jurisdiction of justices of the peace, they should have been raised much higher than they were, in the scale of social distinction. Parsimony and jealousy of the influence of the crown lent their aid in frustrating any benefit that might be expected on an enlarged scale. The duration of the statute was limited to three years, the salaries of the justices to four hundred pounds per annum, none of them were to sit in parliament, and they and the receiver, and all their constables, were prohibited from voting at, or interfering, by word, message, writing, or in any other manner, in any election for Middlesex or Surry, Westminster or Southwark. This last piece of

paltry jealousy was to protect a population of about a million and a half, from the dangerous influence of some threescore persons, forty-two of whom would necessarily be in a very humble station of life*. With whatever indifference some men might view such an exclusion, many who possessed lofty spirits and glowing principles, would have disdained the thought of being thus sequestered from all gentlemen in the commission of the peace, in all other parts of the kingdom, at being thus themselves made the first public example, under their own act.

Had the views respecting the establishment been less ungenerous, the remuneration more liberal, and the duration more certain, it is not to be doubted that many gentlemen of considerable standing in the law, and, which is more important, who had really been engaged in an extensive course of active business, would have embraced these offices as an honourable retirement from the bustle of courts, to the useful activity of the magisterial functions. Gentlemen well educated and used to good society, would have lent their aid, and from these two and other equally wise and honourable classes of society, might have been formed, not a detached set of

* Three justices at each office, 21—six constables, for no more were allowed, 42, and one receiver. Total 64.

police establishments, with justices ever seeking to change their stations from the extremity to the centre, as opportunity might permit, but a solid, systematic board of magistracy and police, which would have commanded the gratitude of the country, and the admiration of the civilized world. How the offices were filled, and how they have been recruited, it is not for me to describe. I knew most of those who are departed, and all who remain. To all I have many acknowledgements to make for great personal kindness and civility, and I will not risque the friendly feelings which I ought to maintain with so many individuals, by any reflections which might be considered personal, in investigating the composition of a class.

Be it, however, permitted me to say that the inherent faults of the first formation of police offices have never been effectually surmounted. Frequent renovations have given to the system an acknowledged permanency; the salaries have grown up to six hundred pounds a year; but still, much improvement is wanting.

In power, certainly, great acquisitions have been made: the unpretending modesty of the first, is strangely contrasted with the grand assumptions of the last police act*. The first

* 3 Geo. 4, c. 55.

gave to these justices no extraordinary powers; it seated them in their places with six constables around them, and limited the expense of each office to two thousand pounds per annum, salaries included.

That the first act gave no extraordinary powers is almost a literal truth; the only new power created, is that of arresting ill disposed and suspected persons and reputed thieves, frequenting the avenues to places of public resort, and the streets and highways, with intent to commit felony. This was to be done by any constable, headborough, patrole, or watchman, and the party to be conveyed before any justice, and if to him it should be made appear that he was such ill-disposed or suspected person, and he could not give a satisfactory account of himself, and if it also appeared that he was in the place where found, with such intent, he was to be treated as a rogue and vagabond; but with liberty of appeal to the session. How this power has been improved by the modern vagrant act, I have already had occasion to observe, and lest that should fail, expire, or be repealed, the old clause is re-enacted with some strong additions, extending it to parks and fields, to the parishes of St. Mary-le-bone, Paddington, St. Pancras, Kensington, and Chelsea; the river Thames, and the docks, creeks, quays,

and warehouses adjacent, and the streets, highways, and avenues leading thereto, and giving the right of apprehending all whom they may choose to suspect, not to peace officers, or persons acting in their aid, or under their direction alone, *but to all persons whomsoever*. In the name of God, where does an Englishman's right of protecting himself against illegal restraint, by the use of arms or of his natural strength begin, if any ruffian may seize him in any part of the metropolis, or any where within the bills of mortality, and drag him to a place of confinement, merely because he thinks that he is *after no good*? And this is really what the clause amounts to.

When I speak of amplified powers in the new act, I do not mean to say a word in censure of those clauses which augment the salaries of the justices, increase the number of the constables to any extent the secretary of state may approve, and give them authority in all the counties of Middlesex, Surry, Essex, and Kent; nor do I object to the appointment of thirty *fit and discreet* men to be Thames police surveyors, (although I have some observations to make on the powers confided to them), nor to the removal of the old restriction on expenditure, which is now permitted to amount to “the annual sum of sixty-eight thousand pounds, over

“ and above the necessary disbursements for
 “ purchasing, hiring, repairing, fitting up and
 “ furnishing the houses and buildings wherein
 “ the offices are held.” All these are matters
 of regulation and expense, the direction and
 management of which are very properly en-
 trusted to the responsible ministers of the crown.

