

No. 6.



T H E

T R I A L

O F

Humphry Finnimore, Esq; &c.

[Price One Shilling.]

T H E
T R I A L
O F

HUMPHRY FINNIMORE, Esq;

(reputed to be worth Forty Thousand Pounds)

Who was Tried at the QUARTER SESSION holden
for the County of SURREY, in the Town-Hall,
SOUTHWARK, on *Thursday* the 14th day of
January, 1779,

and Convicted of Felony,

In stealing of FIVE TURKIES, the Property
of THOMAS HUMPHRIES.

W I T H

The PLEADING of the COUNSEL, and the SPEECHES
of the JUSTICES, on the 14th and 15th of
January, when the Prisoner's Counsel moved
the Court to respite the Sentence.

A N D

A Copy of the PETITION presented to His
MAJESTY, signed by the Fifteen Magistrates
who were present at the Trial.

With an ADDRESS to the PERSON Pardoned, and another
to the READER.

The Purchasers of this Trial will be able to decide for them-
selves in a Cause where the Justices and the Jury were of
different Opinions.

L O N D O N:

Printed for B. WHITE, in Fleet-Street; and
J. SEWEL, Cornhill.

MDCCLXXIX.

1779

N. B. This Trial is entered at Stationer's Hall, and the Profit
arising from the Sale will be given to the Poor.

THE
T R A I L

Reported to the Court by the
Who was tried at the Court
for the County of Surrey, in the Town of
SOUTHWICK, on Friday the 14th day of
January, 1770.

and Convicted of Felony.

In reading of Five Turkeys, the Property
of Thomas Hamond.

W I T N

The Reading of the Counsel, and the Sentence
of the Judge, on the 14th day of
January, when the Prisoner was
the Court to receive the Sentence.

A N D

A Copy of the Petition presented to His
Majesty, signed by the British Magistrates
who were present at the Trial.

It is an Answer to the Petition presented, and another
to the Petition.

The Purchaser of this Trial will be able to decide for them
there is a Case where the facts and the law are
different Opinions.

L O N D O N :

Printed for B. White, in Fleet Street, and
J. Sturges, Cornhill.
MDCCLXXII.

N. B. This Trial is printed at a small price, and is
being sold by the Author to the Public.

T O

Sir JOSEPH MAWBÉY, Bart.

CHAIRMAN;

Sir TIMOTHY WALDO, Knt.

And the rest of the MAGISTRATES present
at the Trial of HUMPHRY FINNIMORE,
at the Town-Hall, on *St. Margaret's-Hill*,
Southwark.

GENTLEMEN,

THE following Trial is written from notes
taken in Court. The speeches said to be
delivered in Court, as also the pleadings of the
Counsel, are since recollected as well as my memory
would permit, (no notes of them being taken). I
have to ask your pardon for the imperfect manner
in which I have related what was said in Court.
Some things that were said may have been omitted,
and some few words of my own may have slipped
in their room, but not with design: I have neither
left out any thing that I could recollect, through
favour or affection, nor have I set down ought in
malice; but, to the best of my knowledge, have
given a fair and true account of what passed on the
trial, and the day after. I have not the least con-
nexion with any of the persons concerned, nor had
I any thought of any insignificant writing of mine
appearing in print; but the general enquiry after
the particulars, by many persons with whom I have
since

since conversed, and all the consequence that might have attended the verdict being now over, the publication cannot injure any, and it may be acceptable to the curious enquirer; it is now printed, that the public at large may be acquainted with the evidence produced in Court in this cause, where the sentiments of the court and the verdict of the Jury, differed from each other. I have not mentioned the names of the Magistrates who delivered their sentiments on the trial, nor the names of the Counsel, that in what I have written for them they should have no injustice done them through any imperfection of mine in the relating*. Upon the whole, those that were present, from what I have written, may perfectly recollect all that passed. And those Readers that were not present, will be informed of every thing material, in an impartial manner. I have once more to ask your pardon for the liberty taken by,

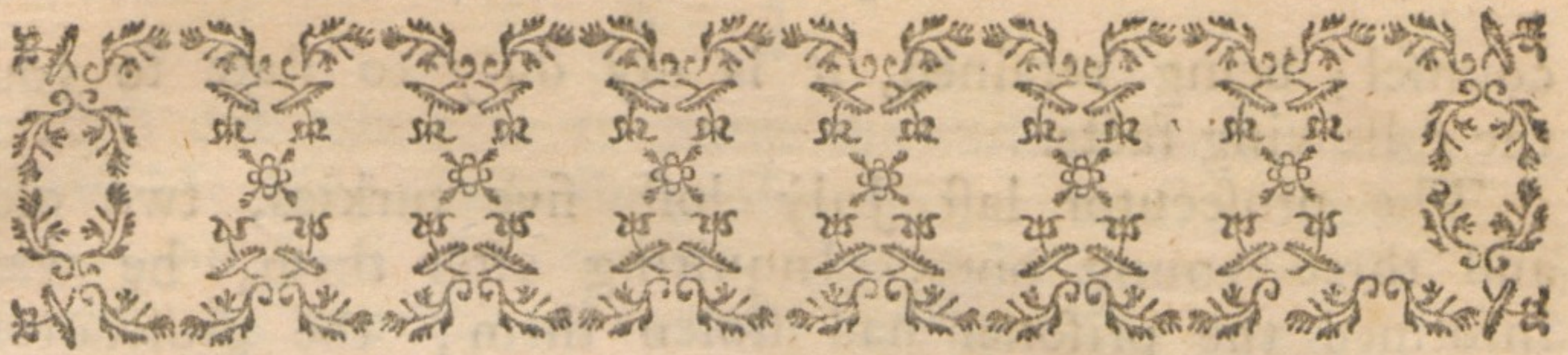
GENTLEMEN,

Your most obedient

humble Servant,

The WRITER.

* Had I the talents of the author of *Anticipation*, I might have saved this remark.



T H E
T R I A L, &c.

HUMPHRY FINNIMORE, of the Parish of Lambeth, in the County of Surrey, Labourer, was indicted for feloniously stealing, taking, and carrying away five Turkies, the property of Thomas Humphries, &c. &c. To which he pleaded not Guilty.

The Jurors names being called over, one person was objected to by the prisoner's counsel.

Twelve being sworn well and truly to try the prisoner at the bar, for the felony whereof he stands indicted, &c. &c. The indictment being read; the counsel for the prosecution addressed himself to the court and jury, as follows :

Mr. Chairman and Gentlemen of the Jury,

From two counsel being retained on the part of the prosecution, it may be inferred that the prosecutor is violent against the prisoner; but it is not so; he bears him no ill-will, notwithstanding the ill-treatment he has received from him: but as two eminent and learned counsel, gentlemen of great ability, are retained on the other side, it became necessary to obtain that justice for which this prosecution was commenced, in which the prosecutor has proceeded so far as to bring the prisoner to his trial: I say, in order that the justice which he seeks, may not be defeated by the learned and able counsel on the other side, the prosecutor has been advised to retain
B counsel;

counsel; being retained, it is my duty to state to you the following facts.

The prosecutor last July lost five turkies, two old and three young ones. Inquiring after them, he was informed the prisoner had stolen them; the prosecutor thinking no man had any right, be he ever so rich, to steal his turkies, he complained to a magistrate; but notwithstanding repeated applications, he could not immediately obtain justice. With some difficulty he got a search warrant, and found the turkies he had lost in the possession of the prisoner. We shall prove that the prisoner did steal them; not only this, but that he corrupted poor ignorant boys to be his accomplices in aiding and assisting him in committing this felony, by giving them money for that purpose. My client, gentlemen, lives in a wood, has lived there a long time, so long he is become rusticated, at least his manners are not the most refined: in short, he is not a courtier: (you shall see him presently.) I imagine he was not very complaisant to the justice (perhaps he never saw a justice before): his turkies having been stolen, he thought he had a right to punish the thief; and the rustick, who is a blunt honest Englishman, might say so in plain English. I am sure of this, if my client said any thing to offend the justice, he is very sorry for it. The justice himself might not be well pleased to hear a brother justice (I believe the prisoner is in the commission) accused of stealing turkies, and might be a little severe to my client, who insisted on prosecuting a person of such consequence. The prosecutor, after many times attending by appointment on the justice, being put to much expence, he was served with a copy of a writ, in order to intimidate him, and to prevent any further prosecution. But, as I said before, my client is an honest Englishman, and therefore, notwithstanding his being served with a copy of a writ, and being brow-beat by the justice, he still thought that the person who could be guilty of stealing turkies must be a thief, and that he was right in endeavouring to bring him to justice. Finding the great expences he had been at hitherto, were to very little purpose, he went to Kingston, and there, at the Quarter Sessions, he prefers a bill against the prisoner for felony: the Grand Jury found it a true bill; and he now stands, where he ought to be, at the bar before you, gentlemen, to take his trial for the felony whereof he stands indicted.

