

2000
2000
J. Pocock Esq.
with the Author's affectionate
dedication

THE

VAGRANT ACT,

IN RELATION TO THE

LIBERTY OF THE SUBJECT.

SALUTARIS SEVERITAS! BEATA SECURITAS!

Lord Coke.

BY A BARRISTER.

LONDON:

JOHN MURRAY, ALBEMARLE-STREET.

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THE measure proposed for consideration in the following pages, and principally, in comparison with former provisions upon the same subject, is the "*Act of the 3 Geo. 4. consolidating into one Act, and amending the laws relating to idle and disorderly Persons, Rogues and Vagabonds, &c.,*" but better known by the name of the "*Vagrant Act.*" No sooner had this measure, as we must all recollect, passed into a law, than the whole artillery of what is called the "*Public Press*" was levelled without mercy against it: it was said to be framed in a spirit unknown to the constitution; endangering the ancient liberties of Englishmen—the summary, and, as we contend, the salutary and necessary powers thereby continued or created, were pronounced to be at once dangerous and despotic, converting not only the public office of the police magistrate, but the private study of the country justice into an inquisition the most detestable.) The great

(principle of penal legislation was represented as violated ; and the means adopted of preventing the mischief “ more mischievous than the mischief itself.”) Such was the general tenor of the objections, prematurely at least, poured forth upon this occasion, and had there only existed sufficient foundation for them, it must on all hands be admitted, that the measure could not too soon have been repealed ; but so far is this from the case, that, as we hope to prove, an act more sound in its principle ; (more *essentially* merciful in its provisions ; more beneficial and salutary in its execution, is scarcely to be found in the whole circle, large as it is, of penal enactments ; and when we consider *who* are the objects of these laws ; their numbers ; the depravity of their habits ; their readiness ever to join in popular commotion, in a country too where there is *even a pernicious excess of charity, by law*, we ought rather to admire the lenity of the measure than reproach it for its rigour.) This “ unruly brood,” as Lambard describes them, may be compared to the overflowings of a stream left to stagnate—impoverishing the land, and distempering the air ; or like those lazy peccant humours of the body, which, unless dispersed, or purged away, weaken and eventually destroy the constitution.

To regulate and coerce this class, is strictly the business of police; and the powers that have from time to time been entrusted to it for that purpose, have invariably been founded on the principle* of punishing idleness *to prevent crime*; of holding in check those who live without visible means of subsistence, and of repressing that vagrant spirit which but too generally prevails among the lower orders, and disposes them not only ignobly to rely on the misplaced bounty of others, but to resort to plunder when that bounty fails them. Of the summary jurisdiction of the magistrates, by which they take cognizance of offences committed against this act, in derogation, as it is termed, of trial by jury, we shall speak hereafter. We will first consider the law as it now stands; and even, before we enter upon a detailed examination of that law, it may not be altogether unamusing or uninteresting briefly to notice some of the measures taken by

* “ Ogni nazione ha alcune leggi di polizia che hanno un’ influenza immediata e diretta sull’ ordine pubblico.

“ La mendicizia e l’ozio negli uomini che non hanno altro patrimonio che quello delle loro braccia dovrebbe esser punito dalla legge; essa dovrebbe punire quell’ uomo che perde nell’ inazione la sua vigorosa gioventù, e che stende con bassezza e viltà al ricco quella mano che potrebbe essere utile allo Stato.”—(Filangieri, *La Scienza della Legislazione*, lib. iii. tit. 7.)

this and other nations, in remoter periods, to rid themselves of these pests of well-ordered states. Among the Egyptians, who were distinguished for their domestic polity, we find this law recorded, *back in time* { "That every man should go before a magistrate and declare his name and business, and whence he derived his means of subsistence, and if convicted of making a false declaration, or of following an illicit trade, he was to suffer death." } [This severe law was subsequently introduced into Greece by Solon, upon his return from Egypt,] and the powers of executing it entrusted to the Areopagus: of such importance to the state did that great legislator deem it, that every one should, in his youth, be taught some art or trade by which he might afterwards gain his livelihood, that he expressly exempted those whose parents had not so instructed them, from the penalties of the law, which declared infamous all who did not contribute to the support of their father and mother. In the infancy of the commonwealth of Rome, we see the same principle wisely adopted by Romulus in his distribution of the business of the state, to each citizen, according to his rank and circumstances.*

* " Patres sacra, magistratusque soli peragunto ineuntoque,

(In a later period of the empire, we have the ordinances of the emperors Gratian and Valentinian, commanding diligent search to be made after such as led a vagrant and mendicant life: and from a law in the Theodosian code, it would seem that a runaway slave was to be at the disposal of an officer of the state;) and the idle freed-men were liable to be employed in **perpetual labour in the fields.*

(In France, during the reigns of Louis XIII. and Louis XIV., we find some severe proclamations issued respecting the vagrants and idlers then in Paris:) “Avons enjoint suivant les ordonnances et arrêts de la cour ci-devant donnez à tous vagabons sans condition et aveu, même à tous garçons barbiers, tailleurs et de toutes autres conditions, et aux filles et femmes debauchées, de prendre service et condition dans vingt-quatre heures, sinon vuider cette ville et fauxbourgs de Paris, *à peine contre les hommes d'être mis à la chaine et envoyez aux galeres; et contre les femmes et filles, du fouet, d'être*

jus reddunto, rem-publicam cum rege gubernanto; Plebei agros colunto, questuosa opificia exercento.”

* Codex Theodosianus, lib. iv. tit. 18. De Mendicantibus non Invalidis. The words of the original are, “colonatu perpetuo fulciatur.”

raseés et bannies à perpétuité, sans autre forme de procès.”* However harsh this may appear to those who are so ready upon all occasions to vindicate the right of loco-motion in a set of vagabonds, who are themselves but little disposed to respect that right in others, we shall, in the sequel, have occasion to notice some regulations in our own country which, in severity, may fairly vie with these foreign fulminations. If we turn to the “Code Pénal” of France, we shall perceive that the existing law upon this point is infinitely more rigid than our own; but we will now, cursorily, consult the annals of our own country, from which we shall be enabled to judge how far the present law is an hasty enactment concocted in a spirit of oppression and innovation upon our liberties; or a measure framed on principles that have subsisted and been recognized by our constitution for ages—that it has its faults we do not mean to deny, and which, when we come to the discussion of the act itself, we shall, with great deference to its projector, notice.

In the reign of Edwin, king of the Northumbrian Angles, so strong and so well executed were the laws, that it became an aphorism, *that*

* Delamare, *Traité de la Police*, p. 137.

*a woman with her new born infant might walk from sea to sea without fear of insult.** It is singularly striking, that one of the earliest regulations that was made in England for the coercion of the vicious part of the community, should be the simplest and best element of Police that ever was devised by the intellect of man ; equally adapted, under certain modifications, to a country in its barbarous or in its civilized state : the regulation to which we allude was that by which all persons were compelled to find security to the state for their good behaviour. It was introduced into this country by the Anglo-Saxons, who borrowed the idea from the mutual suretyship of the Germans ; among whom the head of a family was not only answerable for the good conduct of the individuals belonging to it, but of any stranger who shared his hospitality. Alfred† saw the advantage of this insti-

* Turner's History of the Anglo-Saxons, vol. i. p. 354.

† The system of placing all the people under *borh*, originated from Alfred, according to the historians ; but we first meet with it clearly expressed in the laws in the time of Edgar. By his laws it is thus directed, " Every man shall find and have *borh*, and the *borh* shall produce him to every legal charge and shall keep him ; and if he have done any wrong and escapes, his *borh* shall bear what he ought to have borne. But if it be theft, and the *borh* can bring him forward within twelve months, then what the *borh* paid shall be returned to him."—Turner, vol. iii. p. 577.

tution, and more systematically organized it. During his reign the counties were divided into friborgs, or tythings, to which every man belonged; the members of it were answerable for each other to the tything, while the tything was answerable to the King for the good conduct of the whole body; and he who from the badness of his character was unable to find pledges, was in a state of outlawry, and became a vagabond.

In the reign of the Conqueror, it would seem, from the Saxon Chronicle, that this country justly prided itself on the infrequency of crime, "amongst other things (it is observed in that work) is not to be forgotten the good peace that he made in this land, so that *a man of any account might go over his kingdom unhurt with his bosom full of gold.*" The first statute that we meet with expressly for the regulation of police, is the Statute of Winchester, in the thirteenth of Edward I., in which we find the following enactments:—"no one is permitted to lodge in the suburbs of the town except in the day time, nor even then *except his host answer for him.* Bailiffs to make inquiry of persons so lodged every week or fifteenth day, and if suspected persons are found, to do right therein: strangers are to be detained by the watch till

the morning," and other useful provisions of the like nature.

By the 11 H. 7. c. 2. "Vagabonds, idle and suspected persons shall be set in the stocks three days and three nights, and have none other sustenance but bread and water, and then shall be put out of the town; and whosoever shall give such idle person more shall forfeit twelve-pence. Every beggar not able to work shall resort to the hundred where he last dwelled, is best known, or was born, and there remain, upon pain aforesaid."

By the 22 Hen. 8. c. 12. it was provided, "That if any person *being whole and mighty in body* and able to labour, was taken begging, or vagrant, and could give no reckoning how he lawfully got his living, he might be brought before a justice of peace, high constable, mayor, or other officer of the place, who might direct him *to be whipped out of the place at the end of a cart till his back was bloody.*" And by a statute passed in the twenty-seventh of the same reign, those who were found a second time in a state of vagrancy, were *not only to be whipped, but to have the gristle of the right ear clean cut off.*

Notwithstanding the severity of these laws, the country still appears to have suffered from

the great increase of these "valiant vagabonds," in consequence, in all probability, of the dissolution of the religious houses, at whose gates the aged beggar and the young idler had been alike accustomed to find relief. To suppress this growing evil a measure was resorted to of which we give the preamble, on account of the stateliness of its eloquence, and the principal enactment for its complicated cruelty.