The first material extension of power by the
 last act, relates to the regulation and suppression
 of fairs, holden within ten miles of Temple-bar.
 The regulation is, that business and amusements
 of all kinds shall cease at eleven at night, and
 not recommence earlier than six in the morning,
 and if any house, shop, room, booth, standing,
 tent, caravan, waggon or other place, shall be kept
 open, during the prohibited hours, in the place
 where the fair is held, or within three hundred
 yards thereof, the peace officer may take the
 person having the care or government of any
 such place into custody, and also every person
 being therein, and who shall not quit the same
forthwith upon being bidden by the peace officer,
 and on being convicted before one justice, the
 master of the house or show shall pay five
 pounds, and every one of the others shall be
 fined forty shillings, which sums, if they do not
 pay, they are to be committed to the house of
 correction, to hard labour for not more than
 three months, nor less than six days. Whatever
 desire may exist any where to suppress the sup-

posed licentiousness of the fair-frequenting class of the community, it will not easily be imagined that such severe penalties can have been deliberately affixed to such small transgressions. Forty shillings for staying in an alehouse till his pot of beer is out, or not quitting the puppet show just when the trumpet sounds to battle in Bosworth field, is the penalty to be exacted from the labourer who earns perhaps twelve shillings a week, or the servant girl whose wages are six guineas a year.—“Serve them right! such people have no business in such places!” says the pious and prudent reformer;—and I have no reply.

The rage for suppressing fairs in and about the metropolis is so widely spread, that I have little courage to raise my voice against it. Suppress or abolish is the word, with all who want sense to use, or vigour to regulate those institutions which habit has rendered part of the popular taste, or long usage has brought to be considered as a portion of public right. The extension of this principle to many branches of legislation is calculated to give serious alarm; that feeling if in any degree expressed with respect to these fairs, would be ridiculed by many, and unavailing even if it could produce conviction. The fairs which have been abolished, and several have been so, can never be restored: the very ground on which some of them were

held, having, as I understand, been devoted to different purposes. If the measure is fit, the means afforded are neither violent nor unconstitutional. Justices, in petty session, are empowered to summon before them the owners or occupiers of the spot where the fair is usually held, and if they fail in proving that it is founded on charter, or established by prescription, the justices decree its abolition, and direct the peace officers to take measures accordingly; if the party is dissatisfied, he may enter into his own recognizance in two hundred pounds, to appear in the Court of King's Bench in the following term, to answer an information in the nature of a *quo warranto* to be filed by the Attorney-general, so that the question will in due course be tried by a jury. The recognizance is to be returned to the secretary of state, and should the Attorney-general not think fit to proceed, or fail in his suit, the fair remains as it was. This is a wise and dignified strain of legislation.

The justices have also, under this act, new or augmented powers with respect to coffee-shops, blowing horns, and bullock-hunting. The first is an evil resulting from a measure adopted by government, to relieve the holders of colonial produce. During the exclusion of British commerce from the continental ports, encouragement was given to the sale of coffee at low

prices ; the shops opened for this traffic became scenes of vulgar debauchery ; restraint is to be effected by the act, and offenders who cannot pay fines are transferred from the coffee-mill to the tread-mill. How the clause against blowing horns was obtained I have already mentioned, and I shall here only wish that so great a nuisance had been got rid of by means more direct. I remember the beginning of the use of tin-horns, in announcing the Star, the first daily evening paper, in 1788 or thereabouts, and I am truly happy that I have seen the end of it. The powers for preventing cruelty in driving cattle are also augmented, and although I think that, even in these instances, too ample authorities are given for the imposition of fines and sentencing to imprisonment and hard labour, still the several offences belong so entirely to the department of police, affect general right so little, and are so limited and defined in their nature, that with a proper power of appeal, I am not aware that any just complaint can arise respecting them.

But perhaps, in all the acts I have hitherto noticed, so strong and oppressive a system is not to be found, as that which is intrusted to the Thames Police in the statute now under consideration. This office has three justices, under whom are thirty Thames Police surveyors, with all the

powers, authorities, privileges and *advantages* of constables in the counties of Middlesex, Surrey, Essex, and Kent, and they have also power by night or by day to enter into any ship or vessel in the River Thames or the creeks, wharfs, quays, and landing-places adjacent, for the purpose of directing the conduct of any constable who shall be stationed on board, *and of inspecting and observing the conduct of all other persons who shall be employed on board in or about the lading or unlading thereof, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board, and for the effectual prevention, in all cases, of felonies or misdemeanors, and for detection of any which may have been committed, or which such surveyor may have reasonable cause to suspect to have been committed.*

Such is the outline of the authority intrusted to these *fit and discreet* persons. A ship on her arrival in an English port has to receive first a pilot, for fear she should mistake her way to London; next, such custom-house officers as may be thought necessary to prevent the captain and crew from defrauding the Crown; and lastly, Thames Police surveyors, to make all these persons and all passengers keep the peace toward each other, and to pry into all parts for

the detection of felonies which they have any reasonable cause to suspect to have been committed. Perhaps the owners and captains hail the approach of these persons as of friends and protectors; if so, no reasonable objection can be made to their appointment or the terms of it; if not, it is impossible to conceive a greater or more vexatious tyranny than is vested in their hands. A police officer always thinks he has just reason to suspect that a felony is either committed or meditated: he lives to suspect, for if he ceased to suspect, he must find some other employ, or cease to live; and should he be inclined to exercise his power offensively, it is not easy to imagine how a greater latitude can be given to him than he commands by the terms of this clause.