We

We shall call witnesses to prove the turkies to be the property of Mr. Humphries the prosecutor; we shall produce a witness who bred the turkies, and sold them to the prosecutor. As the learned counsel on the other side will no doubt exert their great abilities to exculpate the prisoner, and amongst other things that their ingenuity may suggest, they by way of defence may pretend to have lost turkies, and to have taken these for those he had lost; but, Gentlemen, this can have no weight with you, as the prisoner had no turkies of his own, therefore could not lose any: and these turkies not being his, but the property of Mr. Humphries, he must steal them: that he did so, will be proved by the witnesses on the part of the prosecution. We shall prove that the prisoner at the bar did steal, take, and carry away, these turkies; that he secreted the two old ones in the seat of his chaise, covering the poor things up for fear they should be seen by any one, and he should be detected in the fact: That he carried them home in this secret manner, they being covered so close that one of them died by the way or soon after; for when the prosecutor found them in the possession of the prisoner, one was dead.

Not contented with stealing himself, he corrupted some boys to assist him in stealing the young ones, and for which he gave them a reward.—We shall prove to your satisfaction that he had no turkies of his own, but being willing to get some in an easy way, he steals his neighbour's; this, if we do, you will find him guilty, and the court will inflict such punishment, as may deter him and others from stealing turkies hereafter. Gentlemen, it does not always follow that a person's being rich will keep him honest. You may all remember an instance, within a few years, of a very rich man being convicted of felony for stealing paper in Guild-Hall, for which he was transported.

Thomas Humphries.

I keep the sign of the Gipsies at Norwood. On the fifth of July I lost five turkies, two old and three young ones: I missed them on the Monday; I inquired after them, and I heard Mr. Finnimore had taken them.

Question. Have you found them since?

B 2.

Answer.

Answer. I found the cock turkey and the three young ones in a field behind Mr. Finnimore's house. I found the hen nailed against a shed or stable belonging to Mr. Finnimore.

Q. Did you see Mr. Finnimore, or had you any conversation with him?

A. I have; he said I was a rogue and a rascal, and he would kick me out; that I had stolen his turkies four years ago. I had been many times before the justice; the last time the justice gave him a month, as he had five hundred a year; after this I found a bill against him at the Kingston Quarter Sessions.

Q. Was you served with a copy of a writ for what you had said of Mr. Finnimore?

A. I was served with a writ one of the days I went before the justice: I went six several days with my witnesses, losing my time, and spending my money. Some days Mr. Finnimore did not appear.

Q. How was that?

A. I do not know, it was said he had business, and could not come.

Q. Did not you behave ill before the justice, and did not he bind you to answer for insulting him in the execution of his office?

A. I said Mr. Finnimore was a rich man, and I was a poor man, and therefore I could not have justice done me.

Q. Were those all the words?

A. I only said those words.

Q. If Mr. Finnimore had not served you with a copy of a writ, would you have indicted him?

A. I believe I should not.

Q. You believe. Should you, or should you not?

A. I should not.

N. B. Humphries being asked by his own counsel, answered, if I could have got my property, I believe I should not.

Q. Was the writ ever prosecuted further then serving you with it?

A. I heard no more of it.

Q. Did you speak to Mr. Finnimore after his taking the turkies, and what did he say to you?

A. He

A. He said I was a rogue and a rascal ; and that I stole his turkies four years ago ; I got a search warrant, and found the turkies in a field behind his house, and the hen turkey was nailed up.

William West.

Q. Do you know Thomas Humphries ?

A. I do very well ; he keeps the sign of the Jolly Gipsies in Norwood.

Q. Do you know of his having turkies ?

A. I sold him five turkies, two old ones and three young ones : the cock turkey was a white one.

Q. When did you sell them ?

A. In the course of last summer ; I cannot tell exactly the day.

Q. How long had you the turkies before you sold them ?

A. I had the white turkey about three years ; I believe it might be between two or three years. At the time I removed from a farm I had, I gave the turkies to Mr. Bulcock, and when I went to the present farm he gave them to me again, and I sold them to Thomas Humphries : we call him Doctor Humphries.

Q. What age were the young ones when you sold them ?

A. They were very young, about three weeks old.

Q. For how much money did you sell them ?

A. The Doctor having done me some service, for which I thought myself obliged, I let him have them for half a guinea.

Q. Where are the turkies ?

A. From several persons in court, Here they are.

A person brought the white turkey to the bar, the dead hen was kept at some distance.

Thomas Humphries. This white cock turkey is my property.

William West.

Q. Is that the turkey you sold Humphries ?

A. I believe it is, but do not chuse to swear to it, as one turkey may be like another.

The person who brought the turkey into court swears that the white cock turkey now produced by him, is the

property of Mr. Humphries, and I know it (said he) by a wen on the lower part of the neck.

Wood. I know this turkey to belong to Mr. Humphries; it has a black spot on the rump; I carried this turkey from Mr. West to Mr. Humphries, when Mr. West sold the turkies to him.

Richard Ruffel. Sunday the fifth of July, just behind my mother's, I heard somebody in the wood: going to see who it was, I saw Mr. Finnimore; and his horse and chaise having got into the wood, he asked me to lend him a hand out: when I had backed the horse for him some way, a boy brought him a white turkey-cock, and he put it in the seat of his chaise under cover; and he carried it away. At the same time I saw three young ones in the wood.

Ned Jarvis.

Q. Do you know Mr. Finnimore?

A. Yes.

Tell what you know.

I caught one of the young turkeies: a boy told me Mr. Finnimore would give me something if I carried it to him; so I carried it, and he gave me six-pence.

Robert Fox. As some boys and I were going along the wood, we found some turkies: having heard Mr. Finnimore had lost some, I carried them to my grandfather's; he said he would call on Mr. Finnimore and let him know.

Q. Have you lived with Mr. Finnimore since that time?

A. Yes, I have a little while. Mr. Finnimore said he had lost five white and four black turkies.

Q. Did he tell you the age or size?

A. No, he did not; he said there were five white and four black; he said the white cock was a young one.

Q. How long did you live with Mr. Finnimore?

A. I lived a week with him.

Q. When was this?

A. About a month ago.

Q. Had you any wages?

A. No.

Q. Did he give you any money?

A. No.

Q. What

Q. What was you,---a servant? had you nothing of him?

A. Only one shilling, and another in the Borough, when they gave a paper.

Q. Was this all the money you had?

A. I had only those two shillings.

Q. In that week you lived with him, did he talk with you about the turkies?

A. He put me in mind of the turkies.

Q. Was your grandfather with you when you caught the turkies?

A. No, only the boys.

Q. How many turkies did you take.

A. There were two old ones and three young ones.

Q. Where did you carry them?

A. To my grandfather's.

Q. What day was this?

A. On the Saturday.

Q. Who carried them?

A. I did.

Q. Did you carry them all?

A. I carried them all, only one boy carried one young one: I carried the two old ones and two young ones.

Q. Did you know or suspect them to be Mr. Humphries's turkies?

A. I did not think they belonged to Mr. Humphries; but we carried them back again. On the Sunday I went with Mr. Finnimore to shew him the turkies, and he tied the legs of the hen turkey first, and afterwards the cock, and Mr. Finnimore put them in his chaise. I told the two boys, who caught the young ones, and carried them to Mr. Finnimore.

Q. What time of the day was this?

A. Between twelve and one o'clock in the middle of the day.

Q. Then you did not suspect them to belong to Mr. Humphries?

A. I did not. Mr. West told my grandfather they were Mr. Humphries's turkies.

Q. How far were these turkies from the house of Mr. Humphries?

A. About a mile, in the wood.

Q. How far from Mr. Finnimore's?

A. About three miles.

Q. You say they were in a wood ; were they wild ?

A. They seemed quite wild.

Ned Jarvis called again.

Q. When did you see the turkies ?

A. I saw them twice : I had them up to Mr. Catley's, and he said they were Mr. Humphries's turkies, and we carried them back again.

Q. What day was this ?

A. This was on Saturday ; I saw them again on Sunday. Mr. Catley bid us carry them back, said they would make good shooting in the winter.

Q. When you first caught them, whose turkies did you think them ?

A. I thought they were Mr. Finnimore's.

Robert Fox.

Question to Fox. How came you to carry them back ?

A. Because Mr. West told Mr. Catley they were Mr. Humphries's, and so we carried them back again. Mr. Finnimore came the next day, and said he should be glad to see them : I went with him to shew him. When Mr. Finnimore saw the black turkey, he said he believed it to be his, as soon as he saw it in the wood.

Q. When did West say they were Humphries's ; was it on Sunday or Saturday ?

A. It was Saturday night.

William West.

