

where *property* is in question, justices of the peace have, there, *no jurisdiction*.*

But, to return to the other point—Attornies were anciently admitted in all the *king's* courts;—and among these, are those circuit-courts, called Courts of Assise, and Nisi Prius, held in the several counties of England, by the judges of Assise, for the purpose of trying causes therein, by juries of the respective counties: These came in the place of the ancient justices in Eyre, who were established so early as 1176—By the 12th chapter of *Magna Charta*, these itinerant judges of the crown were bound to go once a year into every county; but now the judges of Assise, &c. go twice a year into all the counties in the kingdom, except the four northernmost

Notwithstanding the justices would not, before the enacting of the statutes above mentioned, permit Attornies to officiate in those little wrangling judicatories, where the vassals and tenants of the lord of the manor litigated their disputes among themselves in the court-baron, the tribunal of the feudal chief—and in the county-court, which was held by the sheriff—&c; every man enjoyed a Right, by the express provisions of those statutes, to make an Attorney in such courts. As the ordinary authority of the sheriff did not enable him to hold pleas in his county-court, but of sums *under forty shillings*, and as *these* were determined *without a jury*,—the aid of Attornies could scarcely have been necessary in such cases: but when suitors in those courts occasionally sued forth writs

* See 3 Salk. 217.

of *Justices*--which authorized them to hold pleas of much larger value, and rendered the intervention of a *jury* indispensable,--Attornies were, then, also required:--Even *before* the statutes were enacted, the King could, by virtue of his prerogative, give his warrant to a suitor in the court-baron, or other court, to make an Attorney in any action or suit; and that, as well demandant or plaintiff, as tenant or defendant. As the courts-baron, notwithstanding--prior to the power given to suitors therein, by those statutes, to constitute Attornies--did not admit them without a special command, in pursuance of the king's precept; so it would seem that even *after* they were intitled to this privilege by positive laws, a reluctance was manifested by these and other inferior judicatories to admit them to an enjoyment of the Right:--For we are told by Fitzherbert, in his *Natura Brevium*, that where a man ought to do suit at the county, hundred, wapentake or other court,--and was *doubtful* whether the sheriff would admit for his Attorney, the person whom he was desirous of making such; he might sue out a writ *de Attornato faciendo* or *recipiendo*, directed to the sheriff, or bailiff of the hundred,--commanding them to receive such a person to be Attorney for him, to appear, &c. But where the party did *not* entertain such doubt, (of being allowed his Right of having an Attorney); he might make one by his letters patent, directed to the bailiffs,--without suing forth any writ.

It is worthy of being remarked, that, notwithstanding this plain manifestation of the ancient and just

Right, which suitors in the English county-courts (and other judicatories) enjoyed, of instituting Attornies,—a Right, indeed, founded in reason and the nature of things, independently of any statute; it was actually controverted by some of those *Levellers*, who prevailed in England, in the middle of the seventeenth century. A little tract concerning the practice of the county-courts, entitled—*Curia Comitatus rediviva*, was published by *W. Greenwood*, in the year 1657; during the protectorate of *Oliver Cromwell*—In the chapter which treats of Attornies in the County-courts, the author notices its having been objected to him—“that no Attornies could legally practise in this court, and that every man ought to prosecute his own cause himself:” But this unfounded and weak assertion he refutes, by reference to authorities.

But notwithstanding that the rude and uncultivated state of society that existed among the English (as well as all the European nations), in those ages which have preceeded us more than five centuries, may very naturally be supposed to have prejudiced the *illiterate* members of their ordinary judicatories against professional jurisconsults; and although a consciousness of their own incapacity* must have rendered those

* The celebrated *ROBERTSON*, the historian, remarks--that before the close of the 12th century, the science of jurisprudence in Europe had assumed a systematic form and character; and that the various improvements it had then recently acquired, with the important change in manners consequent thereon, gave rise to the occupation of Lawyers, as a distinct profession. UNTIL this period, says Doct. Robertson,—“every gentleman, born a SOLDIER, scorned any other occupation; he was taught no other science but that of war; even his exercises and pastimes

petty judges jealous of the presence and interposition of persons *Skilled* in the Law, in the management of their judicial business,—thus operating as the cause of their exclusion; the suitors in those tribunals must frequently have been sufferers, while deprived of the counsel and assistance they stood in need of. Great inconveniencies and injury had, doubtless, been very often experienced by the people, from the unreasonable destitution of such aid, to which they were thus arbitrarily subjected, in consequence of the envious temper of their ignorant and self-sufficient tribunals.—Hence it was, that the Great Council of the nation *confirmed* to suitors the Right of employing *professional Agents*, for the better conducting of their judicial causes; while at the same time they were furnished with Process, when requisite, to compel the tribunals to admit, therein, the services of those Agents, whom the suitors choose to substitute as *their Attornies*.

were seats of martial prowess. Nor did the JUDICIAL character, which persons of noble birth were alone entitled to assume, demand any degree of knowledge beyond that which such untutored soldiers possessed. To recollect a few traditional Customs, which time had confirmed and rendered respectable; to mark out the lists of Battle, with due formality; to observe the issue of the Combat; and to pronounce whether it had been conducted according to the Law of Arms;—included every thing that a BARON, who acted as a JUDGE, found it necessary to understand." MARTIAL and ILLITERATE nobles, he observes, had neither leisure nor inclination to undertake so laborious a task, as the necessary study of the Law had then become—"They gradually relinquished," continues the historian, "their places in Courts of Justice, WHERE THEIR IGNORANCE EXPOSED THEM TO CONTEMPT. They became weary of attending to the discussion of Cases, which grew too intricate FOR THEM TO COMPREHEND. Not only the JUDICIAL DETERMINATION of points which

Sir *William Blackstone* also remarks on this subject, that formerly, according to the old Gothic constitution, every suitor was obliged to appear in person, to prosecute or defend his suit; unless by special license under the king's letters patent: And this is, as he tells us, still the law of *England*, in criminal cases;—(though, as to matters of *law* arising on trials for *capital** offences, the prisoner is there entitled to Counsel.)—The learned commentator observes further,—that, as in the *Roman*† law—though it was

were the subject of controversy, but the CONDUCT of all LEGAL BUSINESS AND TRANSACTIONS, was committed to persons trained--by previous STUDY AND APPLICATION--to the KNOWLEDGE OF LAW."

* But by the constitution of the United States, as well as that of our own particular State, the accused have a Right in ALL criminal prosecutions, to be heard by themselves, OR COUNSEL.

† "CUM OLIM IN USU FUISSET, ALTERIUS NOMINE AGI NON POSSE, SED, QUIA HOC NON MINIMUM INCOMMODITATEM HABERAT, COEPERUNT HOMINES PER PROCURATIONES LITIGARE." Inst. 4. tit. 10.

But, (if we may be permitted to digress here, a little,) let it be remarked--that although the ROMAN or CIVIL Law found the aid of Proctors, Advocates, &c. to be necessary in ITS tribunals; as we have very long since also discovered from experience, that the assistance of Counsel and Attornies is, in the Common-law courts; still the arbitrary spirit of the former would never accord with so popular an institution, as the Trial by Jury. Nevertheless in this country--although we are under the necessity of having one branch of our national judiciary conducted according to the principles of the CIVIL LAW,--the genius of our government and the spirit of all our political institutions have induced us to prefer a resort to this REPUBLICAN tribunal of jury-trial; wherever it shall be found practicable. Thus, by the law of Congress, entitled, "An Act to establish the Judicial Courts of the United States,"--the District Courts have original jurisdiction of all civil causes of AD-

anciently the practice that no person could act in the name of another—yet, because this was attended with *great inconvenience*, men began to conduct their judicial controversies through the medium of *Lawyers*;* so in *our* law, upon the same principle of convenience, it is provided in general, that Attornies constituted by the parties may prosecute or defend *any* action.

