A

LETTER

TO THE

COMMON COUNCIL

OF THE

CITY of LONDON.

With REMARKS on

Lord Chief Juſtice PRATT's Letter

TO THE

CITY of EXETER.

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TO THE

COMMON COUNCIL

OF THE

CITY of LONDON.

GENTLEMEN,

THE late extraordinary *Reſolutions*, which you have declared with reſpect to public tranſactions and characters, muſt neceſſarily have drawn the attention of your fellow-citizens, towards the ſubject of thoſe reſolutions.

As the acts which you perform in your corporate capacity, are generally followed, too implicitly followed, by other corporations in this kingdom, it behoves you to be more particularly cautious and circumſpect, before you take the lead on public occaſions.

It is your duty, in the firſt place, to be well aſſured that the matter of your deliberation, is proper for your cognizance: And, before you determine, you ſhould be thoroughly perſuaded, that you are maſters of the ſubject before you. Your laſt attention ſhould be, to expreſs your reſolutions, with good ſenſe and decorum.

That you have failed in every requiſite, is what I ſhall now endeavour to demonſtrate, in the courſe of the following ſheets. If it ſhall appear that you have tranſgreſſed the bounds of your juriſdiction, that you have ventured to decide upon a matter, of which you might be *preſumed* to have been incompetent judges, and concerning which you have expreſſed yourſelves both ignorantly and indecently, you cannot then be offended at the freedom of an individual, who points out your indecorums and abſurdities, with a view of inducing you, for the future, to keep within the proper line of your duty and underſtanding.

I will firſt beg leave, Gentlemen, to premiſe that, at your original creation, it could never be intended that you ſhould interfere with buſineſs, which does not concern the government of the City of London. The law will tell you, common ſenſe will tell you,

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your very *name* will tell you, nay, the *oath* which you take, will inſtruct you, that it is your duty "to give true *council* for the common intereſt of the *City*."—And not of the nation at large.

It is in the Court of *Common Council*, Gentlemen, that laws are to be made for "*the advancement of trade*", and the regulation of the internal police of the City. The wiſdom of government, with good reaſon, entruſted you with the management of thoſe concerns, which, from your education and habits of life, you might be ſuppoſed beſt capable of directing.

We may infer, from the very definition of a corporation, that theſe are the *proper* objects of attention, which ſhould employ every corporate body: For a *corporation* is defined to be—"A body politic, conſiſting of material bodies, which, joined together, muſt have a name TO DO THINGS WHICH CONCERN THEIR CORPORATION."

Little was it ever ſuppoſed, at their original creation, that any Corporation would dream of erecting *imperium in imperio*, and aſſume ſelf-delegated authority, by making *their* juriſdiction the *dernier reſort* in matters foreign from the obvious deſign of their inſti-

tution. Much leſs could it ever be imagined, that the *Court of Common Council*, would arrogantly draw the deciſions of the ſupreme courts of juſtice, before *their Court at Guildhall*, and preſume to ſit in judgement on the Judges of the Land!

Theſe events were at that time unforeſeen. Such dangerous and unwarrantable attempts, were reſerved for theſe days of diſorder, when licentiouſneſs, the rampant offſpring of opulence, overleaping the bounds of the conſtitution, dares to invade the province of the legiſlature.

That I may not be ſuſpected, Gentlemen, of drawing forced inferences, by means of partial quotations, I ſhall fairly tranſcribe your reſolutions, as they appear in the public papers: beginning with that which is firſt in order, and not the leaſt exceptionable of the two.

At a Court of Common Council at Guildhall, London, Feb. 21, 1764.

" *Reſolved*, That the thanks of this court be preſented to Sir Robert Ladbrooke, Knt. Sir Richard Glynn, Bart. William Beckford, Eſq; and the Honourable Thomas Harley, Eſq; the Repreſentatives of this City, for their zealous and ſpirited endeavours

deavours to aſſert the rights and liberties of the ſubject, *by their laudable attempt* (laſt Friday) to obtain a ſeaſonable and parliamentary declaration, *That a general warrant for apprehending and ſeizing the Authors, Printers, and Publiſhers of a ſeditious Libel, together with their papers, is not warranted by law.* AND *to expreſs* * to them our warmeſt exhortations, that they ſteadily perſevere in their duty to the crown, and uſe their utmoſt endeavours to ſecure the houſes, papers, and perſons of the ſubject, from arbitrary and illegal violations."

That you, Gentlemen, as a Court of Common Council, have a right to inſtruct the Repreſentatives of the City, I am bold to deny. It is true, though I am going to eſtabliſh a doctrine which your favourite patriot has, both by his principles and *practice*, publickly diſavowed; it is true I ſay, that a majority of a general aſſembly of conſtituents, have an undoubted right of tranſmitting inſtructions to their Repreſentatives; and the records of antiquity furniſh many inſtances, where the members of the Houſe

* On the want of grammatical connection and correctneſs in this, and more particularly in the ſubſequent reſolution, I ſhall forbear any criticiſms. Probably the *Town-Clerk* held the pen: And he is too fine an orator, to write ſenſe and grammar.

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of Commons have excuſed themſelves from coming to any reſolution, till they had an opportunity of conſulting their conſtituents. However this right may be diſputed, I hope it will never be deſtroyed.