Q. Have you had any conversation with Mr. Catley about the turkies ? when was it ?

A. I cannot tell whether it was on Saturday or Sunday : I said to Catley, Don't go to Finnimore ; there will be hell of work ; they are Humphries's turkies.

Q. Where is the wood ?

A. It is Norwood.

Q. Is it near Humphries's house ?

A. I suppose it is the wood next Humphries's field.

Jasper Wood. I saw the boys have each a young turkey in their hands : they were going to Finnimore : they said they were to have six-pence : I told them that they belonged to Mr. Humphries.

Ned Farvis.

Question to Farvis. Did you say any thing to Mr. Finnimore?

A. I told Finnimore on Sunday they were Mr. Humphries's turkies.

Counsel for the Prisoner.

Mr. Chairman,

The counsel for the prosecution having examined all their witnesses, I rise to speak to a point of law. I mean to submit to the court that this is no felony. If the court shall be with me in opinion, that in law this is no felony, we shall proceed no further; but as the law, in cases of felony, does not permit the counsel for the prisoner accused (however false the accusation) to observe upon the evidence, however improbable, contradictory, or false it may appear, this I call cruel and oppressive; it is unjust: I wish to see it expunged our books. Where a man's liberty, his life, and every thing that is dear to him is at stake, however false, inconsistent, or contradictory, the evidence on the side of the prosecution may be; yet the counsel for the prisoner is forbid to point out that falsehood, to expose those inconsistencies, to observe the contradictions, to do his client justice, or to prevent his having injustice done him by false and scandalous accusations. His lips are sealed by this cruel and oppressive law. But in this case, I desire the gentlemen on the other side to take notice that I am now speaking to a point of law. As the law and fact is blended together, I must of necessity take some notice of the evidence that has been produced, and I shall avail myself of this opportunity, because I have a right so to do, that otherwise I could not have in a case of felony. I cannot speak to the point of law without it. I submit it to the court, whether, from the evidence produced, there has been any thing like felony, or a felonious intention, proved. Without a felonious intention, there can be no felony. Where the property is doubtful, and a person claiming a right to that property takes possession, fully persuaded, or, if you will, only supposing his right therein, and it is notorious that he takes possession on that account, will any one say this is a felonious act? Can this be felony?---- Every taking even of the property of another is not a felonious

nious taking : The taking in this case, by no construction in the world, however forced, can be called a felonious taking. — Did ever any person, intending to commit a felony, take witnesses with him to convict him ? Do not felons go secretly to work ? Do they go openly in the face of the sun, in a neighbourhood where they are well known, where it is impossible to remain a secret ? Will any one say a person who thus acts, does it feloniously ? Every circumstance attending the fact speaks loudly a contrary language. Will a person committing a felony, call persons to assist him at the time he is stealing the property of another, and this near the house of the mother of one of the persons so called ? It being impossible but that she must soon be informed of what had passed, and he be detected, and the person so called ready to be a witness against him. It has been said, that while this person was assisting the prisoner, the white turkey was brought and secreted in the seat of a chaise, where he had before put the black one : Where could he find a properer place ? how could he carry them better ? He found his property in the middle of a wood ; he did not put them in the seat by way of hiding them, as the counsel for the prosecution would insinuate, but it occurred to him as the readiest way of carrying his property home. When he came home, are they secreted ? No ; he puts them in an open place visible to every passenger. Would he have put it in the power of his own servants to betray him ? No ; they confirm him in his opinion that they were the turkies he had lost. When one died, did he conceal or bury it ? No ; he nails it up in a conspicuous place. Would any one conscious of having committed a felony, so industriously have preserved that, which produced might prove a means to convict him ? Every part of the prisoner's proceeding prove that he had no felonious intention. Upon his being informed of turkies being found in the wood, he takes persons with him to search for those he had lost ; I say, for those he had lost ; for, notwithstanding the counsel on the other side has boldly asserted that the prisoner had not lost any, (if I fail in the opinion of the court, with respect to the point of law, if the court shall be of opinion that I should proceed) I shall prove by witnesses that he had lost many, and that these were part of those he had lost : but, I trust, this matter will appear in so clear a light to
the

the Court, that there will be no necessity for producing any witness on behalf of the prisoner. I say, Sir, what have they on the part of the prosecution proved? Their witnesses say, the turkies were first found by some boys in the wood: whose property do the boys believe them to be, but Finnimore's? they swear they suppose them to be the Prisoner's, those he had lost.

Counsel for the Prosecution.

You are now observing on the evidence.

Counsel for the Prisoner.

I have a right to do so. I am speaking to a point of law; that I cannot do without thus observing. I mean only to speak to the point of law.

Sir, The prisoner hearing of these turkies being found, goes to the house where they were carried the day before; finding they were turned again into the wood, he expresses a desire to see them; for what? to steal them? no, but to see whether they were the turkies he had lost: for this purpose he takes a guide with him; this guide is one of the witnesses examined on the part of the prosecution, who declares, upon his oath, that he did not suspect them to belong to the prosecutor, but that the general opinion was, that they were the prisoner's, those that he had lost; that he himself believed them to be Mr. Finnimore's; and that when the prisoner saw them, he claimed them as such, and carried them away, giving public notice, that if any of the boys would bring the young ones to his house, he would pay them for their trouble. Where is the felonious taking? where is the felony? It is annihilated, it does not exist. It never did exist. I doubt very much, if the truth could be perfectly known, whether it could be proved even a trespass. Certain I am, there is no felony; and I hope the Court will be of this opinion, and put an end to this business at once, and then I shall not call witnesses to prove what at present seems so apparent, and a fact this court should not have been troubled with.

Chairman.

Leave it here, by what I see the Court are for going on with the trial; why not call your witnesses?

The

The Counsel for the Prosecution rose to reply : After speaking a short time,

The Chairman said, he did not mean to interrupt him : but if the Court should be for going on, and to leave the law, as well as the fact to the Jury, the end for which he was pleading would be answered ; he did not wish to stop him, but in order to save time. If the Court should be inclined to decide the point of law, he should be heard, and his arguments attended to by the Court. The Counsel sat down.

The sense of the Court being taken, they were of opinion, that the law and the fact should be left to the Jury ; that in this case they were competent to judge of both : that the witnesses on each side should be heard ; that the Jury, who were sworn to find their verdict according to the evidence, are the proper judges. If the Jury should have any doubt, they may apply to the Court, who will set them right.

Counsel for the Prisoner.

I will not trespass on the patience of the Court a minute. We will call witnesses to prove the Prisoner had lost turkies ; that word was left at his house that turkies, answering the description of his, were found, by some boys, in a wood : upon his seeing them, he declares they were his turkies ; he takes them not feloniously, but as his own ; that he had a right to do, where he found them. We shall produce witnesses to prove they were the Prisoner's property, his servants taking these turkies to be the same their master lost. After all these proofs, if it should be thought otherwise, I trust the Jury will acquit him of the felony, that being always accompanied with an evil intention, and therefore can never be imputed to a mistake, or misanimadversion. I am sure I am right, and that what I now say is Law.

Chairman.

Then call your witnesses.

Counsel.

Call ——— Bond.

——— Bond.

Q. You live with Mr. Finnimore ?

A. Yes.

A. Yes.

Q. How long have you lived with him?

A. I have lived with him some years.

Counsel. Tell the Court and Jury what you know about the turkies.

—— *Bond.* Some time in March last, my master lost nine turkies, and I think the turkies brought home were some of those my master lost; he lost five white and four black ones.

Q. How old were those your master lost?

A. They were a year old; the young ones were three parts grown.

Q. How old were the young ones brought back?

A. They might be six months old.

Q. How could they be your masters?

A. They might have been hatched in the wood, as the hen-turkies laid when my master lost them.

Q. Can you swear they are the turkies your master lost?

A. I did not examine them; they went to the same roost the others used to do.

Q. Did you nail up the hen turkey?

A. No. My master nailed up the dead one himself.

Q. Did your master ever talk with you, to persuade you to swear the turkies were those he had lost?

A. My master never talked with me on the subject.

Q. Are you sure?

A. I never had any conversation with him.

Q. Have you not said to some persons the contrary?

A. No.

Counsel. We shall see that. Do you stay in court.

Margaret Waller.

I am servant to Mr. Finnimore: my master, in March last, lost nine turkies; there were four dark-coloured, and five white turkies. I believe the turkies brought back were my masters, only they had their wings and tails cut.

Catley.*

My grandson, Robert Fox, went into the wood, where finding some turkies, he brought them to my house; they

* The father of Miss Ann Catley.

seemed

seemed, by the description, to be Mr. Finnimore's; he having called at my house, and informed me of his loss, desired me, if I should hear any thing of them, to let him know; accordingly I went to inform him of these: as I was going to Mr. Finnimore, I saw Mr. West, and told him where I was going, and upon what account. Mr. West said, they belong to Doctor Humphries, and therefore don't tell Finnimore, for there will be the devil to pay if you do. Notwithstanding his saying so, I went to Mr. Finnimore, that he might call and see them. Mr. Finnimore not being at home, I left word at his house.

