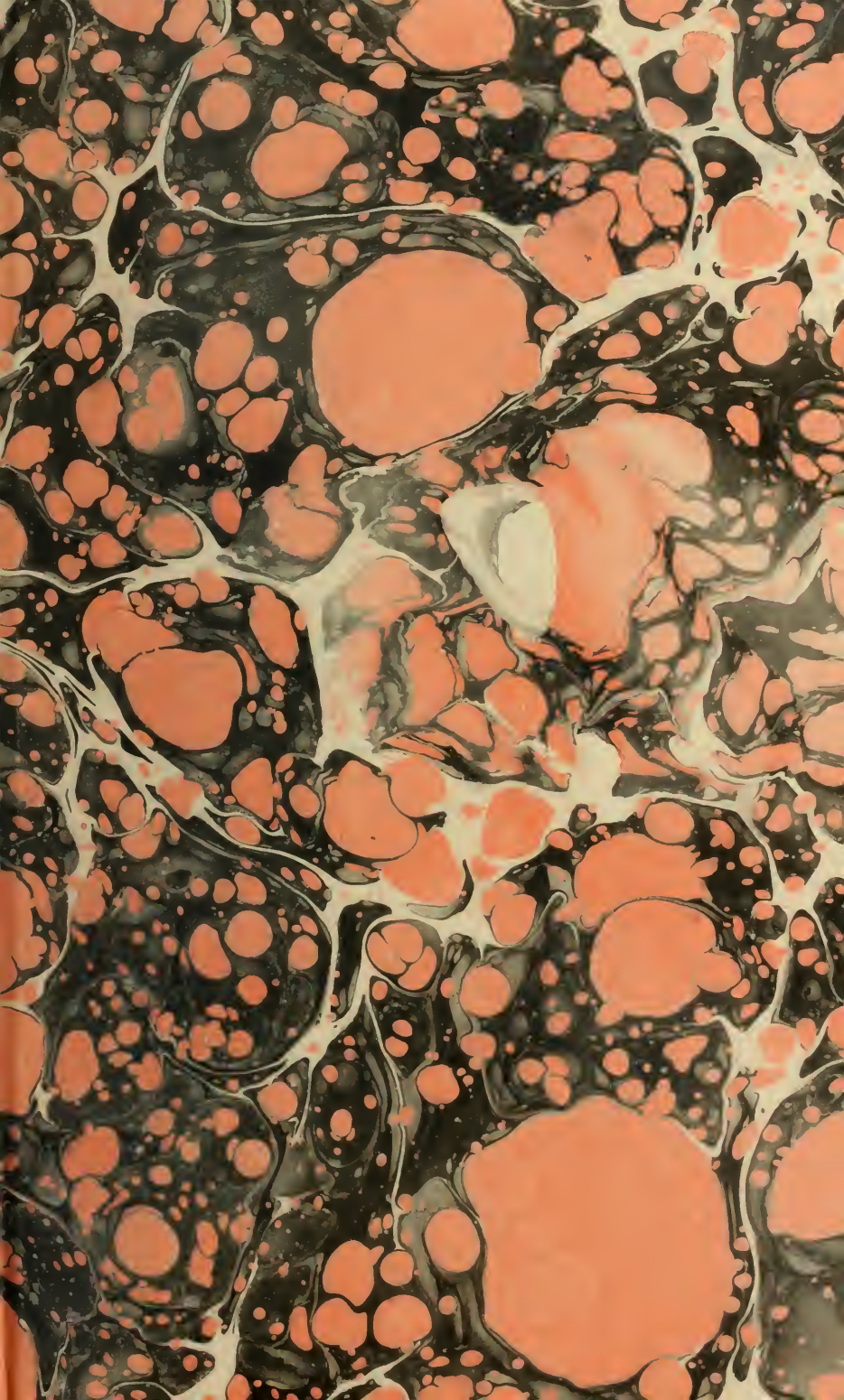

AN

ADDRESS

TO THE

PEOPLE OF SCOTLAND,

ON THE

NATURE, POWERS, AND PRIVILEGES OF JURIES.

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OF

JURIES.

A NEW EDITION.

By the late WILLIAM SMELLIE, F. R. S. & F. A. S.
AUTHOR OF THE PHILOSOPHY OF NATURAL HISTORY,
TRANSLATOR OF THE WORKS OF BUFFON, &C.

