

See D. Murray and Act, 140

A
LETTER
TO A
MEMBER OF PARLIAMENT,
ON THE
ON THE
IMPROPRIETY OF CLASSING PLAYERS
WITH ROGUES AND VAGABONDS
IN THE
VAGRANT ACT.

BY THE AUTHOR OF "THE
VAGRANT ACT IN RELATION TO THE LIBERTY OF THE SUBJECT."

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A LETTER,

to
&c. &c.

SIR,

IN the conversation which I had, a few days ago, the honour to hold with you upon the subject of the *Vagrant Act*, you were pleased to put a question to me, which, at the moment, I was unprepared to answer;—viz. how far, independently of that act, I considered the existing laws relating to Plays and Players sufficient for the punishment of offenders, without the necessity of including them any longer in its provisions.—I have since looked into those laws with some attention; and although I find them at present too confused and inconsistent to be of themselves sufficient for the object we had in view—of their own regulation—yet they might, I think, without much difficulty, be so moulded and consolidated as to answer that purpose, and render any further reference to the act in question altogether unnecessary. The introduction of

players indiscriminately into the laws relating to vagrancy is of modern date, for the act of the 39th of Eliz. by which a *certain set* of them are expressly treated as vagabonds, speaks only of "*common players of enterludes,* wandering abroad.*" The words are "*common players of enterludes and minstrels wandering abroad, (other than players of enterludes belonging to any baron of this realm, or any other honourable personage of greater degree, to be authorized to play under the hand and seal of arms of such baron or per-*

* In every country there have been theatrical amusements of an order inferior to the regular drama ; such were the Mimi and Atellanæ of the Romans, and the Intermezzi of the Italians. To the Mimes of Rome succeeded the *Histrion* and *Farceur* of the middle ages, who roamed about from place to place, without any settled habitation, displaying their buffoonery and obscene wit. After them came the *Trouveur*, the *Conteur*, and the *Jongleur* ; the first celebrated in verse the exploits of princes or heroes, interspersing his theme with sallies of satire, or recited in dialogues the dalliance of lovers, which were called *Tensons*, *Syrventes*, &c. ; the *Conteur* told his merry tale ; and the *Jongleur* played upon some instrument. They would often unite their talents, and by this means afforded infinite mirth to their patrons and protectors. In England, previous to the establishment of the drama, we had also our mummeries and masquerades, and at festivals the castles of our great barons were thronged with minstrels, mimics, tragedours or jugglers, tumblers, and a whole train of these amusing vagrants. Then followed the Mysteries and Moralities, after them the Interludes, and then the Drama. :

“sonage.”) Upon this clause two questions arise—
 1st. What were interludes. : 2dly, What were the
 players of them intended by the act. Now inter-
 ludes were *not* mysteries, which were a sort of
 theatrical representation, founded entirely upon
 some scriptural or legendary story—They were
not moralities, which principally contained reflec-
 tions and disquisitions upon vice and virtue—
 They were *not* the regular drama, because they
 had little or no pretension to fable or plot ; but
 they were a species of dramatic entertainment, in
 dialogue, *inter-personal** as it were, and not inter-
 scenical—sometimes serious, but oftener comic—
 which followed the mysteries and moralities, and
 preceded the regular drama. Such were the
 interludes of Heywood, in the reign of Henry
 the VIII. And now as to the persons.—Mr.
 Malone, in his historical account of the English
 stage, speaking of the 39th of Eliz. makes the
 following remark. “ This statute has been fre-
 quently mistated by Prynne and others, as if it

* “ *A Play betwene Johan the Husband, Tyb the Wyfe,*
and Sir Johan the Priest, by John Heywood, 4to.

A Mery Play betwene the Pardoner and the Frere, the Curate,
and neybour Pratte, 4to. Imprynted by William Rastall, 5th
of April, 1533.