The *Right*, then, is clear and definite, both by *our* Law and the *English*, in *civil* suits; and the constitution has, in this country, extended it in like man-

ADmiralty and MARITIME jurisdiction; saving to suitors, in all cases, the Right of a COMMON-LAW remedy, where the Common Law is competent to give it." See sect. 9.—The same section provides, that "the trial of issues in fact, in the District Courts, in all causes—except causes of ADMIRALTY and MARITIME jurisdiction, shall be by JURY: And the 16th section declares, that "Suits IN EQUITY shall not be sustained in either of the Courts of the United States, in ANY case, where plain, adequate, and complete remedy may be had, AT LAW."

This attachment to the RIGHT of Jury-trial, manifested by the legislature of the Union, is highly laudable. The ENGLISH Law is, however, very jealous of an interference with that Right, in some other particulars, that are deserving of our notice—For example: A FREEHOLD, or inheritance of lands, cannot be determined by ARBITRATION. [See 1 Roll. Abr. 242.] Nor, according to the same authority, can the interest of an estate for years; it being a CHATTEL-REAL. Indeed, nothing in the NATURE of a FREEHOLD is determinable by AWARD, which cannot pass without the deed of the party. [See 3 Hen. IV. ch. 6.—14 of same reign, ch. 19.—9 Hen. VI. ch. 60.—and 1 Roll. Abr. 266.] CRIMINAL causes also, of every description, as is generally known, are not ARBITRABLE.

* Though the employment of Advocates and Proctors may not have obtained,—until some time after the revival of the Roman or Civil

ner to all criminal actions or prosecutions. This Right too, we perceive, has grown out of the necessity of the measure—grounded on principles of Reason and Justice:—Hence it is apparent, that, in proportion as sound knowledge, and enlightened political theories, dispel the clouds of ignorance,—with the erroneous prejudices always attendant on barbarism; so will a people—thus advancing in the liberal refinements of society, and acquiring correct principles of social order—invariably apply those principles, as fundamental maxims, in the practical administration of their government,—throughout its various departments.

The Formalities necessary to be observed, in a regular systematic administration of Law, render it a matter of the highest importance to the citizen, that all who are concerned in its dispensation, in our judicatories—whether in the capacities of judges, ad-

Law, which ensued in consequence of the discovery of Justinian's Pandects about the middle of the 12th century; yet Lawyers were undoubtedly well known, in the judicial tribunals of ANCIENT ROME,—under the titles of ADVOCATI and JURISCONSULTI. We find, in 3 Bl. Com. 28. 29—that advocates in the Civil Law had their HONORARIUM, or fee; and that this, by a decree of the Roman senate, could not exceed in any case 10,000 SESTERCES—which are equal to 242½ dollars;—a great sum in ancient times. BLACKSTONE (who, by the bye, estimates the amount at £. 80 sterling—355. 55 dolls.) cites the Annals of TACITUS, as his authority on this head, and this celebrated historian flourishes in the second century of the Christian era.

In the courts of Civil and Ecclesiastical Law, of modern ages, the offices of Advocate and Proctor correspond with those of Counsellor and Attorney, respectively—perhaps with some slight shades of variation, in the Common-law courts.

vocates, or executive officers of the Tribunals,-- should possess a competent *skill* in the Law. And in a country such as ours, where every reputable freeholder is liable to be at some time called upon, to officiate in a *judicial* capacity, as a *juryman*,--a knowledge of the *fundamental principles* of its Laws, is of the highest value.--Mr. *Gibbon* has truly said--that "the *Laws* of a nation form the most instructive portion of its History ;"*--an observation peculiarly applicable to our own nation. In pursuing, however, the *due* forms of Law, in judicial Tribunals, *delays* are sometimes *unavoidable* ; and it *may* happen, that even *abuses* may occasionally arise from this source. The profound and elegant historian, just quoted, notices the abuses too generally prevalent in the *Roman* or *Civil Law* judicatories, and incident to *their* forms and dilatory proceedings--He then makes this very apt reflection on the subject:--" The experience of an Abuse, from which our own age and country are not *perfectly* exempt, may *sometimes* provoke a generous indignation, and extort the *hasty* wish of exchanging *our elaborate jurisprudence*" (the English law,) "for the *simple* and *summary* Decrees of a *Turkish Cadhi*. Our *calmer reflection* will suggest, that such forms and delays are *necessary* to guard the *person* and *property* of the Citizen ; that the *Discretion of the judge* is the *first engine of Tyranny* ; and that the *Laws* of a people should foresee and determine every question that may probably arise in the exercise of power, and the transactions of industry."†

* Gibb. Decl. and Fall of the Rom. Emp. ch. 44.

† Ibid.

It will at the same time be admitted, that, notwithstanding *certain* Forms and *some* Delays are necessarily attendant on a *wise* and *efficient* administration of Law,—Abuses of any kind are by no means their *unavoidable* consequences, in *our* system of Jurisprudence; and therefore when *these* occur, they ought, as far as practicable, to be remedied.

If the mere “*Discretion of the Judge,*” uncontrolled by established and known Laws—or even the *discretionary* Verdict of a *Jury*, not *duly informed* respecting the *legal* points in controversy (as well as the matter of fact,) by an ample *discussion* of them before *Judges of Law*;—let it be repeated,—if such *Discretion* could ever be made the rule of deciding judicial causes, in our courts of justice; it would inevitably become, what Mr. *Gibbon* has pronounced it to be—“*The first engine of Tyranny.*” Mr. *Powell* very properly remarks, in his Essay upon the law of contracts and agreements, that “it is absolutely for the advantage of the public at large, that the Rights of the subject should, when agitated in a court of Law, depend upon *certain* and *fixed* Principles of Law; and not upon rules and constructions of Equity, which when applied there, must be *arbitrary* and *uncertain*,—depending, in the extent of their application, upon the *will* and *caprice* of the Judge.”

Indeed it must be apparent, on the slightest view of the subject, that if the Judge be either *incapacitated*, by *want of knowledge*, from deciding according to Law,—or *disposed*, by *inclination*, to make his own notions of Equity the rule of his decisions; the Judge then becomes, in fact, a *Legislator*: his will is sub-

stituted for *law*, and his *judicial* acts assume the shape of *legislative* acts. *Law*, in this case, would be truly a strange and capricious thing; for, depending, as it thus would, upon the arbitrary opinions of a multiplicity of *Judges*, in their various and separate tribunals, *the Law* would be nothing more than what *their several Wills*—prompted perhaps by *interest*, by *partiality*, or by *want of knowledge*—might choose to make it.

Such *uncertainty* in the dispensation of *Law* would produce a most deplorable state of things, in any country where it should prevail. There could be no true *Liberty*—no security for *Property*, or other *Rights of the Citizen*,—where this should be the case: for there could be no *uniform, established, and known Rule of Right*;—and, “*MISERA EST SERVITUS, UBI GUS AUT VAGUM AUT INCERTUM EST.*” The *uncertainty* which would thus be produced, and the *quality* of *Judicial Decisions* *arbitrarily* made, would be strictly conformable to the *Civil-law Maxim*,*—“*STET PRO*

* The celebrated *Puffendorf* very truly observes, that “no man can say—“*Sic volo, sic jureo;*” So I will, so I command;—unless,—“*STET PRO RATIONE VOLUNTAS;*” “His Will is his Reason.”—No sovereign upon earth possesses a right of ruling according to his own Will: and hence Mr. *Granville Sharp*, in referring to another maxim of the civilians, founded on the same principle—justly styles it, that unreasonable and dangerous position of the civil law, which attributes to the prince’s Will and Pleasure the force of Law.” How then can any man of common sense for a moment contend, that the Will of a *Judicial Magistrate*, whether it be unrestrained or undirected by Law, ought in any case to guide his *Judicial Acts*? For, as *Bracton* remarks, there is no *Rule* of conduct, where Will bears the sway and not Law.

