

CHARGE

TO THE

GRAND JURY,

AT CALCUTTA, DECEMBER 4, 1783.

GENTLEMEN OF THE GRAND JURY,

IT might perhaps be sufficient, if my address to you this day were confined to some short remarks on those offences, of which the prisoners named in the calendar are accused; but such is the particularity of my own situation, that I cannot help feeling an inclination to take a wider range. Six years have elapsed, since the seat, which I have now the honour to fill, became vacant; and, in that interval, so many important events have happened in *India*, and so many interesting debates have been held in the parliament of *Britain*; on the powers and objects of this judicature, that I may naturally be expected to touch at least, though not to enlarge,

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on those events, all of which I have attentively considered, and on the result of those debates, at most of which I was present. Such expectations, if such have been formed, I should be very loth to disappoint; and, as I shall express my sentiments without reserve, you will hear them, I am confident, with perfect candour.

None of you, I hope, will suspect me of political zeal for any set of ministers in *England*, with which vice my mind has never been infected; nor of political attachments here, which in my station it will ever behove me to disclaim, if, in the character of a magistrate appointed to preserve the public tranquillity, I congratulate you, who are assembled to inquire into all violations of it, on the happy prospect of a general peace in every part of the world, with which our country is connected. The certain fruits of this pacification will be the revival and extension of commerce in all the dependencies of *Britain*, the improvement of agriculture and manufactures, the encouragement of industry and civil virtues, by which her revenues will be restored, and her navy strengthened, her subjects enriched and herself exalted: but it is to *India*, that she looks for the most splendid as well as most substantial of those advantages; nor can she be disappointed, as long as the supreme executive and judicial

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powers shall concur in promoting the publick good, without danger of collision or diminution of each other's dignity; without impediment, on the one side, to the operations of government, or, on the other, to the due administration of justice.

The institution, gentlemen, of this court appears to have been misapprehended: it was not, I firmly believe, intended as a censure on any individuals, who exist, or have existed. Legislative provisions have not the individual for their object, but the species; and are not made for the convenience of the day, but for the regulation of ages. Whatever were the reasons for its first establishment, of which I may not be so perfectly apprized, I will venture to assure you, that it has been continued for one obvious reason; that an extensive dominion, without a complete and independent judicature, would be a phenomenon, of which the history of the world affords no example. Justice must be administered with effect, or society cannot long subsist. It is a truth coeval with human nature, and not peculiar to any age or country, that power in the hands of men will sometimes be abused, and ought always, if possible, to be restrained; but the restrictions of general laws imply no particular blame. How many precautions have from time to time been used to render judges and jurors impartial,

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and to place them above dependence ! Yet none of us conceive ourselves disgraced by such precautions. The object then of the court, thus continued with ample powers, though wisely circumscribed in its jurisdiction, is plainly this : that, in every age, the *British* subjects resident in *India* be protected, yet governed, by *British* laws ; and that the natives of these important provinces be indulged in their own prejudices, civil and religious, and suffered to enjoy their own customs unmolested ; and why those great ends may not now be attained, consistently with the regular collection of the revenues and the supremacy of the executive government, I confess myself unable to discover.

Another thing has been, if not greatly misconceived, at least very imperfectly understood ; and no wonder, since it requires some professional habits to comprehend it fully : I mean the true character and office of judges appointed to administer those laws. The use of law, as a science, is to prevent mere discretionary power under the colour of equity ; and it is the duty of a judge to pronounce his decisions, not simply according to his own opinion of justice and right, but according to prescribed rules. It must be hoped, that his own reason generally approves those rules ; but it is the judgement of the law, not his own, which he delivers. Were judges

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to decide by their bare opinions of right and wrong, opinions always unknown, often capricious, sometimes improperly biased, to what an arbitrary tribunal would men be subject! In how dreadful a state of slavery would they live! Let us be satisfied, gentlemen, with law, which all, who please, may understand, and not call for equity in its popular sense, which differs in different men, and must at best be dark and uncertain.

The end of criminal law, a most important branch of the great juridical system, is to prevent crimes by punishment, so that the pain of it, as a fine writer expresses himself, may be inflicted on a few, but the dread of it extended to all. In the administration of penal justice, a severe burden is removed from our minds by the assistance of juries; and it is my ardent wish, that the court had the same relief in civil, especially commercial, causes; for the decision of which there cannot be a nobler tribunal than a jury of experienced men assisted by the learning of a judge. These are my sentiments; and I express them, not because they may be popular, but because I sincerely entertain them; for I aspire to no popularity, and seek no praise, but that which may be given to a strict and conscientious discharge of duty, without predilection

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or prejudice of any kind, and with a fixed resolution to pronounce on all occasions what I conceive to be the law, than which no individual must suppose himself wiser.