But what pretence have you, other than in common with the conſtituents at large, to preſcribe a rule of conduct to the Repreſentatives of the City?

The repreſentatives are choſen by the Livery-men. In order to be Common Council Men, it is not neceſſary that you ſhould be of the Livery: And in fact, ſome of you are not of that body: Thus, though you have not even a vote for the election of members, yet you preſume to inſtruct them.

Admitting however, that you were all fellow conſtituents with the Livery-men, yet ſhall a little junto of about two hundred and forty, ſuppoſing you all aſſembled, preſume to include the ſenſe of near eight thouſand?

In ſhort, Gentlemen, in which ever view your reſolution is conſidered, it is an infringement of the rights of the Livery-men, an inſult on your repreſentatives, and a violation of the laws of the kingdom.—A violation

lation the more unpardonable, as your reſolution concerns a right, in which every ſubject in the kingdom is equally intereſted, and which is ſo extremely foreign from the buſineſs of your corporation in particular.

This leads me, Gentlemen, to the matter of your reſolution. You exhort your members to uſe their utmoſt endeavours to ſecure the houſes, &c. of the ſubject from arbitrary and illegal violations. By which expreſſions you peremptorily and indecently determine the queſtion, which is ſtill depending before the legiſlature.

It is but charity to conclude, however inaccurately you expreſs your meaning, that you conceive the warrant in diſpute to be arbitrary and illegal only in the caſe of a *ſeditious libel*. You ſurely would not be underſtood, that it is arbitrary and illegal to enter houſes, ſeize papers, &c. in all caſes; even on ſuſpicion of *treaſonable* or *traiterous* attempts. You cannot be ignorant that unleſs ſuch a power is lodged in government, traitors may, with ſecurity, concert ſchemes for its ſubverſion: And, what ſpeaks more loudly to your intereſt, your very exiſtence as a corporation may be deſtroyed.

But if it is, in your high judgments, Gentlemen, arbitrary and illegal, to enter houſes,

houſes, ſeize papers, &c. on preſumption of a ſeditious libel, with what propriety could you come to the next reſolution following?

Reſolved, That "As the independency and uprightneſs of judges is eſſential to the impartial adminiſtration of juſtice, and one of the beſt ſecurities to the rights and liberties of the ſubject," THIS COURT, in manifeſtation of the juſt ſenſe WE entertain of the inflexible firmneſs and integrity of the Right Honourable Sir *Charles Pratt*, Lord Chief Juſtice of his Majeſty's Court of Common Pleas, DOTH direct that the freedom of this City be preſented to his Lordſhip, And that he be deſired to ſit for his picture to be placed in Guild-hall, in gratitude for his *honeſt* and *deliberate* DECISION upon the validity of a warrant which had been frequently produced to, but ſo far as appears to this Court, never debated in the Court of King's Bench, *by which* he hath eminently diſtinguiſhed his *duty* to the King, his juſtice to the ſubject, and *his knowledge of the law*."

One might conclude from this reſolution, pardon me, Gentlemen, that your recollection of paſt tranſactions is as faint, as your knowledge of more recent proceedings is imperfect. It is not long ſince Lord Chief Juſtice *Pratt* held the office of Attorney-General,

General, which he had the honour to fill with the applauſe of his countrymen, who dignified him with the name of the *Patriot Attorney*. It may poſſibly occur to your memory, that while he enjoyed that high office, the houſe of a ſubject was entered, his papers were ſeized, and his perſon impriſoned on the preſumption of his being the author of a ſeditious libel, of which he was at length legally convicted. Can it be ſuppoſed that the then Attorney General, would have carried on a proſecution founded on arbitrary and illegal proceedings? Was his knowledge of the law ever doubted? Were his integrity, his humanity ever called in queſtion? Wherefore then do you obliquely caſt ſo ſevere a reflection on the diſtinguiſhed perſonage, whom, one would imagine, you meant to compliment.

I could remind you likewiſe of other warrants, of a much more general and dangerous tendency, than that you would allude to; warrants too, which were iſſued under the ſeal of a late patriot miniſter, aſſiſted by his favourite the patriot Attorney. But as the former has publickly pleaded guilty, and put himſelf upon his country, to the mercy of his country I leave him.

With regard to his Lordſhip's deciſion, to which you refer in this reſolution, you

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are no doubt poſſeſſed of it; though it is not eaſy to conjecture by what means you became regularly maſters of it. For my own part, I confeſs myſelf a ſtranger to this deciſion, which I had no opportunity of hearing; having in truth, little curioſity of attending Courts of Juſtice on ſuch tumultuous occaſions.

But whatever this deciſion was, I will readily believe that it was both honeſt and deliberate. Nevertheleſs, admitting this, yet your concluſion by no means follows. Your inference, Gentlemen, is much wider than your premiſes. For the deciſion may have been, as I truſt it was, honeſt and deliberate, and yet, by ſuch deciſion, his Lordſhip may not have eminently diſtinguiſhed his *knowledge of the law.* Who does not ſee, that, on the contrary, it may have been honeſt and deliberate, and yet at the ſame time be unprecedented, injudicious, inconſiſtent, and erroneous?

