

THE STATE GAZETTE

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Mess. HODGE and WILLS,

IN Mr. Murphy's paper of Wednesday, the 9th of April, a person under the signature of "A Juryman" invokes the attention of the public on the proceedings of the General Assembly respecting Thomas Vail; he begins with marvels, and if I may be at liberty to express my sentiments on them, must conclude as the great poet, with some little variation, that they have brought forth mice. Was there a cause for wonder that the General Assembly should have entered on the journals the grounds of their proceedings, that it might redound to the satisfaction of any person who was inquisitive enough to read them?—As to a memorial that had nearly brought on an impeachment, it is equally false with his wonders; nor do I recollect a single recital in it that was not supported by undoubted proof, nor a single allusion that reflected the least discredit to his Honour Judge Spencer; a mistake as to entering the verdict and against the intention of the jury cannot be denied. And can it be possible that any man, who entertains a moral or political sentiment, who is not deluded by passion, prejudice or ignorance, will undertake to allege that an entry in any proceedings should be regarded, though it be positively false and contrary to the intention and express declaration of those whom they alledge gave a sanction for it? A belief of this kind must at once suppose that the stroke of a pen or mistake of a Clerk, should be validated in preference to the positive oaths of the jury. A person possessed with an opinion of this last, I hope will embrace some mode of convincing the world that their proceedings are infallible, which will be an illumination that they are at present at a loss for. He says that the interference of the legislature was illegal and unconstitutional. It cannot be supposed that there was any member of the legislature who would not promote the interest of his country, perhaps sooner than Mr. Juryman. What an accumulated stock of impudence must such an incendiary have?—How ought such a prophetic and omnipotent being's absence be regretted in all matters of doubt and difficulty—one whose knowledge and genius is sufficient to preponderate a nation. But alas, the fault perhaps is on the side of Providence; though it is possible the mistake with more propriety may be charged on his fellow citizens, who have not penetration enough to consider him competent to the discharge of public trust, otherwise they could not have deprived themselves of such a dictator.—To convince the public that what he has urged is false, and designed only as an imposition, I will refer them to the XIXth section in the constitution and XIIIth in the bill of rights, and then they will find that the General Assembly have done nothing but what they had an absolute right to do by the standard of our liberties—the constitution. As to impeaching in an improper forum (as he calls it) the records of a court of justice, he certainly at the time of this expression could not have possessed his intellectual faculties, for the court themselves set aside such entry from a full conviction that it was wrong, and not having it in their power fifteen hours after the jury were discharged to reverse it; during which space they had been subject to the embraces of many disingenuous and base minds, in order to dissuade them from dissenting to an entry which they had done at the bar, before pen was put to paper, which they have deposed; and this fact is also corroborated by the Sheriff, who counted them after retiring.

After these sacred truths, which many are acquainted with beside those who have deposed, I would ask if ten thousand men were to swear

that they did not hear them, if it would or ought to make any difference as to the fact: If it was true then, it must be true now, and will ever remain so. There is an idea on this point that evidently appears to those of the smallest capacity, that his Honour Judge Spencer was not to blame for a thing he did not hear, and consequently the defendant not bound by the laws of the land for a transaction that was at least grounded on a mistake, or accident, perhaps at that time invisible. As to the depositions being taken *ex parte*, or in a corner, it is a most egregious falshood; they were taken in open court the same term of the trial, copies of which, with all the records relative thereto, were transmitted to the General Assembly, and there acknowledged by the Clerk to be true; there were some taken out of court that related to the trial, it being impossible to have them all taken in court by reason of its being the last moment of the court, and there was not time. As to the gentlemen who conducted the business being in a hurry, it is as true as the other allegations of Mr. Juryman. Its origin before its determination was nine days, and then there was but one dissenting voice in the whole House of Commons, and that was by the mellifluous —; it was then transmitted to the Senate, and the next day was concurred with by nearly the whole house.

As to the improprieties in the resolution, I must confess the most superficial scholar would have discerned it, without the assistance of an Argus-eyed Juryman; nor was that published a true copy of the original without the additional dress of the —, who I suppose put it into the hands of the Printer.—Permit me, therefore, Mess. Printers, with as little intrusion on your paper as possible, to give as compendious a narration, and that strictly consistent with truth, as can be done.