But the suspecting power of these officers barely begins here; by s. 31, if they have just cause to suspect that any felony has been, *or is about to be committed* on board of any ship, or in the Thames, or docks or creeks adjacent, they may enter by day or by night, and take all necessary measures for prevention or detection, *and to apprehend and detain all persons suspected of being concerned in such felonies, and also all property so suspected to be stolen*, and the same to produce before some justice, to be dealt with according to law.

The same persons are also “ empowered
 “ to stop, search, and detain, in some place of
 “ safety, any boat, craft or vessel which there
 “ shall be reason to suspect of having therein
 “ any of his Majesty’s naval stores, or any ropes,
 “ cordage, tackle, apparel, furniture, stores,
 “ materials, or any part of any cargo or lading,
 “ or any lead, iron, copper, brass, bell metal,
 “ pewter, solder, *or other article*” (whether be-
 “ longing to his Majesty or not), “ stolen, *or*
 “ *unlawfully procured* ; and also to apprehend,
 “ search and detain any person who may be
 “ *reasonably suspected* of having or conveying
 “ any such articles in such boat, craft, or vessel,
 “ *or on land*, and to convey every such person
 “ before some justice of the peace ; and if such
 “ person shall not *give an account to the satisfac-*
 “ *tion of such justice* how he came by the same,
 “ then he shall be adjudged *guilty of a misde-*
 “ *meanor* ; and such boat, craft, or vessel, with
 “ her tackle, apparel, furniture, and loading,
 “ shall, upon such conviction, be forfeited.

“ And if, on information given on oath, it
 “ shall appear to any justice, that there is rea-
 “ sonable cause for suspecting that any such
 “ articles as aforesaid, after having been so
 “ stolen or unlawfully obtained, are concealed,
 “ or otherwise lodged, in any dwelling-house,
 “ warehouse, yard, garden, or any other place,

“ it shall be lawful for such justice, by special
 “ warrant, directed to any Thames police con-
 “ stable or surveyor, or other constable, to cause
 “ every such place to be searched at any time
 “ of the day, or by night ; and the justice may
 “ empower such constable or surveyor, with
 “ any such assistance as to the said justice may
 “ appear, or by such constable or surveyor may
 “ be found necessary, to use force for the ef-
 “ fecting such entry, whether by breaking open
 “ doors, or otherwise ; and if, upon search there-
 “ upon made, any such suspected article shall
 “ be found, then to convey the same forthwith
 “ to and before a justice, or to guard the same
 “ on the spot, while the offenders are taken
 “ before a justice, or otherwise dispose thereof
 “ in some place of safety ; and, moreover, to
 “ apprehend and convey before the said justice
 “ the person or persons in whose house, lodging,
 “ or other place, the same shall so have been
 “ found, *as also every other person found in such*
 “ *house, lodging, or place, who shall appear to*
 “ *have been privy to the depositing of such*
 “ *article in such place, knowing, or having rea-*
 “ *sonable cause to suspect, the same to have*
 “ *been stolen, or otherwise unlawfully obtained ;*
 “ *and, if such persons respectively shall not im-*
 “ *mediately, or within some reasonable time to be*
 “ *assigned by the justice, make it appear to the*

“ *satisfaction of the justice, by what lawful means*
 “ *such article or articles came to be deposited or*
 “ situated in such place as aforesaid, without
 “ any default on the part of such persons re-
 “ spectively, *then* the persons in whose house,
 “ lodging, or other place, any such suspected
 “ article was found, and also every other person
 “ so appearing to have been privy to the depo-
 “ siting thereof, knowing, or having cause to
 “ suspect, the same to have been stolen, or other-
 “ wise unlawfully obtained, shall be deemed and
 “ adjudged *guilty of a misdemeanor*. And if
 “ any person on being produced before any
 “ justice to give an account of any articles
 “ seized and detained, shall declare himself or
 “ herself to have bought, received, or other-
 “ wise obtained such articles of some other per-
 “ son, such justice is authorized to examine
 “ every such other person, and also every other
 “ prior purchaser, or pretended purchaser; and
 “ if, upon the whole evidence, it shall appear
 “ to such justice, that the party suspected, or
 “ the party upon whom such articles were
 “ found, or the person so produced, or such
 “ prior purchaser, or pretended purchaser, or
 “ any of them, at the time of his or her re-
 “ ceiving such articles into his or her posses-
 “ sion, did believe, or had reasonable cause to
 “ believe, that such articles, or any part thereof,

“ were at any time and by any person unlaw-
 “ fully come by or obtained, it shall be lawful
 “ for such justice to adjudge such party to be
 “ *guilty of a misdemeanor*. And it is further
 “ enacted, That every person who for the pur-
 “ pose of protecting or preventing any goods, or
 “ other articles whatsoever, from being seized,
 “ on suspicion of their being stolen, or other-
 “ wise unlawfully obtained, or of preventing
 “ the same from being produced or made to
 “ serve as evidence of or concerning any felony
 “ or misdemeanor, shall frame, or cause to be
 “ framed, any bill of parcels containing any
 “ false statement in regard to the name or
 “ abode of any alleged vendor, the quantity or
 “ quality of any goods, the place from whence,
 “ or the conveyance by which, the same were
 “ furnished, the price agreed upon or charged
 “ for the same, or any other particulars, know-
 “ ing such statement to be false, or who shall
 “ fraudulently produce such bill of parcels,
 “ knowing the same to have been fraudulently
 “ framed, shall be adjudged *guilty of a misde-*
 “ *meanour*; and may, moreover, at the discretion
 “ of any justice in whose jurisdiction such offence
 “ shall be committed, be published and adver-
 “ tized as a fabricator of false bills of parcels,
 “ or as a convicted or reputed receiver of goods
 “ stolen, or otherwise unlawfully obtained.”