Remember, O my friends, the laws, the rights,
The generous plan of power deliver'd down,
From age to age, by your renown'd forefathers,
O let it never perish in your hands!
But piously transmit it to your children.

ADDISON.

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AN

ADDRESS

TO THE

PEOPLE OF SCOTLAND, &c.

GENTLEMEN,

THE subject on which I presume to address you is interesting. When your lives and liberties are concerned, no declamation is necessary to excite attention. I am no lawyer, but a juryman of some experience. In performing that disagreeable, and often painful office, I have remarked some prejudices, and mistaken notions, with regard to the Nature and Powers of Juries. To remove these prejudices, as well as to inform young Jurors, who may have had little opportunity of acquiring distinct ideas of the subject, is the design of this short address.

The original intention of trials by Jury was to guard against the partiality and

injustice of magistrates and judges. The county-courts, the members of which were the ancient judges of this country, became so exceedingly corrupt, that Juries were invented to remedy the many enormities and oppressions daily committed by these courts. Formerly, the Juries of Scotland were impannelled in civil as well as in criminal actions. They are now limited to the trial of high crimes and misdemeanours. This limitation renders the nature and powers of SCOTISH Juries less complicated than those of ENGLAND, where civil, as well as criminal actions, are still regulated by the verdicts of Juries. But it is no part of my intention to investigate the origin of Juries, or to trace the several changes they have undergone since their first institution. Without farther preamble, therefore, I shall endeavour to remove some prejudices which many of my countrymen entertain concerning their powers, when called to be Jurors in the trial of crimes.

It is a common notion, that jurymen are judges of the *fact* only, and not of the *law*. This absurd, and often fatal prejudice, is

much more prevalent than might be expected, in a city like this, where general knowledge ought to be pretty widely diffused. It has, perhaps, been too much fostered by the injunctions of judges and magistrates. It is exceedingly natural, that plain simple jurymen should look up with veneration to the high rank, and superior abilities of those men who are appointed by their sovereign to dispense justice to the nation. For this reason it is, that the ENGLISH judges are so extremely solicitous not to inculcate their own opinions on the minds of jurymen, but to leave their determinations solely to the dictates of their own consciences. But, from whatever source this prejudice may have derived its origin, I shall endeavour to shew that it has neither law nor common sense for its support.

For this purpose, Gentlemen, I beg your deliberate attention to the following law authorities, and the subsequent reasoning.

In JACOB'S *Law Dictionary*, under the word *Jury*, it is said, "That juries are "fineable, if they are unlawfully dealt with "to give their verdict; but they are not

" fineable for giving their verdict *contrary*
" to the evidence, or *against* the direction
" of the court; for the law supposes that
" the jury may have some other evidence
" than what is given in court; and they
" may not only find things of their own
" knowledge, but they go according to their
" *consciences.* If a jury take upon them the
" *knowledge of the law*, and give a general
" verdict, it is *good.*"

Mr EDEN, in his *Principles of Penal Law*, which he derives from the best authorities, remarks (p. 160), " That the positive tes-
" timony of a thousand witnesses to the
" positive allegation of the indictment, is
" not conclusive, in *any* case, as to the
" verdict of the jurors. But they will still
" retain an indisputable unquestionable
" right to *acquit* the person accused, if, in
" their *private* opinions, they disbelieve the
" accusers; or if, in their *consciences*, they
" think, however erroneously, that the fact
" partakes not of that *degree* or *species* of
" criminality with which it is *charged* in the
" *indictment.*

" It is the privilege of ENGLISHMEN to be

" tried by their equals; and that privilege " will become *vox et præterea nihil* (an " empty sound), whenever it ceases to be " the duty of those equals to infer and " conclude their verdict from the testimony " of witnesses, by the act and force of their " own understanding.

" Would it not be a most preposterous " doctrine, that they who, under the obli- " gation of a solemn oath, are chosen to try " a fellow citizen for a crime, and as a " criminal, and bounden by that oath to " give a true verdict between the public and " the prisoner, according to the evidence; " that, in this predicament, they should be " told, that the criminality or innocence of " the *intention*, the *legality* or *illegality* of " the *fact*, are matters of indifference, not " subjected to their inquiry; and that their " verdict ought not to be influenced by any " such considerations?