"Forasmuch as idleness and vagabondry is
 "the mother and root of all thefts, robberies,
 "and all evil acts and other mischiefs, and the
 "multitude of people given thereto, hath always
 "been here within this realm very great, and
 "more in number (as it may appear) than in other
 "regions, to the great impoverishment of the
 "realm, and danger of the King's Highness's
 "subjects; the which idleness and vagabondry
 "all the King's Highness's noble progenitors,
 "kings of this realm, and this High Court of
 "Parliament, hath often and with great travel
 "gone about and assayed with godly acts and
 "statutes to repress; yet until this our time it
 "hath not had the success which had been
 "wished, but *partly by foolish pity and mercie*
 "*of them which should have seen the said godly*
 "*laws executed*, partly by the perverse nature
 "and long-accustomed idleness of the persons

“ given to loitering, the said godly statutes
 “ hitherto have had small effect, and idle and
 “ vagabond persons being unprofitable members,
 “ or rather enemies, of the commonwealth, have
 “ been suffered to remain and increase and yet
 “ so do, whom if they should be punished *by*
 “ *death, whipping, imprisonment,* and with other
 “ corporal pain, it were not without their deserts,
 “ for the example of others, and to the benefit
 “ of the commonwealth; yet if they could be
 “ brought to be made profitable and do service,
 “ it were much to be wished and desired.” The
 statute then enacts, “ that whosoever, man or
 “ woman, being not lame, impotent, or so aged,
 “ or diseased with sickness, that he or she cannot
 “ work, nor having lands or tenements, fees,
 “ annuities, or any other yearly revenues, or
 “ whereon they may find sufficiently their
 “ livings, shall either, like a serving man want-
 “ ing a master, or like a beggar, or after any
 “ such other sort, be *lurking in any house or*
 “ *houses, or loitering or idle wandering by the*
 “ *highway side, or in streets, cities, towns, or*
 “ *villages,* not applying themselves to some
 “ honest and allowed art, science, service, or
 “ labour, and so do continue by the space of
 “ three days or more together, and, not offer
 “ themselves to labour with any that will take

“ them according to their faculty; and, if no
 “ man otherwise will take them, do not offer
 “ themselves to work for meat and drink, or,
 “ after they be so taken to work for the space
 “ agreed betwixt them and their master, do leave
 “ their work out of convenient time or run away,
 “ that then every such person shall be taken for
 “ a vagabond, and that it shall be lawful for
 “ every such master offering such idle person
 “ service and labour, and that being by him
 “ refused, or who hath agreed with such idle
 “ person, and from whom, within the space
 “ agreed of service, the said loiterer hath run
 “ away or departed before the end of the cove-
 “ nant between them; and to any other person
 “ espying the same, to bring or cause to be
 “ brought the said person so living idle and
 “ loitering, to two of the next justices of the
 “ peace there resiant or abiding, who hearing
 “ the proof of the idle living of the said person,
 “ by the said space living idle as before said, ap-
 “ proved to them by two honest witnesses or
 “ confession of the party, shall immediately
 “ cause the same loiterer to be marked with a
 “ hot iron in the breast the mark of V. and ad-
 “ judge the same person living so idle, to such
 “ presenter to be his slave, to have and to hold
 “ the said slave unto him, his executors or as-

*“ signs, for the space of two years then next
 following, and to order the said slaves as fol-
 loweth; that is to say, to take such person ad-
 judged a slave with him, and only giving the
 said slave bread and water or small drink, and
 such refuse of meat as he shall think meet,
 cause the said slave to work by beating, chain-
 ing, or otherwise, in such work and labour (how
 vile soever it be) as he shall put him unto.”*
 And if any manner of slave, either for loitering
 or for the cause before rehearsed, so adjudged,
 shall, within the space of the said two years
 here appointed, run away, depart, or absent
 him from his said master by the space of four-
 teen days together, without a licence, it shall
 not only be lawful to his said master to pursue
 and fetch him again by virtue of this act, but
 also to *punish such fault by chains or beating*
 as is aforesaid; and against the detainer, if
 any man do willingly detain him knowing him
 to be a slave as is aforesaid; to have an action
 of trespass, and recover thereby in damages
 ten pounds, besides the costs and charges of
 the suit for so detaining his said slave. And,
 further, every such master shewing and proving,
 by two sufficient witnesses, the said offence
 and fault by his running away, before two
 justices of the peace for the same county,

“ whereof one to be of the quorum, the same
 “ justices shall cause such *slave, or loiterer, to*
 “ *be marked on the forehead, or on the ball of the*
 “ *cheek, with an hot iron, with the figure of an*
 “ *S. that he may be known for a loiterer and a*
 “ *runaway, and shall adjudge the loiterer and*
 “ *runaway to be the said master's slave for ever.*
 “ And if such slave shall the second time run
 “ away, or be absent himself, if the said master
 “ shall approve the same second time running
 “ away, with two sufficient witnesses, before the
 “ justices of the peace, in their general and
 “ quarter session, then every such fault and
 “ running away *to be adjudged felony*, and such
 “ loiterer and runaway to be taken as a felon,
 “ and thereof being lawfully indicted and at-
 “ tainted, or otherwise condemned, to *suffer*
 “ *pains of death, as other felons ought to do.*”—
 1 Ed. 6. c. 3.

This savage act was in the course of two or
 three years repealed, and the 22 Hen. 8. revived.
 In the reign of Elizabeth, the evil again increased
 to such a height as to threaten the existence
 of social order. In some counties, bands of
 these beggars assembled together to the number
 of three to four hundred, bent on plunder, to the
 great terror of the people, who were obliged to
 watch day and night to protect their flocks and

corn from these lawless marauders.* Nor are we much surprised at such disgraceful insubordination, when we find the justice of peace of that day described, as “ *a living creature, who, for half-a-dozen chickens, would dispense with a whole dozen of penal statutes.*”† But what these “ capon-lined ” and timid justices shrunk from doing, the Queen herself, in a spirit quite worthy of her father, undertook to do, and forthwith issued the following warrant, which in violence might vie with the thunder of the Vatican:—

A. D. 1595.

Elizabeth, by the Grace of God, &c. To our trusty and well-beloved servant, Sir Thomas Wyllford, Knight, greeting.

Forasmuch as we understand that of late there has been sundry great unlawful assemblies of a number of base people of a riotous sort, both in our city of London and in the suburbs of the same, and in some other parts near to our said city, for the suppression whereof, although there hath been some proceedings in ordinary manner by the mayor of the said city, and sundry offenders committed to several prisons, and have

* Strype's Annals, vol. iv. p. 290.

† D'Ewes' Journals, p. 661.

also received corporal punishment by direction and order of our Council in the Star Chamber at Westminster; and for the stay of the like tumults to follow, we have also, by our proclamation published the fourth of this month, charged all our justices and other officers having charge of the keeping of the peace to have special regard to the inquisition for all that hereafter shall attempt to commit the like offence, *and specially for the apprehension of all vagrant persons*, and them to commit to prison and punish according to the laws of our realm.

Yet for that the insolency of many of the kind of desperate offenders is such, as they care not for any ordinary punishment, by imprisonment and other severe punishment inflicted on them; therefore, We find it necessary to have such notable, rebellious, and incorrigible persons to be speedily *suppressed by execution to death, according to the justice of our martial law*; and, therefore, we have made choice of you, upon special trust of your wisdom, discretion, and other qualities meet for this purpose, to be our Provost Marshal, giving you authority; and so we command you, upon signification given to you by our Justices of Peace in our city of London, or of any place near to our said city, in our counties of Middlesex, Surry, Kent, and Essex,

of such notable, rebellious, and incorrigible offenders worthily to be speedily executed by martial law, to attack and take the same persons, and in the presence of the said justices, according to *justice of martial law, to execute them upon the gallows or gibbet, openly or near to such place where the said rebellious and incorrigible offenders shall be found to have committed the said great offence.*

And furthermore we authorise you to repair with a convenient company into all common highways near to our said city, where you shall understand that any vagrant persons do haunt, and calling to your assistance some convenient number of our justices and constables abiding about the said places, to apprehend all such vagrant and suspected persons, and them to deliver to the said justices, by them to be committed and examined of the causes of their wandering, and finding them notoriously culpable in the unlawful manner of life, as incorrigible, and so certified to you by the said justices, you shall *by our law martial cause to be executed upon the gallows or gibbet some of them that are so found most notorious and incorrigible offenders,* and some such also of them as have manifestly broken the peace, sithence they have been judged and condemned to death for former

offences, and have had our pardon for the same. And we further command as well the mayors and sheriffs and all other officers within our said city, and other our justices of peace, and common officers in any place near to our said city, to be aiding and assisting to you in the execution of the premises, as they will answer thereto at their peril; and of your doings to advertise our council from time to time. And this our authority committed to you to continue in force until that we or our council shall signify unto you our pleasure to determine the cause. And these presents shall be your warrant and discharge in thy behalf.

In witness whereof, &c.*

Two years afterwards the statute of the 39th Eliz. passed, by which it was enacted that every person declared a rogue, vagabond, or sturdy beggar, by that act, taken begging, wandering, or misordering themselves in any part of this realm, should, upon their apprehension by the appointment of any justice of the peace, constable, headborough, or tythingman of the same county, hundred, parish, or tything, where such person should be taken, the tythingman or headborough being assisted therein with the advice

* Rym. Fæd. tom. xvi. p. 279.

of the minister and one other of that parish, " *be stripped naked from the middle upwards, and shall be openly whipped until his or her body be bloody.*"

These measures, too severe one would suppose to have proved otherwise than revulsive and shocking in their execution, produced an effect which we will give in the words of Lord Coke himself, and to which we earnestly entreat the attention of the reader. Speaking of the 39th Eliz. he says,* " *that upon the making of this statute, and a good space after, whilst justices of peace and other officers were diligent and industrious, there was not a rogue to be seen in any part of England; but when justices and other officers became tepidi or trepidi, rogues, &c. swarmed again.*"†

By the statute of the 7th Jac. c. 4. a *new class* of persons is described under the vague designation of " *idle and disorderly persons:*" upon which Lord Coke makes the following comment: " *Though they have lawful means to live by, yet if they be 'idle or disorderly persons,' the justices of peace have power to commit*

* 2 Inst. p. 728.

† Justices will again become both *tepidi* and *trepid*, if their conduct, like that of the respectable Member for Stafford, is to be brought before Parliament upon every occasion.

“ them to the House of Correction,—*a general and large power given to them, without the exception of any person.*—And their mittimus “ to the House of Correction may be more “ safely upon this statute, *quia otiosa et inordinata persona*, than upon the 39th Eliz.”* Through subsequent reigns we find much the same course of penal legislation pursued in taming these vagrant spirits.

A view, too rapid perhaps, has been taken of the measures adopted by other governments as well as our own, to repress a class of people—outeasts of society, not from misfortune, but vice—idle, not from want, but hate of work,—and vagrant from the pure love of vagabondry;—eating the hard-earned bread of others, which they triumph in getting by plunder or fraud:—a class which can alone be kept under by laws like the present, executed with firmness, temper, and discretion. If in the exercise of that summary power, so wisely and necessarily entrusted to those who execute the Act, some may have appeared, and perhaps have been, somewhat too zealous in the application of its penalties, it is no more than must be expected from our common nature,—*Humanum est*—

* 2 Inst. p. 728.