FIATONE VOLUNTAS :”—And, (in the words of Mr. *Powell*,) “against the introduction of which Maxim into our Law,” (which those who have been best acquainted with it, have entitled the perfection of reason,) the country would, there can be no doubt, enter an *eternal Protest*, and exclaim with the barons of old—“*NOLUMUS LEGES ANGLIAE MUTARI*”—we are not willing that the Laws of the land be changed.

Let us then give this subject a solemn and dispassionate consideration. Let us neither suffer ourselves to be deceived, by projects of Innovation* on our ancient and established Rights, however plausible they may appear ;—nor carried away by foolish prejudices against Courts and Officers of the Law ; fomented by interested, treacherous, disappointed or designing men.—Let it be recollected that Britain produced a *Selden*, a *Hale*, a *Sommers* and a *Maynard*—a *Cambden*, an *Erskine* and a *Mackintosh*,—with many other illustrious Lawyers, who have distinguished themselves in the cause of rational *Freedom* : that our own country has constantly abounded with great characters in the same profession, justly celebrated for their *Patriotism* and their *Abilities* : that during and since the American revolution, many of

* “Towards the preservation of your Government, and the permanency of your present happy state, it is requisite, not only that you discountenance irregular oppositions to its acknowledged authority ; but also that you resist with care THE SPIRIT OF INNOVATION upon its PRINCIPLES, HOWEVER SPECIOUS THE PRETEXTS.”—See President WASHINGTON’S Address to the People of the United States—17th of Sept. 1796.

the most important public stations among us, both civil and military, have been ably and faithfully filled by men bred to the Law : and that, at the present period, the *President of the United States* and the *Governor of Pennsylvania*—both of them long known as professional Lawyers, as well as eminent Statesmen—have been, with many others of the same profession, elevated to the most dignified situations in the government, *by the suffrages of the People*.

It will, however, be apparent to all persons of observation and reflection, that nothing is more natural than for turbulent, desparate, and depraved men, dreading the *restraints* and *penalties* of the *Law*, to look with an evil eye on its *officers* and *professors*.

But the dreadful consequences that flow from this disposition, and from the absurd prejudices which lawless characters excite by various artifices in the minds of the more uninformed, have been too often exemplified.—England exhibited striking examples, in the times of Richard II. and Henry VI. of the miseries resulting from such principles and practices. In the former of these reigns,—hosts of poor deluded people, instigated by a few crafty and mischievous leaders, broke into open rebellion against the government ; committing, in their mad career, the most horrible crimes of every kind. The chiefs, on this occasion, were four men named *Jack Straw*, *Wat Tyler*, *John Littister* and *John Ball*. The Pretences of these miscreants and their followers—says Dr. Brady, in his *Cont. of the Hist. of England*—were “ **LIBERTY—CHANGING the EVIL CUSTOMS of the nation—And cutting off the heads of all the LAW-**

YERS, *great and small, wherever they could find them; for that the nation could never enjoy A TRUE LIBERTY, 'till THEY were killed.*"—Tyler the ringleader, who was of Kent, saw himself at the head of more than 100,000 rebels, principally of that county;—and his colleague *Straw*, being an Essex-man, headed 60,000 from that and the neighboring parts. This truly formidable, but infatuated rabble, broke open the prisons, letting out all the prisoners—by whom they were joined; and among these was *Ball*, a renegade priest—who, by inflaming the multitude with his seditious harangues, became one of their leaders, and a principal associate of *Jack Straw*. After giving "*liberty*" to all *traitors, felons, and other offenders against the Law*, whom they found in the *jails*—as well as to the *débtors*—they demolished *the Temple*, then a habitation for *Lawyers*; burning all their books and papers, with the records there deposited. Besides other enormities of the most atrocious kinds, they *actually beheaded* many eminent and worthy men; among whom were *Simon Sudbury*, archbishop of *Canterbury*—then *lord-chancellor*,—*Sir John Cavendish*, the *chief-justice of England*—and *Robert de Hales*, *prior of St. John's* and *high treasurer*.—*Littister*, who was a *dyer*, *compelled* the *lord Scales*, *Sir William Morley*, *Sir John Brewes*, *Sir Stephen Hales*, and *Sir Robert de Salle*, to remain with him and his partizans. The last named of these gentlemen, abhorring and openly condemning the conduct of the rebels, had his brains beaten out by them: And *Littister*, now setting himself up as *King of the Commons*, affected to consider the others

—who observed more prudence—as his favorites ; making Sir Stephen Hales his carver, &c.—*Ball* contributed greatly to the atrocities of this rabble : and in one of his harrangues to the lawless multitude, he took as his text, this senseless, vulgar, rhyming distich :

When *Adam* dalfé and *Eve* span,
Who was, then, a *Gentleman*?

This fellow (as *Rapin* observes,) “ by his seditious sermons, raised the people’s fury to the utmost height. He persuaded them, that all men being the sons of *Adam*, there ought to be no distinction ; and, consequently, it was their duty to reduce the world to a perfect equality. Pursuant to this maxim, they resolved to dispatch all the Nobility and all that were distinguished by their Posts : so, without further consideration, they cut off the heads of all *Lords, Gentlemen, Judges, Counsellors, and Lawyers*, that fell into their hands.”—Another historian, *Doct. Brady*, says—*Ball* advised his followers “ to kill all the great men of the kingdom ; then the LAWYERS and JURYMEN ; and lastly, to destroy all such, as they knew would be injurious to them, for the future ; and there would be equal Liberty, the same Nobility, and the like Power, amongst them.”—*Jack Straw* confessed, that their purpose was to slay the king, the nobility and gentry, and the rich clergy.—“ These things done,” continues *Brady*,—“ when there had been none greater, none more potent, none more knowing than themselves ; they were to have made such Laws, as they pleased, by which the people were to be governed : They intended,

also to have made kings; as *Wat Tyler*, in *Kent*—and in every other county, one.”

These wretched men, however, all paid the forfeit of their lives for their crimes. *Tyler* was slain at the head of his rabble—*Straw*, *Littister*, and *Ball*, with many others of less note, their adherents, were executed as traitors—And their deluded followers were all either killed in battle or dispersed.—Thus ended the reign of Anarchy, at that period of the English history.

But, seventy years afterwards—in the year 1450, a scene of the same kind was exhibited on the same theatre: The plot of the piece, and the actors, were similar to those of the former era—and the catastrophe was also of a like nature. One *Jack Cade*—who had been obliged to fly from his native country into France, on account of his crimes—went soon after into England; and there found some discontents among the people, purely of a party-political nature:—Restless and discontented himself, as well as vicious in his disposition, he speedily availed himself of this ill temper. Assuming the popular name of *Mortimer*, 20,000 of the malecontents flocked to the standard, which this fugitive from justice had erected, under the pretence of a necessity for “reforming the Government and easing the People;” and he inflamed his followers, by publishing complaints of numerous public abuses,—demanding, at the same time, a redress of grievances. This banditti, flushed with their success in defeating a small force sent against them, progressed with increasing

insolence, till, finally, after committing many acts of murder, rapine and other enormous crimes, they were routed with great slaughter ; and Cade their chief was slain, singly, by the hands of a country-gentleman, who found him on his grounds. This levelling miscreant—who, as he pretended, wanted to “reform the Government” and “ease the People” and who, like his predecessors *Jack Straw*, *Wat Tyler*, with others of the same cast, abhorred the Law, Lawyers and Knowledge—thus terminated his career : and twenty-six of his chief associates expiated their crimes on a gibbet.—*Cade* had been styled Captain MEND-ALL, by his partizans !

