



AND North-Carolina State Gazette.

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For the Register.

Edenton District, April Term 1806 Superior Court.

To Judge Taylor.

SIR. THE Grand Jury collected for the District of Edenton, through their Foreman, solicit the favour of a copy of your charge, delivered to them at the commencement of the Term of this Court. Impressed, as we are, with a persuasion that the dissemination of the moral principles as well as the precise and comprehensive expositions of the criminal law, therein contained, would conduct to benefit society, we conceive it our duty to endeavour to promote that interest, by making this our request, which we flatter ourselves you will not withhold.

Signed on behalf of the Grand Jury, GAB: BAILEY. Foreman. April 9th, 1806.

Gentlemen of the Grand Jury.

IT is the unquestionable right of every citizen of this State to claim from the government, such an exercise of its power, as will secure to him the most efficacious protection of his civil, and political liberties. This is not only the design and principle of the social compact, but the fundamental condition upon which, the parties to it, forbear the assertion of those original rights, which are clearly deducible from the laws of nature.

The uncorrected impulse of private vengeance would be uncertain in its measure, and extensively mischievous in its effects. It therefore gives place to the calm dispensations of legal justice: the public adopts, as its own, the cause of an injured individual; and, under the guidance of established principles, fitted to the moral constitution of man; and, with the aid of salutary forms, admirably calculated to banish fear from innocence, and hope from guilt, seeks to procure redress for past injuries, and security against future wrongs.

In surveying the blessings resulting from a free constitution of government, and in the consciousness that we participate in them to the fullest extent, we shall discern strong and abundant motives, for the due performance of all those civic duties, to which we are occasionally called by our country; and upon the regular and faithful discharge of which, the permanency of those blessings manifestly depends.

The laws to which every member of the community, either expressly or tacitly consents, form the only restraint upon our civil conduct: and, even these, to be practically valid, must respect certain imprescriptible rights, which in other times of superstition and tyranny, had been grossly infringed. To place them beyond the reach of future profanation, they are deposited on the altar of the constitution, and securely lodged in a sanctuary, which no department of the government can violate.

The common law of the land, founded upon the immutable principles of justice; matured by the collected wisdom of ages; and so modified by legislative acts, as to accord with the genius of our government, guarantees to every citizen, the enjoyment of personal security, the undisturbed possession of the acquisitions of industry, and ample redress for any wrong which his reputation may receive, from the attacks of calumny. It allows every man to pursue his own happiness, by any means, which are not incompatible with the good of the community, or the rights of others.

If our desire to cherish such institutions could be increased, or our zeal in their preservation animated, by additional motives of reverence, they might possibly be derived from a contrast of these exalted privileges, with the deplorable vassalage, which oppresses the subjects of a despotic state; where the law is to be sought for in the will of an individual, and the rights of nature, of conscience and humanity, are made to fluctuate with his caprice or bend to his ambition.

Allow me, then, to impress it on your minds as a truth of primary

importance, that a pure and efficient administration of justice is essential to the preservation of that liberty, which only a rational man would choose to enjoy;—liberty founded upon equal rights, and inseparably connected with law.

The declaration of rights may consecrate the great principles of civil freedom; the constitution may define and limit, with cautious precision, the just exercise of power, and multiplied acts of the legislature may be passed to meet the rising emergencies of the republic, and to promote the happiness of the people. But all is vain and illusive, unless the ministers of justice, of every description, discharge their respective duties, unless, by the assistance of Courts and Juries, rights are effectually protected, and wrongs adequately redressed. Like the light of a meteor, they are to dazzle and lead, but impart no vital warmth to the suffering and unprotected citizen.

Coming from every part of this District, and selected for the purpose of taking a most important share in the administration of its criminal justice, you will not consider the time misemployed, which is devoted to your instruction and assistance; and although the nature of this address will not admit of a detailed analysis of the criminal law, yet I shall attempt to sketch the most striking outlines, and to furnish you with some general directions pertaining to your duty.

On the importance of this knowledge to every man, permit me to adopt the words of a writer eminently skilled in it: "The learning, touching these subjects, is a matter of great and universal concernment. It merits for reasons too obvious to be enlarged on, the attention of every man living. For no rank, no elevation in life, and let me add, no conduct, now circumstances soever, ought to tempt a reasonable man to conclude, that these enquiries do not, nor possibly, can concern him. A moment's cool reflection in the utter instability of human affairs, and the numberless unforeseen events, which a day may bring forth, will be sufficient to guard any man, conscious of his own infirmities, against a delusion of this kind."

The oath, which has been administered to you, sufficiently marks the importance, attached to your office, in the contemplation of law. It inculcates diligence of enquiry and truth of presentment, in all such matters as are given you in charge.