Neither the projector nor the promoters in parliament of the present measure, nor the intelligent Minister of the Interior, under whose eye it passed into a law, could have been influenced by any other feeling than the public good; they have created no new law, as it has been ignorantly imagined, but acting on principles that all times and nations have recognised, have merely simplified and arranged the provisions already existing in our statute books, condensing them into one act, and adapting them to the present state of society. With the few exceptions which will be presently noticed, the law is a most salutary one: but instead of the thanks of the country, to which the learned framer of it, Mr. Chetwynd, was so justly entitled, he has met only with reproach and obloquy. The same feeling that lauded the murderer on the scaffold, is now as busy in abusing the magistracy, and advocating the cause of thieves and vagabonds. So constant indeed has been the attack upon this misunderstood measure and its administrators, that it was not until it called forth the reprobation of Mr. Hume, that its real merits began to appear.*

* The case which originated these animadversions was that of a man of the name of Lotcho, convicted as being of that sect of philosophers called Cynics, *ita dicti* (says the Lexicon

Come we now to the Act itself. The preamble states the expediency of amending the laws now in force relating to idle and disorderly persons, rogues and vagabonds, and incorrigible rogues, in England, and that it would simplify the same if the several provisions relating to such offenders were consolidated into one act. It then proceeds to repeal former acts, with a provision that nothing in this Act shall alter any

Forcellini) *quod canum more in propatulo coire non dubitarent*, and whose petition for redress of grievance, on that account, was presented a short time since to the House by Mr. Hume. This *much-injured* and *respectable* tradesman, as described by this statesman (or rather in his speech as done into *English* by the reporters), is one of a family of felons; his father and two of his uncles were cast for death at Chelmsford for a burglary—his mother keeps an old iron shop (which is another word for a receptacle for stolen goods) in Essex-street, Whitechapel, where this *respectable tradesman* occasionally lives. So much for the accuracy and philanthropy of this Parkins of Parliament. In the course of his vituperation of those who executed the law, with his usual good taste and gentlemanly feeling, he more than once bestowed the epithet of *hired* on the Magistrates of Police—If indeed the disgrace attendant on holding a public station were to be measured by the salary attached to it, the Magistrates of Police would at least have the satisfaction of coming in for as small a share of it as any functionaries in the state. At present we will say no more, but content ourselves with recommending to those who may feel dispirited by similar reflections from the same quarter, that honest recreation just now so much in fashion—“*pede humum quætere*.”

law now in force for the removal of poor persons born in Scotland, Ireland, or the Isles of Man, Jersey, Guernsey, and becoming chargeable to parishes in England. It then, in section 2, defines the persons that are to be deemed idle and disorderly, which had in the statute of 7 Jac. been left to the discretion of the justices.

"Those who threaten to run away and leave their families or children chargeable to any parish." This proposition is somewhat too general; it would be hard to commit a man who merely *threatens*, without some overt act to evidence his intention. By the statute just mentioned, of 7 Jac. the man who threatened must be able to work, and the fact of his threatening be proved by two witnesses before two justices.

Secondly, *"All persons who, being able to work, and thereby or by other means to maintain themselves and families, shall wilfully refuse or neglect so to do, by which default or neglect they or any of them shall become chargeable to any parish, township, or place."* This, also, is too general; *all persons* would comprise all other classes of society, as well as the labouring class, to which, of course, it is intended to apply.

Thirdly, *"All persons who shall return to any parish, township, or place from whence they have been legally removed by order of two jus-*

"times of the peace, and shall there become chargeable, without producing a certificate owning them to be settled elsewhere." By the 17th of Geo. 2. it was not necessary that a person so returning should become actually chargeable to the parish, to bring him within the penalties of the law, which by this Act is humanely made necessary.

Fourthly, *"All common prostitutes or night-walkers wandering in the public streets or public highways, not giving a satisfactory account of themselves."* *Night walkers, wandering*, is obviously too vague a term, and requires to be more strictly defined. With respect to *prostitutes*, it is somewhat curious to observe, that this is the only penal enactment upon the subject to be found in our statute book; whether this abstinence is to be attributed to a feeling of languor in Parliament to every question connected with police, or to a feeling of mercy towards the hapless individuals who are the objects of these laws, or perhaps to a sense of the total impracticableness of the subject matter, it is difficult to determine. We should be more disposed to ascribe it to the latter, since it has been found by experience that neither the edicts of prætors, the rescripts of emperors, the anathemas of the church, or the ordinances of kings,

have been of the least avail, and statesmen have at length been obliged to compromise what they could not restrain. During the middle ages, this subject was at various times discussed at councils by the learned men of the church. "In regimine humano illi," says that eagle of theologians, Thomas Aquinas, "qui præsunt rectè aliqua mala tolerant, ne aliqua bona impediantur, vel etiam ne aliqua mala pejora incurrantur."* It would be tedious to enumerate the many regulations that nations both ancient and modern have made with regard to this unhappy class of beings, too often "more sinned against than sinning." There are some laws, however, that seem to have pretty generally obtained in most countries; such are those compelling them to wear a certain dress, restricting them to a particular quarter of the city, or obliging them to register their names with the proper authorities.†

* *Quæstiones.*

† Eodem anno gravibus Senatûs decretis libido feminarum coercita; cautumque "ne quæstum corpore faceret, cui avus, aut pater, aut maritus eques Romanus fuisset;" nam Vistilia prætoriâ familiâ genita, licentiâ stupri apud Ædiles vulgaverat; more inter veteres recepto, qui satis pœnarum adversum impudicas in ipsâ professione flagitii credebant."—*Tacitus, Annal. lib. 2.*

In England, fornication has of late years been cognizable only by the ecclesiastical law, though anciently, according to Lord Coke, both adultery and fornication were punished by fine and imprisonment, and “inquirable in turnes and leets by the name of Letherwite.” We find in Domesday, “De adulterio vero per totum Chent, habet rex hominem, (i. amerciamentum hominis) et archiepiscopus mulierem, (i. amerciamentum mulieris), &c. Vidua, sialicui se non legitime commiscet, 20*s.* emendabit, puella vero 10*s.* pro consimili causâ.”* Fleet-street, from time immemorial, seems famed as the resort of these “*donne peccatrici.*” There is a record in the time of Edward III. which runs in these words: “Rex præcipit majori civitatis London, quod amoveri faciat omnes mulieres meretrices in venella prope fratres Carmelitarum in *Flete-street* inhabitantes.” In the reign of Henry VI. there is an obsolete statute, declaring, that they who dwell in the stews shall not be impanelled on juries.

In the year 1650 (as Blackstone observes), when the ruling powers found it for their interest to put on the semblance of a very extraordinary strictness and purity of morals, not only incest and wilful adultery were made

* 3 Inst. page 205.

capital crimes, but also the repeated act of keeping a brothel, or committing fornication, were (upon a second conviction) made felony without benefit of clergy! But at the restoration, when men, from an abhorrence of the hypocrisy of the late times, fell into a contrary extreme of licentiousness, it was not thought proper to renew a law of such unfashionable rigour; and these offences have been ever since left to the feeble coercion of the Spiritual Court, according to the rules of the Canon law,—a law which has treated the offence of incontinence, nay even adultery itself, with a great degree of tenderness and lenity, owing, perhaps, to the celibacy of its first compilers. So stood the law upon the subject, until the present Act; and the power that it entrusts to magistrates should therefore be used with great tenderness and discretion, especially as the punishment to which it may consign them, is one, the propriety of which, as far as it affects females indiscriminately, may admit of just objections.*

The Act then, as to the foregoing classes, declares it lawful for *any justice of the peace to*

* The House of Correction for females in Paris, called St. Lazar, where continual, but not oppressive, labour in the *ordinary occupations of women* is the punishment, may perhaps be worthy of attention.

commit such offenders (being thereof convicted before him by his own view, or by his, her, or their own confession, or by the oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month.

By Section 3d, the following classes are to be deemed rogues and vagabonds: "*All persons going about as gatherers of alms under false pretence of loss by fire, or by any other casualty, or as collectors under any false pretence; all bearwards; all common stage players, and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be performed, any interlude or entertainment or entertainments of the stage, or any part or parts therein, such persons not being authorized by law.*" The first part of this section scarcely requires any comment, as it is almost entirely a reprint of what is contained in the old acts; the phrase "*common stage players,*" which is here, for the first time, introduced, requires, perhaps, some little explanation. It is matter, however, for consideration, whether more power might not be granted to justices in sessions than they now have* of licensing certain places of

* 25 Geo. II.

public entertainment in and near the metropolis. At present their power is limited to granting licenses only "*for music, dancing or other public entertainments of the like kind,*" under which license nothing in the shape of dramatic representation can be legally performed, although it is done by means of various subterfuges, to evade the penalties of the act.

There is even now a species of amusement going on, of a very rational kind certainly, and which is much followed by the higher orders of society—we mean French plays; the performance of which, were the magistrates called upon officially to notice them, would not only expose "*Messieurs les Artistes*" to the appellation of Rogues and Vagabonds, and to the pains and penalties thereunto appertaining, but render the gay audience liable "*to be seized and dealt with according to law.*"* Now it would be somewhat ludicrous to see a lovely Countess, or perhaps one of our highest legal characters, distinguished not more for the depth of his learning than for the refinement of his taste, running the gauntlet of a watchhouse—a Bow-street Office,—and perchance, the tread-mill, for the great offence of enjoying a delightful comedy of Molière, or

* Query, what law?

Piron. Such, however, is the law; and the sooner it is altered the more agreeable it will be both to actors and audience.

“ All persons pretending to be gipsies; all persons pretending to tell fortunes, or using any subtle craft, means, or device by palmistry, or otherwise, to deceive or impose on any of his Majesty’s subjects, or playing or betting at any unlawful game.” The last of these propositions requires to be more definitely worded; for the lawfulness or unlawfulness of a game may depend on time, place, and person: for example—By the 33d of Henry VIII. a game that is allowed at Christmas is unlawful at another season. 2dly. Games that are prohibited at a common house, kept for the purpose of playing, are permitted at an inn or tavern for the recreation of the guests. 3dly. A master is allowed to play at a game which, in a servant or artificer, would be punishable. The discussion of the general question of gaming, of its effects upon society, and under what restrictions it would be expedient to place it, must be reserved for another opportunity; since its investigation would require more reflection, and occupy a greater space than could conveniently be spared in a work of this kind.

“ All persons who run away and leave their wives or children chargeable to any parish,

" township or place ; and all petty chapmen and pedlars, wandering abroad, not being duly licensed, or otherwise authorized by law." This last offence is already sufficiently punishable under the Hawkers' and Pedlars' Act.

" All persons wandering abroad and lodging in ale-houses, barns, out-houses, or in the open air, or under tents, or in carts or waggons, and not giving a good account of themselves"—this also is a reprint of the old law, but requires to be more definitely worded.

" All persons openly exposing or exhibiting in any street, road, public place or highway any indecent exhibition, or openly and indecently exposing their persons"—this is the clause that has given so much offence, and been the principal reason of all the outcry raised against the act. We will, in spite of the clamour, however, venture to say, that there does not exist in the whole circle of penal legislation a more useful enactment, properly understood and applied. It may perhaps appear incredible to those who judge of the purity of others by themselves, that there is to be found in this metropolis and elsewhere, a class of wretches who really take pleasure in shocking the eyes of women and children by the grossest and most shameful exposure of their persons ; several instances of this kind have fallen

under our notice, and where the offenders, who, but for this salutary measure, would in all probability have escaped with impunity, have expiated their offence by a three months labour* at the wheel. Whether this punishment should extend to persons who, without intending, occasionally offend against the laws of decency, is another question. That it would be desirable to restrain such offenders there can be no doubt, but the difficulty is, how to legislate upon such vague and impalpable subjects, as coarse feeling and bad taste; and to leave it to the magistrates to determine what is or is not so, where each may have his own peculiar way of viewing the question, would certainly be to abandon the liberty of the subject too much to the arbitrary notions of these gentlemen. Something, however, should be done—some enactment made to distinguish the two classes of offenders above designated: for those who *deliberately and intentionally* offend, there might be a greater punishment than even now awaits them; and upon those who, in their ordinary functions, are *unnecessarily indelicate*, a small fine might be imposed, and, in

* Toute personne qui aura commis un outrage public à la pudeur sera punie d'un emprisonnement de trois mois à un an, et d'une amende de seize francs à deux cents francs.—*Manuel de Droit Français*, par Pailliet, p. 1120.

default of payment, an imprisonment for any time not exceeding a month.