I think it would hardly be possible to find in the penal code of any country, a system so fraught with tyranny and oppression, and contrived in such manifest and ostentatious contempt of every fundamental principle of liberty. I am sure, that if the societies in 1792 had predicted that such enactments would, at some time, appear in the British Statute book, their prophecy would have been treated as one of the audacious means by which, under the semblance of speculation or conjecture, gross libels were vented, to render the people dissatisfied with the government. What! it would have been said, are we to believe that the legislature of this truly free and happy country will ever permit a mere constable to seize boats and ships because he chooses to suspect that they have on board ropes, metal utensils, *or any thing else* (for the trick I have formerly noticed of enlarging the apparently intended sense by general words, cunningly slipped in, is in these clauses most perseveringly practised) which has been, no matter by whom, unlawfully procured; to seize, search, and detain any person, either in the vessels *or on land*, (in a word, *any where*) whom the same salaried suspects shall suspect of having, or of conveying such things, to break into houses by night, and, on suspicion, to clear them of every inmate, and of

every chattel that they may suspect to have been (not stolen or received with knowledge of their being stolen, but) unlawfully obtained, and convey all before a justice, who is to decide the whole matter without form or process, to fine, confiscate, and imprison, without a trial, and without an appeal! The thing, it would have been said, is impossible from its absurdity, and the suggestion of it is atrocious from its malignity!

Such would have been the exclamation thirty years ago, but we see what is the law now. As yet, however, we have only brought our suspected delinquent before a justice. Let us see what chance he has when there. The officer suspects, and swears before one who is daily recording his suspicions; the party has then to *prove to the satisfaction of the justice* by what lawful means he became possessed of the article; he fails of that, for the officer's suspicion must outweigh his account; he is convicted, and every one in his house, whom the officer suspects to have been privy to the depositing the chattels, having had cause to suspect that they were unlawfully obtained (no matter for the degree of unlawfulness) is to be guilty of a misdemeanor, and the goods, and in other cases the boat, craft, or vessel forfeited.

But suppose the person who is seized makes

a defence: he says, I bought the things of A. and here is the bill and receipt. A. is sent for, acknowledges the sale and the bill; he says he bought them of B., who is gone abroad; without more ado, the witness is suspected, the bill of parcels is suspected to be a fabrication, and thus a new misdemeanor rewards the sagacity of the officer. Had this statute existed in 1794, we should certainly have had less pleasantries, and, perhaps, less declamation about Robespierre's favourite description of offenders, who were imprisoned, *on suspicion of being suspected*.

But further, any justice before whom it shall appear, how or by what evidence, is not stated, that any person, no matter when, or by whom inculpated, has endeavoured by false representation of any circumstance, whether of date, buyer, quality, or price, to protect goods from being seized on suspicion of being unlawfully obtained, he may not only be convicted of a misdemeanour, but may be advertised as a fabricator of false bills of parcels, or as a convicted or reputed receiver of stolen goods, at the discretion of the justice. It is an axiom frequently cited, and certainly most just, that it is an indictable offence to publish that a man has been convicted of any crime or misdemeanour, and it would be no defence to produce the record of his conviction, comprizing the verdict of a jury,

and the judgment, even of the Court of King's Bench ; yet in this instance, without any process whatever, and upon his own inspection only of a bill of parcels, any justice of peace in the kingdom may advertise any tradesman or merchant who happens to be obnoxious to him, as one of the greatest pests that disgrace society, and that too, with absolute impunity. I may be told that the honour of the magistrate will be sufficient to guarantee the subject against such culpable abuse. When I have far better reasons than I have at present for believing in the integrity, impartiality, and good temper of all justices of the peace ;—I shall be extremely unwilling to exchange the security of good laws for the accidental and variable impulses of good feelings and pure intentions.

Before I explain what is the consequence of being convicted of a misdemeanour under this act, I will give another specimen of the offences to which it applies. In section 38, it is enacted, that “ if any person employed in the loading, “ landing, or warehousing of any goods, or “ *any other person (another tricking generality!)* “ shall wilfully, or through culpable negligence “ or carelessness, cause or suffer, *or be concerned* “ *in causing or suffering* to be broken, bruised, “ pierced, started, cut, torn, or otherwise injured, any cask, box, chest, bag, or other

“ package, containing or being designed and
 “ prepared for containing any goods while on
 “ board of any barge, lighter, or other craft,
 “ lying or being in the said river, or any dock,
 “ creek, quay, wharf, or landing-place adjacent
 “ to the same, or in or in the way to or from
 “ any warehouse, to or from which such pack-
 “ age shall have been removed, shall be remov-
 “ ing, or about to be removed, with intent that
 “ the contents of such package, or any part
 “ thereof, may be spilled or dropped from such
 “ package, every person so offending, shall for
 “ every such offence be deemed and adjudged
 “ guilty of misdemeanour.”