The import of this is, that in the formal accusations sent you, by the Attorney General, you are to weigh and attentively examine the evidence offered in their support. The names of the witnesses endorsed, on the bill, designate those to whom an oath has been administered, and from such alone, is your decision, whether in affirmation or rejection of the charge, to be collected. The degree of evidence, necessary to support an accusation, has given rise to much diversity of opinion, amongst the ancient sages of the law. On one side it has been contended by Coke, that as an indictment is found in the absence of the party accused, it is necessary that the proof of the offence should be substantial. Others have thought, amongst whom stands the venerable name of Hale, that as an indictment is merely an accusation, and the party is afterwards to undergo a full trial, they ought, upon probable evidence only, to find the bill. So far as the evidence goes, however, the Grand Jury ought to be thoroughly persuaded of its truth, and ought to reject probability, as the only support of a charge, which may attach to an innocent man, some portion of ignominy disquietude and expence.

The tendency of another part of your oath, is, to put you on your guard against the influence of those evil passions, whose operation never fails to mislead the judgment, and to bring disgrace on the administration of justice. Such is the immutability of our nature, that we cannot, perhaps, wholly eradicate the selfish affections; but it is the duty of a rational being, to make constant struggles to counteract their effects, and prevent them from assuming an im-

proper bias in the direction of his conduct. All who undertake to administer the justice of a country should be more particularly impressed with this sentiment; because with them, it assumes a higher grade, in the scale of duty, and becomes a solemn and imperative obligation. They cannot fulfil the expectations of the public, nor accomplish the objects of their appointment, unless when they enter the temple of the law, they leave their prejudices at the portal. It is emphatically their duty to render a court of justice "a place for the punishment of evil doers, and the praise of such as do well," an asylum for the innocent and oppressed; and to communicate the full benefit of the law to all who seek its protection, of whatever country, religion or political creed.

If twelve of the jury concur in believing that the charge, contained in the indictment, is substantiated by the evidence, it then becomes the duty of the foreman to indorse upon it a true bill, and to subscribe his name and official character; and this he is bound to do, although his own opinion should not coincide with that of the twelve. The whole of the fact submitted to your enquiry must be affirmed or denied, for part of an indictment cannot be found true, and the rest false; unless there be distinct offences, stated in separate counts. In such case, one may be found true and the other rejected.

Let me now invite your attention to a brief description of those crimes and misdemeanors which the jurisdiction of this court embraces, upon which, however, no citizen can be arraigned, until the indictment has been sanctioned by your finding: Thus wisely has the law contrived that every criminal case shall be subject to the examination of two juries, and where the death of a man has ensued, to three.

A crime or misdemeanor, is an act committed or omitted, in violation of a law, forbidding or commanding it. Crimes signify the more atrocious offences; misdemeanors denote all such indictable offences as do not amount to felony. The chief crime that can be committed against the persons of the citizen, is homicide, which imports the killing of a human being, either accidentally, justifiably, excusably, or feloniously.

It may be by misadventure, as where one doing a lawful act, without intention of bodily harm to any person, and using proper caution to prevent damage, happens unfortunately to kill. An instance, illustrative of this, is given in the Mosaic Law, Deut, 20, 5, "Where a man goeth into the wood with his neighbor to hew wood, and his hand fetcheth a stroke with the axe to cut down a tree, and the axe slippeth from the helve, and lighteth upon his neighbor that he die." Thus too if a parent, in correcting his child, a master his servant, an officer a criminal, give an unhappy stroke, which causes death, and no malice can be collected from the attendant circumstances, it comes within the same class. It may be founded in justice, as where resistance is made in civil cases, and the act is done in strict pursuance of legal authority. This rule is subject however to many necessary limitations.

In cases of felony where resistance is made, which exempts the person (whose duty it is to apprehend) from any degree of guilt, if he kill instantly him who resists.

In cases of felony where the felon fleeth and cannot be apprehended; in which case, an officer who has a warrant, or any private individual on view of the offence, at the moment of its being committed, may justifiably kill the fugitive, if he cannot be overtaken. This rule is most frequently applied to the cases of robbery, burglary, and murder.

It may be justifiable in self-defence, as in a woman to protect herself from violation; or in any person upon whom a robbery or murder is attempted, or whose house is broke open in the night time, with intent to commit a felony.

It may be excusable in self-defence where there is a real necessity for a man to kill the assailant in order to save his own life.

Homicide may be felonious and amount to manslaughter, which is exempted from capital punishment, on account of the indulgence shewn by the law to human frailty.

Reproachful words or contemptuous gestures, without an assault upon the person, will not excuse the use of a deadly weapon, so as to alleviate a killing so committed into manslaughter. But if a person thus provoked were, on a sudden, and in the heat of passion, to give a blow with the unarmed hand, or with a stick not likely to kill, it would be manslaughter. It must however be remembered, that evidence of an intent to kill, or to do some great bodily harm, from which death would probably ensue, will always place homicide in the class of murder. And, if homicide be not founded in justice, nor in necessary or excusable self defence, nor in accident, nor in passion it, must be murder, which is, where a person of sound memory and discretion, unlawfully killeth any reasonable creature within the peace of the state, with malice aforethought, either express or implied.