"All other persons wandering abroad or placing themselves in streets, public places, highways, courts or passages, to beg or gather alms, or causing or procuring, or encouraging any child or children so to do, or endeavouring by the exposure of wounds or deformities to effect the same purpose." With respect to the propriety of this enactment, there can be but one opinion; the law of France is, on this point, fully as severe as our own.*

"All persons who shall be apprehended having in possession any pick-lock key, crow, jack, bit, or other implement, with intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable, or out-building"—a most salutary clause, of the benefit of which, however, His Majesty's subjects in Middlesex are in great measure deprived, by the construction which the sessions have put on the term "*having*;

* Toute personne qui aura été trouvée mendiant dans un lieu pour lequel il existera un établissement public organisé afin d'obvier à la mendicité, sera punie de trois à six mois d'emprisonnement, et sera après l'expiration de sa peine conduite au dépôt de mendicité. Mendians qui feindront des plaies ou infirmités seront punis d'un emprisonnement de six mois à deux ans.
—Code Pénal de France. Pailliet, p. 1112.

in possession ;" they, in their wisdom, have laid it down that a man cannot be said to *have a thing in his possession* unless he has it *actually about his person*.* The words of the statute 23 Geo. 3. c. 88, "*that if any person be apprehended having upon him any pick-lock key, &c.*" made it necessary that a commitment should state that the implements *were upon him* at the time of his apprehension ; and when a conviction was quashed in the King's Bench on the ground that *they were not so*, Lord Kenyon yielded, it is said, with the greatest possible reluctance to the objection.† This obvious defect in the 23 Geo. 3. is, when interpreted by common sense, remedied by this act.‡

* A case occurred a short time since of a man whose lodgings were entered and searched by the officers of the police ; he was found in them, and from his pocket was taken a key, with which they opened his drawers and found an immense number of pick-lock keys of every description, and of the most ingenious manufacture ; besides which were discovered his mask, dark lantern, phosphorus box, &c. He was taken before a magistrate who, in the simplicity of his understanding, convicted him, under this act, of having in his possession pick-lock keys, with a felonious intent. This conviction was appealed against and quashed at the sessions, on the ground that, because he had not the 500 keys upon his person, he could not be said to have them in his possession.

† R. v. Brown, 8 T. R.

‡ Tout mendiant ou vagabond muni de limes, crochets ou autres

*"All persons having in possession any gun, pistol, hanger, cutlas, bludgeon, or other offensive weapon, with intent to assault any person or persons, or commit any other illegal act"**—this clause is not to be found in former vagrant acts; it is imported from the 23 Geo. 3. with the exception only, that that act has the phrase "with intent feloniously to assault."

"All who shall be found in or upon any dwelling-house, warehouse, coach-house, stable, or out-house or area, or in any inclosed yard, garden, or place, and shall not be able to give a good account of themselves; or who shall frequent any river, canal, or navigable stream, dock, or basin, or any quay or warehouse near or adjoining thereto, or the avenues to any such quay or warehouse, or the streets or highways leading thereto; or any place of public resort, the avenues leading thereto, or the streets, highways, or places adjacent, WITH INTENT TO COMMIT FELONY on the persons or property of any of His Majesty's subjects"—this is partly new matter, and, in part, taken from the last police act—WITH INTENT

instrumens propres soit à commettre des vols ou d'autres délits, soit à lui procurer les moyens de pénétrer dans les maisons.

* Ou porteur d'armes, bien qu'il n'en ait usé ni menacé, sera puni de deux à cinq ans d'emprisonnement.—Paillet, *Manuel de Droit Français*, p. 1112.

to commit felony ;—now, a man's intention may be collected from the character of the person—his actions—the time—the place—the company in which he is found, &c. &c. ; but here, again, the sessions have interposed, and rendered almost nugatory a clause which is penned in the best spirit of police, *prevention of crime* ! They are not satisfied that a man is, by repute, a thief ; the place in which he is found, a public street ; the time, night ; his company, other thieves ; but they require evidence of some open and immediate act committed before they will infer the felonious intent ; and thieves are much too wary to be often taken in “ *ipsâ rapinâ et flagranti crimine.*”

“ *All persons imposing or endeavouring to impose upon any church-warden or overseer of the poor, or upon a charitable institution or private individual by any false and fraudulent representation, either verbally or in writing, with a view to obtain money, or some other advantage or benefit* ”—This is an entirely new enactment, and a most useful one it is ; but whether this *imposing or endeavouring to impose* must be connected with alms—in the way of seeking charity only ; or is applicable to *all cases* where one man endeavours to impose upon another, is the question.

Section 4. describes the persons who are to be deemed incorrigible rogues.

“ All persons apprehended as rogues and vagabonds, and escaping from the person or persons apprehending them, or refusing to go before a justice or justices of the peace, to be examined by such justice or justices, or knowingly give a false account of themselves on such examination after warning given them of their punishment ; and all persons who shall break or escape out of any gaol or house of correction before the expiration of the term for which they were committed or ordered to be confined, by virtue of this act ; or who, being charged with any offence, AND BEING BOUND BY RECOGNIZANCE, IN MANNER HEREIN-AFTER MENTIONED, to appear at the next general or quarterly sessions of the peace, shall neglect to appear accordingly ; and all persons who, after having been adjudged to be rogues and vagabonds and then discharged, shall again commit any offence under this act.”

By Section 9. the Justices in sessions are empowered to order any rogue and vagabond to be imprisoned for not more than six calendar months to hard labour ; and any incorrigible rogue for not exceeding one, nor less than half, a year, and during that time to be corrected by whipping (not females), at such times and places as the

court may think fit; incorrigible rogues, upon a second conviction as such, may be imprisoned for not exceeding two years, and during their confinement to be corrected by whipping. By 17 Geo. II. incorrigible rogues, upon a subsequent conviction, were treated as *felons*.

“BEING BOUND BY RECOGNIZANCE, &c.” Sec. 15, which gives an appeal to persons aggrieved in the execution of this act, omits to empower the justices to bind the appellant to appear *personally* at the sessions, the words of the section being, “*entering into a recognizance with sufficient surety to try and prosecute such appeal.*” Although perhaps the sessions would not entertain the appeal without the presence of the appellant.

Section 6. awards the punishment which any justice out of sessions may impose upon any *rogue and vagabond, or incorrigible rogue, the matter alleged and charged being first proved against them*, viz. imprisonment to hard labour for any time not exceeding three months nor less than one month. Then follows a most humane provision, not to be found in any preceding law, that it shall be in the discretion of the justice either to commit or *discharge the offender, although an act of vagrancy be proved against him*. And the justice may, if he thinks

fit, bind him or her in a sufficient recognizance to appear at the next quarter-sessions. This latter provision seems almost useless, for of what value can be the *personal* recognizance of a *vagrant*? We will not quote the proverb.

Section 5. empowers justices, *if they think fit, to reward persons apprehending vagrants with any sum not exceeding five shillings.* By the former act, 17 Geo. II. the justices could award no sum under ten shillings.

Section 13. By this section any justice, “*upon information on oath, that persons described as idle and disorderly rogues and vagabonds, or incorrigible rogues, are reasonably suspected to be harboured in any lodging-houses, by warrant under his hand and seal, may authorize a constable or other person, to enter at any time such house, and apprehend and bring before him or any other justice, all persons found therein and so suspected; and if, on examination, it shall appear to such justice, that they or any of them cannot give a satisfactory account of themselves, it is lawful for such justice to commit them to the House of Correction to be dealt with as rogues and vagabonds.*” The difficulty here is, when the persons are so found and brought before the justice, to produce sufficient evidence of their having actually committed some act constituting the

offence of vagrancy; for, in the absence of such proof, the magistrate would hardly be justified in dealing with them as rogues and vagabonds.

By Section 15. an appeal is given to *persons aggrieved by any act of any justice in execution of this act*; but there is this embarrassment attending it, arising from its being an appeal against a commitment *in execution*, in which case it has long since been decided* that a party *cannot be bailed*, notwithstanding the statute has given a right of appeal against the conviction to the sessions. This difficulty has never yet been satisfactorily explained or removed. Let us suppose the case of a man convicted under the vagrant act, and committed, six weeks prior to the sessions, for one month, that after he has been in gaol a week he gives notice of his appeal, enters into a recognizance to try it, and complies with the requisites of the act; can, then, a magistrate, *after he has committed, discharge him out of custody?* the moment the commitment is signed, the magistrate is *functus officio*; but if he is *not* permitted to be at large on bail, this absurdity follows, that he appeals against a conviction after he has undergone the duration of imprisonment expressed in the commitment, the conse-

* R. v. Brookes and others, 2 T. R. 196. per Buller J.

quence of such conviction. If he *is* permitted to be at large and the sessions confirm the conviction, what then becomes of the commitment? It is like a Lord Mayor, in force only for an appointed time, and then sinks into nothing. Thus one of three absurdities must follow, either the sessions confirm that which is *no longer in existence*, or the *rogue laughs at justice and escapes punishment*, or they *refer him back to his original sentence*, and if asked by what law they do so, they would find it, or we are much mistaken, difficult to give a satisfactory answer. Let us consider it by analogy, and suppose a convict, for a transportable offence, receives sentence of seven years transportation, and escapes after he has been six months on board the hulks, and is not found till after the expiration of the term, could he be referred back to his original sentence? We say no! it is true that had he been convicted of a capital crime* and pardoned, on condition of his transporting himself, and had afterwards failed in performing the condition, he might then be referred back to his original sentence of death, which might again be commuted, at the pleasure of the crown, to transportation. There will be now an opportunity

* R. v. Patrick Madan, 1st Leach, 223.

for the legislature to remove these doubts and difficulties, which, if they perplex professed lawyers, must of course embarrass our country squires.

Upon a comparison then of this Act with any law upon the subject that has ever existed here or in any other country, the unprejudiced inquirer must see, first, That it is a most temperate measure, for it not only adopts the *minimum* of punishment ever meted out to the offence of *vagabondry*, but it also empowers the justice* for the first time, to discharge an offender, where the offence has been proved against him. 2dly. That it is an effective one, since it is simpler, better arranged, and, when rightly interpreted, contains more useful enactments than any former law. 3dly. That it is less expensive to the country, since it has diminished the amount of the rewards, and disburthened counties of that most grievous charge of passing vagrants from one end of the kingdom to the other. When this act shall have been carefully revised, for the purpose of giving to its propositions a

* This obviates any oppression which might otherwise arise towards those who are taken in an act of vagrancy from necessity; such as Americans and foreigners, &c. in distress, who have no settlement, and of course no parish on which they have a claim for relief.

greater degree of convenient certainty and legal precision, we unhesitatingly assert, that its repeal would be an evil, and its continuance a blessing to the commonwealth.