Permit me to add, Gentlemen, that by determining how far a judge has diſtinguiſhed his knowledge of the law, you claim a degree of intelligence equal, if not ſuperior, to the reverend ſages who fill the ſeats of judicature. And you will pardon me, if I aſk you by what extraordinary lights, you have acquired ſuch tranſcendent knowledge, in a ſcience

ſcience ſo foreign from your profeſſions, and, one might preſume, from your educations? I own I am at a loſs to conceive from whence you could derive ſuch aſtoniſhing powers; unleſs you were ſuddenly enlightened by your ſagacious and eloquent *Town-Clerk*, who is maſter of "the Key of Knowledge, and the Touch-ſtone of Truth."

Were we inclined however to acknowledge your capacity, yet, with what propriety can we admit your right? By what authority do you preſume to review the deciſions of the King's courts? By what law of the conſtitution, do you determine the legality of ſuch deciſions? I have heard of many courts of appeal, but that of the Court of Common Council of the City of London, is a ſupreme judicature to which I have hitherto been a ſtranger: And I congratulate my countrymen, on the erection of a tribunal compoſed of *Heaven born lawyers*.

But your preſumption, Gentlemen, is not confined to your unwarrantable intermeddling with the deciſion of the Common Pleas; you venture further to affirm, that the object of that deciſion has been frequently produced to, but ſo far as appears to *your* Court, never debated in the Court of *King's Bench*.

The meaning of this invidious insinuation, is too obvious to need a comment: And we can but admire the extreme confidence of the members of this new judicature; who, from behind their counters, presume to know what passes in his Majesty's Courts at *Westminster*, and to pronounce peremptorily on the legality of such solemn proceedings.

In short, Gentlemen, you must excuse me, when I am bold to declare that your resolutions, in whatever light they are considered, are assuming, indecent, absurd, unconstitutional, and dangerous.

With what reason therefore can you suppose, that Lord Chief Justice *Pratt* will comply with your ridiculous desire, by sitting for his picture? What! can you imagine that his Lordship will *literally* lend *his countenance* to men, who have indirectly pronounced his practice in a former station, to have been arbitrary and illegal.—To men, who have offered him the grossest insult in his high office of Chief Justice, by presuming to judge of the *honesty*, *deliberation*, and *legality* of his decisions.—To men, who have violated the order of government, and usurped to themselves a power unknown to the constitution.—Can you presume that his Lordship will submit to be the *willing instrument* by which faction would shew its con-

tempt of government?—No: never expect that he will ſo far diſgrace his character by ſuch an indiſcreet condeſcenſion. His good ſenſe, his pride; nay, his duty to his King and country, forbid it.

Let not the freedom of my animadverſions be conſtrued into a diſreſpect for the Court of Common Council, as ſuch. While you, Gentlemen, who are members of it, keep within your proper province, you are uſeful and reſpectable in your politic capacity. Many of you, I am perſuaded, claim eſteem and reſpect likewiſe in your private capacities. The Court, whoſe reſolutions I condemn, is improperly called a Court of Common Council. It is a Court, which hath not yet obtained a name: And which I hope will, for the future, be unknown to this kingdom.

It is not difficult, Gentlemen, to account for the manner in which you have been betrayed into this uſurpation. Well might you miſtake your buſineſs and importance, when one of your turbulent abettors, ventured to affirm in a certain aſſembly, that you were, in weight and conſequence, ſecond to none but the legiſlature.

Alas! Gentlemen, you have been miſled by a clamorous and ſhallow Member, who

BELLOWS forth the ſpirit of faction, and is the tool of tools, for many removes, till we come to him whoſe very tone of voice proclaims the vulgarity of his ſoul; and who, born to command ſlaves, is himſelf a ſervile agent to the artful mover of oppoſition, who, concealing the deſigns of dark ambition beneath the affected gloom of retirement, ſecretly and ungratefully practiſes againſt the honour of his King, and the quiet of his adminiſtration.

But however you are to be pitied, Gentlemen, for having ſuffered yourſelves to be betrayed into ſuch unwarrantable reſolutions; you muſt nevertheleſs be reſponſible for all their ill conſequences. You may perceive, that the contagion of your ill example has ſpread already; and has been followed by the corporation of *Exeter*, who have voted the freedom of that City to Lord Chief Juſtice *Pratt*, for, what they call, " his noble and impartial conduct in *the cauſe of liberty*."

What we are to underſtand by the cauſe of liberty, the Gentlemen have not thought proper to explain: But I ſhall forbear to make any comment on the vote of this corporation, as I have ſufficiently expreſſed my ſenſe of ſuch proceedings, in my animadverſions on the reſolutions of you, Gentlemen of the Common Council.

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I wiſh that Lord Chief Juſtice *Pratt*'s Letter to the City of *Exeter*, could likewiſe be paſſed over in ſilence: But the character of the writer is ſo diſtinguiſhed, and the contents of that Letter are of ſuch an extraordinary nature, that it would be unpardonable to treat it with indifference. The Letter, as publiſhed in the daily papers, runs thus

Lincoln's Inn Fields, March 1, 1764.