I shall waste no observation on this miserable
 medley of wilfulness, and culpable negligence,
 coupled with an intent which repels the very
 idea of negligence, or on the vague phrase of
 being concerned in suffering any thing to be
 done, and proceed to state the effect of a con-
 viction of misdemeanour before a single justice.
 The party convicted is at the election of the
 justice, to forfeit, not exceeding five pounds,
 or be imprisoned not exceeding two months, in
 any gaol or house of correction within his ju-
 risdiction; or if the justice shall elect a penalty,
 but the offender be unable to pay, then he is to
 be imprisoned for the like term, or until the fine
 be paid. The conviction is to be returned to

the session, but whatever may be its form, it cannot be removed by certiorari, and *there is no appeal to the session*, for the conviction is declared to be *final and conclusive to all intents and purposes whatsoever*.

Thus then, a house may be broken into in the middle of the night, searched and ransacked in every part, the whole family, male and female, master, mistress, and servant, dragged to a cage or watch-house, any chattel, however small or great its value, taken, they and their witnesses may be convicted, their property confiscated and sold, their characters blasted by a public advertisement, themselves sent to prisons in every corner of the county, and all this perhaps without the slightest proof, that goods have in fact been stolen, at the *discretion* too of one justice, and without even the possibility of redress. An appeal, even to a session composed of the justices of the same county, is taken away; a certiorari is prohibited, and should the sufferer bring an action, or move for a criminal information, the worthy myrmidons of the worthy justice would swear last, and the unfortunate plaintiff or mover of the court would be effectually reprimanded for his rashness and want of decent submission to just authority, by a writ of execution or an attachment for costs.

Perhaps it may be suggested that these ap-

parently severe regulations are intended only for the prevention of robberies on board ships, and in the vicinity of the Thames, and that there is therefore no fear of extended evil from their existence. Such, most probably, was the assurance by which doubts were calmed and opposition prevented, but I know that the operation of the act has already extended to Paddington and St. Giles's, and I can see no reason why its blessings may not travel to Guildford, to Colchester, to Rochester, or to Dover.

When I speak of surprises being effected in Parliament, or inquiries evaded, I mean nothing disrespectful. Every local and personal act has its particular promoters and friends, who receive their knowledge from some parties interested in, or supposed to be peculiarly acquainted with, the matter in question. Bills like those on which I have been observing, although classed as public and general, are treated as if they were local and personal; and an inquiry into any particular section is deemed to be sufficiently answered when the inquirer is told, "that only means—so and so—or that "is the old clause re-enacted," especially if the general reading confirms the assertion, and attention is not particularly called to a few words which have been introduced, and which, as I have shown in many instances, totally change

the apparent intention. It is not very many years since a select-vestry bill, or some other bill for regulating the poor of a parish, was brought into the House of Commons, and had, I believe, gone through the committee without any objections but such as were answered by the remarks, "that is usual;"—"that has been done in the act for such a parish;"—or "that is rendered necessary by our peculiar situation." What had passed without notice in the committee, did not, however, escape the penetrating glance of Sir Samuel Romilly; he discovered in this supposed regulation of course, clauses, among others, enabling the guardians of the poor to correct them with stripes, to mortify them by famine, and to restrain them by solitary imprisonment. As soon as he represented these circumstances, the House would not permit its dignity to be trifled with, under specious propositions of amendment, but rejected the bill altogether. I think that if many of the matters I have noticed had been similarly pointed out, the rescinding of the obnoxious parts would have been equally spontaneous and decisive, although public policy might not have permitted the rejection of the entire bill.

I conclude the observations I intended to make on the statutes most recently enacted,

but far from exhausting, I have barely touched upon the general subject of the jurisdiction of justices. If, as Lambarde has said, in a passage of his *Eirenarcha* quoted by Mr. Chetwynde, the backs of justices were like to be broken by the stacks of statutes laid upon them in the sixteenth century, how much must their vigour have increased in modern times, to bear the mountains under which they amble and prance in these days, and which are thus described by Mr. Colquhoun. “ They are required to hear and determine, in a summary way, particularly in cases relative to the customs, excise, and stamps; the game laws; hawkers and pedlars; pawnbrokers; friendly societies; highways; hackney coaches, carts, and other carriages; quakers and others refusing to pay tythes; appeals of defaulters in parochial rates; misdemeanors committed by persons unlawfully pawning property not their own; bakers for short weight, &c.; journeymen leaving their services in different trades; labourers not complying with their agreements; disorderly apprentices; alehouse keepers keeping disorderly houses; nuisances by different acts of parliament; acts of vagrancy by fraudulent lottery insurers; fortune-tellers, or persons of evil fame found in avenues to public places, with an intent to

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“ rob : as well as a multitude of other offences,
 “ in which justices have power to proceed to
 “ conviction and punishment, either by fine or
 “ imprisonment.