Q. Where do you live?

A. I live at Norwood: I keep the sign of the Horns.

Counsel for the Prosecution.

Bond having sworn he had no conversation with his master relative to the turkies, we shall prove he had, and that by persons who heard him acknowledge it to them. Call William West.

Q. to West. Have you had any conversation with Bond on this affair; what has he said to you?

A. I saw Bond, and heard him declare, that he thought there was something in the wind, something going forward, because his master and the maid were so fly up-stairs. He said he could not hear perfectly what they were about, but that he heard them say something about turkies.

Q. Is this all you heard?

A. This is all he said to me, or that I heard.

Counsel.

Then we will call another witness.

Edward Morris.

Q. What have you heard?

A. I heard Bond say, his master wanted him to swear, the turkies were his masters, which was what he could not do, and that he thought they were not.

Bond, being called, appeared, and denied he ever said so.

Morris declared he did.

Bond declared he did not.

Court.

One of you is perjured.

Doctor

Doctor Allen, formerly Master of Dulwich College, Mr. Allen, the present Master, and Mr. Dawson of Southwark, all of known and unexceptionable characters themselves, had known the prisoner many years, gave him the character of a very honest man. Mr. Dawson said, he had dealings with him for eighteen years, and he always found him very honest.

These being thought by the court sufficient to character, no others were called.

Chairman.

Gentlemen of the jury, the prisoner stands indicted for feloniously stealing, taking, and carrying away five turkies, the property of Thomas Humphries. In support of this prosecution the counsel have called several witnesses, &c.

Here the Chairman repeated from his notes the testimony of all the witnesses on either side, in a very exact and impartial manner, setting before the jury the evidence for and against the prisoner exactly as it was delivered by them to the court. He then addressed the jury something after this manner, but in much better words and more to the purpose.

Gentlemen,

You have heard the evidence; the Counsel have examined and cross-examined the several Witnesses: what has been said by the Counsel on either side, you have heard, and I shall not repeat, unless a small part of what came from the learned Counsel in the opening of this business. That the Prisoner had lost no turkies; this you will judge of from the witnesses, some of whom have sworn positively to his having lost five white, and four black ones. That the prisoner is a Justice of the Peace: I believe he is not; I never heard that he was: whether he is or not is of no consequence. One of the Magistrates, the person to whom the Prosecutor first complained, is since dead; the other Justice, whom the Counsel pleased to notice, is a very worthy Magistrate of this county, and one to whom the public are much indebted, who, I dare say, acted on this occasion, as he has ever done, with justice and humanity; whose conduct it is not
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our present business to enquire into, or it would be found to merit praise instead of censure.

Your business, Gentlemen, is to attend to what you have heard from the several witnesses : the evidence consists of plain facts ; it is from those facts you will be enabled to give your verdict.

In the case before you much will depend on the intention with which the prisoner took these turkies ; for that they were taken by him, is proved and acknowledged.

You will consider whether the Prosecutor has proved the property to be in him, or whether the property is the Prisoner's ; you will seriously weigh the evidence on both sides : if you shall find the turkies are the property of the prisoner, you will acquit him ; if you find them to be the property of the Prosecutor, then you will consider —

Whether the Prisoner had lost any turkies ; how far he might be led from his own knowledge, and the information of others, to take these, thinking them to be his own ; how far he might be deceived by appearances, and be mistaken only.

Or, whether he knew them to be the property of the Prosecutor, at the time of his taking them, and that he had no reason to think them his own, having no sort of claim to them, but taking them away, being conscious they did not belong to him, but to the Prosecutor.

You will be able to form a right judgment from the facts that have appeared in the evidence given by the several witnesses ; and that cannot have escaped your notice, as they in a great measure prove the manner, the design, the guilt or innocence of the prisoner.

If you shall be of opinion, from the evidence before you, that the prisoner knew the turkies to be the property of the prosecutor ; that neither the prisoner nor any other person thought or reported them to be the prisoner's property ; that he had no claim to them ; that he was not mistaken, but wilfully, and, as the indictment sets forth, feloniously did steal them, conscious that he had no right to them ; if you believe that he really knew the turkies were not his own, but the property of the prosecutor, as it is the intention of the mind where the act follows that constitutes a felony——You will find him Guilty.

But, on the contrary, if you believe, from the witnesses that have been examined, that the prisoner had lost
turkies ;

turkies ; that he received information of these turkies being in the wood, answering the description of those he had lost ; that upon his seeing them he had reason to think them his property : of this you will be capable of judging from the manner in which he proceeded ; if he made no secret of what he was going about ; if he carried them home as his own, avowed the action, showing no signs of guilt, but that he really did believe them to be his own ; if he was confirmed in this by his own servants and others, although he might be mistaken, yet having done no more than any honest man might have done under the same circumstances ; if you believe those witnesses who knew the most of the manner of his taking them, and who declare upon their oaths that they did not suspect them to be the prosecutor's, but that they thought and believed them to be the prisoner's ; if from all these several circumstances together you shall be of opinion he had no intention to commit a felony — you will acquit him.

I leave the whole to your consideration ; you have heard the evidence. You will judge of the fact and intention, by the facts that have appeared, by the testimony of the several witnesses, and find your verdict accordingly.

An officer being sworn to attend the jury, they retired for a quarter of an hour ; being returned into court,

Clerk of the Peace. Gentlemen, are you agreed in your verdict ? Who shall speak for you ? Your foreman ? How say ye, is the prisoner guilty of the felony whereof he stands indicted, or not guilty ?

Foreman. GUILTY.

Immediately one of the magistrates said : This verdict amazes me ; I cannot resist rising to express my astonishment ; I feel myself very sensibly affected for the melancholy situation to which it has reduced the prisoner at the bar : I feel for myself, for the gentlemen on the bench, for all mankind, for any one who under similar circumstances, if this verdict is recorded, may hereafter be tried by such a jury. It is a verdict big with every evil. By every law in being, as far as my knowledge extends, and I have, in the former part of my life, been no stranger to the bar, or the practice
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of courts ; and I aver, no person can be found guilty of felony, but where a felonious intention is proved. In this case I will be bold enough to say, no such intention appears, but the contrary. I will not repeat the evidence; that has been done by the Chairman, in a manner that did him honour, and demands my esteem : that evidence the jury cannot be ignorant of, and they must be convinced, if they were to reconsider their verdict, that there has not been produced the least evidence that proves a felonious intention. In all kinds of felony, a felonious intention is essential to constitute the crime.

If a man kill another, and malice prepense is not proved, the person is not guilty of murder. In the law books, many kinds of homicide are recorded, neither of which are felonies, because they are not accompanied with a felonious intention, which is necessary in every felony. Homicide against the life of another, either amounts to felony, or does not, according to the intention, or the malice precedent, or at the time of committing it ; and therefore, in an indictment for murder, the words *ex malitia præcogitata* are necessary. If a person happens to kill another without design or intention, he is guilty of homicide *per fortunium*, because his intention was wholly innocent.

Homicide is either with precedent malice, or without ; the former is murder, because it is the killing of a person with malice prepense : that, wherein no malice precedes or accompanies the action, may be a misfortune, but in law is no felony. In burglary, another kind of felony ; a crime that, to deter persons from committing, our laws have made capital ; a felonious intention is necessary to make it felony. A man may, without any legal right, break open the house of another, and yet not be guilty of felony. An officer, in order to arrest a man, breaking in for that purpose, although it is an offence for which he is liable to answer, yet his intentions not being felonious, he is not guilty of felony.

Every indictment for larceny must have both the words *cepit & asportavit*. If there be no felonious intention in the taking, there can be no felony in carrying away. If a person finds goods and converts them to his own use, *animo furandi*, yet he is not guilty of felony, there being no felonious taking : and in the case of the prisoner it is
clear

clear he had no felonious intention ; he lost his turkies ; he is informed where some of them are in a wood ; upon his seeing them, he apprehends them to be his own, he carries them home as such : this is not felony ; and therefore I would order the jury to reconsider their verdict.