" SIR,

" I received the favour of yours this poſt, imparting the unanimous reſolution of the chamber of Exeter, to preſent me with the freedom of that antient and reſpectable city; for which I beg you will be pleaſed to return my moſt reſpectful thanks, and to inform the chamber, that I feel an uncommon pleaſure in this teſtimony of good will from the City of Exeter, as it is the capital of that county where my father and all his anceſtors took their birth, and where I myſelf heretofore received an encouragement in my practice far beyond my merits.

" IF I have deſerved, in any part of my conduct, the approbation of my countrymen, as an honeſt and impartial judge, I ſhall not be aſhamed to confeſs, THAT I take

take a pride in THAT applauſe THAT flows from an opinion of my integrity, leaving the praiſe of capacity to others whom God hath endued with more ſhining parts, and ſuperior abilities.

" I can make no other return (and I know the chamber of Exeter expect no other) for this valuable compliment, than a promiſe to perſevere in an upright and impartial execution of my office; and I hope this promiſe will obtain ſome degree of credit, when it is conſidered, that by deviating from this path, I ſhall not only forfeit the eſteem of your City, which I am now ſo honourably poſſeſſed of, but ſhall likewiſe diſgrace my Royal Maſter's nomination, *and break my oath.*

I am, SIR,

With all due Reſpect to yourſelf,

as well as the Chamber,

Your moſt obedient faithful Servant,

C. PRATT."

It is impoſſible for any one, who has the leaſt partiality to his Lordſhip, to read this letter, without the moſt extreme concern. For my own part, I am ready to confeſs, that I have ever conſidered his Lordſhip, in his

his judicial capacity, as candid, patient, intelligent, unaffected, perſuaſive, engaging, and amiable.

As a Judge, I have ever reverenced him, both from duty and inclination: But if a Judge, if a Chief Juſtice, will deſcend from his high ſtation, it is impoſſible not to treat him on the level to which he has degraded himſelf: And I am ſorry to ſay, that in whatever light we examine the letter in queſtion, it lowers our idea of it's author.

In this letter, there is a preſumption wantonly diſplayed, through a modeſty aukwardly affected. If we conſider the writer as a Judge, where is the dignity of his character? If as a ſcholar, where is the elegance of compoſition? If as a citizen, where is his regard for public order and decorum?

Can his Lordſhip be ignorant, that they who compliment him for his deciſion to-day, have the ſame right to brand him for his adjudication to-morrow? And will he concur, in expoſing the judgments of the high courts of Weſtminſter, to the review of every petty corporation? Would it not have been more noble, more conformable to his duty, to have checked ſuch illegal uſurpations? Can popular applauſe have ſo faſ-

cinated his excellent underſtanding, as to prevent his perceiving that his encouragement of ſuch abſurd and irregular addreſſes, has a dangerous and unpardonable tendency, to cheriſh that factious and licentious ſpirit, which is impatient of all juſt, legal, and conſtitutional reſtraint?

As to the particulars of his Lordſhip's letter, we may readily excuſe his partiality to the capital of that county, where all his anceſtors took their birth.

But, not to inſiſt on trivial objections, how can we reconcile the next paragraph to any rules of ſound judgment, or nice decorum? "If," ſays his Lordſhip, "I have deſerved, *&c.*" IF!—Surely his Lordſhip beſt knows whether he does deſerve it or not.——His honeſty and impartiality may, nay muſt be a matter of opinion, with regard to the corporation of *Exeter*, however penetrating that body politic may be: But with reſpect to his Lordſhip, his degree of merit on account of thoſe qualities, muſt be a certainty; and is only to be eſtimated by the teſtimony of his own conſcience. No man, it is true, can be preſumed a competent judge of his own capacity, but of his honeſty and impartiality, no one can determine ſo well as himſelf.

His Lordſhip however carries the affectation of modeſty much too far, when he leaves the praiſe of *capacity* to others. Is it not eſſential for a Judge to be, and to be thought, capable, as well as honeſt? Can his Lordſhip be ignorant, that, by his want of that capacity which he leaves to others, his royal Maſter's nomination would be diſgraced?

But after all, this is a vain affectation which can impoſe upon nobody. Would a Judge, conſcious of the leaſt incapacity, have ventured to determine a moſt intricate and important caſe, in the common courſe of buſineſs, when he might, with the greateſt propriety have called in the aſſiſtance of all his brethren? No one will ever be weak enough to imagine, that his Lordſhip is indifferent to the praiſe of capacity. This affected ſentiment muſt therefore have been forced in, with what view I know not: perhaps only to round the period.—I hope, at leaſt, that it was for ſome ſuch innocent purpoſe.

The *natural and obvious conſtruction* of it, I am perſuaded his Lordſhip was not aware of, and will never avow. He could never mean to inſinuate, that there are *others*, who Mansfiel are praiſed for ſhining parts and ſuperior abilities, who are nevertheleſs deficient in that

integrity, on which he ſo modeſtly prides himſelf. He muſt be too well acquainted with his brethren, not to know that the ſeveral ſeats of judgment, are honeſtly, ably, and impartially filled.

Beſides, I truſt that his Lordſhip is a better philoſopher, than to imagine that capacity is any bar to integrity. With the greater abilities any man is endowed, the ſooner he will diſcover the various relations of moral duties, and the more firmly he will be perſuaded, that it his intereſt to obſerve them.