“ The duty of the magistrate also extends to
 “ a vast number of other objects, such as li-
 “ censing public houses, and establishing rules
 “ and orders for publicans ; watching over the
 “ conduct of publicans ; swearing in, charging,
 “ and instructing parochial constables and head-
 “ boroughs, from year to year, with regard to
 “ their duty ; issuing warrants for privy searches ;
 “ and in considering the cases of persons
 “ charged with being disorderly persons, or
 “ rogues and vagabonds ; in making orders to
 “ parish-officers, beadles, and constables, in a
 “ variety of cases ; in parish removals ; in bil-
 “ leting soldiers ; in considering the cases of
 “ poor persons applying for assistance, or ad-
 “ mission to workhouses ; in granting certi-
 “ ficates and orders to the wives of persons
 “ serving in the militia, and also in attesting re-
 “ cruits for the army ; in attending the general
 “ and quarter sessions of the peace, and in visit-
 “ ing the workhouses, bridewells, and prisons.

“ In addition to these various duties, many
 “ criminal cases occur in the course of a year,
 “ which are examined for the purpose, if neces-
 “ sary, of being sent to superior tribunals for

“ trials : such as charges of treason, murder,
 “ coining and uttering base money, arson, man-
 “ slaughter, forgery, burglary, larceny, sedition,
 “ felonies of various descriptions, conspiracies,
 “ frauds, riots, assaults, and misdemeanors of
 “ different kinds : all of which unavoidably im-
 “ pose upon every official magistrate a weight
 “ of business requiring great exertion, and an
 “ unremitting attention to the public interest,
 “ in the due execution of this very important
 “ trust.”

Ample provision has been made by different statutes for the protection of justices who act illegally in the execution of these extensive duties. They are not to be proceeded against at law without certain notices, nor in any but a prescribed form of action ; they may tender amends for any wrong they have done, and give the tender in evidence, which other wrong-doers cannot ; they are protected against all consequences resulting from their not knowing the law, if their intentions appear pure and good ; and after they have sold up a man's whole property under a warrant, however unjust the decision may have been, the sufferer is without remedy ; for unless he alleges and proves that the justice acted maliciously, and without any probable cause, he can recover only the value

of the goods sold, and *treopence*, and must pay his own costs*.

Used as we are in other cases to hear the most ignorant persons told, that every man is bound to know the law; that the act done is the evidence of its motive, and that no one who acts unjustly is entitled to the excuse of pure intention, it seems rather extraordinary that they who undertake to execute the laws should be so absolutely protected in the perversion or violation of them. I am far from thinking that captious actions against justices ought to be encouraged, but a court and jury might safely be intrusted with the decision of the question, whether a plaintiff had or had not been inexcusably injured, either in his liberty, his fortune, or his fame, and with the assessment of damages, without the insulting limitation imposed by the statute. At all events, if it be proper to protect in an extraordinary degree the unpaid magistracy, who devote their time and talents gratuitously to the service of the country, the same reason cannot be extended to those who, by accepting a salary, acknowledge an obligation, and are bound to bring to

* 43 Geo. III. c. 141, commonly called, in terms of appropriate compliment, *the twopenny Act*.

the service in which they are to be remunerated the talent, knowledge, and integrity, which will enable them to execute their offices without gross and injurious error. I believe that in many instances, the certainty of immunity produces an obstinate wrongheadedness, and a determined contempt of the law. I have heard, from the mouths of some of them, such declarations as this: "Well, I shall do as I please; if "I am wrong, I am indemnified."

When the system of summary convictions had not yet attained to its present formidable height and alarming extent, law-writers, sensible of the encroachment made by it on our justly boasted privilege of trial by jury, strove to apologize for and palliate the evident deviation. The history of these proceedings, and of the judicial power of justices of the peace in general, is very ably and succinctly given by Mr. Paley, in the Introduction to his *Treatise on the Law of Summary Convictions on Penal Statutes*. These convictions had their ominous origin in an act made in the reign of Henry the Seventh, which seems to have formed a part of the iniquitous measures of Empson and Dudley. The repeal was hailed as a triumph, and Sir Edward Coke adduces the experiment as an example of the danger of altering the common law. The statute in question was, to

be sure, one of frightful generality ; it enabled the justices of assize and justices of the peace, at their discretion, to hear and determine all offences short of felony, against any statute then in being. No modern act contains quite so extensive a description ; but could Sir Edward Coke again direct his eyes toward the statute book, and consider in detail all the summary powers given to justices of the peace, he would abate very much his tone of triumph, and acknowledge, that in modern times men are not so sensible, as he was, of the danger of altering the common law. To adopt a simile once used by a king of Sardinia, he would find, that they who could not swallow the artichoke whole, have managed pretty well to eat it leaf by leaf.

