

[XXth Year.]

THURSDAY, January 10, 1765.

[N^o. 1027.]

From the North Briton, N^o CXL.

Conversing the other Day with an eminent Lawyer, on some Points lately agitated, he observed that *the King pays no Costs*. At first this did not particularly strike me, but reflecting on it at home, I could not refrain offering a few Thoughts on a Point of Law which I take to be of the last Consequence to the internal Peace of this Kingdom, and the Liberty and Property of its Inhabitants.

Groundless Prosecutions, and false Informations, at the Suit of the Crown, by which the MOST INNOCENT are liable to be prosecuted in Courts of Law, without Hope or Redress, have so frequently occurred, that it is full Time to consider their Scope and Tendency; and if they should be discovered to be Evils of the most dangerous and oppressive Nature, it is not doubted but such proper Remedies will be applied as will hereafter preserve us from Calamities that take their Rise, and chief Encouragement, from the Misapplication of a Maxim in our common Law, THE KING PAYS NO COSTS.

This Maxim, like the rest of our Law, is built on the best Consideration; but the usual Conclusion drawn from it, viz. *That the Servants of the Crown shall pay no Costs in Actions brought at his Majesty's Suit*, is, in my Opinion, neither founded on that Maxim, nor the Laws of Justice. This I shall endeavour to shew, by briefly comparing that Position with another immediately connected with it—THE KING CAN DO NO WRONG.

The King, says our Law, can do no Wrong, yet nobody has yet been bold and absurd enough to infer from thence, that Ministers can do no Wrong, when acting in the name of the King; or that they ought not to be answerable for the Injustice they may commit under that high Sanction. If Ministers, then, cannot screen themselves, by the Use of their Master's Name, from answering the Calls of Justice when they oppress, why should the Servants of these Servants, the ministerial Declaimers at the Bar, be secure under the like Circumstances, from indemnifying the injured? The King, in our Law Books, is supposed immortal and impeccable. He can neither die, nor do a Wrong. That such a perfect Person should not be liable to pay Costs is truly reasonable, because he cannot bring against his Subjects any false or oppressive Action. He that cannot do Wrong, cannot merit any legal Adjudication against him; but this neither quadrates with his Ministers of State, nor their Servants in Westminster-Hall. We know it too severely that his Ministers have often prostituted his Authority in sanctifying the most tyrannical Acts of Oppression; and I believe we have all severely felt, too, that Attornies General have frequently brought the most vexatious Actions, in the Name of the King, against the most innocent and loyal of his Subjects. No Plea of his Majesty's Authority can screen the former from making Reparation, and I am sure it is equally consistent with Equity, that in the latter Case, no Attorney General should be exempt from the Payment of Costs, which they have wantonly obliged an innocent Person to expend merely because they have thought fit to bring the Action in the Name of the King! A Lord Chief Jefferies, if he were alive, might possibly encourage, against Conviction, any Extension of that equitable Maxim, *the King shall pay no Costs*, for the sake of preserving from Justice some overbearing N-RT-N of the Law, or screening,

from Reparation, some base and treacherous Informer; whether he be a Twitcher, a Perjurer, a Kidgell, a Scott, or a Currie: But since no upright Judge would countenance or continue any Practice contrary to the most clear and positive Decrees of unprejudiced Reason, and the Evidence of his own Senses, I shall not be fearful of incurring the Displeasure of our present Dispensers of Justice, in attempting to search to the Bottom the Foundation of a Misapprehension, in my Opinion, so big with Evil, and so pregnant with Oppression.

That *the King shall pay no Costs* I have admitted to be reasonable, because he CANNOT do wrong, but will these Premises bear this Conclusion, *the ATTORNEY GENERAL shall pay no Costs, who CAN do wrong*? Though the KING can do no Wrong, yet an ATTORNEY GENERAL can bring a vexatious Action and lay a false Information, to the Ruin of an absolutely innocent Person; this, too, he can do in the Name of the King; yet where is the Man who can give a convincing Reason that he ought not to pay Costs whenever he does so? The Propositions respecting the King and the Attorney, are so exceedingly opposite, that it is wonderful the one should ever be supposed a proper Conclusion from the other! Sure I am, that our greatest Lawyers agree, that it is a certain Rule in the Law, never to be departed from on any Consideration whatever, that *no Maxim is to be so understood or explained, that it should be productive of general Injustice*; why then, in the Name of Equity, should this Maxim, *the King pays no Costs*, be so far extended beyond its natural Meaning, as to protect the Attorney General from the Payment of Costs, in Cases where Justice calls for their being awarded?

It is indeed true, that there is no Precedent for condemning the Attorney General in Costs in any such Case, but it is as true, that there IS no Statute, no Maxim in Law, nor (I believe) no Rule of Court, to protect him from the paying of COSTS, AND EVEN DAMAGES TO BOOT, wherever Equity requires a Determination of that kind. An Attorney General has no better Title to do wrong than any other Person whatever, why then should he not be equally bound to indemnify those whom he may officially injure? It may, perhaps be easily accounted for, why there is no Precedent in favour of Innocence and Justice against an Attorney General in such Cases, but if the Practice should appear to be a most crying Oppression, it would be utterly unaccountable if it then remained unrectified.

Before the Revolution, the Judges held their Commissions during Pleasure only, and consequently dared not so far disoblige the Ministry, as to make such an equitable Order against the Attorney General, who always receives his Instructions from the Government, and is too frequently a Minion of the Minister's. Why that beaten Path has not been deviated from, since that happy Period, I cannot say. Custom, I fear, is a more prevalent Argument in every Station and Department of Life, than it ought to be. But, as neither Law has introduced, nor Equity warrants, any Privilege in Favour of the Attorney General, in Cases of RIGHT and WRONG, I do not doubt but our present Bench of patriot Judges, will break through this Practice, if on a more mature Deliberation, they find it inconsistent with Justice, and baneful to the Liberty and Property of the Subject.