There are inſtances, it is true, where an immoral practice, has diſgraced an excellent underſtanding; but, in general, the ableſt men, have been the beſt: And I could, without offence to his Lordſhip, point to a Chief, whom God hath indeed endued with ſhining parts and ſuperior abilities, and whoſe integrity nevertheleſs is as unimpeached, as his capacity is unqueſtioned; who diſcovers the merits of a cauſe with amazing acuteneſs, and who omits no opportunity of expreſſing a becoming indignation, at the leaſt appearance of a practice, which he conceives to be repugnant to the principles of juſtice, and injurious to the honour of the profeſſion.

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One might wonder how a man of Lord *Pratt*'s judgment and experience, could give room to ſuch an exceptionable ſentiment. But indeed he appears, in every part of this letter, greatly below himſelf.

In the laſt paragraph, where his Lordſhip promiſes to perſevere in the upright execution of his office, who would not imagine that ſome petty miniſterial officer, was here proclaiming his attachment to his patron, and doing fealty for his office? Who will not acknowledge, that this is rather the ſtile of a ſervile *Tide-waiter* *, than of a reverend judge.

But the ſentence, alas! goes on *pari paſſu*, till at length it crawls to a concluſion, and ends with four flat monoſyllables.

You ſee, Gentlemen, the fatal effects of your intoxicating applauſe. The grave, the reverend, the learned judge, is no longer himſelf. Stunned with the echo of your plaudits, he is deaf to the remonſtrances of his own better judgment.—*Heu! quantum mutatus!*

Such will ever be the conſequence of an intemperate fondneſs for popular applauſe.

* I caution the reader not to take this word in a *figurative* ſenſe.

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They who build their reputation on the fickle and fluctuating opinion of the giddy multitude will, like them, act lightly, injudiciouſly and inconſiſtently.

Judges ſhould, above all others, guard againſt ſuch a dangerous intoxication. The maintaining of that nice balance on which our conſtitution ſhould be poized, depends, in a great degree, on their juſt and diſcreet adminiſtration. It is one of their principal duties, no doubt, to watch over the liberties of their fellow ſubjects; but it is not leſs their duty, to pay a becoming attention to the honour of the crown, and the order of government.

Such a wiſe and equal conduct alone, will recommend them to the favour of the judicious and diſpaſſionate; ſuch alone, will ſecure them a permanent reputation, and tranſmit their names with honour to poſterity.

But ſhould it ever happen, that a judge ſhould court the people, at the expence of his maſter's honour; ſhould he, though ever ſo indirectly, afford countenance to delinquents, who have offended againſt the dignity of the crown, and the laws of the conſtitution; ſhould he be inſtrumental in raiſing jealous and dangerous diſtinctions between

tween his Majeſty's courts; ſhould he, in an unprecedented manner, determine points of a new impreſſion and of the utmoſt conſequence, without any conſultation or conference with his brethren of the other courts; ſhould he, after having pronounced judgment according to the duty of his office, ſtoop to harangue the gaping multitude, upon a favourite topick; ſhould he indiſcreetly prognoſticate that his judgment might be reverſed—And, after thus anticipating the ſentence of the ſupreme judicature, preſume to add, that ſuch ſentence would be a *rod of iron* over the people of England.—If ever any one ſhould thus comport himſelf, more like the advocate of a party, than a judge of the land, he may be aſſured that he will immediately forfeit the good opinion of the wiſe and moderate, and that his fame even among the vulgar, will be tranſient. Though popular honours ſhould be heaped upon him, and preſented in golden boxes, yet he will find thoſe boxes to be like the preſent to *Epimetheus*, and he will live to curſe the *dona ferentes*.

Ld. Ch. Just Pratt's word

I would not however, Gentlemen of the Corporations, be thought to inſinuate that your golden preſents will be attended with ſuch baneful effects. Your valuable gifts and compliments are beſtowed from a perſuaſion, and I truſt a well grounded one,

of

of Lord Chief Juſtice *Pratt*'s having purſued a conduct quite oppoſite to that, by which, for the ſake of illuſtration, I have ſuppoſed it poſſible for ſome judge hereafter to be influenced. Yours, as you declare, are given in gratitude for his honeſt and deliberate deciſion.

I have already expreſſed my confidence, that the deciſion was as you repreſent it, though I have had no opportunity of making myſelf acquainted with it. Beſides was I actually maſter of it, yet I ſhould not think myſelf warranted in making any public comment upon it, unleſs it came to me properly authenticated under the ſanction of the court: For I am not clear, I ſpeak with all due deference to you Gentlemen of the Common Council of London, I ſay I am not altogether clear, that it would not be conſtrued a contempt of the court, ſhould their deciſion be miſrepreſented in the leaſt particular.

Thus much however, I may venture to ſay, though I have not the honour to be a member of the Common Council, that a late deciſion reſpecting privilege of Parliament, was erroneous, becauſe it ſtands in effect condemned by the reſolution of the ſupreme judicature in this kingdom.

The

The reaſons on which this miſtaken determination was grounded, I am wholly unacquainted with. Such as have been frequently made public, are not thoſe, I am perſuaded, on which the Court delivered their opinion.