The immortal *Shakespeare** has so admirably pour-

* *Shakespeare*, as a DRAMATIC writer, is not quoted as an AUTHORITY. But this celebrated author was intimately acquainted with the windings of the human heart : he was versed in the history of his own country ; and many of his plays are founded on HISTORICAL occurrences in its annals---Hence, such of his dramatic performances are strikingly characteristic of the manners, principles and conduct, of the times which he represents. The GREAT OUTLINE of his *Henry VI.* among others, is conformable to historical FACTS ; though his fancy has undoubtedly embellished the piece, by the TOUCHES he has given some of its MINUTER PARTS. Notwithstanding, he has certainly well illustrated the characters of licentious INNOVATORS—and of ignorant, worthless, and desperate DISTURBERS OF CIVIL SOCIETY,—in the passage above quoted from that play. It is a PICTURE which, indeed, TRULY represents the PRINCIPAL FEATURES of the ORIGINAL.

These considerations will therefore, it is hoped, be admitted as an apology, for the introduction of the above quotation on the present occasion.

trayed the character, principles, and views of these very men—in the second part of his *Henry VI.* that an extract from it will serve to illustrate the subject. In the second scene of the fourth act, the bard exhibits *Cade* in the midst of his band of “*Reformers:*” and the following part of the drama is well worthy of attention.

CADÉ. Be brave then, for your Captain is brave, and vows *Reformation*. There shall be in England seven half-penny loaves sold for a penny; the three-hoop'd pot shall have ten hoops, and I will make it felony to drink small beer. All the realm shall be *in common*, and in Cheapside shall my palfrey go to grass; and when *I am King*, as King I will—

ALL. God save *your majesty!*

CADÉ. I thank you, *good people*—There shall be no money; but all shall eat and drink upon my score; and I will apparel them all in one livery, that they may agree like brothers and *worship me*, their Lord.

DICK. The *first* thing we do, *let's kill ALL THE LAWYERS.*

CADÉ. Nay, that I mean to do. Is not this a lamentable thing, that the skin of an innocent lamb should be made Parchment; that Parchment being *scribbled o'er*, should *unda* a man?—Some say the *Bee stings*; but I say 'tis *Bees wax*;—for I did but once *seal* to a thing, and I was never my own man since.—How now?—Who is there?—

[Enter a Clerk]

WEAVER. The Clerk of Chatham—He can *read* and *write*, and *cast accounts*.

CADE. O monstrous!

WEAVER. We took setting boys, copies.

CADE. Here's a villain!

WEAVER. He 'as a Book in his pocket, with red letters in it.—

CADE. Nay, then he's a conjurer.

DICK. He can make Obligations, and write *Court-hand*.

CADE. I am sorry for't: the man is a proper man, on mine *honor*; unless I find him *guilty*, he shall not die.—Come hither, sirrah, I must examine thee—What is thy name?

CLERK. Emanuel.

DICK. They use to write it on the top of letters—
'Twill go hard with you.

CADE. Let me alone—Dost thou use to *write thy name*? or hast thou a *Mark* to thyself, like an *honest plain-dealing* man?

CLERK. Sir, I thank God, I have been so well brought up, that *I can write my name*.

ALL EXCLAIM. He hath *confess'd*; away with him; he's a Villain and a Traitor.

CADE. Away with him, *I say*; hang him,—with his *pen and ink-horn* about his neck.

[Exit the Clerk, to execution—attended by one of the rebels.]

Such, we find by the testimony of historians, have been the effects in former times of *levelling* principles, —and of the attempts made by *ignorant* and *licenti-*

ous men, to fit the *administration of justice* and the *Conduct of State affairs*, to their views!--Indeed*

* Besides the instances above mentioned, in earlier times, we find that, so late as the reign of Edward VI. (ANNO 1549,) formidable insurrections were excited in some parts of England, by factions and discontented Innovators. The tumults rose to a very great height in the County of Norfolk. At first, INCLOSURES were the OSTENSIBLE ground of complaint: but the malcontents, finding their numbers amount to 20,000 men, became insolent--and proceeded to more exorbitant pretensions than they FIRST AVOWED. They demanded, among other things, THE SUPPRESSION OF THE GENTRY (meaning thereby, men of character, note and estate, and THE PLACING OF NEW COUNSELLORS ABOUT THE KING. Headed by one KET a tanner--this man assumed the government over them, and exercised his authority with the utmost arrogance and outrage. Having stationed himself on a commanding ground near the city of Norwich, this Leveller erected his Tribunal under an old oak, which they called "the Oak of REFORMATION;" and summoning the gentry before him, he made such decrees as might be expected from a man of his views and character. Finally, however, this "REFORMER," with his rebellious adherents, was totally routed by the earl of Warwick, at the head of 6204 men. Two thousand of the insurgents fell, in the action and pursuit: KET was made prisoner, and hanged; and nine of his deluded followers shared the same fate--on the boughs of "THE OAK OF REFORMATION." In some of the other counties, a few of these miserable people became victims of the Laws of their country, which they had treasonably opposed; others threw down their arms, availing themselves of a general amnesty offered by the government;--and thus the insurrection was entirely suppressed.

RELIGIOUS grievances, mostly imaginary, were the pretences of the rebels, in some parts of the country: and it is remarkable, that one of the demands of those in Devonshire was,--"THAT THE PEOPLE SHOULD BE FORBID TO READ THE BIBLE!"--But KET's followers, in Norfolk, were actuated by different motives---Rapin informs us, that "the Oak of REFORMATION" was thus called by them,--"because they talked on-

more ancient times are not without examples of the dreadful consequences, that flow from the schemes and machinations of flagitious *Innovators*—set on foot under specious pretexts of “*reforming the Government,*” and “*easing the people.*” Even in our own day, the English nation had nearly witnessed a dissolution of their Government—a total destruction of Order in their Civil Society—and a prostration of all those *Rights*, by which the Lives, Liberties and Property of their People are secured; and this, too, through schemes of pretended *reformation*, projected by a visionary Innovator—lord *George Gordon*.

Such things as these furnish an awful and impressive lesson, to the people of this country—They have a strong claim on our most solemn and dispassionate reflections.—We are blessed with the freest Government under heaven;—founded, in all its departments, on defined Federal and State Constitutions; which secure, in the amplest manner that human wisdom can devise, to every American Citizen—whatever may be his condition—the complete enjoyment of all his just Rights, civil and religious.

But, when the Spirit of Party is carried to a great height, it is extremely difficult to obtain, for almost any subject of a political nature, a dispassionate consideration. That Spirit mingles itself more or less, in all our concerns; and, when carried to excess, it

ly of REFORMING THE STATE; Religion being neither the cause nor pretence of their rising.” “Their design,” continues the historian, “was TO DESTROY THE GENTRY—and put some of THEIR OWN body about the KING, TO DIRECT AND GOVERN HIM.”

insensibly generates Prejudices—even in the most liberal minds : thus, in some degree obscuring correct conceptions, respecting every thing connected with it, in men of the soundest understanding. Pride of Opinion—or a strong inclination which we feel to adhere to opinions which we have once warmly supported, even against the suggestions of our better judgment—is too often a mean of keeping alive the Spirit of Party. Hence it is, that we are sometimes driven to the hazard of sacrificing our dearest interests, by the impulses of Passion, Pride and Error. These remarks are not intended to be applied to any particular Party : They are, unfortunately, too far applicable to Party of every description : But they have a special reference to an unreasonable and excessive Party-spirit. Good men may, very naturally, be supposed to entertain different opinions concerning measures of government and public characters ; and such diversity of opinion often forms, of itself, the basis of party. But, with respect to the Government itself—or, more properly, the Constitution, (especially, where this is a defined one, like our own,)—there can but *one party* (if the expression may be admitted) amongst men of probity ; and that will be a *nation party* : for, though individuals of *this* may, entertain different sentiments on unessential matters, and some minor points,—they will, as friends of their country, make the provisions of the Constitution, according to such fair and liberal interpretation of the instrument, as will result from a harmony of all its parts and accord with its true spirit, the Rule of their political conduct. Wise men will

also perceive that it is their interest—independently of their duty—to do this : for an excess of party-spirit is never without a tendency to dangerous consequences, in a free country. Nor are the most violent partizans always actuated by the greatest disinterestedness and purest patriotism. Much, it is true, depends on the constitutional temperament of some men, in this particular : and very good citizens may, on some occasions, be carried beyond the bounds of reason and candor, in political matters, by an overheated, yet well-meant zeal. Still, the Welfare of the Country, the National Honor, and the Happiness of Society—all demand the aid and countenance of every good man in the community, to allay the heat of party-spirit. If the object of any party be either men or their measures, our periodical Elections afford a full opportunity of effecting a change in such, as the majority of the People shall judge the Public Interests to require ; and in the intervals, the public conduct of all public characters is fairly open to investigation and animadversion. Here, then, is the regular and constitutional Remedy, for political evils.