The mention of my duty, gentlemen, leads me naturally to the particular subject of my charge, from which I have not, I hope, unreasonably deviated: but you are too well apprized of your duty to need very particular instructions; and happily no higher offences (except one larceny) appear in the calendar than some criminal frauds and a few assaults: one of them, indeed, is stated as very atrocious, and, if you consider that the frequency of small crimes becomes a serious evil in society, you will not think the more trivial complaints unworthy of your attention. Redress of wrongs must be given, or it will be taken; and the law wisely forbids the slightest attack upon the person of a subject, lest far worse mischief should ensue from the sudden ebullition of rage, or the slower, but more dangerous, operation of revenge.

Your powers, however, are not limited to this calendar, or even to the bills which may be preferred; for, whatever else shall come to your knowledge, it will be your part to present, and ours to hear attentively: thus, by a cordial

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concurrence in preserving the publick peace, and bringing such as violate it to punishment, we shall contribute, in our respective stations, to the security of this great settlement, and to the prosperity of these provinces, in which the dearest interests of our common parent and country, *Great Britain*, are now essentially involved.

CHARGE

TO THE

GRAND JURY,

AT CALCUTTA, JUNE 10, 1785.

GENTLEMEN,

WHEN I first addressed a Grand Jury of *Calcutta*, too soon after my arrival in this country for any distinct idea to be formed of all its inhabitants, the small number of prisoners, which, to my infinite joy, appeared in the calendar, gave me an opportunity of speaking at large on the institution of this court, and the principles of criminal justice. It is my turn to address you at the opening of the present session; but I have not, unfortunately, the same reason to rejoice, nor the same excuse for expatiating on general topics: I may, nevertheless, without the impropriety of detaining you too long, touch on one or two subjects, which I have much at heart, and on which I cannot but flatter myself with a hope of your concurrence.

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If I may justly, as I do sincerely, conclude from my own observation at former sessions, that the Grand Juries of this capital will deserve the praise of intelligence and moderation, vigilance and humanity, I must be persuaded, that you, Gentlemen, have little need of instruction in the discharge of your important duty, and I confidently leave with you the few persons, who are, I see, imprisoned under accusations of petty crimes; nor is it either expedient or becoming to point at particular cases, of which I have no official knowledge.

One case, which has come regularly before me as a justice of the peace, concerning the death of a *slave girl*, whom her master had beaten, I think it my duty to mention more at large; leaving to you the determination on facts from a view of all the circumstances, and declaring only my opinion of the law. A master may legally correct his servant with moderation, and with a view to his amendment; nor, if the servant thus corrected should die by some misfortune unforeseen, and unlikely to happen, would the master be guilty of any crime; but if the correction be immoderate, excessive, unreasonable, cruel, the party may have, if he live, a reparation in damages; or, if he die, the master will be guilty of manslaughter or of murder, according to the circumstances; of manslaughter, if he gave the

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fatal blow in a sudden burst of passion, after violent provocation, with a weapon not likely to kill; of murder, if he had full time for deliberation and coolness of blood; and that, whether he intended to destroy life, or only to chastise immoderately; for the true sense of *malice*, to constitute this *horrible* crime, is **MALIGNITY of heart**, or a *disposition to do mischief*, which may be ascertained by comparing the fault with the correction; and the age and condition of the person stricken, with the force of the striker, and the danger of the instrument used by him. It is hardly needful to remark, that, in such cases, a servant and a *slave*, if such a relation be known to our modern law, stand precisely on the same ground; as a lord, in feudal times, might indisputably have been convicted of murder for killing his villain or his neife.

In the present case, you will hear the witnesses on one side only; and it is recommended by great lawyers, lest enormous crimes should be smothered without a trial, that Grand Juries find such bills, as their consciences oblige them to find at all, for the highest degree in the scale, that the evidence fairly supports, leaving it to the Petty Jury, under the direction of the Court, in questions of *law*, either to hold the prisoner guiltless, or to ascertain the precise measure of his guilt by their verdict; but you are not absolutely