In the argument which has appeared abroad, the authority of Lord *Coke* is principally relied on, to prove that privilege of Parliament generally holds, unleſs in three caſes, viz. *Treaſon*, *Felony* and the *Peace*: In ſupport of which *dictum*, his Lordſhip, in the margin, is ſaid to have referred to a record of *Hen.* the 6th.

The perſon ſuppoſed to deliver this argument confeſſes, that he has not been able to have recourſe to the original record, but he cites *Cotton*'s Abridgment, where there is a note in corroboration of Lord *Coke*'s dictum.

But if he had not ſeen the original record, was it not his duty to have inſpected it, before he ventured to ground an opinion upon a dictum, the authority of which depended wholly on that record, ? Can he be juſtified in referring to an *Abridgment*, which they who have had occaſion to conſult it, know to be erroneous in a variety of inſtances ?

Had he ſwept away the *cobwebs*, if I may adopt a phraſe, which was, with more vivacity than decorum, uſed by a great lawyer in a certain auguſt Aſſembly; I ſay, if he had ſwept away the cobwebs, that is, in other words, if he had examined the record, he would have found that it expreſly proved the contrary to Lord *Coke*'s dictum: And this duty was the more indiſpenſable, as it is well known that no writer whatever is more faulty in his references to records than Lord *Coke*, as *Prynne* in particular has manifeſted by innumerable inſtances.

Upon inſpection of this record, it would have appeared that the party therein mentioned, who was ſervant to a member of the Houſe of Commons, was not arreſted on any criminal proſecution whatever, but in a civil action for debt: And that, with regard to the general and *new* claim of privilege, which the Commons prayed on this occaſion—"That they and their ſervants ſhould not, for the future, be any ways arreſted or detained in priſon, during the time of Parliament, except for *Felony*, *Treaſon* or *Surety of the Peace*."—This claim was wholly *rejected*. The anſwer was, *Le Roy ſ'adviſera*.

Thus it appears from the authority of this record, that there is not the leaſt foundation for the dictum of Lord *Coke*, or for the note in

in *Cotton*'s Abridgement: On the contrary, it eſtabliſhes a concluſion in direct oppoſition to both.

But Lord *Holt*'s authority is likewiſe relied on; and he is made to ſay—That whereas it is ſaid in *our books*, that privilege of parliament was not allowable in *Treaſon*, *Felony*, or *breach of the Peace*, that it muſt be intended where ſurety of the peace is required; that it ſhall not protect a man againſt a *Supplicavit*; but that it holds as well in caſes of *indictments or informations for breach of the Peace*, as in caſe of actions.

With regard to this dictum, which can have been no more than a ſaying *obiter*, it reſts on a very ſuſpicious footing. In the report of the caſe, a Q. ſtands in the margin; and indeed it is greatly to be doubted whether any ſuch opinion was ever delivered, more eſpecially as it does not ſeem to have the moſt diſtant relation to the principal point. It is evident however, from the manner of his Lordſhip's introducing it, on the authority of *our books*, that he alludes to the miſtaken dictum of Lord *Coke*, which Lord *Holt* probably never had occaſion to examine with his accuſtomed accuracy.

Having endeavoured to eſtabliſh this erroneous propoſition on theſe fallacious au-

 thorities,

thorities, the argumentator proceeds to examine how far a libel is a breach of the Peace; and, after eſtabliſhing a ſubtile diſtinction between an *actual* and a *conſtructive* breach of the Peace, concludes that a libel is of the latter kind, as it only tends to a breach of the Peace.

But in truth this diſtinction, which is altogether nugatory, implies a contradiction in terms, and was no doubt firſt raiſed by ſome ſubtile advocate to ſerve a preſent purpoſe. I would aſk any man of common ſenſe, whoſe judgment has not been perverted by law quibbles, Whether there can be a breach of the Peace, before the Peace has been *actually* broken? I would aſk him likewiſe, Which is the greater breach of the Peace, the holding up of one's fiſt or cane at another in a menacing way, or the publiſhing of a ſeditious libel, tending to raiſe traiterous inſurrections? How would he ſtartle to be told, that the firſt, as an *actual* breach of the Peace, was not within privilege; but that the latter, as *tending* only to a breach of the Peace, was a privileged offence?

It is made a queſtion however, whether a libeller may be obliged to find ſureties for his *good behaviour?* And it is ſaid that *Dalton* enumerating many caſes wherein it may be demanded, makes no mention of libels: Thus

Thus the errors of ſome writers, and the ſilence of others, is made a foundation for an opinion on ſo important a point.

But Lord *Coke* ſays expreſly that a libeller may be bound to his good behaviour. The reaſon of the thing however ſpeaks ſtronger than any authority whatever. Beſides, it is admitted on all hands, that perſons may be ſo bound, for ſpeaking words of contempt of inferior Magiſtrates, as a Juſtice of Peace, Mayor of a town, &c. though they be *not* in the execution of their offices.—And ſhall they not be bound for publiſhing a libel on ſome of the firſt Magiſtrates in the kingdom?