Thus much for the act itself. With regard to the *summary power* entrusted to the magistrates in this and other acts; it has, obviously, arisen from the necessity of securing to the subject in certain cases, a cheaper and speedier redress of wrongs, than he could possibly obtain by the tedious and expensive mode of trial by jury: "*Justice*" being "*sweetest*," as my Lord Bacon has it, "when it is *freshest*," and it is by this means brought home to every man's door. This power, decried as it is, of hearing and determining cases without the intervention of a jury, has within these few years much increased, not from any love of authority on the part of the magistracy, or desire on that of the legislature to innovate, as it has been insinuated, but from the indisputable benefit that has been felt from it in every part of the kingdom. Its opponents are obliged to resort to that common vicious mode of reasoning, which draws its conclusions from the *abuse of things*, the fallacy and absurdity of which are strikingly obvious in the instance before us. These sophists proclaim the liberty and property of the subject to be in danger, as being left to the decision of a single judge, whose

haste and ignorance may betray him frequently into error; and thence they infer, that summary power is bad, forgetting at the same time that they are wholly taking part with the *injurer*, and are keeping out of view altogether the right to redress of the *injured*. The sum of such reasoning amounts to this, that because out of an hundred cases *two or three injurers* may perchance be oppressed by a decision, (with the right, be it always recollected, of appeal reserved to them) the *hundred injured* are to be entirely shut out from all redress, or, which is the same thing, subjected to the expense of seeking it in the courts above, which would be much greater than the *compensation* asked for the injury received. Notwithstanding, however, all that the legislature has already done to secure to the subject a speedy, cheap, and effectual administration of justice, there remains a *mass of undressed injury pressing upon the lower classes*, of which those who are unacquainted with the painful detail of the business of life are but little aware. It may fairly be asked, for example, what remedy the poor man has to rid himself of a troublesome swindling lodger?—The same machinery must be put into motion to eject the tenant of a garret,* as the wealthiest lord from the largest

* See Note at the end.

domain. What redress also has a man whose watch or coat, of the value of four or five pounds, is unjustly withheld from him? It is true, the Court of King's Bench, it may be said, is open to him, "so (said Horne Tooke) is the London Tavern, if he can but pay:"—but here, if he had the means, none but an ideot would think of throwing away twenty pounds to recover four or five.* Trial by Jury has received its fullest measure of praise; it is, doubtless, between the crown and the subject, of inestimable value, but as a universal mode of arbitrement, inapplicable to the multiplied and complicated interests of society, in a high state of civilization; in which disputes are hourly arising among the citizens, that require *immediate* interposition. Without intending to speak of this venerable institution with the slightest disrespect, it may be compared to a rich brocade, or fine old china, to be brought out on many occasions, but quite unfit for every-day use. Let any one carefully watch the proceedings in our civil and criminal courts of judicature, and he will, if we mistake not, perceive that, in most instances, the verdict of a jury is little more than a judgment expressed by twelve men,—right, when it is bor-

* See Attorney's bill in note at the end.

rowed from another, and wrong when it is their own.

Vagrancy, although an important, is still a very minor branch of Police, which, when *essentially protective*, is of the highest importance to society. In France it has, particularly since the revolution, been so elaborately organized, as to be almost identified with the government itself,—reduced to a system, detached in part from the judicial administration: when police assumes this shape, danger may justly be apprehended from its abuse; yet even so, in the hands of a good government, it resembles those poisons deleterious in themselves, which, when skilfully applied, work the greatest benefits. In this country statesmen have not yet considered the subject as worthy of their attention, and it has therefore not kept pace with the other improvements of the age. We are almost as far behind hand in the knowledge of police, considered as a science, as though we had for the first time turned our attention to the properties of steam, when the engine had been at work for years in every other part of Europe. This neglect is the less pardonable in us, as our constitution and code afford elements admirably adapted and amply sufficient to form the most efficient yet liberal system in Europe. It is painfully curious to observe that while French

kid gloves, Irish whiskey, Dutch toys, and Russia tallow, are considered of sufficient consequence to be put under the *surveillance* of men of just consideration (we mean the Commissioners of Excise and Customs); the administration of this important branch of the executive power has, till within these few years, been left to persons who knew no more of the laws of their country than of those of Confucius. The late amiable and judicious Secretary for the Home Department saw and corrected this evil, and the office of public magistrate has since been filled by men selected from the Bar. Much still remains to be done—between religion and morality on the one hand, and the penal laws on the other, there is an immense void, which it is the business of Police to supply; and though it will not perhaps make men more virtuous, it will diminish the number of criminals. It will not utterly root out moral evil, but it will prevent much physical, and keep off the contagion of bad example. Glorious, indeed, is the yet untrodden path, for a minister to win to himself honour by promoting this long-neglected science: thus giving to his fellow citizens a full and perfect assurance of safety to their property, their characters, their liberty, and their lives.

NOTE.

Costs of an Ejectment to recover Possession of a Garret, where the Defendant pleads, but afterwards omits to appear at the Trial, and makes no Defence.—See ante, p. 46.

IN THE KING'S BENCH.

Michaelmas Term.

	£.	s.	d.
Instructions to sue and filling up warrant . . .	0	6	8
Paid for stamp for warrant	0	5	3
Perusing deeds and abstracting parcels as instructions for declaration	0	6	8
Drawing declaration with notice, folio 6.	0	6	0
Ingrossing to serve	0	2	0
Stamp	0	0	4
Service of ejectment on the tenant	0	5	0
Affidavit of service, stamp, and oath	0	8	8
Copy declaration to annex, and stamp	0	2	4
Term fee, letters, &c.	0	12	0

Hilary Term.

Instructions to counsel to move for judgment . .	0	2	6
Paid him	0	10	6
Attending him and court	0	3	4
Paid for rule	0	7	6
Paid filing affidavit	0	3	0
Searching if tenant had entered into consent rule, and giving receipt for same	0	3	4
Paid filing with clerk of the rules, and for rule . .	0	12	0
	4	17	1

	£.	s.	d.
Brought forward	4	17	1
Fee on signing consent rule	0	3	4
Copy and service of rule	0	3	0
Drawing issue, fol. 8.	0	2	8
Ingrossing to deliver	0	2	8
Stamp	0	0	4
Notice of trial	0	3	0
Entering issue on the roll, and paid	0	6	10
Warrants and docket	0	4	0
Drawing placita and jurata	0	3	4
Ingrossing the record, fol. 11.	0	5	6
Paid for stamp and parchment	0	12	0
Paid passing the record	0	12	0
Fee thereon	0	6	8
Venire	0	11	6
Distringas	0	12	6
Paid returning.	0	14	0
Attending	0	3	4
Paid setting down cause.	0	11	8
Subpœna	0	12	6
Copies and service on two witnesses	0	10	0
Paid them	0	2	0
Instructions for brief	0	13	4
Drawing same, two sheets	0	13	4
Copy for counsel	0	6	8
Paid him and clerk	2	4	6
Attending him.	0	6	8
Attending trial when a verdict found for the plaintiff	1	1	0
Paid court fees (<i>not ascertained</i>)			
Term fee, letters, &c.	0	13	0
	17	18	5

	£.	s.	d.
Brought forward	17	18	5
<i>Easter Term.</i>			
Rule for judgment	0	4	0
Attending to get record stamped for postea	0	3	4
Paid stamping	0	10	0
Drawing and ingrossing postea	0	5	0
Paid marking	0	0	6
Drawing bill of costs and copy	0	5	0
Attending taxing	0	6	8
Paid the master	0	5	0
Drawing and entering final judgment	0	5	0
Attending at Westminster for that purpose	0	3	4
Habere facias possessionem	0	14	6
Warrant and messenger	0	3	6
Attending the sheriff to take possession (according to time and distance) but at the least	0	6	8
Paid the sheriff—this also depends upon distance and the value of the premises, according to which is the sheriff's poundage, but say officers' fees and assistants	1	1	0
Sheriff's poundage			
Term fee, letters, &c.	0	13	0
Total	£ 22	14	11

In this bill it is supposed the defendant pleads merely to annoy the plaintiff; the charges are upon the lowest possible scale.

*Costs of an Action in Trover to recover a Watch.*See *ante*, p. 47.

COMMON PLEAS.	Trinity Term.	£.	s.	d.
Instructions to sue and filling up warrant . . .		0	6	8
Stamp		0	5	3
Capias		0	16	0
Copy and service		0	5	0
Searching for appearance		0	3	4
Instructions for declaration		0	6	8
Drawing same, folio 5		0	5	0
Ingrossing duty and warrants		0	2	8
Rule to plead		0	4	0
Searching for and demanding plea		0	5	4
Drawing issue, folio 9		0	3	0
Ingrossing to deliver duty and entering plea . . .		0	4	8
Entering issue on the roll, and paid prothonotary .		0	8	0
Notice of trial		0	3	0
Warrants and docket		0	4	0
Drawing placita and jurata		0	3	4
Ingrossing record, folio 13		0	4	4
Parchment and duty		0	15	0
Paid prothonotary marking it		0	1	0
Paid passing it		0	5	0
Fee on passing same		0	6	8
Venire		0	12	0
Returning and attending		0	5	4
Habeas corpora juratorum		0	14	0
Paid returning		0	12	0
Attending for same		0	6	8
Paid setting down cause		0	13	9
Associate passing and marking record		0	8	8
Instructions for brief		0	13	4
				<hr/>
				10 3 8

	£.	s.	d.
Brought forward	10	3	8
Drawing same, four sheets	1	6	8
Two fair copies of brief for counsel	1	6	8
Fee to Mr. Serjt. Best with brief and clerk	3	5	6
Attending him	0	6	8
Paid fee to Mr. Pollock and clerk	2	4	6
Attending him	0	6	8
Three subpoenas	1	16	0
Copies and service on twelve witnesses	3	0	0
Attending court, verdict for plaintiff	1	1	0
Paid court fees	4	8	0
Officers	0	3	0
Paid witnesses	2	10	0
Term fee, letters, &c.	0	13	0

Michaelmas Term.

Rule for judgment	0	4	0
Attending to get the record stamped for postea	0	3	4
Paid stamping	0	10	0
Drawing and ingrossing postea	0	5	0
Paid marking	0	0	6
Drawing bill of costs and copy	0	5	0
Attending taxing	0	6	8
Paid the master	0	5	0
Drawing and entering final judgment	0	5	0
Attending at Westminster for that purpose	0	3	4
Term fee, letters, &c.	0	13	0
Writ of execution	0	14	6
Warrant and messenger	0	3	6
Officer's fee, and sheriff's poundage, cannot be previously ascertained, but not less than	1	11	0

Total £ 38 1 2

In an action of Detinue, the costs would be the same, and then if the article cannot be recovered in specie, damages are given in lieu; but it may often happen damages will not compensate, as in the case of a *family* watch, or piece of plate, &c.

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THE
VAGRANT ACT,
IN RELATION TO THE
LIBERTY OF THE SUBJECT.

SALUTARIS SEVERITAS! BEATA SECURITAS!

Lord Coke.

BY A BARRISTER.

LONDON:
JOHN MURRAY, ALBEMARLE-STREET.

MDCCCXXIV.

L O N D O N :
PRINTED BY G. ROWORTH, BELI YARD,
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POSTSCRIPT.

SCARCELY were the foregoing pages printed off, when a pamphlet appeared upon the same subject from the pen of a distinguished Barrister;* and certainly if it fails to give the *coup de grace* to this almost *expiring* Act, which is the subject of it, it will be for no want of those vehement denunciations, those exaggerated statements, and other arts, by which a far less accomplished advocate can “make the worse appear the better cause.” But until it can be satisfactorily shown that our own and every other civilized nation known to history have grossly erred in the principle on which they have ever dealt with the idle and vicious classes, we shall and do hope that the legislature will pause before they mistrust the wisdom of ages by a repeal of the present law.