The Play called the Foure P. P. ; a new and very mery
Enterlude of a Palmer, a Pardoner, a Potycary, a Pedler.
Made by John Heewood, 4to.

declared *all* players (except noblemen's servants) to be rogues and vagabonds; whereas it was made against *strolling* players only."

As early as the 16th of Eliz. (1574) we find a license granted by herself to James Burbage and others, "to use, exercise, and occupy the art and faculty of playing *comedies, tragedies*, interludes, stage-plays, and such like, as they have already used and studied."

In Rymer's *Fœdera* there is also to be found a license from King James the First.—

"Pro Laurentio Fletcher, et Willielmo
" Shakespeare, et aliis. A. D. 1603. Pat.

" 1 Jac. P. 2. m. 4.—James, by the grace of
" God, &c. to all justices, &c. truly, Know you
" that we have licensed and authorized, these
" our servants, Lawrence Fletcher, WILLIAM
" SHAKESPEARE, Richard Burbage, Augustine
" Phillippes, John Hemings, Henry Condel,
" &c. and the rest of their associates, freely to
" use and exercise the art and faculty of playing
" *comedies, tragedies*, histories, interludes, morals,
" pastorals, stage plays, and such like other, as
" they have already studied, or hereafter shall
" use or study, as well for the recreation of our
" loving subjects, as for our solace and pleasure,
" when we shall think good to see them, during
" our pleasure; and the said comedies, tragedies,

“ histories, interludes, morals, pastorals, stage
 “ plays, and such like, to shew and exercise pub-
 “ licly their best commodity, when the infection
 “ of the plague shall decrease, as well within
 “ their now usual house called the Globe, within
 “ our county of Surrey ; as also within any town-
 “ halls, or moute-halls, or other convenient
 “ places within the liberties and freedom of any
 “ other city, university, town, or borough what-
 “ soever, within our said realms and dominions.
 “ Willing and commanding you, and every of
 “ you, as you tender our pleasure, not only to
 “ permit and suffer them herein, without any
 “ your lets, hinderances, or molestations, during
 “ our pleasure, but also to be aiding or assisting
 “ to them, if any wrong be to them offered, and
 “ to allow them such former curtesies as hath been
 “ given to *men of their place and quality* ; and
 “ also what further favour you shall shew to
 “ these our servants for our sakes, we shall take
 “ kindly at your hands. Witness ourself, at
 “ Westminster, the 19th day of May.

“Per Breve de privato Sigillo.”

Now let the time be noted when these licenses
 were granted—the first, twenty-three years *before*,
 and the second within six years *after* the act
 of the 39th of Eliz. when every species of drama-

tic representation was perfectly well known, and understood, and fully recognized in those licenses;* and had it been the intention of the framers of that statute, to include the players of the *regular drama*, (nay, *all* players indiscriminately,) it is not very likely they would have made mention only of *common players of interludes and minstrels*,—performers of the lowest order—“*wandering abroad*,”—thus giving them their complete vagrant character; nor is it very probable that the players of the regular drama would so soon after, have been treated with such marked respect and distinction by King James, had they, by the act of his predecessor, only been considered in the light of licensed vagrants.

The epithet *common*, also I take it, was not without its meaning, further to denote the humble rank of these itinerants, and to distinguish them from such as were attached to the court,—the retainers of some noblemen, or such as confined themselves to the higher order of their art.—Thus we perceive, that in order to bring a player within the 39th Eliz. three things were necessary:—1st. He must have been a player of interludes, *not* of the regular drama—2dly. A common one, *not* attached to the court or a noble—3dly.

* Riccoboni—*Reflexions Historiques*, p. 160.