Let no one be deterred, by a fear of incurring the censure of any party, from using his endeavors to moderate the spirit of party. Independently of the sanction which his efforts will, sooner or later, receive from the virtuous and intelligent part of his countrymen—the *mens sibi conscia recti* will sustain him, with fortitude, against any reproaches which malevolence may cast upon his political character. What were the sentiments of the late President *Washington*, on this head?—Read his own words, as con-

veyed to the People of the United States, in his Address to them, when retiring from the Presidency.—
 “The Spirit of Party, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled or repressed; but in those of the popular form, it is seen in its greatest rankness and is truly their worst enemy. The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissention, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism.— But this leads at length to a more permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose, *in the absolute power of an individual: and, sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation—*
 ON THE RUINS OF PUBLIC LIBERTY.* Without looking forward to an extremity of this kind (which, nevertheless, ought not to be entirely out of sight,) the common and continual mischiefs of the spirit of party are sufficient to make it the Interest and Duty of a wise people, to discourage and restrain it.”

Thus spoke the great *Washington*.—And is there an American, that does not respect the sage admoni-

* “Some states have lost their Liberty by particular accidents: but this calamity is generally owing to the decay of Virtue.” *Dickinson's FARMERS LETTERS*, lett. 12.

tions of this venerated character, this departed *Friend of his Country*, as a SOLEMN WARNING?—Very recent events, in another quarter of the globe, strongly illustrate the truth of his observations;—though these were predicated on a knowlege of human nature, as well as many memorable incidents in the history of former times.—Let every good man, then, “discourage and retrain,” as far as in him lies, the acrimonious effusion of party-spirit.

The writer of the foregoing observations earnestly recommends them to the consideration of his fellow-citizens, in the spirit of sincerity and truth. They are dictated by a zealous desire to promote the welfare of our common country, in which the individual happiness of us all is deeply involved: And he offers them to the public, abstracted from all views of a personal or of a party nature. He avows himself—as he has always done—a Republican,—according to the legitimate principles of our federal and state Constitutions; an American citizen, who respects the Laws and Government of his Country: and such, he is conscious that he is. It is to Principles, and not to Men, politically considered, that he is attached. He thinks, that (in the language of the Chief Magistrate of the Union) it is incumbent on all true and legitimate AMERICANS, to “unite with one heart and with one mind,” in order “to restore to social intercourse that harmony and affection; without which, Liberty, and even Life itself, are but dreary things.” There are undoubtedly, good men of different parties, in a free government; though it is equally true, there are hypocrites and dangerous cha-

racters in all parties: And the sentiment of the President is strictly correct, that "every difference of Opinion is not a difference of Principle;" notwithstanding, as he observes, "we have called by different names, brethren of the same principle."

Let us then—after a serious consideration of what our Duty, our Honor, and our Interest require—nay, of what our most sacred obligations to God, our Country, Ourselves and our Posterity,* demand; let us all, after duly estimating these things, determine to act a part worthy of a great, free, and rational people: in order that we may be enabled to transmit, unimpaired, to our Children, the inestimable Privileges, which we ourselves rightfully possess. But let us at the same time remember, that we can neither faithfully nor effectually discharge the sacred trust with which we are invested; unless we discard from our bosoms the virulence of Party-spirit:—and also resolve, most vigilantly to beware of Innovators; and of all new projects of *pretended* Reformation in our great political institutions,—whether suggested by *Ignorance* and *Folly*, by *Hostility to the Government*, or by a *depraved Self-interestedness*.

* "Let us take care of our RIGHTS, and we therein take care of our POSTERITY."—Dickinson's Farmers Lett. lett. 12.

OBSERVATIONS*

ON THE

EXTENTION OF THE JURISDICTION

AND

POWERS OF JUSTICES OF THE PEACE;

CONTEMPLATED BY A BILL WHICH PASSED BOTH HOUSES OF THE GENERAL ASSEMBLY OF THIS COMMONWEALTH, IN THEIR LAST SESSION, ENTITLED "AN ACT FOR THE RECOVERY OF DEBTS, NOT EXCEEDING ONE HUNDRED DOLLARS; AND TO DIRECT THE MANNER OF CHOOSING CONSTABLES IN THIS COMMONWEALTH."

Respectfully submitted to the Consideration of the present
General Assembly.

By a Citizen of Pennsylvania.

DECEMBER 7, 1802.

As this Bill (independently of other considerations) contemplates such a change in the existing system of our Jurisprudence, as, it is conceived, would materially impair the ancient and Constitutional *Right* of TRIAL BY JURY, to which the Citizens of Pennsylvania are intitled; I shall endeavor to designate, as concisely as I can, the foundation upon which that Right *now* rests:—At the same, time I

* These are the GENERAL OBSERVATIONS referred to, in the beginning of the Preface. But a few NOTES, not originally printed with them, are now added.

In treating of the same subject, a second time—though in a more extensive view,—SOME REPETITIONS seemed unavoidable; especially in a discussion of this nature. It is, however, hoped—that the CIRCUMSTANCES, connected with the ORIGINAL publication of the following Obser-

shall adduce some high and solemn Authorities to shew, with how sacred a reverence this Right has been cherished —and with what jealous circumspection every thing, which might tend to its violation, has been guarded; not only by our Ancestors, but by our Compatriots and ourselves, both before and since the Independence of these states.

We find it stated by Judge Blackstone, and other writers on law and government, that the TRIAL BY JURY is of great antiquity in *England*; where it seems to have been cœval with the first civil government of the nation. Its establishment and use in Britain, of what date soever it be—though for a time much impaired and shaken, by the introduction of *Norman* modes of Trial,—was always so highly esteemed and valued by the *People* of England; that no Conquest, no change of government, could ever prevail to abolish it. In *Magna Carta*, it is more than once insisted on as the *principal Bulwark of English Liberty*: And it has been established and confirmed by English Parliaments, no less than fifty-eight times since the invasion by the Normans; a circumstance unprecedented, with relation to any other privilege.

Traces of *Juries* may be found in the legal institutions of all those nations, who adopted the feudal system, as in Germany, Sweden, France, and Italy; —all of whom had a tribunal composed of *twelve*

vations; together with those extraordinary subsequent events, which have induced the writer now to submit the whole to the consideration of his Fellow-Citizens, GENERALLY; will be admitted as an apology, for his having thus, in a few instances, mentioned the same thing twice.

good men and true. Indeed this tribunal was universally established among the Northern nations of Europe, (as well as some of the Southern); and was so interwoven with their respective Constitutions, that the earliest accounts of these, point to some vestiges of the other: And it was ever esteemed, in all the countries where it prevailed, a *Privilege of the highest and most beneficial nature.*

Judge Blackstone's Eulogium on this Institution, and his admonitions respecting its violation or abuse, deserve particular notice on the present occasion.—
 “The *Trial by Jury* (says this able Commentator) has ever been, and I trust ever will be, looked upon as *the glory of the English Law.* And, if it has so great an advantage over others in regulating *civil property*, how must that advantage be heightened, when it is applied to *criminal cases!*”—“It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his *property*, his *liberty*, or his *person*, but by the unanimous consent of his neighbors and equals.—a constitution, that I may venture to affirm has, under Providence, secured the just *liberties* of this nation for a long succession of ages. And, therefore, a celebrated French writer (*Montesquieu*),—who concludes, that because Rome, Sparta, and Carthage, have lost their liberties, those of England in time must perish,—should have recollected that Rome, Sparta, and Carthage, at the time *when their liberties were lost*, were *strangers to the Trial by Jury.*”

