

THE CASE
OF
PRESENT DISTRESSES
ON
NONCONFORMISTS
EXAMINED.

BY
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IN the execution of an act entitled, ‘ An act against seditious Conventicles’ (whereof large experience hath manifested that no dissenters are guilty), this practice hath been of late taken up, that upon the oath of some informers, convictions are clancularly made, and executions granted on the goods of those informed against, a first, second, third time, and without notice, warning, or summons, or any intimation of procedure against them, or allowance for them to make their own defence.

This practice is as contrary to the original pattern of all government, as unto the execution of law in criminal cases. When Adam sinned by the transgression of a penal law, God was the only governor of the world, and there was a temporal penalty annexed unto that transgression. But yet to manifest that personal conviction was to be the natural right of every transgressor, before the execution of punishment, he himself the only judge, though absolutely omniscient, deals with Adam personally, as to the matter of fact: ‘ Hast thou eaten of the tree, whereof I commanded thee that thou shouldest not eat?’ and gave him the liberty of his own defence, as that which was his right, before he denounced any sentence against him. He is still the supreme governor of the world; and let magistrates take heed how they despise that precedent and pattern of the administration of justice in criminal causes, which he hath given and prescribed unto all mankind.

2. It is contrary to the light of nature, and that in such a principle as hath a great influence into the constitution and preservation of government in the world; and that is, that every man is obliged unto, and is to be allowed the unblamable defence of himself and his own innocency, against evil and hurt from others. This the law of God and nature require of every man, and the whole figure of human justice doth allow. And that he may do this without force or violence, the injury of others, or disturbance of natural order, is one of the principal benefits of government in the world, and one chief end of its institution. If this be taken away, the law of nature is violated, the chief end of government is destroyed, and all things are reduced to force and confusion. This men are deprived of in this practice, namely, of lawful self-defence before conviction, and the execution of penalties. And it is to no purpose to pretend, that this is a matter of small moment; so that although there should be a deviation in it from the common rule, yet the law of nature in general may be kept inviolable: for that law being the animating soul of all human government, as the whole in the whole; and the whole in every part, if it be wittingly contravened in any instance, it tends to the dissolution of the whole; and where any such thing is admitted, it will sully the beauty, and weaken the rightful power, of any government.

3. It hath been always rejected in all nations, even among the heathen, who have exercised government according unto the rules of reason and equity. So the laws and usage of the Romans is declared by Festus, Acts xxv. 'It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer for himself concerning the crime laid against him.' It is not of any weight to object, that this was in the case of death; for the reason of the law is universal, namely, that every one who is charged of a crime, in order unto punishment, should have liberty to answer for himself. And it was observed by them in all criminal causes whatever. No instance can be given of their varying in this process, but it is noted as an oppression: and the same practice is secured by the laws and usages of all civilized nations. For,

4. This procedure of allowing men charged with any crime, real or pretended, liberty to answer for themselves before judgment and execution, is so manifestly grounded on natural equity, so inseparable from the common presumptions of right and wrong amongst mankind, as that it could never be wrested from them on any pretence whatsoever. It is a contradiction unto common sense in morality and polity, for a man to be convicted of a crime exposing him to penalty, and not be allowed to make his own defence before such conviction: yea, let men call such a sentence and its execution by what name they please, there is no conviction in the case; and it is ridiculous to call it so, where a man is not allowed to defend himself, or plead his own innocence, if he be ready so to do. The common saying of ‘*Qui statuit aliquid, parte inaudita altera, æquum licet statuerit, haud æquus fuit,*’ is no less owned as unto its natural equity than that other, ‘*Quod tibi fieri non vis, alteri non feceris;*’ and both of them condemn this practice in the consciences of all men, not blinded by prejudice or interest.