“Wandering abroad,” * *not* having any regular abode ; this is his distinctive character.†

From this view it seems manifest, I think, that players such as Hemings, Condell, and Shakespeare himself, in the higher walks of the drama,—consisting, be it recollected, of the same immortal productions which we witness with delight at this day—could never have been intended by their royal mistress, to be brought within the reach of so sanguinary a statute,—mixing them in one indiscriminating mass, with rogues, vagabonds, and sturdy beggars, and consigning them to the same ignominious punishment ; but even if it were otherwise, and we could for an instant suppose her Majesty guilty of so flagrant an anomaly, it surely would not

* See also the statute 10 Geo. 2. c. 19. enabling the authorities of the two Universities to restrain players, expressing doubts whether the law then in force applied or not to players “ *not wandering abroad.*”

† A subsidiary reason, perhaps, for the introduction of players of interludes into the act of the 39th of Eliz. may be found in a complaint preferred against certain itinerant actors in the reign of Queen Mary, for it appears from Strype, that in 1556 a remonstrance was issued from the Privy Council, to the Lord President of the North, stating that “ certain “ lewd persons, naming themselves to be servants of Sir “ Francis Lake, and wearing his livery or badge on their “ sleeves, have *wandered about* these north parts, and representing certain plays and *interludes*, reflecting on the Queen “ and her Consort, and the formalities of the Mass.

render the matter the less inconsistent with the spirit of the present reign—our own enlightened times—to expose, a day longer, to unnecessary obloquy, a class of persons, who can boast such names as Booth, Betterton, Garrick, Quin, Henderson, Kemble, Siddons, &c.—extensive learning, sound judgment, brilliant wit, refined manners, exemplary conduct, and high character.

I will now endeavour to state as briefly as I can, the law, both as it has existed and exists at this moment, regarding plays and players.* The most ancient statute I have been able to discover is the 34th and 35th of Henry VIII. the preamble of which alone remains, from which it should seem that its object was to abolish the mysteries and moralities which, about this time, were made the vehicle of religious controversy; for it states its view, “that the
“kingdom should be purged and cleansed of all
“religious plays, *interludes*, rhymes, ballads,
“and songs, which are equally *pestiferous* and
“*noysome* to the common weal.”†

* In the reign of Edward III. an act passed, by which it was ordained, that a company of men called *vagrants*, who had made masquerades through the whole city, should be whipt out of London, because they *represented* scandalous things in the little ale-houses, and other places where the populace assembled.

† The performance of French plays is not a novelty in this

In the early period of the drama, the entire regulation of the plays and players seems to have been considered as part of the prerogative of the crown; and to the chief officers of the household—the Lord Chamberlain, and the Master of the Revels—the Sovereign delegated certain powers of licensing and controuling them; as is evident from the licenses, before alluded to, in the reigns of Elizabeth and James. What these powers exactly were, or what the punishment was for playing without such license, does not very clearly appear; but from the following entry in the Journal of Sir Henry Herbert, Master of the Revels in the time of Charles I. and two succeeding reigns, it would seem that a sort of undefined power of

country; for in a book in the Remembrancer's Office, containing an account of the daily expenses of King Henry VII. there is the following item, "To the *French players* in reward 20s." In the time of Charles I. they were much in fashion at court. Queen Henrietta Maria, it seems, took great pleasure in this amusement, and patronized the French company. Sir Henry Herbert's Manuscript Journal states, that on Tuesday night, the 17th of February, 1634, a French company of players, being approved of by the Queen at her house two nights before and commended by her Majesty to the King, were admitted to the Cockpit in Whitehall, and there presented the King and Queen with a French comedy, called "*Melise*," with good approbation, for which play the King gave them ten pounds.

arrest and imprisonment was claimed and exercised by the Lord Chamberlain.—“On Monday, “ the 4th of May, 1640, William Beeston was “ taken by a messenger, and committed to the “ Marshalsea by my Lord Chamberlain’s warrant, *for playing a play without a license.*”— “ The same day the company at the Cockpit “ was commanded by my Lord Chamberlain’s “ warrant to forbear playing, for playing when “ they were forbidden by me, and for other disobedience, and lay still Monday, Tuesday, and “ Wednesday. On Thursday, at my Lord “ Chamberlain’s entreaty, I gave them their “ liberty.