Of late, some Oppressions of the Great, which had escaped the Vigilance of former

Times, have met with a proper Check, and why this important Point, relative to the Attorney General's Office, should not now be more narrowly scrutinized, I can see no just Cause. The many late Determinations against the Violence of Men in Power, give us great Ground to hope for Success in this interesting Matter, if the Question was fairly stated for a legal Decision. In such a Case, I can form no doubt of the equitable Disposition of our Judges, nor of their Readiness to hear and duly ponder, whatever can be reasonably alledged against any Mistake, that may have crept into Practice, from the Inattention or Inaccuracy of their Predecessors: Neither can I be dubious of the nice Discernment of our Jurors, if it should be thought a necessary Step to have Recourse to that farther Remedy the Law has afforded; I mean Access to the Judgment of our Country, in a Trial by Jury.

Wherever an Injury is actually done, or only supposed to be done, There must be a LEGAL Method of obtaining Relief; or, at least, a Judgment in the Case; because the Law abhors final Injustice: The KING is just without Exception—uniformly and universally just, it cannot, therefore, be his Will, that any of his People should be finally denied Justice; and therefore, too, the Subject must be entitled to the same Justice against the Attorney General, as against any other Person whomsoever. As there is no Law, so is there no Reason to be shewn, why this ministerial Officer should be endowed with a Privilege to ruin his Majesty's Subjects, by involving them in oppressive Prosecutions; obliging them to sacrifice their Time and Property in Courts of Law; to the inconceivable Damage of the COMMONWEALTH, and the irreparable Loss of the LITIGANT'S FAMILY.

Since then, the Law (as I have already observed) allows no Violence to pass unrepaired, there must be in this Point, as well as in any other, Refuge, BY ACTION OF DAMAGE on the Case; and thereby the Question would naturally come under the Cognizance of a Jury, each of whom would most certainly, and equitably, make the Case their own; and give their Voices in such a Manner as should be consistent with Justice; and, as they would with the Plaintiff should do, were he to decide upon a similar Cause of theirs.

The Mischief that gave Rise to my considering this Case—(a Case, I believe, never before treated on!)—is, indisputably, of a very threatening Nature; and as hurtful as alarming. It menaces us in the Streets, disturbs us in our Houses, and disquiets us in our Business. If so unjust a Privilege, in Favour of the Attorney General, was absolutely established by a Statute, it would be the Duty of every freeborn Englishman to spare no Pains in obtaining a Repeal of so inequitable a Law. But in Fact, there is no Law, and I hope never will be, to authorize such a dangerous, such a dreadful Prevalence. All the other Servants of the Crown are answerable for every Stretch of Power and Office—for their blundering Credulity, or malicious Oppression—and why the same Fate should not attend the Attorney General, no Man of Reason and Candour can less than a poor Exciseman commits a Mistake to the Prejudice of his Neighbour, he makes repair the Wrong; in some Cases, even THIRTY-FOLD: Yet a wicked Attorney General, by Virtue of paying no Costs, may drive many honest Families to DESPAIR, and their MONEY, their QUIET and their TIME,

Notice of the Publick Life, a certain Cure for the Gout, Tincture of Golden Rod for el: Tincture Valerian for Ner

is a young Beginner, he hopes close Application to Business of the Public; and they may served with genuine Medicines, e best of it's Kind. As a Stora afforded, has been long with'd us, he has settled Corresponds and Annapolis to forward him they arrive from London, as he them fresh by every Vessel, so ways well afforded. It will be a the Physicians in these Parts, to y of being supplied from him, very cheapest Terms; and any ease to favour him with their and on having their Orders ex-Punctuality, and Dispatch. LINE CHESTS Families that live distant from a r Directions. ghest Prices for Oil of Mint, makes.

hath been represented to his the Governor, By ROBERT edior of Potomack, That on or y of October past, there was taken away from, the Inspecto on Nanticoke River, Nine Barrel of Molasses, which had for the King's Use, for want of Excellency, therefore, in order ny may be Detected, and any of duly Punished, doth hereby ip's Pardon, to any one of the herein, who shall Discover his e or Accomplices in the said they may be convicted thereof. Order, J. Ross, Cl. Cona.

REWARD.

Encouragement, I hereby Promise of Fifty Dollars, to any Person discovery of the above Villainy, Parties concerned be brought to ROBERT HERON.

HAPP, WATCH-MAKER,

Method to acquaint the Pub- has provided an Assistant in the G BUSINESS, which will ter to Dispatch the Work of o have, and may employ him. Endeavours in that Way, may desired End. It is manifest ce, that Numbers of Watches originally well executed) have b' the unskillful and injudicious a, who assumed the Knowledge ich they were only Pretenders. ch have been many Years in uly Wore, he will engage to hen New; and will at a very eep, those he Repairs, in Or- all Damages excepted which om Accidents, such as a Fall, a Main Spring, which the most cannot often Account for,

ill Supply any Gentlemen with ONDS, OR PLAIN WATCHES, Quality to be equal to any

the Subscriber, living near ut the last of 7th at, a Mulatto y, about 5 Feet high; he is 's incline to turn inwards, has is slow of Speech; he has curls much. Had on a Cloth with yellow Metal Buttons, and old Leather Breeches. the said Fellow home, shall g Reward. If taken out of y Shillings, and reasonable home, paid by GERARD HOPKINS, junior.

Street. All Persons ENTS of a moderate Ones in Proportion.