5. The general ends of penal laws, which alone make them warrantable in government, are inconsistent with such clancular convictions as are in this case pretended. Their first intention is authority to inquire into offences, whether they are real or no, for the preservation of public good and peace. And if it be found that the complaints concerning them are causeless, the second intention, which respects punishment, is superseded; as God declared in the case of Sodom, unto the inhabitants whereof, after inquiry, he granted a personal conviction by the angel he sent among them, unto whom they openly declared their own guilt. To omit the first intention of the law, and to go, ‘*per saltum,*’ unto the latter, is to make that which was designed for the good of all men, to be unto the danger of all, and ruin of many. For,

6. The practice designed takes away all security of the goods and estates from many peaceable subjects, even of all unto whom the case extends; for every evil man is enabled hereby, for his own profit and advantage, to take the goods of other men into his own possession, the owner knowing nothing of the cause of it, which possession shall be avowed

legal. Now this is utterly contrary unto all good government, and the principal end of the law, which is to secure unto every man the possession of his own goods, until he be legally convicted (on the best defence he can make for himself) that they ought by law to be taken from him. But in this case the legal right of one man unto his goods is transferred unto another, and that other enabled by force to take possession of them, before the true owner is once asked why it should not be so. The pretence of allowing him a liberty in some cases to make use of an appeal, and to sue for his own goods, when they are in the supposed legal possession of another, and he disabled for such a suit by the loss of them, as many have been, is no help in this case, nor gives the least colour of justice to this procedure.

7. To interpret the words in the act to give countenance unto this way of procedure, is contrary to the known rules of interpreting laws of this nature. And these are,

(1.) That they are not to be made snares to catch and harm men, without just cause, and a necessity thereon for public good. To make such engines of them, is to divest them of all authority, nor can that reverence that is due unto government be preserved, unless it be manifest, that not only the laws but also the administration of them are for public good; so as that they are not capable, in their genuine sense, to be made snares for the hurt of men, in denying them their own just defence. Nor can there be a more dangerous inroad made on the security of the subjects, as to their property and liberty, in and by the administration of the law, than a wresting of it in any one instance unto the hurt or wrong of any. And we do know what consequence the interpretation and undue application of penal statutes, with the wresting them unto unwarrantable severities, have had here in England.

(2.) It is a rule of the same importance, that in dubious cases such laws are to be interpreted according to the custom and usage of proceedings in other laws of a like nature, and not be construed unto the interest of severity, especially where it is unto the gain and profit of other men: and what is the method of conviction in all other laws, towards persons who do not decline a trial, is known.

8. But besides all that hath been spoken, as unto the

reason of things in general, this practice is directly contrary to, and inconsistent with, the plain sense and intention of the law itself, whereof execution is pretended; for there is a gradation in the penalty annexed unto a continuance in the offence. The first conviction is for twenty pounds, the second for forty. And this will admit of no pretence, but that the person offending must know of the first conviction, that it may be a warning to him to avoid the additional penalty, which is for continuance in the same supposed offence after the first admonition. But in the present practice no such thing is allowed, but convictions are made for the first, second, and third offence, without any trial of what effect the first would be, which is contrary to the sense of the law, and an open wresting of it unto the ruin of men. And,

9. Lastly, these convictions are made on the oaths of the informers, who at present are a sort of men so destitute of all reputation, on the account of their indigency contracted by their profligate conversation, as that men of the like qualifications are prohibited by many laws from bearing testimony in any case, though in all other things the process be legal, open, and plain. To admit such persons to give oaths in private, without calling or summoning them to answer, who are charged by them, and thereon to put them into an actual possession of their goods unto their own use and advantage, is a practice which England hath had as yet no precedent for, nor found an especial name whereby to call it. Hereon perjuries have been multiplied among this sort of persons (whereof sundry of them have been legally convicted) to the dishonour of God, and great increase of the sin of the land. And whatever becomes of nonconformists, if the same kind of procedure should be applied unto other cases, (and why may it not be so, if in this instance the bounds of the law of nature and the usages of mankind should be broken down?) others would find themselves aggrieved as well as they.

These things are humbly submitted unto the consideration of the judges, justices, and juries, even all that are concerned in the administration or execution of the law.