“ The play I called for, and forbidding the “ playing of it, keep the book because it “ had relation to the passages of the King’s “ journey into the North, it was complained “ of by his Majesty to me, *with command to “ punish the offenders.*” From the time of Henry VIII. there appears to be no distinct legislative provision upon the subject of theatrical amusements, (excepting for the purpose of restraining the indecent use of oaths in plays,* and prohibiting performances on Sundays,††

* 3 Jac. c. 21.

† 1 Car. c. 1.

† By the ordinances of the long parliament (1647) all stage plays were totally suppressed.

until the 10 Geo. 2. cap. 28. which, (after reciting that, “ by 12 Ann. cap. 29. all fencers, bearwards, *common players of interludes*, and other persons therein named and expressed, were deemed rogues and vagabonds; and that *some doubts* having arisen concerning so much of the said act as related to *common players of interludes*, it became necessary to explain the same) enacts, “ That *every person* who shall “ for hire, gain, or reward, act, represent, or perform, or cause to be represented or performed, “ any interlude, tragedy, comedy, opera, play, “ farce, or other entertainment of the stage, or “ any part or parts therein, in case such person “ shall not have any legal settlement in the place “ where the same shall be acted, represented or “ performed, without authority by virtue of letters “ patent from his Majesty, his heirs, successors, “ or predecessors; or without license from the “ Lord Chamberlain of his Majesty’s household “ for the time being, shall be deemed to be a “ *rogue* and a *vagabond* within the intent and “ meaning of the said recited act, and shall be “ liable and subject to all such penalties and punishments, and by such methods of convictions as are inflicted on, or appointed by the “ said act for the punishment of rogues and vagabonds who shall be found wandering or

“ begging, and misordering themselves, within
 “ the intent and meaning of the said recited
 “ act.”

2. “ If any person, having or not having a
 “ legal settlement as aforesaid, shall, without
 “ such authority or license as aforesaid, act,
 “ represent, or perform, or cause to be acted,
 “ represented, or performed, for hire, gain, or re-
 “ ward, any interlude, tragedy, comedy, opera,
 “ play, farce, or entertainment of the stage, or
 “ any part or parts therein, every such person
 “ shall, for every such offence, forfeit the sum of
 “ fifty pounds, and in case the said sum of fifty
 “ pounds shall be paid, levied, or recovered, such
 “ offender shall not for the same offence suffer
 “ any of the pains and penalties inflicted by the
 “ said recited act. Provided always, *That no*
 “ *person or persons shall be authorized by virtue*
 “ *of any letters patent from his Majesty, his heirs,*
 “ *successors, or predecessors, or by the license of*
 “ *the Lord Chamberlain of his Majesty's house-*
 “ *hold for the time being, to act, represent, or*
 “ *perform, for hire, gain, or reward, any inter-*
 “ *lude, tragedy, comedy, opera, play, farce, or other*
 “ *entertainment of the stage, or any part or parts*
 “ *therein, in any part of Great Britain* EXCEPT
 “ IN THE CITY OF WESTMINSTER AND WITHIN
 “ THE LIBERTIES THEREOF, AND IN SUCH PLACES

“ AS HIS MAJESTY, HIS HEIRS, OR SUCCESSORS,
 “ SHALL IN THEIR ROYAL PERSONS RESIDE, AND
 “ DURING SUCH RESIDENCE.”

This is, certainly, when taken altogether, as pretty a piece of modern legislation, as can well be found in our statute books. Some one had, it seems, in drawing up the 12th of Anne, omitted that strongly-vagrant designation, “wandering abroad,” and thereby increased the difficulty of understanding precisely, who were meant by “common players of interludes.” Another statute, of course, became requisite to explain—*obscurum per obscurius*—what had thus been confused and darkened.