Judge Foster, who was esteemed a good judge ; an excellent judge he was, we have not seen many better ; he ordered a jury to reconsider a verdict given by them in his opinion contrary to evidence. If such a judge thought it right, and did order a jury to reconsider their verdict ; this court, sitting here as judges in this cause, have a right to order, and I do move that the jury be ordered to reconsider this verdict ; and I do this from a sense of the evil that may arise from so fatal a precedent, as this verdict standing as it does, may prove hereafter. It is not only the prisoner's cause at the bar that I am now pleading ; I declare I know him not, I never saw him before in my life ; it is the cause of justice, it is the cause of humanity ; it is the cause of every man who hears me. There is not a gentleman on the bench, there is not a person in court, nor of the jury themselves, whose property and lives, whose reputation that in some cases is dearer than life itself, but that may be all lost by accusation without proof. Thank God this is not law ; if it was, can any one say how long it may be before he may stand in the same situation as the prisoner at the bar ? Can any one tell how soon ? It is only for a person to be hardy enough to prosecute him, and he may be deprived of his liberty, his fortune, and his life, without having entertained the least evil design, or having the least intention of invading the property of his neighbour. Need I say more ? Is not the prisoner at the bar an object that demands your attention ? I have said before I know him not. It is said he is a gentleman of great property ; this I know, that by this verdict all his personal estate is forfeited ; I see him now from opulence reduced to poverty, to the condition of a beggar ; I see him standing there on the verge of life, tottering with age and infirmity, not worth a shilling, and this, from what appears from the evidence, without the least intention of wronging his neighbour of a single farthing. He is convicted of felony, and must undergo—the horror and misery of a gaol, suffer an ignominious sentence, that, perhaps, if this verdict stands, may end his misfortunes together with his life.

Therefore I move that this court do order the jury to reconsider their verdict.

A Magistrate who spoke next said,

I am not for ordering the jury; the gentleman's knowledge of the law I do not dispute; I am no lawyer; I have heard him with pleasure. Judge Foster might be a very good Judge, and I believe he was: but when Judges or Courts order Juries, with respect to their verdicts, they exercise a power that in many cases may be attended with the worst of consequences.

That Judges have ordered Juries to reconsider their verdicts, I cannot doubt, after what has been said; I suppose they did reconsider, and it might be well for them that they did.

But suppose the Jury refuse, what method is to be taken? the Jury are upon their oath. If they refuse, obstinately refuse orders so given, would it be for the credit, for the honour of this court, to dispute the point with them? I am against ordering them, but I wish them to reconsider their verdict, as they find other persons have a different opinion of the verdict than that they themselves have entertained. I should not have troubled the court with any sentiments of mine, but that ordering the jury seemed to me a harsh phrase. I confess it strikes me in that light. But I do for one desire the jury to withdraw; if the court shall be of the same opinion, I trust the jury, for their own sakes, considering the oath they have taken, will withdraw, and bring in such a verdict as they, upon reconsideration of the facts that have appeared to them on the trial, shall, in their own consciences, find to be true and just, without prejudice or partiality, uninfluenced by any other consideration than the oath they have taken, that is, a true verdict to give according to the evidence.

Chairman.

Gentlemen of the Jury,

You have heard several of the magistrates express their desire that you would reconsider your verdict, before it is recorded. One of the gentlemen has spoken in strong terms, and from his knowledge of the law, has endeavoured
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to convince you that neither burglary or any other felony can exist without a felonious intention : that malice prepense is necessary to be proved, before a person can be convicted of murder ; and I so far agree with him, that either it must be *proved* or *implied*, by some evil intention either precedent or accompanying the fact. But I beg leave to remind my learned friend, that there are cases wherein a person may be guilty of murder, where no malice aforethought is proved against the person killed : as where a person issuing out of a house with a drawn sword, where a number of people are passing, and he kills a person whom he neither saw or knew before ; this is murder. Where a person throws a brick or a large stone over a wall, where he knows there are a number of persons assembled, and the stone or brick kill any, though the person intended only to frighten them, he shall be guilty of murder. Murder is the wilful killing of any of the king's subjects, through malice aforethought : not only he who by a wound, blow, or other means, directly causes another's death, but in many cases he who wilfully and deliberately doing a thing that apparently endangers another's life, and thereby occasions his death, shall be adjudged to kill him. There are cases where even violent suspicion and strong circumstances may convict a man ; as where a person is killed in a house, no other person being therein, and a man is seen coming out of that house with a drawn sword, that sword bloody, and he endeavouring to make his escape, this has been construed murder. I just mention these, for I perfectly agree with my learned friend in this, that the intention is that which constitutes a felony. In many cases of felony, the intention can only be judged of from the facts, and of these facts I think the jury are competent judges.

Although it might not be well to order the Jury to withdraw, as some exception has been taken, yet surely it is reasonable, gentlemen, after what you have heard, that you should reconsider, notwithstanding you are now the only legal competent judges of the facts from whence the matter of law, whether the felony is clearly proved or not, must be finally determined. You will, I am persuaded, reconsider your verdict. Certainly there have been times, when Juries have not only been ordered to reconsider their verdicts, but to alter and even reverse them ; and they have

been punished for refusing. The Star-chamber has done many things contrary to law. But these arbitrary proceedings were in particular times, and to answer particular purposes, such as I hope will never be repeated. We live in better times, and our laws are better understood; the more our laws are known, the more they will be revered; they are founded in wisdom; it is the interest of every one to submit to, support, and obey them. They have wisely provided Juries to stand between even the highest power and the lowest individual. I do not remember in this place one instance, where the verdict of the Jury has seemed contrary to the evidence, but when it was in favour of the person accused, more especially when charged with felony.—I have known instances in favour, but never any that aggravated the offence.—I do earnestly request you, gentlemen, to reconsider.—If you shall have any doubts, or wish to have any part of the evidence repeated or explained, the court will give you assistance, upon any question you may put to them. If you will take upon you to judge of the facts, and the matter of law arising from those facts, you certainly may; but if you shall not be clear in your own minds, you may bring in the verdict Special, and leave it to those who from their superior knowledge of the laws of this country will determine the offence.

If you doubt with respect to the felonious taking, you may find him guilty of taking *generally*.—There was a Jury once, when one was indicted for a crime, who found him guilty of preaching in Gracechurch-street.

Whatever shall be your verdict, it will be necessary to withdraw; as you will with more convenience speak your own and collect each others sentiments; that which, upon mature deliberation, you shall agree to be your verdict, will be recorded.

The Jury seemed unwilling to withdraw.

A magistrate, who stood near the Jury, said, Gentlemen, be persuaded; if you reconsider your verdict, and continue in the same opinion, it will be decent in you to withdraw: the evidence may appear to you upon such reconsideration in another light; if not, you will at least shew your inclination to do justice. You will be well assured in your own consciences, that your verdict is right, and you will be more certain of being all of one mind; for it appears at present

present that you are disputing with each other, and of different opinions.

A person came forward, and said to this magistrate, Sir, I am one of the Jury, and I never did agree to the verdict as delivered ; it is not my verdict, I never consented.

Mr. Chairman, it is now become absolutely necessary that the Jury do withdraw : they are not agreed in their verdict ; one of the Jury declares to me that he did not consent ; that it is not his verdict.

Here the Jurymen declared to the court, that he was against, and did not agree to the verdict as delivered by the foreman.

Chairman.

Gentlemen, you must now talk to each other ; you are not agreed in your verdict ; you hear what your brother Jurymen declares, that he never consented to the verdict as it now stands. If you were to withdraw, you will be more at liberty, and with greater convenience settle what shall be your verdict ; whatsoever that be, it must be the verdict of each individual ; no verdict can be received by this court, unless every one of the Jury consents ; if you are not all of one mind, you must continue until you are, and then bring in your verdict.

Officer. The Jury will withdraw.

Ten of the Jury went out, and two staid in court, one of them declaring he need not go, for he should never alter his opinion.

Chairman. Sir, you must go ; gentlemen, you must keep with your brethren ; you must consider of your verdict, every one of you, and you must all agree before you bring in your verdict. *Officer,* keep the Jury together, and by themselves.

The two Jurymen with seeming reluctance followed the others.

The Jury, after an absence of ten minutes, returned. As they came into court, one of them with a loud voice said, Well, we are all agreed now.

The Jury's names being called over :

Clerk of the Peace. Gentlemen, How say ye, Is Humphry Finnimore guilty of the felony whereof he stands indicted, or not guilty ?

Foreman. Guilty.

Q. To what amount?

A. Guilty of the whole.

Chairman. The value in the indictment is fifteen shillings. You may find a value, as the offence will be greater or less according as you find the value in your verdict; although the value in the indictment is fifteen shillings, Juries frequently do, and you may find any less sum, if you think proper.

The Jury consulted with each other, and the Foreman declared the value half a guinea.

Court. That makes no difference in the offence.

Here the court agreed to consider at their leisure what punishment should be inflicted on the prisoner, when he should receive sentence; and soon after adjourned.

The prisoner was taken into the custody of the keeper of the county gaol, and by him conveyed to prison, until he should be ordered up by the court to receive sentence.

On the next day the Counsel for the Prisoner moved the Court to respite the sentence.

Counsel for the Prisoner.