Lord *Coke* very properly diſtinguiſhes between a public and a private libel. "If," ſays he, "it be againſt a Magiſtrate, or other *public* perſon, it is the greater offence; for that it concerneth not only the BREACH OF THE PEACE, but alſo the ſcandal of government." It is a little ſtrange, that they who ſhelter their opinion under his Lordſhip's errors, ſhould overlook his authority when he talks agreeably to law and reaſon.

But not to cavil about terms, and enter into nice diſtinctions between ſureties of the Peace, and ſureties for the good behaviour, it is clear that a libeller may, at leaſt, be obliged

obliged to find ſureties for the latter: And no claim of privilege can avail in caſe of a ſeditious libel.

Indeed a privilege to commit crimes, would involve the moſt palpable abſurdity. It would be a privilege deſtructive of the very eſſence and well-being of ſociety. In civil caſes, it is true, there is good reaſon for admitting it, becauſe it is impoſſible for a Member to avoid contracting debts: And a bad Miniſter may, at a critical juncture, prevail on creditors to arreſt thoſe from whom he expects an oppoſition.

But every Member may avoid committing crimes; and ſhould a Miniſter procure his confinement on a groundleſs ſuſpicion, a jury would, upon an action for damages, no doubt give ſuch as might prevent thoſe attempts for the future.

Beſides, it is a weak pretence, to contend that the diſallowing of privilege in caſe of libels, *&c.* widens the door for Miniſters to make ſuch attempts; for the offences of treaſon, felony, and breach of the peace, leave an opening ſufficiently wide for any Miniſter, who is wicked and daring enough to venture on ſuch abſurd and dangerous practiſes.

But

But the admiſſion of privilege in ſuch caſes, is not only condemned by reaſon, but by authority.

It is expreſly ſaid in our books, that "Privilege *cannot* be pleaded againſt an *indictment* for any thing *done out of parliament*." And, both from reported caſes, and from the journals of the Houſe of Commons, it will appear that the claim of privilege does not hold in many caſes, which cannot be brought under the deſcription of *treaſon*, *felony*, or *breach of the peace*. The Parliament however, are the proper judges of their own Privileges; and to them it muſt be ſubmitted whether privilege holds in caſes of *Recuſancy*—*Excommunication*—*Outlawry* after judgment, *&c. &c.*

From what has been ſaid, it appears that the *dicta* in ſupport of privilege, in caſe of a libel, *&c.* are fallacious, and that the authorities to which they refer maintain a contrary doctrine. It appears likewiſe, that ſuch a claim of privilege is againſt reaſon and common ſenſe, and ſubverſive of the very ends of civil government: And laſtly, it may appear, both from the authorities of law, and the reſolutions of Parliament, that there is no foundation for confining the excluſion of privilege to the three caſes above mentioned.

With what propriety therefore, could the noble perſonages who ſigned a certain paper, which

which has been induſtriouſly handed about, take upon them to aſſert, that the doctrine on which the reſolution of parliament was founded, was new, dangerous and unwarrantable?

Let no one imagine, however, that it is any imputation on a court of juſtice to have made an erroneous deciſion. It is no uncommon thing, for the judgment of one court, to be reverſed by the ſentence of another. Beſides, it muſt be conſidered, that the caſe in queſtion was new, and of exceeding difficulty and importance.

Theſe conſiderations, it may be thought, might have induced the Common Pleas to have declined, if poſſible, intermeddling with a caſe of a *criminal* nature; more eſpecially as it was *term time*, and the more *proper court* was then ſitting. But it is my duty to believe that they were bound to take cognizance of it; for it would ill become me, who am no Common Council Man, to determine concerning the juriſdiction of his Majeſty's Courts.

Nevertheleſs, I have met with a caſe, which I ſubmit to the conſideration of you Gentlemen of the Common Council, the next time you ſit on judgment on the proceedings of the courts at *Weſtminſter*.

The

The caſe I allude to, is the caſe of *Rudyard*, in the Common Pleas, where—" The *Court* ſaid, they had *often* directed, that no *Habeas Corpus* ſhould be moved for in *this Court*, except it concerned a *civil* cauſe, becauſe when the party was brought in and the cauſe ſhewn, this court cannot proceed upon it, therefore the PROPER PLACE to move for them is the KING'S BENCH.

If therefore the taking cognizance of the criminal caſe above alluded to, had been a matter of diſcretion, I appeal to you, Gentlemen, whether the directions of the Court, in the caſe of *Rudyard*, would not have been a reaſonable apology for referring it to the more proper juriſdiction.

But if, as I am bound to believe, it was not a matter of diſcretion, the Court were undoubtedly under an obligation to determine it; and, in determining it, I am fully perſuaded that they had nothing in view, but truth and juſtice: For it is impoſſible to conceive any circumſtances in the caſe, which could give a bias to the opinion of the court.

Judges indeed have formerly been accuſed, and not without reaſon, of aſſiſting to draw the reins of government too tight; but there is no precedent, where they ever have

concurred, nor is it *probable* that they ever will concur, in effecting a total relaxation of all civil diſcipline.

Nevertheleſs it may be poſſible to ſuppoſe a criſis, wherein an ill-grounded reſentment, or miſtaken gratitude, may give ſuch a bias to a Judge's mind, as may influence him to act in oppoſition to the ſound principles of his profeſſion, and the real intereſt of his King and Country.