" To what end," said Lord Chief Justice VAUGHAN, " are the jurors challenged so " scrupulously to the array and poll? To " what end must they have such a certain " freehold, and be *probi et legales homines*

" (good and honest men), and not of affinity
" with the parties concerned? To what
" end must they have, in many cases, the
" view for their exacter information chiefly,
" if, after all this, they implicitly give a
" verdict by the *dictates* and *authority* of
" another man, when *sworn* to do it accord-
" ing to the best of their own knowledge?
" A man cannot see by another man's eye,
" nor hear by another man's ear; no more
" can a man conclude or infer the thing to
" be resolved by another's understanding
" or reasoning; and, though the verdict be
" *right*, which the jury give, yet they, be-
" ing not assured it is so from their own
" *understanding*, are *forsworn*."

Sir MATTHEW HALE, in his *Pleas of the Crown*, remarks, " That it is the conscience
" of the jury that must pronounce the pri-
" soner *guilty* or *not guilty*; for, to say the
" truth, it were the most unhappy case
" that could be to the judge, if he, at his
" peril, must take upon him the guilt or
" innocence of the prisoner; unhappy also
" for the prisoner; for, if the *judge's opi-*

"*nion* must rule the verdict, the trial by "jury would be *useless*."

Sir WILLIAM BLACKSTONE, in his *Commentaries on the Laws of England* (vol. iv. p. 354), says, "A verdict may be either "general, *guilty* or *not guilty*, or special, "setting forth all the circumstances of the "case, and praying the judgment of the "court, whether, for instance, on the facts "stated, it be murder, manslaughter, or no "crime at all. This is where they *doubt* "the matter of law, and therefore *choose* to "leave it to the determination of the court; "though they have an unquestionable *right* "of determining upon all the circumstan-"ces, and finding a general verdict."

These authorities are all derived from English law-books. But it ought to be considered that the English law, with regard to juries in criminal cases, is the same with ours, if a few innocent forms be excepted.

The law of Scotland, however, is equally explicit, and declares, in positive terms, that jurymen are equally judges of the law, as well as of the fact. I shall confine my-

self to two passages from the larger Institute of the late Mr ERSKINE, an authority pleaded in all our courts of law, and justly revered by the whole nation.

"Though the proper business of a jury "be to inquire into the truth of facts, it is "certain that, in *many* cases, they judge "of matters also of *law* or *relevancy*. Thus, "though an objection against a witness "should be *repelled* by the court, the jury "are under no necessity of laying greater "stress on his testimony than they think "*just*; and, in trials of art and part, where "special facts need not be libelled, the jury, "if they return a general verdict, thereby "make themselves truly judges of the *rele-* "*vancy*, as well as of the truth of the facts "deposed upon by the witnesses. A gene- "ral verdict is that which, without descend- "ing to particular facts, finds, in general "terms, that the pannel is *guilty* or *not* "*guilty*." (Ersk. Inst. p. 741, sect. 101.) The same author remarks, that M'KENZIE "disapproves of this institution of juries, "because it is hardly possible, in many "cases, to separate the proof of facts from

" their relevancy, the last of which is fre-
" quently of too high a disquisition for such
" as are not learned in the law. But no
" man's *life* or *fortune* ought to depend
" upon too refined reasoning; and, if dis-
" cerning the *nature* of crimes be beyond
" the *reach* of juries, which are presumed to
" consist of men of common understanding,
" how can our *criminal law* be accounted a
" *rule* by which every *artificer* and *farmer*
" ought to *square* his conduct?" Ibid. p. 733.

From these most respectable authorities, and many others that might, if necessary, be produced, it is evident, that jurymen, by the laws of their country, are expressly constituted judges, in all criminal trials, both of the *law* and of the *fact*. I shall, however, hazard a few arguments, derived from the nature and intention of trials by jury.

To prevent the misapplication of law by judges and magistrates, was one of the great ends for which trials by jury were originally devised by the wisdom of the legislature. If, therefore, the power of judging

of the law, as well as of the fact, were annihilated, the very intention of the legislature would be defeated; because the courts, and not the jury, would then be the sole judges. Intention is the essence of crimes. The facts libelled may be distinctly proved. But if, from particular circumstances, the jury are convinced in their own minds, that the pannel either had no intention to commit a crime, or that the crime is not of so heinous a nature as to merit the punishment concluded for in the indictment, in all cases of this kind, the jury have not only a right, but they are bound, by the spirit of their oaths, and by the laws of God and man, to find the pannel *Not Guilty* of the crime laid to his charge. When a pannel is libelled for murder, and the actual slaughter is proved against him; yet, if the jury are satisfied that he had no design to commit the crime, it is their duty to *acquit* him; because, on this supposition, the intention is wanting, and, of course, the crime of murder has no existence. Again, suppose a culprit to be indicted for robbery, or any other capital offence, and that the

facts are clearly proved; still, as Mr Erskine judiciously remarks, if the jury are convinced in their consciences that the chief witnesses are either perjured, or that their evidences should not have been admitted, their testimonies ought to be entirely disregarded.