Mr. Chairman,

I humbly move the Court on behalf of the unhappy person now in the county-gaol, who stood yesterday at your bar, was tried and convicted of felony by a Jury, but such a Jury, I cannot speak, or even think, of them without indignation; a Jury, if ever they reflect, as one day or other, for their own sakes, I hope they will, it will be with horror on the verdict they have given. I need not say to you, their verdict was contrary to the evidence, contrary to the oath they had solemnly taken. Strange as this appeared yesterday, it is not now so much to be wondered at, as we have since learned, but too late to object to them, that some of them had declared, before trial, before hearing a single witness, that they would punish the old rascal, and that nothing should prevent them from finding him guilty. I look at them, (great part of them may be present; I wish them all to hear me) indignant I look on them; they have much to answer for. Where was your oath? where your justice? If you have been induced to bring in your verdict, by a
few

few men prejudiced, bearing hatred towards the prisoner, with hearts as black as malice itself could make them, you will repent; it is sufficient to give you sorrow as long as you live. I say your verdict was unjust, and such a one as your consciences, if you have any, will tell you ought never to have been given; for this the law inflicts no punishment; but punishment will follow you, and one day overtake you. If the solemnity of an oath, if the great trust the law has placed in the hands of Juries, has not been attended to, or violated by you; if through prejudice, hatred, or ill-will, you brought in your verdict, and not according to the evidence, reap the fruit of your injustice; I have done with you; your verdict is recorded, my client is ruined; he is in gaol, convicted of felony; I, his counsel, am pleading to the Court, not for his discharge, not for to reverse the verdict; that cannot be; it is now even out of your power: you have done an act that all your repentance and sorrow hereafter will avail him nothing: it may be a means of escaping a dreadful sentence yourselves; his sentence must be the consequence of your unjust verdict: this sentence, for any thing you can do, he must soon with anguish hear from this respectable court, with whom I am now pleading to respite this his sentence to a future day. And here, Mr. Chairman, I hope I shall not plead in vain: as you certainly have the power, I flatter myself you will readily comply, as the court cannot but be sensible that if the Jury had not been the most obstinate, I say the most ———, I should not now, in this place, have any cause of his to plead, nor your time taken up in hearing me, that time that has already been too much trespassed upon; therefore a few more words, and I have done. I am sensible that even from the favour I now ask, great inconvenience will arise to my client, as he must continue in gaol; a punishment that at his time of life cannot be otherwise than a grievous affliction, his mind and body both suffering in a degree that one would not wish an enemy to experience: a continuance of this evil, even great as it is now, is the only remedy: it will give us time to petition the King for a pardon, which, from a true state of the case, we do not entertain a doubt of obtaining. The law having wisely placed the power of pardoning, in cases where the law may be too severe, to relieve the subject;

ject; also to stand betwixt the subject and such a verdict as this; the only remedy in our unhappy circumstances. I hope, therefore, you will respite the sentence to the next sessions, or at least to the adjournment.

Second Counsel.

Sir,

Hitherto, as Counsel in this cause, I have been so unfortunate, that my client has received no benefit from any effort of mine to serve him. I shall therefore trouble the Court with but a very few words on this subject: our request is so reasonable, and the motive for it so equitable, that I hope the Court will respite the sentence.

The Jury, if they were not criminal, were certainly very obstinate; they have brought in such a verdict, that, in the opinion of most unprejudiced persons, is contrary to the evidence: be that to themselves: they have declared my client had a felonious intention, and have found him guilty of felony. If their intentions have not been innocent; if they have been influenced by motives unworthy of any Jury, let the upbraiding of their own consciences be their punishment. Bad as felony is, and the situation of my client may be, I do not wish him to change situations with them, they are guilty of a greater crime; I do not wish them to be tried by any but themselves, upon the same principles.

My application to the Court, on behalf of my client, is to respite the sentence, as I am almost certain that his Majesty will pardon him. This respite will be no obstruction of Justice, for my client will be likely to suffer a longer imprisonment than if he was immediately to receive sentence; to this he must submit: the only favour asked at present is, that the sentence may be respited.

Several Magistrates, in a few words, delivered their sentiments.

A Magistrate, whose speech, from his knowledge and experience, during many years great and reputable practice as a Lawyer, before he quitted the profession, must, in its tendency, have been interesting: the writer thinks it was on the subject of the debate the day before, but is not certain, as he could only hear him mention several authorities;

thorities; but to what end he could not distinguish, his voice being rather low, and the people in court making much noise, although he seemed to speak with great earnestness. Silence being called for, without effect, the writer could not hear a single sentence, but lost the whole of this speech, or he would have been glad to have recited it, if it had been only in the imperfect manner the others are written. As he did not hear, he cannot relate; and the reader must be content without it. If the writer might venture to guess, he would suppose it was, that the Court had power, and should have settled the point of law the day before. If the writer should be mistaken in this, he asks pardon; for he acknowledges he has no ground for this conjecture, unless what may be inferred from part of the Chairman's speech, which follows.

Several Gentlemen on the Bench complained they could not hear. Proclamation was made for silence, on pain of imprisonment.

Chairman.

I declare, that during the time I have had the honour of sitting in this court, I have not found myself in so difficult a situation as at present; I hope I have hitherto acted, as I ever mean to act, justly, without partiality, without prejudice; I have received some favours from the prisoner; he has been my friend upon more than one occasion; but, standing as I do, in this place, I know no one; the poorest person shall, if he has no counsel, find me his advocate equal with the richest: no consideration on God's earth shall ever bias, or have any weight with me, but that I will, according to the best of my ability, do equal justice to the poor and the rich; my ability may not be equal, I may sometimes be mistaken, but never wilfully in this place will I swerve from acting consistent with justice. I thought yesterday that the Jury were competent to judge of the law and the fact; I think so still; I contend that Juries, if they will take it upon themselves, are competent judges of the law, and every fact that shall be brought before them in evidence; it was argued yesterday in open court; I wish all judiciary business to be so transacted. I am glad the counsel have moved publicly in court for this respite, as a private application, in my opinion, would not have been so proper.

I wish

I wish I knew the practice of other courts on this subject; I wish the counsel for the prosecution were present, or that the counsel would mention some cases in point, where the sentence has been respited from one assize to another, or from one sessions to another, after a clear and conclusive verdict: notwithstanding the prisoner's may be a hard case, I think the sentence should not be respited without a precedent*.

I believe the turkies were the property of the prosecutor; I am of opinion that the prisoner thought them his own; he might be mistaken, yet he thought he was right; though I may differ in opinion from the Jury, I do not think myself at liberty to call them to account; they were desired to reconsider their verdict, they did so; they were upon oath, they found the prisoner guilty. I confess I thought he was not; I do not reflect on them; if they in their consciences thought he was, they did right to find him guilty; and they should not have been censured by the counsel in the manner they have; the severe expressions that came from him can no otherwise be excused, than by his great zeal for his client, whom he thinks is injured; however the Jury may be mistaken, they are not to be treated with such language; the learned counsel will excuse me in this notice I have taken, and in his cooler moments will think me right. But if any of the Jury have been influenced by prejudice, hatred, or ill-will to the prisoner, or any other consideration than the evidence and the facts relating to this offence, and this only, they have done him a material injury, they have violated the most sacred of all obligations, an oath; they have been guilty of a crime too great for any words I am master of to express; but their own consciences must be their judge, will be their accuser, and will consign them to a worse sentence than the prisoner may receive from this court.

But if their consciences bear them witness that the verdict they have given to the best of their judgment was a true one, and that they were neither influenced by pre-

* The Writer has since been informed, that the counsel for the prisoner did, after this, mention some cases where the sentence had been respited; he did not hear in what part of the debate they were mentioned, nor what those cases were.

judice, or any matter foreign to the evidence before them, they could not do otherwise than they did. With respect to the sentence that is to follow the verdict, I should think, if his counsel had not moved as they have, it would have been more for his interest to have sent for him up now, to have received his sentence, whatsoever it might be, than for him to lay in gaol until another sessions, or even until the adjournment. I confess it is far from being clear that this court should respite the sentence to another sessions, as other magistrates, and not those present at the trial, would have the sentence to consider of and pronounce, who are unacquainted with the circumstances attending the fact. I shall not be for such respite, unless I am clear that it is right. I never will do wrong if I know it. If the court think proper, and the prisoner's counsel desire it, as a favour to their client, I see nothing against its being postponed to the adjournment, as that is a continuation of the same sessions, and the prisoner may receive sentence then, as well as now. Our passing sentence immediately is in favour of the delinquent. I shall hear the sentiments of other gentlemen, and take the opinion of the court.

The magistrate, who spake as follows, ended this business.

Mr. Chairman,

Whether the court have power or not to respite the sentence to another sessions, is not now material, as at the adjournment the court will be ready to attend to any thing that may then be offered; the court do not seem to have any doubt with respect to the adjournment, and by what I observe, they do not want inclination: I therefore move that the sentence be respited until the adjournment.