The author, whoever he was, to whom this task of removing doubts was delegated, not being, perhaps, particularly well versed in the drama, or disliking the trouble of inquiring who or what these poor devils of players of interludes were, at once cuts the Gordian knot, and declares *all* players (unlicensed) of whatsoever rank, not having a legal settlement where they shall perform, ‘*to be rogues and vagabonds.*’ And here one cannot but admire the nice discrimination and good taste of that man, who could perceive no difference between the coarse buffoonry of a strolling player of low farce or interlude,

and him who, catching a portion of the spirit, "*bodies forth*," as it were, the conceptions of our immortal Bard.

Next came the vagrant act of the 17th Geo. 2. which, with its widely-spreading clauses, or rather *claws*, pouncing upon the poor players, made, and has continued, them ever since its own. Thus were they of the "learned sock" numbered with outcasts; and the act of Elizabeth, as much perverted from its original meaning as that act would be, which, being passed in restraint of ballad-singers, and organ grinders, should, at this day, be made to apply to a Catalani, a Stephens, or a Spagnoletti.

But we have not yet done with this tasteful and discriminating enactment. It ordains, that *every person* who shall, for hire, &c. represent, &c. or cause to be represented, &c. any interlude, tragedy, comedy, &c. *without the authority of letters patent from the crown, or license of the Lord Chamberlain*, shall be subject to such and such penalties. Now, who, upon reading this, would not think, as it has been thought in the higher courts, that the power of the crown and Lord Chamberlain was here recognized as extending *to every part of the kingdom*? But, no; towards the end we find a provision, by which,

the prerogative of the crown, heretofore unlimited in these matters, is shorn of its splendour, and the Sovereign, and the chief officer of his household, permitted to exercise their power of licensing theatres, *only in the city of Westminster and the liberties thereof; or where his Majesty in person may perchance be resident.* This is, truly, the bathos of legislation; and although there have been two convictions under this act, removed into the King's Bench by certiorari, this objection seems, to one's astonishment, never to have been taken. The first was a case* for tumbling without the Chamberlain's license, and which was quashed by the court on the ground, that tumbling was not such an entertainment of the stage as required a license. The second was a more recent one for performing the tragedy of "Richard the Third," at the Cobourg Theatre without a similar license, and which was affirmed.† In the former case there was, I take it, no law to restrain them; in the latter, the offence would have been punishable by the vagrant act; for although the defendant might have pleaded a license under the 25th Geo. 2. for certain purposes, yet, in the eye of the law, the abuse of a license, or the not having one at all, would have

* Rex v. Handy, 6 T. R. 286.

† Rex v. Glossop, 4 B. & A. p. 616.

been considered the same thing. The absurdity in the second case, which strikes one is, that a man is convicted under an act for not having in Surrey, what the same act declares cannot be granted to him, out of Westminster. Thus until the 28th of Geo. 3. during the period of half a century, the whole country, excepting Westminster and its liberties, was altogether shut out from the rational amusement of the drama, unless an act of parliament, as occasionally was the case, were obtained for the express purpose of erecting a theatre in some particular place.

I come now to the 25th Geo. II. s. 2. which, although it has properly no more relation to players, than to any other description of his Majesty's subjects, has yet, by some unaccountable perversion, become a statute of great theatrical consideration: after reciting, that "the multitude of places of entertainment for the lower sort of people is a great cause of thefts and robberies, as they are thereby tempted to spend their small substance in *riotous pleasures, &c.*" it enacts, that "any house, room, garden, or other place, kept for public dancing, music, or other public entertainment of *the like kind*, in London and Westminster, or within twenty miles thereof, without a license from the sessions, shall be deemed a dis-

“orderly house or place.” It then empowers any constable having a warrant, to enter such house or place unlicensed, and “seize *any* person who “shall be found therein, in order that they may be dealt with *according to law*.” Then follow the penalties to which the keepers of such places are liable.