The legislature passed an act in 1801, for the purpose of removing all doubts with respect to the punishment for the murder of a slave; and with a commendable regard to the interests of humanity, have placed that crime upon the footing of a murder of a free person. The next offence, consisting of an outrage against the person, is maiming, which at common law, is punishable with fine and imprisonment. It is a maim to do such a hurt to any part of a man's body, as renders him less able in fighting, to defend himself or annoy his adversary; as cutting off, disabling, or weakening a man's hand or finger, or striking out his eye or fore tooth: whatever tends to disfigure only and not to weaken, does not amount to the offence.

But by an act of Assembly passed in 1791, the maliciously cutting out or disabling the tongue, or putting out the eye, with intent to maim, maim or disfigure, is punishable with the pillory, loss of ears, and whipping, for the first offence, and with death for the second. The same act also enlarges the description of maiming, and punishes in the same manner, several bodily injuries, if done with the intent to murder, maim or disfigure.

An injury may be offered to the habitations of the citizens, by breaking into them by night with intent to commit felony. This offence remains unaltered by any legislative act, and is a capital felony. So is the offence of maliciously setting fire to the house of another. Barns, stables and out-houses, come within the description as parcel of the house, as in burglary.

Private property may be assailed by stealing, or by any means taking away slaves with the intent to sell or apply to the offender's use; which offence is declared to be felony, and made punishable with death, by an act passed in 1779. The same punishment is also denounced against those, who remove free persons of color from this, to another state with intent to sell them.

By horse stealing, the punishment for which was made capital, the last time, in 1790.

By counterfeiting the currency of the state, in protection of various omissions of which numerous acts have been passed, in some instances directing an infamous, in others a capital punishment.

By forging any deed or will, or security for money, &c. or publishing such papers knowing them to be forged, which offence is directed by an act passed in 1801, to be punished infamously on the first conviction, and capitally on the second; By robbery, which is the felonious taking of goods from the person of another, or, the taking property, in his presence by violence, or threats, without the notion of legal claim.

And by grand larceny, which is the feloniously stealing another's goods, above the value of a shilling. The conservation of the peace has rendered it necessary to prevent not only those offences which actually disturb it, but likewise those, which have a tendency to excite others

to break it. Of the latter description, are challenges to fight, and defamatory libels: By an act passed in 1802, any person sending, accepting, or bearing a challenge, although no death ensue, is rendered ineligible to any office of trust, honor, or profit in the state, besides being subjected to a fine not exceeding one hundred pounds.

A libel is a malicious defamation of any person, made public by printing, writing, signs or figures, in order to provoke him to wrath, or to expose him to public scorn and ridicule. And as such an offence tends to provoke the injured party, his family and friends, and to stir them up to revenge, which it would be difficult to restrain, were not such injuries redressed by public justice, so a libel intended to bring reproach on the memory of a deceased person, is alike subject to indictment. The intention to cast a stain upon his memory, and to injure his posterity, must, however, in such be apparent for then it endangers the peace. This principle does not exclude a fair discussion of the conduct of deceased persons, circulated, in the true spirit of historical writing, to exalt virtue and to degrade vice.

It is an aggravation of a libel, if it reflect on those who are intrusted with the administration of public affairs. For, in addition to the private animosities, which are thus likely to be engendered, such publications are a source of some of the severest evils that can afflict the community.

Until very lately it has been part of the law, that the truth of a libel is no justification in a criminal prosecution. It has been considered, for two centuries past, as repugnant to good policy to permit the malicious publication of even truth itself; since as Lord Coke observes, a man aggrieved ought to have recourse to the law, and not, avenge himself by the odious means of libelling. It has been supposed that the comforts of society might be hourly endangered, and its tranquility interrupted, by tolerating such a practice; and therefore, while the law permitted the party, who was sued in a civil action for a libel, to plead the truth in bar, it considered only in a criminal prosecution, the tendency of libels to disturb the peace of the community, and punished the provocation, not the falsity.

These reasons, however, have not been thought conclusive by the legislature, who in 1805 passed an act allowing a person indicted for a libel to justify himself by proving the truth of the facts. The law must accordingly be so administered, and we must indulge the hope that experience may sanction the innovation; for it is certainly an object of grateful contemplation, when the catalogue of public offences can be lessened, consistently with the safety of the state.

Actual breaches of the peace may be committed by an affray, where two or more persons fight in a public place to the terror of the citizens. The fighting must be in public, otherwise it amounts only to an assault. Any private person, who is present, as well as a magistrate or constable, may justifiably part the combatants. The latter indeed are bound to keep the peace, and secure the parties, so that they be accountable in due course of law.

By a riot, where three or more persons use any force or violence in the execution of any design whatever, wherein it is not permitted by law. Persons are rioters, who being innocently assembled together, do afterwards, upon a dispute happening to arise between them, arm themselves into parties, with promises of mutual support, and make an affray.

Sheriffs and all peace officers are bound to use their best endeavours in the suppression of riots, and may lawfully command all other persons to assist them. Private persons may likewise endeavour to prevent those whom they see engaged in such disturbances, from executing their purpose.

Offences against public justice may be committed,

By an escape of a person arrested upon a criminal process. The grand

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