The opinion of the court being taken, they were for respiting the sentence to the adjournment; and the sentence was respited accordingly.

At the adjournment, the writer has been favoured with the following copy of the petition presented to his Majesty: Also a copy of his pardon; and a copy of a letter from the prisoner to the several magistrates (who signed his petition), upon his receiving his Majesty's most gracious pardon.

To the KING's most Excellent MAJESTY.

The Humble Petition of *Humphry Finnimore*,

Sheweth,

THAT at the last Quarter-session holden for the county of Surrey, in Southwark, your petitioner was tried and convicted, upon an indictment for felony, in stealing of five turkies, the property of Thomas Humphries: that it appeared clearly from the evidence given in the course of the trial, that your petitioner had (some time before the supposed felony was committed) lost nine turkies; that having given a description of them in his neighbourhood, he was, about four months after, informed by a neighbour, that some turkies had been seen in Norwood, which answered the description given of those which your petitioner had lost; that in consequence of this information, your petitioner went, accompanied by his neighbour's grandson, to Norwood, where having found the turkies, after some search had been made, your petitioner took them, and carried them home, being perfectly convinced and satisfied in his mind, that the turkies he had found were his property; in which your petitioner was confirmed by the concurrent opinions of his servants: that the said turkies were so taken under circumstances that excluded all possibility of concealment; they were taken and carried away openly, at noon-day, and in the presence of persons well acquainted both with the prosecutor and your petitioner; that they were afterwards kept publickly in his yard, open to the view of the whole neighbourhood in which the prosecutor lived.

And your petitioner humbly sheweth, that the prejudices entertained by the prosecutor having induced him to make distinct charges against your petitioner, before two respectable magistrates of the county of Surrey, they both refused to treat this case as a felony, and gave their opinions to the prosecutor to that effect.

And your petitioner sheweth, that no indictment was preferred against him for this supposed offence, until some time after your petitioner had commenced an action against the prosecutor for defamation; and the prosecutor, in the evidence

evidence he gave on the trial, admitted that the indictment would not have been preferred, had not such action been brought.

That, notwithstanding these facts had been proved to the jury by witnesses, whose testimony was not impeached; and although the chairman, in stating the evidence to the jury, intimated strongly to them his opinion that it did not amount to proof of a felony; yet the jury did, to the astonishment of the whole court, find your Petitioner guilty of the felony. Thus unfortunately circumstanced, your Petitioner (who is of the age of seventy-six, and infirm) has no means left him of correcting this most extraordinary verdict, but by imploring your Majesty's gracious pardon.

And your petitioner sheweth, that so well satisfied was the court of the injustice done to your petitioner by the verdict of the Jury, that the court unanimously deferred passing sentence on your petitioner 'till the adjournment day of the session in February next, in order to afford your petitioner an opportunity of applying for your Majesty's royal clemency.

Your petitioner therefore most earnestly implores your Majesty's pardon, as the only means of restoring him to that situation, of which he has been deprived by a verdict, which, he trusts, he is warranted in calling unjust.

And your Petitioner shall ever pray, &c.

HUMPHRY FINNIMORE.

WE your Majesty's most dutiful and loyal subjects, Justices of the Peace for the county of Surrey, present in court at the trial of the petitioner, Do humbly certify to your Majesty, that the verdict mentioned in this petition is in our opinion unjust; forasmuch as it did not appear from the evidence that the petitioner was guilty of any felonious intent in taking the said turkies. And we do

do humbly crave leave to recommend the petitioner as a proper object of your Majesty's most gracious pardon.

JOSEPH MAWBEEY, Chairman

TIM. WALDO

THO. TRESLOVE

SAMUEL SWABEY

JN^o. LEVY

RICH. CARPENTER SMITH

WM. WINTER

GIDEON FOURNIER

SAM. GILLAM

H. THOMAS

BENJ. THOMAS

B. HILLS

M. MADAN

WM. NORTHEY

GEO. PAINE.

A COPY of the PARDON.

GEORGE R.

WHEREAS Humphry Finnimore was, at the last Quarter-session holden for the county of Surrey, in Southwark, tried and convicted upon an indictment for felony, in stealing of five turkies, the property of Thomas Humphries: And whereas some favourable circumstances have been humbly represented unto us in his behalf, inducing us to extend our Grace and Mercy unto him, and to grant him our free pardon for his said crime: Our Will and Pleasure therefore is, that you cause the name of him the said Humphry Finnimore to be inserted, for the crime abovementioned, in our first and next general Pardon that shall come out for the poor convicts in Newgate, without any condition whatsoever; and that in the mean time you take bail for his appearance, in order to plead our said pardon; and for so doing this shall be your warrant. Given at our Court at Saint James's, the 25th day of January, 1779, in the nineteenth year of our reign.

By his Majesty's Command,

WEYMOUTH.

To our Trusty and well-beloved Sir Joseph Mawbey, Bart. Chairman, and the rest of the Justices of the Quarter-session holden for the county of Surrey, in Southwark, and all others whom it may concern.

Mr.

Mr. Finnimore gave bail before Isaac Stapleton, Esq; and was thereupon discharged from prison on Jan. 25, 1779.

Copy of a LETTER to ———, Esq.

S I R,

HIS Majesty having been graciously pleased to grant the prayer of my Petition presented to him, in consequence of the unhappy verdict given upon my late trial; I return you my hearty thanks for the favour of your kind representation on my behalf, which, I have the pleasure to inform you, did me essential service; and can sincerely assure you will always be gratefully remembered by,

S I R,

Feb. 15,
1779.

Your much obliged,

and most humble servant,

H. FINNIMORE.

An ADDRESS to Mr. FINNIMORE.

S I R,

PARDON me thus addressing you ; there are times when a word in season may be attended with much good ; take what I am going to say, as it is intended ; I wish you well. From my youth I have been taught to treat age with respect ; I was sorry to see a man of your years and property standing at the bar taking his trial for felony ; that sorrow was increased, when the jury found you guilty. The manner of your trial, the evidence for an against you, is impartially related by me, without any remark or observation of mine, on the plain matters of fact that then appeared. I have endeavoured to recollect some of the sentiments of the gentlemen on the bench, that (notwithstanding the unfortunate verdict) must at the time give you some consolation. Had you not obtained his Majesty's pardon, you must have undergone a sentence in consequence of your being convicted ; this is now omitted, or you might have heard that from the chairman by way of advice, that would have been of use to you, and preferable to any thing that will come from me. What he would have said to you on the occasion I will not pretend to conjecture ; nor am I qualified to give advice to a person of your age and experience. Yet, in the beginning of this business, a common understanding, with a benevolent intention, in any friend or neighbour who should have offered advice, and that advice been attended to, the affair would have been adjusted in an amicable manner, without your submitting to a trial, much less being convicted of felony. Your not being the most popular of men, part of the world being prejudiced against you, it is generally believed that such prejudice did you disservice on your trial. I therefore would earnestly recommend to your serious consideration what follows.

If you have been so unhappy hitherto, as not to gain the good opinion of others, but rather that the greatest part of those that know you are prejudiced against you, whether you have given cause or not, is not my present business ; I wish to make the few years you have to live comfortable and happy. You are possessed of more than

one

one thousand pounds per year, (you confirmed the above as you stood at the bar, in the Town-Hall) : it is said you never spent in one year a hundred ; I do not wish you to spend more than you have been used to do, or alter your manner of living ; this, at your time of life, would be inconvenient. But I do request you to cease adding any more to the heap ; you have more than enough for yourself ; and in the manner which you have brought up and educated those who are to come after, you have more than enough for them, who in a short time will succeed to your property, great part of which was forfeited by a late verdict. If his Majesty's gracious pardon had not been obtained, you would have fatally experienced, that notwithstanding the most assiduous care to accumulate riches, they will make themselves wings and fly away. Part of the *income only* of this property, so graciously restored to you, I am pleading with you to bestow on persons in pitiable and distressed circumstances. Your relations, in the first place, are they in want of any kind of assistance from you ? Give it them chearfully, give it them liberally. Amongst your numerous tenants, are any of them in these hard times distressed through sickness, or any other misfortune, unable to pay their rents ? Forgive them ; that mercy his Majesty has shewed to you, extend to your poor neighbours. Your situation in life and manner of living must have informed you of many persons, whom a small part of what (report says) you make no use, would make them happy. Did not your heart glow with affection towards the magistrate in court, when he pleaded your cause, though he declared he knew you not ? Did not your heart expand, when you heard him say, it was not only your cause he was pleading, it was the cause of mankind, the cause of humanity ? This is the cause I am now pleading, (let me not plead in vain.) It is not only the cause of the poor, who may hereafter be relieved by your liberality, it is your own cause ; it is that that will make you one of the happiest of mortals. You will not only relish the morsel you shall eat with your own mouth, but you will enjoy the heart-felt satisfaction of relishing every morsel that the poor and needy shall receive from your hands. What a glorious field is open to you ! that with your usual œconomy you may do good to thousands without lessening your annual income a penny.