Now the intention of this statute obviously was, to put under the controul of the magistracy in sessions, certain public places of entertainment, then in vogue with the lower orders; such as the Apollo Gardens, Bagnigge Wells, the Dog and Duck, the Shepherd and Shepherdess, and “others of *the like*” (and therefore, neither of a dramatic or theatrical,) “*kind*.” Yet, notwithstanding its manifest object,—notwithstanding the opinion of Lord Kenyon, “that it was not “applicable to entertainments *of the stage*,”*—and a decided case, to the same effect,†—the minor theatres, under its presumed protection, are nightly continuing to perform the regular drama with impunity. The clause under which *all persons* indiscriminately are liable to be seized

* *Gallini v. Laborie*. 5 T. R. 244. A case, in which it was decided, that even dancing, as a ballet of action, was not authorized under the 25th Geo. II. but required the Chamberlain's license.

† *Rex v. Glossop*. 4 B. & A. 616.

in an unlicensed place of the sort, is both unjust and absurd :—unjust, as it confounds the innocent with the guilty, and is much the same as if a party of gentlemen, after the opera, whilst—

“ In chat—

“ With Champagne, lobster-salad, and all that,”

at Long's, or Stevens's, were to be arrested and hurried off to the watch-house, because the Maitre d'Hotel had not taken out a regular ale license. It is absurd, because it directs the persons so “seized, to be dealt with *“ according to law,”* when, in fact, there is *no law* according to which they can be dealt with; and because, without any reason, it limits its own operation to London and Westminster, and within twenty miles of them; as if it were not just as necessary* that public places of the description contemplated by the act, in other parts of the kingdom, Manchester or Liverpool, for instance, should be put under the controul of the magistrates, as in London and Westminster. The 28 Geo. 3. reciting the 10 Geo. 2. states, that, “divers acts of parliament had, since that act, “been solicited and obtained for divers cities, “towns, and places, for exempting them respectively from the provisions of the said law, and

* See opinion of Lord Kenyon in the case of the King v. Handy.

“that it would be expedient to permit in towns of considerable resort, theatrical representations, for a limited time and under regulations.” It then proceeds to enable justices in session, under certain limitations, to license persons and places, for the performance of the regular drama, but omits to impose penalties for playing without such license, leaving the offender to be dealt with under the Vagrant Act.

Thus, Sir, I think I have shown, that these four statutes, which at this day constitute the laws relative to theatrical exhibitions, are alike inconsistent, absurd, and unjust. The (first of them) 10 G. 2. by which for the first time, through the ignorance or indolence of the framer of it, players *of every description* were branded with the degrading appellation of rogues and vagabonds, and which by curtailing the ancient prerogative of the crown with regard to theatres, rendered nugatory its own provisions. The (second) 25 G. 2. under which licenses granted for one purpose, are applied, with impunity, to another ; which makes also, as we have seen, the innocent responsible for the guilty ; and which, then refers them to a nonentity to be dealt with. The (third) 28 G. 3. which, although it empowers justices in the country to license players, imposes no penalties for the violation of its pro-

visions, but hands over all offenders against it to (the fourth) the *Vagrant Act*, which consigns them to the fate of Ixion.

——“ ἐν πτεροεντι τροχῷ
Παντὰ κυλινδόμενον.”—PINDAR.

Under these circumstances, therefore, I venture, most respectfully, to suggest to you, on the grounds at once of justice and expedience, the propriety of omitting altogether the players attached to *established* theatres in the bill which has just been brought into parliament, to *amend* the laws relating to vagrancy. The *itinerant* tumbler and dancer, and “common stage player” *wandering abroad*, — such as usually attend fairs and horse races—when performing without a certain license, might with propriety, be classed among the “*idle and disorderly*.”

Much, however, Sir, as the regulation of our dramatic diversions demands revision and reform, the task in hands like yours, of accomplishing it, would not be difficult; and I can assure you it would afford me infinite pleasure to contribute my mite of assistance, towards so desirable a work.

I have the honour to be,

&c. &c. &c.

Temple, April 29, 1824.