“Great as this eulogium may seem (continues this author), it is no more than this admirable constitu-

tion, when traced to its principles, will be found in sober reason to deserve. THE IMPARTIAL ADMINISTRATION OF JUSTICE, which secures both our persons and properties, IS THE GREAT END OF CIVIL SOCIETY. But, if that be entirely intrusted to the *Magistracy*, a select body of men, and those generally selected by the prince or such as enjoy the highest offices in the state,—their decisions, in spite of their own natural integrity, will frequently have an involuntary bias towards those of their own rank and dignity: It is not to be expected from human nature, that *the few* should be always attentive to the interests and good of *the many*—On the other hand, if the power of *Judicature* were placed at random in the hands of the multitude, their decisions would be wild and capricious, and a new Rule of Action would be every day established in our Courts. It is wisely therefore, ordered, that the *Principles* and *Axioms* of *Law*,—which are general propositions, flowing from abstracted reason, and not accommodated to *times* or to *men*,—should be deposited in the breasts of the *Judges*;* to be occasionally applied to such *Facts*, as come properly ascertained before them. For here partiality can have little scope: The Law is well known, and is the same for all ranks and degrees; it follows as a regular conclusion, from the premises of fact pre-established. But, in settling and adjusting a *question of fact*, when entrusted to *any single Magis-*

* It must still be recollected, however, that, as the Law is NOW SETTLED, the JURY may decide the LAW, as well as the Fact, whenever they think proper to do so.

erate, Partiality and Injustice have an ample field to range in;—either by boldly asserting that to be proved which is not so; or by artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder. Here, therefore, a competent number of sensible and upright *Jurymen*, chosen by lot from among those of the middle rank, will be found the *best Investigators of Truth*, and the *surest Guardians of Public Justice*. For the most powerful individual in the State will be cautious of committing any flagrant invasion of another's Right, when he knows that the *fact* of his oppression must be examined and decided by *twelve indifferent men, not appointed till the hour of Trial*; and that, when once the *fact* is ascertained, the *Law* must of course redress it.—*This, therefore, preserves in the hands of the PEOPLE that share, which they ought to have in the administration of Public Justice, and prevents the encroachments of the more powerful and wealthy citizens.*—“*Every new Tribunal, erected for the decision of Facts, without the intervention of a Jury,** (whether composed of JUSTICES OF THE PEACE, Commissioners of the Revenue, Judges of a Court of

* The COUNCIL OF CENSORS, under the Constitution of 1776, were very properly tenacious of the RIGHT OF JURY-TRIAL. Besides the law passed in the case of GEO. A. BAKER and ISAAC AUSTIN, already adverted to, the committee which was appointed by that body, to enquire into violations of the Constitution, reported sundry ACTS OF ASSEMBLY as being unconstitutional,—on the express ground of their having infringed that clause of the Constitution, which says—“TRIALS BY JURY SHALL BE AS HERETOFORE,” &c.—In noticing these, they advert to some laws for establishing, in effect, “new Tribunals, erected for the decision of Facts, without the intervention of a Jury.”

Consciences, or any other *standing* Magistrates) is," as this very intelligent writer justly observes, "*a step towards establishing Aristocracy, the most oppressive of absolute governments. The feudal system, which, for the sake of military subordination, pursued an aristocratical plan in all its arrangements of property, had been intolerable in times of peace; had it not been wisely counterpoised by that Privilege, so universally diffused through every part of it,—the Trial by the feudal Peers. And in every country on the continent, as the Trial by the Peers has been gradually disused, so the Nobles have increased in power, till the state has been torn to pieces by rival factions, and Oligarchy in effect has been established, though under the shadow of legal government; unless where the miserable Commons have taken shelter under absolute Monarchy, as the lighter evil of the two. And, particularly, (continues this writer) it is a circumstance well worthy an Englishman's observation; that in Sweden the TRIAL BY JURY, that bulwark*

In the discussion of such laws, preparatory to their being passed, the waste of much TIME--and consequently, of TREASURE--must have been incurred;--a circumstance, too, the more grievous,--inasmuch as the EVILS, thereby occasioned, were necessarily the result of measures of an alarming and dangerous tendency.

There is, however, one reflection of a consolatory nature, made by this Censorial Tribunal, in the course of their deliberations, that is equally applicable to the occasion NOW, as it WAS THEN:--"We flatter ourselves," say they, "that, by recurring to the line of DURY, prescribed to the several branches of government by the Constitution,--the Expences, and burdensome Length of the Sessions of the Legislature, may be SAVED to the good people of Pennsylvania."

of Northern Liberty which continued in its full vigor so late as the middle of the last century, is now fallen into disuse: And that there, though the regal power is in no country so closely limited," (it must, however, be recollected, that Blackstone wrote before the late Revolution in that kingdom,) "yet *the Liberties of the Commons are extinguished, and the government is degenerated into a mere Aristocracy.*—He then adds—"It is therefore, upon the whole, a *Duty*, which every man owes *to his Country, his Friends, his Posterity, and Himself*, to maintain to the utmost of his power: this valuable constitution in *all its Rights*; to restore it to its ancient dignity, *if at all impaired by the different value of property, or otherwise deviated from its first institution*; to amend it, wherever it is defective; and, *above all, to guard with the most jealous circumspection against the introduction of new and arbitrary methods of Trial, which, under a variety of plausible pretences, may in time imperceptibly undermine the best Preservative of English Liberty.*"

The learned and ingenious Author of "*Considerations on Criminal Law*"—very properly asks—"If the *Judge, who expounds the Law*, had the power of *determining* according to *his own exposition*, might not an inlet be opened for *arbitrary and partial decisions*?—Might not the Judge, likewise, as well be entrusted to *decide concerning the Evidence of the Fact*?—For (says he) by a latitude of Construction, he might bring the Fact within the severity of the Law, *contrary to the Sense of the Legislature*; or, by a confined exposition, he might restrain it, to the hindrance of Justice."—"Thus (continues this Author)

the Life and Liberty of the subject might depend on the decision of one man; who might possibly, in some cases, be more likely to be biassed than *twelve Jurors*, totally indifferent to the parties concerned, who are sworn to give a true verdict, and must do it under the peril of a heavy punishment,—and whose duty it is to state their doubts and difficulties, if any should occur, for the advice of the Court.”—“Is there not (he further asks) less to be apprehended from the occasional mistakes of judgment in *twelve such Jurors*, than the possible error of Judgement or of Will in *the Judge*, who, whatever be his knowledge or probity, is but *a man?*”

The importance of this subject, and the forcible manner in which the sense of these writers apply to it, on the present occasion, will, I presume, justify the length of the extracts here made from their works.

I shall now beg leave to offer some Authorities of another kind:—Such as, I am persuaded, an *American Legislature* will deem justly entitled to their highest veneration and most serious reflection.

In the Address of the *American Congress*, to the People of Great-Britain—dated the 5th of September, 1774—the Delegates of the American People, composing that Congress, say—“We claim all the Benefits secured to the subject by the English Constitution; and, particularly that *inestimable* one, of TRIAL BY JURY.”—They observe further, that, to force an unconstitutional and unjust scheme of Taxation, “every fence that the wisdom of our British ancestors had carefully erected against *Arbitrary*

power, had been violently thrown down, in America; and the *inestimable* RIGHT of TRIAL BY JURY taken away, in cases that touch both *Life* and *Property*.”