I may appeal to the experience of every one that have tried the experiment, whether to accumulate riches is equal to enriching the mind; whether there is any luxury, any the most expensive viands, or the choicest dainties, that can equal the relish of distributing abroad, and giving to the industrious poor; of feeding the hungry, clothing the naked, of assisting the fatherless and widow in their affliction, of being a comforter to the sick and in prison. Can I mention the word prison, without your recollecting your late situation, although your experience of a prison was attended with every indulgence and comfort that money or friends could administer? Yet you must of necessity, at the same time, have heard of, if not seen, the horrors that accompany those dreary regions. If objects should not readily present themselves, seek them out. God knows, notwithstanding this may truly be said to be an age in which charity to the poor is most conspicuous, yet all the increase of public institutions are inadequate to the various wants of mankind; and we may say with Dr. Young,

“ Though groaning hospitals eject their dead,
 “ Numbers still sigh for sad admission there.”

Alas! they often sigh in vain. Notwithstanding we live in times wherein it is become fashionable to contribute to the various public charities that do honour to the present age and nation, in such times as these it is enough to make a man very unpopular who is known to accumulate riches without end, and not sometimes relieve those that are in want; but more so if he is hard-hearted, overbearing, and oppressive.

An instance of which I will relate. There is a man said to be very rich, not much unlike you in person, who frequently rides through the streets in a one-horse chaise; he seems to be about your standing, and is not many years younger; perhaps you may know whom I mean. This man is execrated by the unthinking populace, they curse him as he passes, even the tradesman shakes his head, saying, that old fellow never did a good action in his life. The carman, porter, labourer, and fishwoman, say, there goes old _____ a sneaking, stinking _____ &c. words often repeated, but better omitted than expressed on paper.

If a stranger pass, and ask, What has this man done to make himself so unpopular? the answer is, He is a rich old rogue; and some things hinted that may not be true; but the general conclusion is, it would have been well for the world, if he had been hanged many years ago.

Now was this man to be tried for felony, would he not have cause, from what has passed, to tremble for his fate? It is the very reverse of this character that I wish you to imitate; that instead of the curses and opprobrious language bestowed on the above person, you may experience the felicity enjoyed by a certain rich man in former times, that proved a comfort to him when he afterwards knew a reverse of fortune.

“When the ear heard him, then it blessed him; when the eye saw him, it gave witness to him, because he delivered the poor that cried, and the fatherless, and him that had none to help him: the blessing of those that were ready to perish came upon him, and he caused the widow’s heart to sing for joy; he was eyes to the blind, and feet was he to the lame; he was a father to the poor, and the cause he knew not he searched out.”

Do the curses and opprobrious language bestowed on the former character grate upon your ear? do not imitate his actions. Do the commendations, the blessings of the latter seem pleasing, do they speak comfort and consolation to the soul? take my advice: if you do not find more solid comfort in one six months, than in a whole life of a contrary practice, I may venture to say I will pay you the expence of your trying the experiment. The latter example of the rich man is so amiable, that for the few years, perhaps months, you have to live, the dearest friend you have cannot wish you a greater blessing, than to go and do likewise. You have no time to lose; as the tree falls, so it must lie; either happiness or misery may be the consequence.

Notwithstanding I have drawn myself in to write much more than I ever intended, and further to publish that not designed for the press; I cannot lay down my pen without saying a word or two to the reader*.

* If what has been written already has given the Reader disgust, throw the trifle aside, and read no further.

TO THE READER.

WE are too apt to despise the miser, and the man who lives only to himself ; and at the same time overlook the prodigal spendthrift, or the designing knave, who runs in debt without the least intention of paying, spending the substance of the industrious poor : this is as despicable a character, and more infamous. The one does not assist and relieve the poor as he ought to do in their distress, but the other defrauds the poor of what little they have, and sometimes are the cause of their misery and ruin. Enough has been said of a narrow soul, and to recommend a liberality of mind.——I shall, in what follows, endeavour to caution the reader against a contrary vice, living beyond his income, that he may not through extravagance live on the property of others, but to avoid every evil, that he may practice every virtue.

Attend not to every tale that is told to the prejudice of another ; it is not every one that the world gives the appellation of a sordid wretch, that is really such ; the world may sometimes be mistaken. If you live beyond your income, whereby the honest and industrious become losers, or are defrauded through your extravagance, cease from reflecting on others ; your character would lose by comparing it with the greatest niggard, who is honest and pays every one their due : we may every one of us, if we look into ourselves, find there faults enough, without seeking for those of others.——I would earnestly inculcate this, and impress it on the mind of every reader, that every one mend one ; the world would soon experience the advantage of so doing.

Let not any meanness of soul prevent you from tasting of the blessings of which your fortune enables you, and your situation in life require ; but by all means live within your income ; whatsoever it be, spare some part of it to those in want, as the testimony of a grateful heart.——If you are rich, and God has given you abundantly of the good things of this life, take the advice given before ; if you find any matter that suits you, make it your own by application.

If this should be read by any one whose estate is extensive, but whose dissipation accelerates its extermination ;
who

who by his extravagance is contracting debts beyond any possibility of their being paid ; let him reflect on the consequence, how will he answer it, should a day come wherein he must account, when his folly shall have caused the ruin of many. If a poor unhappy wretch should rob you on the highway, or take your purse, whereby you lose a few pounds, upon the fact being proved against him, would he not be condemned to death, as the consequence of his demerit ? Of how much sorer punishment shall he be thought worthy, who, not content with plenty of the necessaries and conveniencies with the superfluities of life, shall, contrary to every law of justice and humanity, plunder of thousands the fatherless and the widow, the industrious and necessitous : all to throw it away at the gaming-table, to squander it in luxury and sensuality ; or to maintain a ridiculous parade, and most unpardonable excess. What evils follow the neglect of that great law, Of “ whatsoever you would that men should do unto you, do you even so to them.”

If my property is taken away, it is not material by what means I am defrauded ; if one man steal from me a few pounds, and another gets into his possession some thousands of my property, for which he knows I shall never receive a shilling ; he that takes from me only a few pounds may comparatively be said to favour me ; yet the one shall be hanged, and the other escape with impunity.

Supposing a wise and just disposer and governor of the world to exist, (and few but knaves and fools suppose otherwise) — do not the unequal distribution of rewards and punishments in this life, declare, in strong terms, that there will come a day when every action must be accounted for, when some that make their exit at the gallows, will receive a more favourable sentence than many that die in their beds ? It is not all the pomp and pageantry of titles, power, riches, or any worldly greatness, unaccompanied with virtue, that can bring any comfort at the end of life ; nor can any thing remove the bitter sting of accumulated guilt, uncleansed by a sincere repentance. Let us then “ keep innocency, and take heed to the things that are right, for that shall bring a man peace at the last.”

It is one great law of Society, that we do no ill to others : how much happier would the world be, than it

now

now is, if only this was universally practised. Let me prevail with you, my reader, to cease to the utmost of your power from doing of evil. What benefit, what great advantage would arise to mankind, only from this negative kind of goodness, if I may so call it. But let us not rest here, after making it a point of conscience of ceasing to do evil; let us proceed a little further to that will naturally follow: learn to do well. What great encouragement have we thus to do; what dreadful consequences attend the doing ill; since light and immortality have opened to our view, what excellent plain precepts are revealed to us in these days, far exceeding all the moral lessons of the antient philosophers unassisted by the light of revelation. Let not the exceeding great and precious promises there revealed, and other gracious assistance afforded us, with the excellent lessons there delivered, be bestowed on us in vain; let us look up for the assistance promised, and endeavour to live the life of the righteous, that our latter end may be like his; that we may one day experience that divine bliss, which “eye hath not seen, no ear heard, neither hath it entered into the heart of man to conceive those joys that are reserved in heaven for them that by patient continuance in well-doing shall inherit the promises.”

How excellent the precepts! how easily remembered! (Reader, never forget them!) “Whatsoever you would that men should do unto you, do ye even so to them.” How reasonable! how divine! To love the first and great Cause of every blessing above all things, and our neighbour as ourselves. We all know that love worketh no ill to our neighbour. Love is said to be the fulfilling of the law. Charity is the very bond of peace, and of all perfectness, without which whosoever liveth, in some sense, may be said to be dead, even while he liveth. Every boasted quality of birth or fortune shall fail, and one day be of no account, unless they have been the means of rendering the possessors more eminent in virtue. Let charity draw a veil over those that have used their dignity and riches to the worst of purposes; they are in the hands of the Almighty. Let us, my Reader, endeavour to conform in every thought and action to the great law of Charity; were this law attended to as it ought, how much of the evil in this world would be avoided? how soon

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