Writers even of recent times, as Blackstone and Burn, have viewed with great jealousy this abandonment of the purity of first principles, and have supposed that it is, in some degree, atoned for, by imposing on the justice a very strict and solemn obligation. It may be worth while to quote from the last author, a passage expressing his notions on the subject, and which has been retained in the last edition, purposely, perhaps, to show how little restraints are to be relied on, when deviation has been found commodious, and the bad act of one session becomes a precedent for a worse in the

next, "The power of a justice of the peace to
 "convict an offender in a summary way with-
 "out a trial by jury is in restraint of the com-
 "mon law, and, in abundance of instances, a
 "tacit repeal of that famous clause in the great
 "Charter, that a man shall be tried by his
 "equals; which also was the common law of
 "the land, long before the great Charter, even
 "from time immemorial, beyond the date of
 "histories and records. Therefore generally
 "nothing shall be presumed in favour of this
 "branch of the office of a justice of the peace;
 "but the intendment will be against it. For
 "which reason, where this special power is given
 "to a justice of the peace by act of parliament,
 "it must appear that he hath strictly pursued
 "it; otherwise the common law will break in
 "upon him, and level all his proceedings. So
 "that, where a trial by jury is dispensed withal,
 "yet he must proceed, nevertheless, according
 "to the course of the common law in trials by
 "juries, and consider himself only as consti-
 "tuted in the place of both judge and jury.
 "Therefore there must be an information or
 "charge against a person; then he must be
 "summoned or have notice of such charge, and
 "have an opportunity to make his defence;
 "and the evidence against him must be such
 "as the common law approves of, unless the

“ statute specially directeth otherwise ; then if
 “ the person is found guilty, there must be a
 “ conviction, judgment, and execution, all ac-
 “ cording to the course of the common law, di-
 “ rected and influenced by the special authority
 “ given by statute; and in the conclusion, there
 “ must be a *record* of the whole proceedings;
 “ wherein the justice must set forth the par-
 “ ticular manner and circumstances, so as if he
 “ shall be called to account for the same by a
 “ superior court, it may appear that he hath
 “ conformed to the law, and not exceeded the
 “ bounds prescribed to his jurisdiction.

While these opinions prevailed convictions were so long and formal, that it was soon found, or fancied, that justice was obstructed by requiring so precise a retention of the common law requisites. Then began the practice of giving statute forms, which grew daily more and more lax ; the time of committing the offence ; the place of the justice’s sitting ; the name of the informer, where he was to receive part of the penalty, were successively left out, and, at last, as in the precedent cited in page 62, the very offence itself is kept a profound secret. It may be said, that some of these particulars are so evidently requisite that a statute cannot, except by prohibitory terms, give a dispensation for omitting them. I believe it

is thought so at Westminster, but from that place the party is excluded, and at session, I know, that one of the objections above stated has been decided as often one way as the other. And for fear the subject should benefit by any residue or trace of the common law, a recent statute (3 Geo. IV. c. 23) has provided, that in all cases where the statutes have given no particular form, one which is supplied by the new act shall be sufficient; and, as it might have excited some attention if it had been proposed at once to take away the certiorari in all cases, it has been contrived to render it useless, by declaring in "holiday and lady terms," better fitted to the pages of a romance than those of an act of parliament, that where it shall appear on the face of a conviction, that the defendant has appeared and been tried, and that he has not appealed, or having appealed has not succeeded, "such conviction shall not afterwards be set aside or vacated, in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case." Perhaps the meaning of the author of this prettily composed clause would have been more truly expressed, if he had omitted the last three words.

It may be said, that, even admitting many

of the observations I have made to be well-founded, the evils complained of press chiefly on the most worthless and abandoned portion of society. The object of my solicitude is not the delinquent, but the law. No system of legal tyranny even yet began in attacks on the virtuous and the good; persons of bad, or at least suspicious character, were first pointed out, and the appearance of a desirable end has seemed to sanction irregular means; the evil once committed has formed a precedent, and by degrees, the mischief has extended to all classes of society. Thus, in some of the instances I have cited, laws, intended originally against formidable and rapacious bands, which over-ran the country in different disguises and under different names, have been made to include within their enlarged and falsified denominations of rogue and vagabond, many persons very remote indeed from those originally contemplated. Thus laws which affect to aim at flagrant offenders against the comfort and safety of man in his abode and his possessions, have by alterations almost imperceptible, been brought to include negligent workmen, idle apprentices, and even truant schoolboys looking for birds' nests. Thus, too, powers which have been negligently conceded, in the hope that they would not be abused, have been so

extended, that right and justice are made to depend on the judgment of individuals, more or less instructed, as it may happen, acting in private, subject to no control, and protected against claims for recompense if they act amiss.

What then would you have? may be the inquiry: the answer is easy—a return to first principles. I trust I should be among the last to require that wild reform which, by unhinging a system on which society has long depended, would bring on confusion and aggravate the evils which it pretends to remove; but a wise and temperate review of what has been done amiss, and a firm, but not violent removal of that which if suffered to remain must increase, and even if it does not increase, is already sufficient to introduce fatal disease into the body politic. It is an old observation, and Machiavel, I believe, has written a chapter to prove it, that no reforms are wise but those which bring nations back to their original constitutions. In such a voyage, the statesman turns his prow toward a known haven, and may hope for a safe and happy arrival. In reforms attempted on mere speculation, he launches into an ocean of which he knows not the bounds, in search of an undiscovered coast, where he may never arrive, and where, if he should find himself, every reality may falsify all his expectations.