The defendant, in November 1786, was indicted in one bill which contained two charges, that of forging, and publishing knowing it to be forged; on this issue the whole subject depended. The day after the bill of indictment was found, the defendant being as I suppose distressed at the thoughts of having any charge of the kind, immediately came to trial without having a single witness, but rested his defence totally on the testimony that might be given in behalf of the state; the jury after the usual proceedings came to the bar and were counted by the Sheriff, and asked by the Clerk for their verdict; to which they answered by their foreman, that the defendant was not guilty of the forgery, but was guilty of the publishing; these were the express words, the jury meaning as they have deposed, that the defendant had passed it to another person as it had passed thro' several hands before the defendant had passed it, and not considering that the word guilt implied a crime. The Judge by hearing the word guilt mentioned, dictated to the Clerk to enter the verdict as guilty of publishing the bill or note knowing it to be forged—the jury hearing how the Judge dictated to the Clerk to enter the verdict, at this moment answered by their foreman that it was not their verdict or meaning. They not receiving any answer from the Judge (he not hearing them) but being somewhat confused, and thinking that it was entering as they intended it, and perhaps not understanding the technical words of it, the defendant was required to give bail, which instantly disclosed to the jury how the verdict was entered. They then proclaimed it to Mr. Iredell, who with great emotion and his usual delicacy, earnestly insisted that the Judge should question the jury as to the second part of the entry, to which the Judge answered in these positive words, that he was alone on the

bench, and would not wish to have any thing done that night: And I firmly believe that he was not at this moment apprised of the inextricable difficulties which that moment's neglect would draw on; for it was impossible with any degree of propriety to rescind that entry the next day by the same jury. A practice of this cast would totally viciate the solemnity of a trial by jury, which is the only colour of liberty that we now possess.—It is notorious that his Honour Judge Ashe delivered his opinion from the bench in November term, 1787, that from the face of the whole proceedings the jury intended to acquit the defendant; but the court could not at that time go into an explanation.

The General Assembly without doubt were convinced that the prosecution was conducted with a spirit of malignity very foreign to the purpose of doing public justice, and could not deny pronouncing the defendant acquitted, and adopting such constitutional steps to their officers as they thought most eligible. A trial did take place which no man will deny, and it could not have been a nullity which the Judges themselves invalidated the same term. A new trial after an acquittance is unknown in a criminal case by the laws of the land—the indispensable rights of a jury, the duty of a Judge as limited by law, and the powers of a Parliament or Assembly, are called forth on this subject as the first instance since the late revolution, which truly deserves the observation of the community. The history of each is extensive, and I hope that I shall hereafter be permitted to offer a few observations on the animadversions of Mr. Juryman, which I mean to do not without producing my authorities, that the world may be capable of forming a precise opinion, without calling to my aid either falshoods or impositions, which are truly as unbecoming as they are unnecessary; and it is to be lamented that Mr. Juryman is not properly known, that the public might be able to stamp some credit or discredit as to his real importance, and not to skulk apparently under the ground of a Judge or other person, and offer his sentiments coloured with blackness, instead of mentioning his authorities which might command more respect and attention; and not because he has perhaps been treated with deserved disrespect, set up his comments in opposition to the conduct of a country, which if it had treated him with as little charity as he has bestowed gratitude, he must long before this have submitted to the dire resort of perpetually soliciting a sustenance from that very source, which he now has arrogance enough to attempt to reprobate.

A MEMBER.

To WILLIE JONES, Esquire.

PUTANIST in oaths has as little credit given to his off-hand swearing, as a common prostitute, when she bristles up, acts the prude and lectures on chastity. Your seeming scorn and spurn at the Soldier and Citizen, is but a poor evasion. It is true it is a clumsy performance; it charges heavily; stand forward, answer it, give reputation to your 182 who negatived the learned labour of the choicest worthies of our Empire.—Produce to public view your thoughts, your wisdom, your objections to the code handed us from the Federal Convention; or like the grave digger in Hamlet, confess your self: Or in a manly, honest manner, make the best apology in your power.

You are a member of the General Assembly, have unburthened yourself of the burthen of being a Councillor of the state; call together, embattle your myrmidons, head and command them, redress, if possible, your errors, bring