Suppoſe, for the ſake of illuſtration only, that the nation ſhould at any time hereafter be under the guidance of a bold, declamatory, raſh, and ambitious demagogue; and that he ſhould conceive a partiality for a lawyer, of ſomewhat congenial talents, florid, lively, preſuming and enterprizing.—What if he ſhould lead this favourite by the hand, till he advanced him to the higheſt honour an advocate can attain—And that the demagogue ſhould afterwards, in a fit of diſguſt, ſuddenly abandon the adminiſtration? What if his ſucceſſors, unable to draw with one whoſe bias to his patron would probably incline him to obſtruct their meaſures, ſhould oblige the favourite to quit his active and honourable employ as an advocate, and force greatneſs upon him in a more exalted and inactive ſtation? Suppoſe him advanced to one of the chief ſeats of judg-

judgment, and that the buſy agent of a factious Oppoſition, ſhould, as the author of ſedition, be *irregularly* brought before this darling of the party.——Who will ſay that, under ſuch circumſtances, reſentment, againſt thoſe who compelled him to accept of an unwelcome pre-eminence; diſappointment, at being obliged to ſtop TWO STEPS, *Alas!* ſhort of his ambition; gratitude, to thoſe whoſe partiality would have exalted him to the topmoſt round; together with that fondneſs for popular applauſe, which never fails to intoxicate men of ſtrong paſſions and lively imaginations---Who will ſay that, without imputing any corruption to his heart, all theſe powerful motives co-operating might not pervert his judgment?

I hope, and I truſt, Gentlemen, that we ſhall never live to ſee ſuch an unhappy criſis, when they, whoſe duty it is to preſerve the order of Society, ſhall afford encouragement to licentiouſneſs.

Licentiouſneſs is the bane of liberty. It is the ruin of that cauſe, of which the corporation of Exeter, headed by the Common Council of London, ſtand forth the champions. But they only are the proper aſſertors of liberty, who know its ſignification, and can aſcertain its limits. The mad herd, who

who ſhout forth the name, are ſtrangers to its import: And it is not the intereſt of thoſe who drive them, to define the meaning, or to proclaim the bounds of that liberty, which they abuſe for their own private ends.

They have the addreſs to repreſent every impediment which bars their way to power and profit, as an infringement of public rights: And the unthinking multitude will ever adopt the paſſions and prejudices of ſuch as ſtand in oppoſition to government, as the only articles of their political creed.

But they who are ſincerely anxious for the preſervation of freedom, and who are ſenſible of its real eſtimation, know that popular licence, will as infallibly deſtroy it, as arbitrary will.

To avoid theſe two extremes, ſhould be the principal object of attention in all mixed governments, and more eſpecially in our own. Whenever, Gentlemen of the Common Council, any order of the conſtitution breaks looſe from ſubjection to the laws, and arrogates unwarrantable power, liberty is from that moment endangered.

It is not material, Gentlemen, whether the invaſion comes from the King, the nobles, or

or the people; from whatever ſource it ariſes, it ultimately terminates in the ſame point, and is equally injurious and fatal to liberty. When unconſtitutional attacks are made on one hand, reſentment may dictate, or neceſſity compel, the adoption of illegal meaſures on the other: And whichever party prevails in the conteſt, tyranny is alike the lot of the public.

As popular uſurpation infallibly begets anarchy, ſo anarchy unavoidably engenders deſpotiſm: And ſuch is the natural tendency of every oppoſition; which, when not founded on public virtue, and regulated by that decorum which the laws preſcribe, is the cauſe of its own deſtruction.

It is hoped that ſome true patriots will ariſe, warmed with a ſincere zeal for the general good, and that they will guard the conſtitution, by reſiſting alike all uſurpations, whether from the prince or the people. Such an impartial conduct may enable them to triumph over the malice of ſelfiſh oppoſition, and to ſilence the licentious clamour of party.

If we may judge from preſent appearances, ſuch a conduct we may expect from the preſent adminiſtration. If acknowledged abilities, unwearied application to buſineſs, and

Mr. Grenville

and a ſtrict attention to public frugality, are any grounds for favourable concluſions, we may hope that they will acquit themſelves to the ſatisfaction of their King and country.

Let no one however do me the injuſtice to imagine that I am an advocate for the Miniſtry; or that I am weak enough to imagine it impoſſible for them to change their principles and conduct. I only mean to obſerve, that, from what appears at preſent, their talents and diſpoſitions ſeem properly adapted to our immediate exigencies. For it ſhould be remembered, that the qualities which ſerved us in time of war, would diſtreſs us in time of peace.

The moſt effectual means of making them perſevere in their duty, is for their competitors to overlook their actions, with the vigilant eye of *emulation*. But a general and undiſtinguiſhing oppoſition to *all* meaſures, betrays more of enmity than competition; and can never be founded on the principles of public virtue. I hope to ſee Oppoſition directed to right ends, but never wiſh to ſee it expire: For, as was juſtly obſerved by a ſpirited and noble Lord, Nothing is ſo dangerous, as an "intoxicating unanimity."

F I N I S.