* Observations on the Vagrant Act, &c. by John Adolphus, Esq.

Before we notice further the observations of this gentleman, we shall take the liberty of opening one or two points which, in the generality of the preceding remarks, have been left too concisely or perhaps insufficiently explained.

In page 4, where *the numbers* which compose this vicious mass are adduced to show the necessity of strong measures, it may be more satisfactory to state ~~whereabouts~~ those numbers actually are; for as little idea can otherwise be formed of their amount, as of the immensity of meat or fish daily consumed in this metropolis, from the sight of a sirloin of beef or a single mackarel. So long ago as 1794 Mr. Colquhoun stated, "that in the capital alone above *twenty thousand miserable individuals of various classes* rise up every morning without knowing how or by what means they were to be supported through the day, or where, in many instances, they were to lodge for the night." This computation appears even then too moderate; for, of the class of *mendicants alone*, we see, from the Report of the Mendicity Committee of the House of Commons, the numbers stated by Mr. Martin to amount to *fifteen thousand*, of which 5,300 were Irish; and the Committee state they had reason to believe the number to be much greater, as by the evi-

dence of Mr. Montague Burgoyne it would appear there were, in 1815, 14,164 Irish in London, including adults and children; and although these were not *all* mendicants, yet it appeared that there were few of them who had not either begged themselves or employed some of their family to do so.

The number of prostitutes in London has been calculated at fifty thousand;* the lowest class of them live in connexion with the thieves, and are principally supported by them.†

In the year 1820,‡ there were committed to the

* Colquhoun, p. 340.

† Police Report, p. 50.

‡ “ You can draw no accurate conclusion from the number of offenders sent for trial (which for six years preceding 1815 were 38,429), without also adding thereto, the number of other delinquents who pass through the gaols periodically from year to year. The whole amount, male and female, may be ascertained to a point, by calling on the gaolers of the different counties to make returns of prisoners (not sent for trial) who have been committed and discharged in each year. I calculate, in round numbers, that about 5000 individuals, not sent for trial, float in and out of the gaols of the metropolis in the course of every year; but keeping in view those that are acquitted, you must consider also those sent for trial, but not prosecuted; besides those that are imprisoned and discharged within this period. Supposing that those that have been committed and discharged by the magistrates amount to 10,000, and those committed for minor offences were 12,000, you have

different gaols in England *sixty-five thousand nine hundred and forty-six offenders*,* exclusive of the committals to the prisons in the counties of Durham, Surrey, and Westmoreland, from which there were no returns. Of this number 13,710 were committed for trial for *criminal* offences; the rest were for debt, bastardy, assaults, vagrancy, &c. Of the debtors it may be fairly affirmed that two-thirds are little more than swindlers and sharpers. In the above numbers we have not taken into account those who have pursued their career of crime with impunity.

Of the *habits* of common vagrants, the Mendicity Report itself contains a great variety of illustrative facts, from which we extract a few, for the information of those who may not possess the public document.

a total of *upwards of 50,000 floating delinquents*, arising from discharges from prison after the expiration of their sentences—from acquittals—from liberation for want of prosecutors at the gaol deliveries—from the temporary commitments and discharges of magistrates. It is from this general view only, that the actual number of criminal delinquents can be estimated; and even this will not be accurate, since almost innumerable larcenies are committed, which never come under the view of magistrates or courts of justice.”—*Police Report*, p. 34, *Colquhoun's Evidence*.

* Vide Returns to Parliament from all the Gaols, &c.

“ A beggar will spend 50s. a week for his board.

“ Beggars are furnished with children at houses in Whitechapel, Shoreditch; some who look like twins; children frequently on women’s backs.

“ Children are annually instructed in idleness and drinking, and of course lying; *idleness* is sure to bring on lying and *theft*.

“ One man will collect three, four, or five children from different parents, paying 6d. and 9d. for each, to go begging with. Parents beat their children if they do not carry home the sum required.

“ A woman with twins, which never grew older, sat for ten years. Twins, not the children of the beggars one time in an hundred.

“ The beggars, after having perambulated their circuits, live well, spending a considerable portion of money, have hot suppers, and regale themselves with various liquors.

“ From 200 to 300 beggars frequent two public-houses in St. Giles’s, divided into companies and subdivided into walks; *live luxuriously* at night.

“ Beggars scarify their feet to make the blood come; they change their routes every day; share considerable sums of money, and get

“scandalously drunk; quarrel and fight; and
 “one teaches the other the *mode of extorting*
 “*money*; they are *the worst of characters*, blas-
 “phemous and abusive; when they are *detected*
 “*as impostors* in one parish, they go into ano-
 “ther.*

Such are the dispositions and habits of a very large class of those who fall under the denomination of rogues and vagabonds.†

In p. 45, speaking of the utility and necessity of *summary* power for the effectual execution of this and other penal acts, it should have been observed, that if this power were withheld from magistrates, and the offences it embraces referred for trial to a jury, the freeholders, everlastingly harassed, would be tired and worn out, and vice and vagabondry unavoidably triumph. The reluctance not only of jurors, but prosecutors, witnesses, and all not *paid* for their services, at the Sessions, to waste their time and money in attendance upon them, is already but too manifest

* Vide Mendicity Report, pages 4 and 5.

† While upon the subject of vagabonds, we ought to ask pardon of our friend with the five hundred picklock-keys (mentioned in p. 36), who was treated with such *deserved* lenity by the sessions, for having omitted to state, what we ought in justice to have done, that, at the very next Old Bailey Sessions, he was *tried, convicted, and transported* for a street robbery!

from the operation of the clause which gives the right of appeal against the conviction of a justice. People will not voluntarily serve the public, and the magistrate has not, under this act, the power to compel them; impunity therefore as regards the offence, and odium as regards the convicting magistrate, for not doing what the legislature has not empowered him to do, are the necessary results.

If therefore, instead of being *summarily* punished, offences against this act, as we have said, should be sent to a jury, the preamble of the present Act should be struck out, and the following substituted:—

Whereas it is expedient that LAWYERS SHOULD LIVE, and it would materially facilitate this DESIRABLE OBJECT, if the summary power now exercised by justices of the peace, under the various penal statutes now in force; were, in the COUNTY OF MIDDLESEX, abolished; and the offences committed against such statutes left, in all cases, to a jury: Be it therefore enacted, &c.

We will now pass to the pamphlet itself; which, though written with the usual strength and fervour of its distinguished author, partakes so much more of the tone of the advocate than that of the dispassionate inquirer, that much of

its effect will, we apprehend, be lost upon the legislature, who will eventually have to decide upon the question : for surely, to impute to this august body, as in page 40, an *unnecessary* infringement of the privileges and the liberty of the subject, by their “ manifest tricking” and “ insincerity” in the means of effecting it, is not the most conciliatory or likely mode of procuring the redress or correction of the evil.

In page 18, the writer remarks:—“ I am not “ unaware that the Vagrant Act of the 17th “ Geo. II. gave higher rewards than the recent “ one; but that act contained no such clause as “ the present; and there was *another very remarkable difference*: in that, the rewards were “ to be paid by the treasurer of the county, and “ *the acts of each individual justice would pass “ under the revision of the whole session*, at least “ once in every year; in this they are paid by “ overseers of parishes, and, whatever may be “ their extent, they are never heard of in the “ aggregate; but the overseers’ account is passed “ in the usual manner, and the justice’s order is “ a sufficient voucher.”

The 17th Geo. II. made it imperative upon the justices to allow *no sum under ten shillings*; by the present act they are permitted to grant any sum they please *under five shillings, but nothing*

above it; or they need grant *nothing at all*; which last will, we believe, be found to have been the case in the majority of instances. And as to the *other remarkable* difference (so ingeniously put) in the *payment* of those rewards, there is substantially none at all; for although, when the accounts of the treasurer were laid before the justices in sessions, they might, to satisfy their minds as to the accuracy of them, have called for any voucher they thought proper, yet when the orders of individual justices, for the payment of rewards, were passing in revision before them *for that purpose only*, we never heard of the sessions presuming to question the propriety of them, and for the reason, that they could have no *data* on which to found any correct judgment.

In some points, however, we are happy to agree, as will be seen, with the remarks of the author. We laugh at and despise, as heartily as he can do, that sickly sensibility which can delight in the scarcely-veiled voluptuousness of Moore, or the broad licentiousness of Byron, yet affect to be offended with the *chaste* nakedness (if we may be allowed the expression) of an antique statue; and had the law been made only for *such* delicate and sensitive nerves, we should have been the last to ask for its continuance. But the object the legislature clearly had in

view, was the preservation of *public decency* and *public morals*; and in the maintenance of that just principle, it was as clearly their duty to skreen from the modest eyes of women, as from the tender minds of children, whatever might offend the one, or contaminate the other.

We are fully aware of the extreme difficulty of drawing any line to which *all* will agree; but that our view of the quality of this offence—of *exposure of the person*—may not be misunderstood, we will exemplify it by a case which actually occurred last year, and *ex uno disce*—

On the 18th of January, 1823, a fashionably-dressed, middle-aged man, was charged before the magistrates of Lambeth-street, by the parents of several female children, with the indecent exposure of his person, in different parts of Stepney and Mile-End. The case was this: a child (nine years old) proved, that, on Sunday, the 12th of January, the prisoner exposed himself to her in White-horse Lane, *suum penem ostendens*—saying, “come here, my little girl, hunc manu quate, I’ll give you half-a-crown.”

Another child (about twelve) proved, that on Friday, the 17th of January, as she was going along Mile-End road, she saw the prisoner in a corner, who *exposed himself* to her, *ut supra*.—When she went home, she told her mother there

was a nasty man in the road. Some time afterwards she went out again, and saw the same man, near Globe-lane, when he again *exposed himself in the same way*. A woman, who witnessed this last transaction, went and told the child's mother of it, who applied immediately to a constable, and had the prisoner taken into custody.

A third child (ten years old) proved, that on the same 17th, as she was carrying a man's dinner down Mile-End road, and facing the King Harry public-house, was looking at some dolls in a shop, when she saw the prisoner in a corner — *he exposed himself in like manner to her*.

On this case, or rather cases, the offender, it is hardly necessary to add, was convicted; and committed, in consequence, under the Vagrant Act, for three months to the House of Correction. Three or four days afterwards he entered an appeal, and, having found the necessary bail to prosecute it at the next sessions, he was discharged.

Some time, however, before the sessions, it came to the knowledge of the magistrates, that great exertions were making with the parents of the children, who were by no means in affluent circumstances, to compromise the affair, and every thing was considered settled, so as to

ensure the non-attendance of the children at the sessions to prosecute ; but on the morning of the day appointed for the appeal, the magistrates dispatched a confidential officer to the school which two of the children attended ; and finding them engaged in their ordinary occupations, as if no necessity existed for their appearance at Clerkenwell, he took them in a coach, with some of their female relations, to the immediate vicinity of the court.