Besides, if the powers of jurymen were limited to facts alone, why are exculpatory evidences permitted? The facts libelled may be fully proved. But the pannel, in alleviation of his guilt, may bring such evidence as will either alter the species of his crime, or convince the jury of his innocence. When a jury are judging in a case of this nature, they not only deliberate concerning the two kinds of evidence, but they consider the nature of the crime, and the punishment that ought or ought not to be inflicted. In all such cases, the jury must necessarily determine both the law and the fact.

I know it to be the opinion of many jurymen, that, after the court admit a *relevancy*, they are bound by their oaths to find the libel either *proved* or *not proved*. But

these gentlemen should consider, that their business is to give a verdict of a very different kind. They are to judge both of the criminality of the culprit, and of his exculpatory evidence. The words, *proved*, or *not proved*, should be forever banished from the verdicts of juries. A relevancy may be found, when the jurymen, who hear the indictment impugned, are of an opposite opinion from the court. A crime may be libelled, when the facts related in the indictment, though completely proved, do not constitute the essence of the crime charged. Hence, whenever the minds of jurymen are convinced that a relevancy has been improperly found, their verdict, however the proof may stand, should be *Not Guilty*. Indeed, the expressions *Guilty*, or *Not Guilty*, ought alone to be employed in verdicts. They are liable to no ambiguity, and never can embarrass a court.

Besides, the use of the words *proved*, or *not proved*, was an innovation introduced into verdicts no sooner than the beginning of the present century. The ancient style of verdicts was, *Guilty*, or *Not Guilty*, or

the equivalent phrases, *fylit*, or *clensit*, and *clean* or *guilty*. The words *proved*, or *not proved*, began to be employed in the year 1704; and the use of them was continued till the year 1728, when Mr CARNEGIE of Finhaven was tried for the murder of the EARL of STRATHMORE. In a drunken squabble, CARNEGIE was pushed into a kennel by Mr LYON of Bridgeton. CARNEGIE instantly drew his sword, and run at Mr LYON. But the EARL of STRATHMORE, with a view to prevent mischief, stepped in between them, unfortunately received the push, and died of the wound. CARNEGIE was indicted for murder. After able pleadings on both sides, the court found the crime libelled relevant to infer the pains of law. The fact, that CARNEGIE killed the EARL of STRATHMORE, was completely *proved*. But, as CARNEGIE had no intention to injure the Earl, his resentment being solely directed against Mr LYON, the jury most properly found the pannel *Not Guilty*. Mr M'LAURIN, after stating the circumstances of this, and similar trials, draws the following conclusion: "From "what has been said, it appears that, in

" this case, the jury did not assume a *new* " power, as is generally believed, but only " resumed a power that had *anciently* be- " longed to them, the exercise of which had " been discontinued for some time." *Introd. to Criminal Cases*, p. 22.

With regard to *relevancy*, I remember a remarkable case. About a dozen of years ago, two men built a house for sale near the foot of Leith Walk. They insured the house in the Sun-Fire-office. They were poor. The house was not purchased so soon as would have been convenient. They were supposed, with a view to defraud the insurers, to have set their house on fire; and part of it was actually burnt. They were imprisoned at the instance of the Sun-Fire-office, and indicted for the crime of wilful fire-raising. The court, after a long pleading, found the relevancy. I had been summoned as a juror, and heard the debate. Notwithstanding the finding of the relevancy, two circumstances had determined me, independent of every proof, to *acquit* the pannels. In the first place, the essence of the felony was wanting; for the crime of wilful fire-raising, as appears from the

statute, is the burning of another person's house or property, but not the burning of your own. Besides, the house was so detached from every other building, that it might have been burnt to the ground without the smallest chance of injuring the property of any other man. In the second place, admitting the criminality of the intention, through the impatience of the private prosecutors, the supposed fraud or crime was prevented from being completed; for they imprisoned and prosecuted the pannels, before any application was made to the office for procuring the sum insured. These reasons, it is probable, induced the prosecutors to relinquish the trial, and to consent to a petition for banishment presented to the court by the pannels.