In our great Charter is the beautiful axiom, on the preservation of which all our social rights depend, that “No freeman shall be taken or
 “imprisoned, or disseised of his freehold or
 “liberties, or amerced* but by the lawful judg-
 “ment of his peers, or by the law of the land.” I do not pretend to say, that a sentence, even so great and important as this, is incapable, according to the necessities of the times, of being suspended, or in some slight instances superseded; but, in general, the Great Charter should be a law to the law-makers, they should consider every deviation as a fearful exception, not to be quoted as a precedent, far less to form the basis of a system. If it be contended, that the words, *or by the law of the land*, in the passage I have quoted, imply a discretionary power to enact regulations contradictory to the Great Charter, I admit that they do; but still, the Charter ceases to be a protection to liberty, and a bulwark against oppression, unless the representatives of the people, and the hereditary guardians of the rights, both of the Crown and the people, view it with so much reverence as not to tolerate a systematic departure from its regulations. If deviations are so frequent, and extend so widely as they are made to do by

* The word amerced, is in another part of the Charter, but under the same conditions.

modern laws, we should boast of our Charter no more, but consign it at once to the contempt so openly and indecently expressed for it by Oliver Cromwell. Taking then the Great Charter for a rule, let the trial by jury be restored in all possible cases, and in this mode a sure and easy return will be made to the liberty and safety from which we have so widely departed, and we may resume that boast, to which at present we have little claim, that in England a man's house is his castle; his person and property sacred until attainted by the verdict of twelve honest men; and his rights so protected, that no wrong can be done, even to the meanest of mankind, without the certainty of an adequate redress.

To state more specifically: I should hope from the wisdom of the legislature, a repeal of all the obnoxious clauses in the several statutes I have alluded to, and in some others; a limitation of the immunity of justices of the peace, by enacting, that wherever the subject shall complain of injury done by such magistrate, it shall be left to the jury, under the instruction of the judge, to decide whether he was guilty, not of malice alone, but of gross, wilful, and culpable neglect, malversation or ignorance, and, if the affirmative were found, to assess the damages according to their fair and honest discretion; and lastly, to restore the full benefit of appeal,

in all cases where the justice has power to fine exceeding ten shillings; or to imprison for more than ten days; the conviction to be returned to the session, and there, standing instead of a bill of indictment, and subject to all the general regularities required in one, to be tried by the jury impanelled to try traverses, larcenies, and misdemeanors in general.

In proposing this simple, and, in my opinion, most effectual and satisfactory alteration, it will be seen that I have not suggested any thing that shall weaken the necessary powers of government, or trench upon the just authority of magistrates. Should it be intimated that the course I propose would throw a grievous burthen on those who prosecute for gross irregularities, or sue for small penalties, it would easily occur to the legislature, and, indeed, be no new thing, that every appellant should enter into a recognizance, with proper sureties, to abide the judgment of the session, and to pay the penalty, with costs if the case, on appeal, were decided against them. Nor is this proposal altogether an innovation, for in the act for regulating alehouses, as if one part of it were made to satirize the other, it is directed, that, for third offences, the general form shall not be pursued, but the irregularity complained of *shall be specified in the complaint or informa-*

tion, and a jury impanelled to try the issue, whose verdict shall be binding and final. If such a trial is fit where a penalty of a hundred pounds and a license are in question, it is not too much to ask for it where sums much inferior in amount, but perhaps not less important to the parties, depend on the event, and where character is implicated and liberty at stake.

My observations are concluded, and I commit them to the public, not without a considerable portion of anxiety. I have taken a free view of what I consider abuses, and in exposing them, have expressed myself frankly, and perhaps forcibly. I am conscious that I have advanced nothing in the way of assertion without knowing that it was true; nothing in the way of opinion without a firm conviction that it was just. I address myself to no party or division, in society, or in the state, I am only anxious to excite general attention, hoping to gain for my country, in a question free from all party taint, the honest aid of all true patriots; and that by their co-operation, the errors I have described may be rescinded, and the constitution restored to its purity, beauty, and vigour.

As no man writes to inform, without having also some wish to please, I cannot dismiss these pages without expressing my regret that I have produced them under circumstances which for-

bid me to hope that I shall gain any applause on the score of composition. To be useful at all, my observations must be published at this very time, and in order to complete my task, I have been, from the course of business, obliged to add the toils of midnight to the fatigues of the day; to address myself, without time for premeditation, to the subject on which I had to treat, and to resume, amid the intrusive pressure of discordant avocations, the thread of argument which I had last pursued. These circumstances will have given to my present writing a disconnected, jejune appearance, and may perhaps have occasioned some faults more serious than those of composition alone. I do not make this statement with a view to deprecate any just censure: I know I must be answerable for all my errors; but I hope I shall stand acquitted of wilful negligence, or of appearing intentionally before the public with an implied disregard of that good opinion of which I have ever been most truly desirous, and which has so often been my solace, my reward, and my pride.

THE END.

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