The defendant appeared quite confident of acquittal ; but the case was no sooner called on, than, to the surprise of all the parties, the children were ushered into court by the officers ; and such was the effect on the defendant, that the counsel whom he had retained, declined to enter upon the case, and submitted to the conviction of his client, who was immediately remanded to the House of Correction, in execution of the judgment first passed upon him by the magistrate, and remained there till the end of the term.

Now, had not pains been thus taken to secure the presence of these poor children at the hearing of the appeal, and thus to frustrate the compromise of so gross a case, the transaction would, in all *Hume*-an probability, have gone forth to the public as another instance, like that

of "*poor Lotcho*," of magisterial oppression—adding another victim to the number of those committed to the tread-mill, on insufficient evidence, under this "odious act."

With regard to *indecent exhibitions*, the clause might, perhaps, be better penned ; but we can see no reason for treating it as a joke; and certainly the supposed infrequency of an offence ought not to be a reason for removing all restraint upon it.* And although it may be said that the two last mentioned branches do not strictly fall within *the letter* of the term Vagrancy, it will at least be conceded that the society of vagabonds is the fittest that could be found for such offenders.

In page 30, we find the following comment upon the enactment which punishes "*the imposing, or endeavouring to impose upon any overseer of the poor, or other charitable institution, or private individual, by any false and fraudulent representation, either verbally or in writing, with a view to obtain money, or some*

* "Toute exposition ou distribution de chansons, pamphlets, figures ou images contraires aux bonnes mœurs, sera punie d'une amende de seize francs à cinq cents francs, d'un emprisonnement d'un mois à un an, et de la confiscation des planches et des exemplaires imprimés ou gravés de chansons, figures ou autres objets du délit."—*Code Pénal de France*.

other advantage or benefit." " But should this " clause be allowed to remain in force, even in " its limited sense (viz. the fraudulently obtaining " money in the way of charity), every man who " knows any thing of the management of paro- " chial funds, and the daily untruths told by " persons seeking relief, to those who administer " them, must tremble at depositing in any " hands *the wild and extravagant powers* which " are given by this clause."

We shall here take leave to let in a little light on this enactment from a Report of the Committee of the House of Commons, on the State of Mendicity, from which the reader may, perhaps, gather the reason of depositing these " wild and extravagant powers" in the hands of justices.

The Report* states, " That *some thousand ap- plications, by letters, are made for charity, to* " ladies, noblemen, and gentlemen in the me- " tropolis. That *two thousand on an average* " *were within the knowledge of one individual,* " who was employed to make inquiries."

" That several persons subsist by writing let- " ters. That one woman profits by the practice, " who receives a guinea a week as a legacy

* See Report, p. 8.

“ from a relation, and has laid out 200*l.* in the funds. That letters have been written by the *same person in five or six different hands.*”

“ That persons who write begging letters are called *twopenny-post beggars*, and *profit considerably* by the practice.”

“ That petitions, carried about, frequently obtain money, and that many persons live by writing these letters.”

“ That a man who keeps a school, writes begging letters for twopence each.”

“ That the *Vagrant Act*”—and here, we think, was cause enough for the “*wild and extravagant*” provision in the new act—“was *evaded* by persons resorting to *begging by letters.*”

In page 35, we meet with this remark—

“ One of the defences made for this act is, in my judgment, even more *extraordinary* than the act itself; that the sixth clause gives a discretion either to commit or discharge the person brought before a justice, *although an act of vagrancy be proved.* It is new to me to learn that the power to be partial diminishes the probability of a judge’s being unjust. It is a curious guarantee for the safety of those whom a justice may happen to dislike, that those who are more favoured may be dis-

“ missed with impunity. It must be truly edi-
 “ fying, at the time of an election, for the
 “ people to be informed, that if, with one colour
 “ in their hats, they carry bludgeons in their
 “ hands, they will be sent to the house of cor-
 “ rection ; but if they wear the adverse favour,
 “ his good worship will do them no harm, *even*
 “ *although an act of vagrancy may be proved.*
 “ How wonderfully it must exalt our morals
 “ and our patriotism to know, that if a miser-
 “ able English stroller were to murder Hamlet
 “ at half-a-crown per box ticket, he might
 “ spend his next six months in the house of cor-
 “ rection, whilst a foreigner who might refine
 “ us with the voluptuous sensibilities of *la folle*
 “ *journée*, at half-a-guinea for a *billet*, would be
 “ dismissed from the office with a smile in return
 “ for his *congé*, although *an act of vagrancy had*
 “ *been proved.*”

It so happens that very unconsciously *we*
 have been unfortunate enough to make the
 “ *very defence*”—here denounced—however, we
 shall endeavour to shift, as quickly as possible,
 the odium of it from ourselves to those much
 better able to bear it—the aforesaid Mendicity
 Committee of the House of Commons—who are
 “ decidedly of opinion that the *provision of the*
 “ *act* (of 17 G. 2.), which compels the magis-

“trates in every case *without exception* to com-
 “mit or punish every person who shall be
 “found begging, *should be repealed* ;” and they
 give the following *absurd* reason for their re-
 commendation : “that the humble mendicant
 “asking alms in a state of nearly famishing was
 “(under that act) *as liable* to commitment to
 “the House of Correction as the sturdy and in-
 “solent beggar living in a state of comparative
 “luxury.”

The provisions of sections 7 and 13 appear to
 be jumbled together for no other purpose than
 to cite, with effect, the following terrible *tirade*,
 from the pen of another* barrister, and here
 characterised as “happily conceived and inge-
 “niously expressed.” “Thus then it is at the
 “*discretion* of *any justice* of the peace to sus-
 “pect, to seize, to examine, to imprison, *any*
 “*one* of his Majesty’s subjects!—to seize and
 “sell his effects!—to break into *any house*
 “where he may be entertained!—*provided he*
 “*be poor!*”

* * * * *

“What then becomes of our old maxims, that
 “an Englishman’s house is his castle; that his
 “person and property are free and at his own

* On the Increased Powers of Justices of Peace by R. B.
 Codyn, Esq. Barrister at Law.

“ disposal ; that no man is bound to criminate
 “ himself ; and the many other topics of our
 “ late national pride and exultation ? The *poor*
 “ *man* (to say the least) must remember that *his*
 “ *lodging is liable to be broken into : his more*
 “ *opulent neighbour* must live in dread of the
 “ awful scrutiny into *his trunks and packages*,
 “ or the *sudden seizure and sale* of his beasts
 “ and carriages ; whilst the *whole community*
 “ must bear in mind, that the freedom of their
 “ persons *depends upon the discretion* and inte-
 “ grity of the King’s justices of the peace. But
 “ when once suspected, seized, examined, con-
 “ victed, imprisoned, and stripped of his money
 “ and effects, the unhappy sufferer may *console*
 “ *himself* with the *recollection* that, after the
 “ payment of all expenses of the law, he will, at
 “ the expiration of his term of hard imprison-
 “ ment, be enabled to visit the world again with
 “ the surplus of his forfeited property, if any
 “ there be.”

Now who, not deeply skilled in matters of
 this sort, reading such a philippic against
 our imperial or rather *imperious* parliament,
 would not be apt to ask himself in what coun-
 try he was ; and, whilst he shrugged up his
 shoulders at his *Turkish* and ticklish situa-

tion, bless his stars that his head was permitted to retain its usual place upon them? Not only the habitation of the poor man, "*provided he be poor*," is exposed, it seems, to magisterial, and *of course* tyrannical invasion, but the baggage of his opulent neighbour, provided, we presume, he should travel, is liable to awful *visitation* and scrutiny, and his carriages and horses to detention and sale, at the *discretion* of the first justice he may meet upon the road, who may make all this havoc and confusion, merely to fill up an idle hour, or dispel a gloomy one! The passage quoted may originally, however, have been intended but as a joke, and as such we should be amongst the first to laugh at it, as worthy either of Colman or O'Keefe; but when it is paraded, thus at second hand, as serious argument, by one who does not see the fun of it, we must pause, and, if we can keep our countenance, endeavour to refute it; indeed it is but fair, after our attention has been thus called to the pompous effusions of the comic and tragic muses, to ask a hearing, before it is finally damned, for the *One-Act*-piece of Mr. Chetwynd.

That the legislature has empowered the justices, when *informed on oath*, that vagabonds are lodged and entertained in *certain houses*, to issue their warrants, authorising constables to

enter and search them, and to apprehend all suspected persons who may be found therein—is perfectly true; but *what* houses are here referred to? not those of honest and peaceable poor people, as we are *comically* and *pathetically* besought to suppose, but *low lodging houses*, for the avowed reception of “stark, errant, down-right beggars, ay without equivocation, statute beggars,” as the old play* describes them—houses, “where, in the language of the Report,† there are forty or fifty of them like a gaol, a porter standing at the door and taking money, where for three-pence they have clean straw or something like it; for those who pay four-pence there is something more decent; for six-pence a bed, where they were all *locked in* for the night lest *they should take the property*; and in the morning there is a general muster below, while the servants go and examine all the places to see *that all is free from felony*, and then they are let out into the street, just as you would open the door of a gaol, forty or fifty of them together; they have *no settled habitations* but those places to which they resort.”

Nor is it without reason that justices are empowered to order the search of such persons as

* Jovial Crew, or the Merry Beggars.

† Report of Mendicity Committee, 1815, page 53.

are convicted of vagabondry, their bundles, packages, &c. for upon reference again to the Report, we find,* that “beggars, on their being “*searched* when brought before the magistrates “*a great deal of money has been found upon them, in their pockets and in their clothes*; “that there was clear proof that a blind man “with his dog got thirty shillings in one day; “that a negro beggar retired to the West Indies “with a fortune, it is supposed, of £1,500; that “fifteen, twenty, and thirty shillings have been “found upon them; that they get more by begging than they can by work—found upon “beggars eight, ten, and twelve shillings, that “they had gained in the course of the day; “that it was a bad day that did not yield the “beggars eight shillings and more.”

It would hence appear that this “jovial crew” can very well afford to pay for their own conveyance to the House of Correction and their maintenance whilst there.

“*Gipsies*,” likewise, who are proverbially not over-nice in their distinctions of *meum* and *tuum*, but,

“Such of all men’s meat and all men’s money
 “Take a free part, and wheresoe’er they travel,
 “Have all things *gratis* to their hands provided.”

Old Play.

* Report of Mendicity Committee, 1816.

are surely fit objects of suspicion and search, without any violent stretch of the liberty of *such* subjects.