I hope, Gentlemen, it is unnecessary to add any more authorities, or to employ any farther reasoning, to convince you that it is not only your privilege, but your express duty, in trials for crimes, to judge both of the law and of the facts submitted to your determination.

I am ashamed to take notice of another

mistaken notion, because it is almost too ridiculous to be mentioned. But, as I once saw it embraced by a majority of a jury, and as there is a possibility that it may again be adopted, I shall not pass it over entirely in silence. I have known a majority of a jury give it as their opinion, that a verdict finding a pannel guilty *art and part*, was an alleviation of the crime libelled. Their idea seemed to be, that the addition of the phrase *art and part* to the word *guilty*, mitigated the guilt, and would prevent the court from pronouncing a sentence of *death*. However, when too late, they discovered, and heartily regretted, the fatal mistake.

A third mistake, Gentlemen, merits your most serious attention. It is generally thought, and the maxim has received great support from practice, that, when a jury find a pannel *guilty*, but recommend him to the *mercy* of their Sovereign, the culprit must either be pardoned, or receive a milder punishment than death. The unhappy fate, however, of JAMES ANDREW, who was lately hanged in Edinburgh, though he

had, in the strongest manner, been recommended to mercy, by the unanimous suffrage of his jury, must tend to remove this prejudice, and make jurymen very cautious of their conduct. When a majority of a jury believe in their consciences that a culprit, though the crime libelled should be proved, does not deserve to be cut off from human society, by the ultimate punishment of the law, they should uniformly give a verdict finding the pannel *Not Guilty.* This is a high privilege entrusted to you by the laws of your country ; and you cannot be too anxious to prevent its infringement or violation. Consider, the moment you desert a pannel by an indecisive verdict, your powers are at an end. Bestow, therefore, that mercy which you recommend, and which you think the culprit deserves, while it is in your power. Never trust to future contingencies of any kind ; for the highest orders of men may have prejudices; a thousand fatal accidents may happen ; misrepresentations may be given ; the opinion of courts may not always coincide with that of the jury ; even

negligence of office has deprived men of existence, after the mercy of the Sovereign had been obtained. Why trouble his Majesty, or his courts, with a question which the law has submitted to the sole decision of your own consciences? It is leaving your business unfinished, which amounts to a breach of your duty, and a violation of your solemn oaths. Be always decisive. Leave no part of your duty to be filled up by your Sovereign, but scrupulously adhere to the dictates of your own minds. Banish, as far as possible, the opinions of lawyers or judges. Think for yourselves; and, whenever you determine your line of conduct, never deviate from it, but act with firmness, and with intrepidity. While sitting in judgment, you have no superiors. You are called to determine whether a fellow-creature should suffer an ignominious death. On such awful occasions, you ought to yield to the deliberate suggestions of your reason and conscience alone, and to give an unambiguous decision, finding the pannel either *Guilty* or *Not Guilty*. Clog your verdicts with no adventitious

circumstances, with no recommendations to mercy.

Besides, Gentlemen, if you attend to the nature of recommendations to mercy, you will perceive that they imply a manifest contradiction. When a jury find a pannel *Guilty*, and unanimously recommend him to *mercy*, which has often happened, What have they done? In one part of their verdict, they have condemned a man to be *hanged;* and, in another, they declare to their Sovereign, and the court, that the same man has not committed a crime which deserves to be punished with *death!* It is wonderful how men of any sense should have ever been led into such a glaring absurdity. It is still more wonderful that it should have become a very *general practice* through the whole of Scotland.

To confirm this reasoning, I shall give a short account of the late unfortunate James Andrew.

James Hay and James Andrew, both recruits in the 61st regiment of foot, were indicted for the crime of robbery. Hay,

before trial, broke prison, and escaped; and JAMES PATERSON, their associate, was admitted to be evidence for the Crown. ANDREW was tried on the 22d of December last (1784). A *majority* of the jury found the pannel *Guilty;* but all of them, in one voice, recommended him to the *mercy* of his Majesty.