On the 14th of October, 1774, Congress passed a number of *Resolves*, containing a *Declaration* of sundry RIGHTS. The fifth Resolution is in these words—
“RESOLVED, N. C. D. That the respective Colonies are entitled to the *Common Law** of England; and, more especially, to the great and inestimable Privilege of being tried by their PEERS OF THE VICINAGE, according to the course of that Law.”

On the 24th of October, 1774, an “ASSOCIATION” was entered into, of all the *Delegates of Congress*; which mentions, among other Grievances, the attempts of the British government to deprive the American People, in many instances, of the *Constitutional Trial* by JURY.

On the 26th of October, 1774, Congress Addressed the Inhabitants of Quebec. After asserting, in this, as the first grand Right of their constituents and themselves—“that of the People having a share in their own Government, and, in consequence, of being ruled by Laws which they themselves approve, not by edicts of men, over whom they have no control; they say—The next *great Right* is the TRIAL BY JURY. This (they go on to observe) provides, that neither *Life, Liberty, nor Property*, can be taken from the possessor, until *twelve* of his unexception-

* By the DECLARATION OF INDEPENDENCE, the American People complained of the king of Great-Britain (among other things) “For abolishing THE FREE SYSTEM OF ENGLISH LAWS, in a neighboring Province.” &c.

his countrymen and peers, of his vicinage--who, from that neighborhood, may reasonably be supposed to be acquainted with his character, and the characters of the witnesses, upon a fair Trial, and full enquiry face to face, *in open Court, before as many of the People as choose to attend*,--shall pass their sentence upon oath against him."

In the Address of Congress to the People of Ireland--dated the 10th of May, 1775--the *violation of the Right of Jury-trial*, by the Acts of the British government, is noticed in these words:--"Our ancient and inestimable Right of Trial by Jury was, in many instances, abolished; and the Common Law of the Land made to give place to Admiralty Jurisdictions."--The tendency of those measures of the mother-country *to subvert the Right of Trial by Jury*, by substituting Admiralty and Vice-admiralty Courts, with Civil Law jurisdiction, wherein single Judges preside--besides their actual violation of our constitutional mode of Trial, by a Jury of the vicinage--had been mentioned in the Address of Congress (on the 21st of October of the preceeding year) to their constituents: as well as in sundry other State-papers of the same illustrious Assembly, and other public Bodies in this country, at different periods of the American Revolution.

It deserves, however, to be particularly remembered, that one of the *Grievances* stated, in the DECLARATION OF INDEPENDENCE, as a ground of our separating from the government of Great-Britain,--and exhibited as an high charge of Misrule against the British king,--is, "For depriving us, in many cases, of the *Benefits* of TRIAL BY JURY."

Such are the Testimonies borne by the *People*, and the ablest and most venerable Patriots, of this Country, in support of the *Right* of TRIAL BY JURY, during the earlier periods of the Revolution: The subsequent Authorities, for preserving this Right inviolate, are as follow:

By the 25th section of the frame of Government established by the former Constitution of the Commonwealth of Pennsylvania, it is declared that "*Trials shall be by JURY, as heretofore.*"

In the 9th Article of the *Amendments* to the CONSTITUTION OF THE UNITED STATES, it is declared—that, "In Suits at Common Law, where the *value* in controversy shall exceed \$20 the RIGHT OF TRIAL BY JURY shall be preserved:"—And by the last clause in the 2d section of the 3d Article of the same Constitution, it is declared—that "The Trial of all *Crimes*, except in cases of Impeachment, shall be by JURY."—So—that the federal Constitution has carefully guarded against encroachments on the *Right of Jury-trial*, both in civil and criminal cases: and it will be recollected, that the *Amendment* just mentioned was engrafted upon the Constitution of the General Government, for the special purpose of removing those jealousies that had been manifested by the People, lest violations of the *Right* of Trial by Jury might take place, under laws of Congress; in consequence of an omission, in the original Constitution, to secure that Right in *civil* cases.

Finally;—by the 6th section of the 9th Article of the existing Constitution of this Commonwealth, it

is Declared—"That TRIAL BY JURY shall be as heretofore, and the RIGHT thereof remain inviolate." The whole of this Article constitutes a DECLARATION OF RIGHTS; and was ordained, in order (as it's Preamble sets forth) "That the general, great, and essential *Principles* of LIBERTY, and FREE GOVERNMENT, may be recognized and unalterably established."

In addition to these Authorities, we find the *Right* of Jury-trial guarded from infraction by the Constitutions of several of our sister-states. For example—In the Massachusetts' "*Declaration of Rights*," (art. 15.) it is provided—that, "In all controversies concerning Property, and in all suits between two or more persons, (except in cases in which it has *heretofore* been otherwise used and practised,) the parties have a *Right* to a *Trial by Jury*: and this method of procedure shall be held sacred; unless in causes arising on the high seas, and such as relate to Mariners' wages, the Legislature shall hereafter find it necessary to alter it."

In the Delaware "*Declaration of Rights*," it is laid down (sect. 13th.)—"That Trial, BY JURY, of *Facts*, where they arise, is one of the greatest securities of the Lives, Liberties and Estates, of the People."

The 18th section of the Maryland "*Declaration of Rights*" is in the same language; and the 3d* 19th, and 21st sections further corroborate the Right of Jury Trial.

* The third section declares—"That the Inhabitants of Maryland are entitled to the COMMON LAW of England, and the TRIAL BY JURY according to the course of THAT LAW," &c.

The 14th sect. of the North-Carolina "Declaration of Rights" is in these words—"That in all controversies at Law, respecting Property, the ancient mode of TRIAL BY JURY, is one of the best securities of the *Rights of the People*; and ought to remain sacred and inviolable."

By the 6th sect. of the 9th article of the Constitution of South-Carolina, it is declared—that "The TRIAL BY JURY, as heretofore used in this State, (and the Liberty of the Press,) shall be forever inviolably preserved."

Such are the Testimonies, among others, borne in favor of the sacred Right of Jury Trial, by some of our Sister-states.

It is, in reality the policy of the English system of Jurisprudence, which we inherit,—not to submit the decision of *Facts*, in Courts of Law, to the *Judges*:—It is the province of *Juries* to try all matters of Fact, in such Courts; and to determine the Law also, in all Jury-trials, if they shall so choose to do. Even in the High Court of Chancery—where decisions generally are had according to the Rules and Principles of the *Civil Law*, which knows not of the Trial by Jury,*—the jealous attachment of the Eng-

* "The Courts of Equity are, in many things, conformable to the Rules of the CIVIL Law; of which the chief is the high court of CHANCERY. There, suits are commenced by petition or bill; Witnesses PRIVATELY examined; and NOTHING is there determined by A JURY OF TWELVE MEN,—but all the decisions are made by the CHANCELLOR."
[See Pref. to Dr. Burn's Eccles. Law.]

lish nation to this Privilege, will not permit the Chancellor (their highest Judicial Officer,) to decide on controverted or doubtful *Facts*: But it is rendered necessary, wherever these occur in chancery-cases, to have an issue joined on such facts,—and the Trial of that issue to be *by a Jury*, in a Court of Law. Thus we perceive, that the Juridical system, whose fundamental Rules and principles we have adopted as our own—and the privileges and benefits of which we have long experienced—will not admit of the judicial decision of matters of Fact, in cases which may affect the Life, the Liberty, or the Property, of any one under its jurisdiction, without a TRIAL BY HIS PEERS: whether in the High Court of Chancery; or in the Courts of Common Law, where more than a *single* Judge preside. Indeed, the intervention of a Jury is indispensable, in every judicial tribunal of Common Law jurisdiction, within the United States; under the ancient Law of the Land, as well as our general and particular Constitutions of Civil Government: Excepting, only, cases of Impeachment, and

But in the Chancery there are two distinct tribunals; the one ordinary—being a court of Law; and the other extraordinary—being a court of Equity. The ordinary legal court in Chancery is of much higher antiquity, than the court on the equity side. But it is very limited, with respect to the description of objects, over which it has jurisdiction; and if any cause come to issue in this court—that is, if any FACT be disputed between the parties,—the Chancellor cannot TRY it, having no power to summon a JURY:—The record must, in this case, be delivered into the KING'S BENCH (the supreme Common-law court of the realm,) where it shall be tried by the Country (i. e. a JURY,) and judgment shall be given thereon.

the jurisdiction heretofore vested in Justices of the Peace, in certain specified cases.