Petty Chapmen and Pedlars. These have been described, and we believe truly,* as “prac-

* In the reign of Elizabeth, great complaint was made of this description of persons. In a letter addressed to the lord treasurer, by Edward Hext, justice of peace of the county of Somerset, we find the following sensible observations: “ And when these lewd people are committed to the gaol, *the poor country that is robbed by them, are forced then to feed them, which they grieve at,* and this year (1596) there hath been disbursed to the relief of the prisoners in the gaol, £73, and yet they allowed but six-pence a man weekly, and if they were not delivered at every quarter-session, so much more would not serve, nor two such gaols would hold them; but if this money might be employed to build some houses adjoining to the gaol, for them to work in, and every prisoner committed for any cause, and *not able to relieve himself, compelled to work;* and as many of them as are delivered upon their trials, either by acquittal of the grand jury or petty jury, burning in the hand, or whipping, *presently transferred thence to the houses of correction, to be kept to work,* (except some present will take any into service) I dare presume to say, *the tenth felony will not be committed that now is,* and if *some like course might be taken with the wandering people,* they would easily be brought to their places of abode; and being abroad, *they all in general are receivers of stolen things that are portable;* as, namely, the tinker in his budget, the pedlar in his hamper, the glass-man in his basket, cover infinite numbers of felonies, in such sort that the

"tising every species of villany upon the
 "country people, as well as upon the unwary
 "in the metropolis and all the great towns in
 "the kingdom. The artifices by which they
 "succeed are various, as for example, by fraudu-
 "lent raffles, where plated goods are exhibited
 "as silver, and where the chances are exceed-
 "ingly against the adventurers; by selling and
 "uttering base money and frequently *forged*
 "*bank notes*, which make one of the most pro-
 "fitable branches of their trade; by dealing in
 "smuggled goods, thereby promoting the sale
 "of articles injurious to the revenue, besides
 "cheating the ignorant with regard to the
 "value; by *receiving stolen goods*, to be dis-
 "posed of in the country, by *which discoveries*
 "*are prevented, and assistance afforded to com-*
 "*mon thieves and stationary receivers*; by *pur-*
 "*chasing stolen horses* in one part of the
 "country, and disposing of them in another in
 "the course of their journies, in accomplishing
 "which, so as to elude detection, they have
 "great opportunities."*

tenth felony cometh not to light, for he hath his receiver at
 hand, in every alehouse, in every bush, and these *last rabble*
are very nurseries of rogues."—*Strype's Annals*, vol. iv. p. 293.

* *Treatise on Police* by Colquhoun, p. 116.

Mr. Colquhoun is here, be it observed, speaking of *licensed* chapmen only; what then must be the particular objects of this law—the unlicensed?*

To the foregoing classes, the propriety of the application of the act will not, we think, be denied us: but should it be contended, that there are yet other classes embraced, to which it ought not to extend, inasmuch as though *properly*, they are not *technically*, vagabonds, we can only concede the point, or leave it to the philanthropic and patriotic patrons of such *protégés* to settle among themselves.

There are other minor points which, intentionally, are left untouched, as our only objects were, to establish the broad principle on which the bill was framed, and the propriety of its principal enactments. It has already been urged, and perhaps may again, as an objection to the line of argument pursued in the previous pages, that we can *now* have little to do with the laws of Alfred or Edward, or with the early institutions of our country,—a

* When, in page 33, we spoke of this class of vagrants as sufficiently punished under the Hawkers and Pedlars Act, we had no conception they were such consummate rogues. We here retract what we said. A conviction of them is easier under the Vagrant Act.

most convenient mode of reasoning this, truly! When it suits our purpose, we laud them to the skies—we cling to them with a passionate affection, and are jealous of the slightest innovation; but when a statesman, to guide his vessel in a dubious track, keeps in view these great Lights, as beacons whereby to shape his course, then are they which were so lately vaunted, as loudly deprecated and irreverently scorned. It may here, too, be worthy of mention, that the very regulation of Alfred to which, in page 9, we alluded, compelling men, when called upon, to find security to the state for their good behaviour, and which was imported here from the wilds of Germany by our Saxon fathers, at this moment actually exists in England, in its fullest force; and that a magistrate has at this day, as much as in the days of Alfred, the power “to take of all them, that be not of “good fame where they shall be found, sufficient “surety and mainprize of their good behaviour “toward the king and his people,”* for any time he pleases, or to commit such persons to the common gaol until they do so; and this is recognized in the case of Willes and Bridger, decided by the Court of King’s Bench, Hilary Term, 1819. Now, although this power is as good in law, and

* 34 Edw. III.

as subject to be called into exercise, as any one contained in the Vagrant Act, yet if the bitterest opponent of that measure—the warmest venerator of our great patriarch—were asked, which he would prefer, we are much mistaken if he would hesitate a moment to close with the modern statute.

We refrain, at present, from noticing the other statutes, on which this gentleman so strongly comments, as unconnected with the measure proposed for consideration; but we have a word—and more than one—to say upon the following passage.

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

“ look at the *number of instances* in which
 “ judges* *are obliged* to declare their *wonder* that
 “ the *prisoners were ever committed*.

“ I entertain *very strong opinions* on the *causes*
 “ of this *remarkable difference*, a difference al-
 “ ready noticed, and which I trust will be *fear-*
 “ *lessly* proved by the legislature. I should
 “ *most unwillingly* contribute, by *any public ob-*
 “ *servation of mine, to augment any prejudice* on
 “ this subject; but I am convinced, that a great

* Judges, the *best of them*, may occasionally lose their temper—they are men; but here they must have almost lost their senses also, before they could express a wonder, that prisoners indicted and tried should ever have been committed; for unless true bills had been found, in every instance, against them by the grand jury, on their oaths, and generally on *much slighter evidence* than before the magistrates, thus corroborating and confirming the sufficiency of the committal, the trials could never have taken place. Reflections, however, from the Bench upon the conduct of magistrates are becoming a kind of fashion with the former. It was but the other day that a learned judge, *authentically* informing himself through the means of some deputy in court, gave it publicly out, that the magistrates of the police offices returned copies only of depositions, instead of the original documents, in cases of felony, as it was their duty to have done; but on inquiry into the circumstance, it appeared, that (with one exception, we believe) all the police offices returned, regularly, to the sessions the very documents, whose suppression was so injudiciously deprecated.

“ deal indeed is requisite to render the establish-
 “ ment useful, and that that great deal ought
 “ not to consist in the augmentation of pow-
 “ ers.”

Now, though we are willing to admit that there is not in Europe—we may include *Turkey*—a civic body so *imposing* (as the French have it) as a Lord Mayor and *Aldermen* of London in their *chains*, nor one half so well fitted to do justice to their high name and calling; nay, that the least of this divan, in their halls of justice, is as able a minister of police as the Duke of Otranto (Fouché) himself—yet no one, we think, will deny, that it is neither very gracious, nor very generous, to taunt and tantalize their *stipendiary* brethren of the county in the strain of the fat Friar in the Duenna, to his lean lay-brother—

“ No—neither you, nor your fellows mark how the
 “ hours go; you mind nothing but the gratifying of your
 “ appetites; ye eat, and swill, and sleep, and gorman-
 “ dize and thrive; whilst we are wasting in mortification.
 “ Oh, glutton! glutton!”—Act 3. s. 6.

We, therefore, imitating the humility of the lean brother, shall only presume to suggest, that all that has been said may not, it *is possible*, be quite correct; and that the statements of this

imposing body may yet, like the CORPORATION of our friend the fat friar, be “*all wind*.”

For instance, the relative disparity between the convictions and acquittals in the city, and the county, “*so frightful*,” as it is here called, “*so monstrous*,” as it has been called in a place we cannot name,* is, upon a closer comparison, in truth scarcely worth notice—as will be shewn by the following return, viz.

1823.	Committed.	Convicted.	Acquitted.	Proportion Acquitted.
London - - -	362	248	114	·315
Middlesex - - -	1358	872	486	·358

Hence it appears, that of those committed in London, rather less than one-third are acquitted, and of those in the county, rather more than that proportion escape conviction. And when we consider the difference in the quality of the juries, the comparative distance of the courts from prosecutors, witnesses, &c. the reluctance of parties, who reside so far off, to attend, and other causes, which cannot be here explained, the experience of the learned gentleman might have enabled him to account for the disparity, supposing even a much greater existed, without imputing it to haste or neglect;—

* The reader may perhaps smile at our sudden fit of modesty.

it could not be to the ignorance of the "police justices," members of his own profession, who, as he must have known, had as little to do with the matter as he had.

Thus from a statement which we have shewn to be quite erroneous, he kindly hesitates to infer what he thinks would annihilate, yet just insinuates what he has not the candour to avow—a *something* of too deep a dye to divulge! He talks of prejudice—if any exist: is it by this affected reserve, exciting alarm without defining the danger, and suspicion without affording the opportunity of allaying it, that prejudice can be removed? It surely would have been fairer towards a body from whom he acknowledges to have received "great personal kindness and civility," to have declared at once to *what** and to *whom* this mysterious complaint attaches, instead of, like a waspish insect, throwing out its sting, and again as quickly withdrawing it, as if only to gratify its own angry instinct.

A Parliamentary Inquiry will doubtless be instituted into *all* these matters in the course of the present session;—of the result we are little

* "It is *the cause*, it is *the cause*—

Let me not name it to you, you chaste *Bar*,—

It is the cause." *Othello.*

apprehensive, notwithstanding the league of these learned gentlemen against the measure. It will at least afford consolation to them, to feel that they have done their utmost to check the progress of *Summary* Power, which, albeit it threatens sad *wintry* waste to their briefs and fees, we yet, when duly defined and guarded, venture to predict will become to the science of jurisprudence, what the power of steam is to that of mechanics—let whosoever or whatsoever be crushed by its momentum. Yes, the day *must* come, when chicanery * and jargon will alike be dispelled; and to sickening delay and ruinous expense in the redress of wrongs, will succeed cheap, speedy, equal, and intelligible justice,—accessible alike to the poor man in his cottage and the prince in his palace.

* —“ *CHICANE*—ce monstre odieux

Jamais pour l'équité n'eut d'oreilles ni d'yeux.

La disette au teint blême, et la triste famine,

Les chagrins dévorants, et l'infame ruine,

Enfants infortunés de ces raffinements,

Troublent l'air d'alentour de longs gémissements.

Sans cesse feuilletant les lois et la coutume,

Pour consumer autrui, le monstre se consume;

Et, dévorant maisons, palais, châteaux entiers,

Rend pour des monceaux d'or de vains tas de papiers.”

Boileau.—*Le Lutrin*, chant. 5.

We must now take leave of our subject, and
bid adieu to vagrants,

——“ The only freemen of a commonwealth,—
Free above *Scot-free*,* that observe no law,
Obey no governor—use no religion,
But what they draw from their own ancient custom,
Or constitute themselves.” *Old Play.*

This ancient and *respectable* community will
soon become the subject of legislative inter-
ference, when their *rights* and *privileges* will
be defined.

The question will at last resolve into this—
whether honest men are to live in peace and
security, or the members of this community

* “ Scot-free ” is an expression that has greatly perplexed
the commentators, though without much reason, as it is point-
edly alluded to in the old chorus of all the beggars. The
reader will not fail to be struck with a singular coincidence
of names; but who the persons were that the vagabond streat
so familiarly in their noisy revels, it is impossible at this
distance of time to say—of no great consequence.

CHORUS.

“ If a beggar by chance of the *Quorum* should be,
He no longer could boast of his living *Scot-free*;
But we—do what we will, wench or thief, let what come,
Like “ Lotcho,” are sure of a friend in——

I. HUME! *Heigho! diddle dee.*”

[*Here they all dance and shout.*]

OLD PLAY.

to flourish undisturbed : and in coming to a decision upon this *disputed* point, let the long-established principle of salutarily punishing "idleness and vagabondry, as the mother of "all mischiefs," be not forgotten, nor the saying of Lord Coke* pass unheeded, that "*of all "statutes, these are to be preferred which PRE- "VENT offences before they be done, before those "which punish them after they be done.*"

* 3 Inst. 62.

THE END

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