From this verdict, it is apparent that the jury were unanimously of opinion that the pannel's crime did not deserve to be punished with death, and that they believed he would either receive a pardon, or a mitigation of his punishment. This *indecisive* verdict by no means corresponded with the ideas of the court, who always wish to receive verdicts that are explicit. The jurymen, next day, drew up the reasons which induced them to recommend ANDREW to mercy. As these reasons are perhaps stronger than ever were presented by a jury in any former case, I shall subjoin a copy of them.

REASONS which induced the Jury on the trial of JAMES ANDREW, *indicted for robbery, before the High Court of Justiciary, to recommend the pannel, all in one voice, to the mercy of his Majesty.*

" I. That it was apparent, from the evi-
" dence, that JAMES ANDREW, along with
" JAMES HAY and JAMES PATERSON, all re-
" cruits in the sixty-first regiment of foot,
" had, on the day mentioned in the indict-
" ment, intoxicated themselves with bran-
" dy: That they had neither sticks nor
" any lethal weapon in their possession:
" That they had no previous concert or in-
" tention to rob: That the robbery com-
" mitted was purely the effect of liquor;
" and that the pannel, instead of going
" home by the Meadow (which is a private
" walk), insisted to go by the West Port,
" a public street, where no robbery could
" be attempted at so early an hour as
" seven o'clock, in the month of October,

" in a clear moon shine; but he was over-
" persuaded by HAY and PATERSON to go
" by the way of the Meadow.

" II. That the watch of which DAVID
" DYKES was robbed, as also appeared from
" the evidence, was not taken by JAMES
" ANDREW; and that ANDREW knew not
" that a robbery had been committed till
" sometime after the fact happened, when
" HAY told ANDREW that he (HAY) was
" possessed of DYKE's watch, which he
" shewed to his companions.

" That, soon after the effects of the li-
" quor were over, instead of attempting to
" sell the watch, ANDREW was struck with
" a strong sense of the impropriety of his
" conduct; and he and his companions de-
" livered the watch to Lieutenant VERNOR,
" with a view that it should be restored to
" the owner.

" IV. That the pannel, who is only
" twenty-one years of age, in two declara-
" tions emitted before Mr Sheriff COCK-
" BURN, uniformly told the truth; and that
" every part of these declarations was con-
" firmed by the evidence.

"In witness whereof, we the jurymen "have subscribed these presents," &c.

These reasons were signed by all the jurors, and transmited to his Majesty, "together with the report of the court upon "the case, the minutes of the trial, and the "*evidence* given thereupon." But, by a letter from LORD SYDNEY, then one of the secretaries of state, the jury learned that no mercy, or mitigation of punishment, was to be expected. The jury were afterwards informed, by a letter from their agent at London, that a report had prevailed, that the chancellor, and some other of the jurors, had retracted their former opinion, and thought that the pannel did not deserve mercy. Lest this report should have had any effect on his Majesty or council, the chancellor wrote a letter to LORD SYDNEY, contradicting the report, and inclosing another copy of the reasons for recommending. To this letter no official answer was received. The poor man, of course, was executed in the Grass-market

of Edinburgh on the 4th day of February last (1784).

It is almost unnecessary to make any commentary on the history of this case. It shews the folly and danger of recommendations to mercy, and must strike the minds of every juryman with a force superior to the most powerful reasoning. I shall, however, add, that recommendations to mercy are still more dangerous, now that the law dispenses with taking down the evidences of the witnesses in writing Formerly, when recommendations to mercy were presented, recourse was had to the evidence itself, as well as to the circumstances of the trial. If, at any time, the report of courts coincided not with the opinion of the jury, the written evidence afforded his Majesty and council an opportunity of judging between the two. But now the case is changed. Supposing a future jury, which I hope will never happen, should first find a pannel guilty, and next recommend him to *mercy*, their recommendation will certainly be transmitted to his Majesty. But

it is by no means impossible that the court or magistrate shall think that the culprit deserves no mercy. The courts have it in their power to give their report upon the case; and no evidence exists but what may be preserved in notes taken by the judges or magistrates. This is a most critical and hazardous situation for the pannel. As formerly remarked, the law supposes, in favour of juries, that "they may have some "other evidence than what is given in "court." It may consist with their private knowledge that a witness has sworn falsely, and that the characters of others are infamous. Many other circumstances may influence the minds of a jury, which the court or magistrate can have no opportunity of learning. Hence judges should be extremely cautious in either applauding or censuring the verdicts of juries.