In Pennsylvania, the Justices' jurisdiction, "for determining small debts without the formality of Trial," did not exceed 40 shillings, until the year 1745; when an Act was passed, extending it to debts and demands not exceeding 5 Pounds. By an Act of the 23d of Sept. 1784 (repealed, and supplied by another of the 5th of April, 1785,) the jurisdiction was extended to debts and demands not exceeding 10 Pounds.

It will be perceived, that, at the time of establishing the present Constitution of this Commonwealth, this jurisdiction of Justices of the Peace did not extend further than to debts and demands, of a certain description, amounting to 10 Pounds.

Without taking, however, a retrospective view of the subject, with reference to an Act of the Legislature—which was passed almost four years subsequent to the adoption of the Constitution, (but since expired by its own limitation, and afterwards further continued in force by another Act,) I beg leave to consider the contemplated measure of a still further extension of such jurisdiction, in relation to the existing Constitution of the Commonwealth, at the present moment. This great fundamental Law of the State declares, "That TRIAL BY JURY shall be *as heretofore*, and the RIGHT thereof remain inviolate." At present, this "Right" comprehends all cases, wherein the Debt or Demand *exceeds* 20 Pounds; and all such as are *excepted* out of the Jurisdiction of

Justices of the Peace, according to the *Regulations*, now established by Law.

It, therefore, appears evident to me, that any Legislative Act for extending Justices' jurisdiction to the value of a single Cent *beyond* the sum now *legally* cognizable by them—or, which should comprize, within their jurisdiction, cases of any other description than those *already* provided for, by Law, conformably to the Constitution—would not, if passed subsequently to this time, leave the Trial by Jury “*as heretofore:*” considering that the *present time* would be an “*heretofore,*” viewed retrospectively from the period of passing such subsequent Act. Consequently, that the “*Right*” of *Jury-trial*—as that Right is now enjoyed, under the Guarantee of the Constitution—would not, in that case, “*remain inviolate.*”

I am aware it may be said, that either plaintiff or defendant, if dissatisfied with the decision of his cause, when made by a Justice of the Peace—may have it transferred to the proper Court of Record; there to be tried by a *Jury*. But this does not, in my humble opinion, remove what I conceive to be a *Constitutional* objection to the proposed extension of Justices' jurisdiction. Because, *at present*, the plaintiff is *de facto* compellable to bring his action in a Court of Law, in the *first instance*, where the debt or demand is above 20 Pounds; and the defendant is *not under the necessity* of resorting, on his defence, to a *Trial* by a *Jury of his peers*,—as a *secondary* measure. Nor is either plaintiff or defendant subjected, when the cause is *first* brought in a Court of

Record, to some of those Inconveniences and Hardships to which he is liable, and which he must encounter, when he is *obliged* to submit the *primary* jurisdiction, in his cause, to a Justice of the Peace.

The *reverse* of this would, however, be the case, if the proposed Bill should be passed into a Law: And therefore the mandatory clause of the Constitution—"That TRIAL BY JURY shall be as *heretofore*, and the RIGHT thereof remain *inviolated*"—would not be complied with.

Abstractly from considerations of *this* nature—which are, in my judgment, of primary importance—others, equally obvious, that I humbly conceive operate very forcibly against the mere *policy* and *expediency* of the contemplated extension of the jurisdiction of Justices of the Peace, present themselves to my mind. I shall forbear exhibiting any specification of these; not doubting that, on mature deliberation, the wisdom of the Legislature of Pennsylvania will readily enable them to discern the *prudential* and *reasonable* Objections to the proposed measure, here alluded to.

Permit me, however, barely to remark, that some of these Objections are comprehended in the passages I have quoted, on this occasion; whilst others of them are more particularly applicable to the existing circumstances of the Country: And, that we ought to be extremely cautious how we depart from the old Rule of jurisprudential policy, founded in sound Reason—and which Lord Chancellor Bacon has adopted as an Aphorism;—*That the Commonwealth is best governed, where least is left to the direction of the Judge.*

To conclude—We have derived this inestimable privilege of JURY-TRIAL from our British Ancestors. With *ourselves*, it was the *Law of the Land*, up to the period of our Separation from the Mother-country. The Sages and Patriots of our own Country, at that crisis, deplored the attempts to violate it, that had been made by the parent state; and they reprobated, in language the most energetic, the grievous *unconstitutionality** of those acts. The invaluable inheritance was maintained among us, in consequence of the successful issue of the Revolution: And, in creating separate and independent Governments for ourselves, the American People—aided by the enlightened, the virtuous, Patriots and Lawgivers of their Nation—have striven to secure, by Constitutional Guards, this precious inheritance, “inviolable,” for themselves and their posterity.—It is, therefore, confidently hoped, that the Representatives of the People of Pennsylvania will take this subject into their most serious consideration; and that (to use the language of Judge Blackstone, already quoted,) they will “guard, with the most jealous circumspection, against the introduction of *new and arbitrary* methods of *Trial*, which, under a variety of pretences, may in time imperceptibly undermine this best preservative of (our) Liberty.”

* Our Ancestors INHERITED, BROUGHT WITH THEM to these THEN colonies, and ESTABLISHED here those main fundamental Laws of ENGLAND, which constitute the great system of English JURISPRUDENCE; and while we remained in the condition of colonists—subjects of the British crown—we were entitled to all the benefits secured to Englishmen, by the ENGLISH CONSTITUTION.

Evils, it is admitted, result from the obvious defects that exist in the present *JUDICIARY Establishment** of the Commonwealth: But, to effect a *radical cure* of these, on Constitutional grounds, it cannot be doubted that the Governor will concur with the two Houses of Assembly; with all that patriotic zeal, and those great abilities in the Science of Jurisprudence, by which he has been long distinguished. A wise and timely improvement of this system would promote in an eminent degree, *the Administration of Justice*; upon which the Dignity and Well-being of the State, as well as the Rights and Interests of its Citizens, so essentially depend.

* A more LIBERAL and ENLARGED ESTABLISHMENT of our Judiciary department, is what the interests of the State and the accommodation of the People stand in need of.—It deserves to be noticed, that when we were dependent on Great-Britain, the fault of impeding the necessary Establishments, in this particular, was attributed to the chief Executive of the empire.—The DECLARATION OF INDEPENDENCE charged the KING with having “obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.”
*The ground of complaint, now, is NOT against the EXECUTIVE power.

F I N I S.

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E. A. G. P.
1/30/05.

ERRATA.

The reader is requested to correct, with his pen, the following ERRATA...and also a few LITERAL Mistakes, which occur in the work.... occasioned by its being printed a considerable distance from the writer's residence.

Page 14, line 10,	text,	for even of those	read even those.
14, line 3,	note,	for notice	read nature.
15 line 3,	text,	for algebra,	read algebra.
19 line 12,	do.	for state	read stale.
21, line 19	note,	for informa,	read in forma:
23, line 16	text,	for itself the law	read itself against the law.
35, line 3,	note,	for an act,	read enact.
35, line 20,	do.	for Gilbert,	read Ranulph de.
43, line 4,	do.	for fruitors,	read suitors.
46, line 10,	do.	for once,	read over,
57, line 26,	do.	for discretion,	read direction.
78, line 13,	do.	for night,	read ninth.
87, line 1,	text,	for skilled,	read shield.
100, line 17,	do.	for Fitzhergert,	read Fitzherbert.
108, line 16,	do	for Gus,	read Jus.
117, line 19,	note,	for 6204,	read 6000.
119, line 25,	text,	for nation,	read national