Upon the whole, Gentlemen, I hope I have shewn, to your satisfaction, that jurymen, in trials for crimes, are judges of the law, as well as of the fact; and that all recommendations to mercy are highly improper, contradictory, and dangerous.

I shall conclude this Address with a passage from the *Commentaries* of the celebrated Judge Blackstone, which merits the attention of every person who is liable to be summoned upon juries. It is necessary to observe, however, that several circumstances mentioned in this passage allude, agreeable to the English law, to trials in civil causes; but the general spirit and design of the author are apparent, and equally suited to the juries of Scotland.

"Trial by jury," this learned judge remarks, "ever has 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 much must that advantage "be heightened, when it is applied to cri-"minal 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 twelve "of his neighbours and equals. A consti-"tution that, I may venture to affirm, has, "under Providence, secured the just liber-

" ties of this nation for a long succession of
" ages.

" Great as this eulogium may seem, it is
" no more than this admirable constitution,
" when traced to its principles, will be
" found in sober reason to deserve. The
" impartial administration of justice, which
" secures both our persons and our proper-
" ties, is the great end of civil society.
" But if that be entirely trusted 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 have frequently an
" involuntary bias towards those of their own
" rank and dignity. It is not to be expect-
" ed from human nature that *the few*
" should always be attentive to *the many*.—
" In settling and adjusting a question of
" fact, when entrusted to any single magi-
" strate, partiality and injustice have an
" ample field to range in, either by boldly
" asserting that to be proved which is not
" so, or, more artfully, by suppressing some

" circumstances, stretching and warping
" others, and extinguishing away the re-
" mainder. 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 in-
" vestigators of truth, and the surest guar-
" dians of public justice.—It is, therefore, a
" duty which every man owes to his coun-
" try, his friends, his posterity, and him-
" self, to maintain, to the utmost of his
" power, this valuable constitution in all its
" rights; to restore it to its antient digni-
" ty, if at all impaired by the different va-
" lue 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 circum-
" spection, against the introduction of new
" and arbitrary methods of trial, which,
" under a variety of plausible pretences,
" may in time imperceptibly undermine this
" best preservative of English liberty.

" The antiquity and excellence of this
" trial, for the settling of civil property, has
" been before explained: And it will hold

" much stronger in criminal cases ; since,
" in times of difficulty and danger, more is
" to be apprehended from the violence and
" partiality of the judges appointed by the
" crown, in suits between the king and
" subject, than in disputes between one in-
" dividual and another, to settle the metes
" and boundaries of private property. Our
" law has, therefore, wisely placed the
" strong and two-fold barrier, of a present-
" ment and trial by jury, between the li-
" berties of the people, and the prerogative
" of the crown. It was necessary, for pre-
" serving the admirable balance of our con-
" stitution, to vest the executive power of
" the laws in the Prince: And yet this
" power might be dangerous and destruc-
" tive to that very constitution, if exerted
" without check or control, by justices of
" *oyer* and *terminer*, occasionally named by
" the crown, who might then, as in France
" or Turkey, imprison, despatch, or exile
" any man that was obnoxious to the go-
" vernment, by an instant declaration that
" such is their will and pleasure. But the

" founders of the English law have, with " excellent forecast, contrived that no man " should be called to answer to the king for " any capital crime, unless upon the prepa- " ratory accusation of twelve or more of his " fellow subjects, the grand jury; and that " the truth of every accusation, whether " preferred in the shape of indictment, in- " formation, or appeal, should afterwards " be confirmed by the unanimous suffrage " of twelve of his equals and neighbours, " indifferently chosen, and superior to all " suspicion. So that the liberties of Eng- " land cannot but subsist, so long as this " *palladium* remains sacred and inviolate, " not only from all open attacks, which none " will be so hardy as to make, but also from " all secret machinations, which may sap " or undermine it, by introducing new and " arbitrary methods of trial."

I beg pardon, Gentlemen, for having presumed to address you on a topic which is so far removed from the ordinary line of my studies and profession. If I have failed in the attempt, I have the satisfaction to

know that my intention was good. Such errors as I may have fallen into will be corrected by more skilful hands. Instruction, of course, must be the result. I am,

GENTLEMEN,

Your most obedient servant,

WILLIAM SMELLIE.

Alex. Smellie, printer.