(XLVIth YEAR.) THE (No. 2313.)

MARYLAND GAZETTE.

THURSDAY, MAY 12, 1791.

On Saturday last the circuit court of the United States, for the district of Maryland, was held in this city by the honourable James Wilson, James Iredell and William Paca, Esquires, when the following charge was given to the grand jury by the presiding judge, Mr. Wilson:

Gentlemen of the Grand Jury,

IT is highly probable that little business, of a particular nature, will come before you. Perhaps, therefore, no occasion can be fitter than the present to address you on a subject of great, of general, and of lasting importance, and, at the same time, intimately connected with your official character and views.—I mean the utility, the power, and the duty of juries.

In a well constituted government, the great movements of the state receive their first force and direction immediately from the people, at elections. The influence of that force and that direction ought to pervade all the subsequent progress and stages of the public business. The will and genius of the citizens should diffuse their tints and colourings over every part of the web of government, however finely spun, or intricately woven. In this manner will one inestimable property of a constitution be preserved and secured. It will be *always* accommodated to the dispositions, manners and habits, of those for whom it is intended.

The administration of justice, and the municipal laws, is that part of government which comes most intimately home to the business and bosoms of men.—Where the relation of the laws to facts and transactions is obscure or difficult, and of consequence gives rise to doubts and controversies, the intervention of skilful and unbiassed application of the laws is essentially necessary. This is the province of judges. But before justice can be fully and satisfactorily dispensed, something farther, and of importance equally great and extensive, must be done: The circumstances attending transactions must be developed and ascertained. In order to make the proper estimate, and to discover the true results of things, consideration must be given not only to what is said, but to the character and situation of the witness who speaks it, and to the character and situation of the person concerning whom it is spoken. Now the province of juries opens upon us: let us survey it in all its beauty and extent. If I deceive not myself, we shall return from the excursion fully and agreeably convinced, that as government receives its first moving force, it receives its last finishing efficacy, from the personal acts and energies of the people.

If the administration of justice were entirely committed to one selected body of men, deprived by their situation, and by the functions of their office, from having many opportunities of knowing particularly the circumstances and characters of the parties that come before them, it could not be expected that the proper and practical adjustment of facts to characters would, in every instance, be made. In this case, a competent number of sensible and unprejudiced jurymen, selected and assembled for the purpose, will be best qualified for tracing, investigating and weighing, the truth. They will be triers not only of the facts, but also of the credibility of the witnesses. They will be a strong and uniform defence against the influence of remote or defective information on one hand, and against the undistinguishing operations of systematic inflexibility on the other. A single witness will not be rejected by them, because he is single; nor will they believe two witnesses, if probability and reason encounter their testimony.

These are advantages of the trial by jury even in civil cases; but in criminal cases how much are those advantages heightened and appreciated! The executor of the laws should be vested with numerous, extensive, and important powers; but, while it is necessary to give such powers, it is also necessary to guard against their inconveniencies, by assigning to them proper checks and controls. The executive power, of prosecuting crimes and offences, might be dangerous and destructive, if exercised *solely* by judges *occasionally* appointed, or appointed *during pleasure*, for that purpose. To prevent this, two precautions are used. One is, that the judges are appointed during good behaviour; the other is, that a double barrier—a presentment, as well as trial by jury—is placed between the liberty and security of the citizen, and the power and exertions of administration.

Diligent inquiries, and true presentments to make, is the part allotted to grand juries: those presentments well and truly to try, is the part allotted to traverse juries.

The trust reposed in grand juries is a point of great national concern. To them emphatically belongs the character of being a terror to evil doers, and a praise to those that do well. They are entrusted with the custody of the portals of the law, that into the hallowed dome no injustice may be permitted to enter.—They make, in the first instance, the important discrimination between the innocent and the guilty: to the former they give a passport of security; the latter they consign to a final trial by a traverse jury. That a proper measure be meted out to both, is an object of the highest importance, considered either in a public or in a private point of view.

The manner in which grand juries ought to make their inquiries, well deserves to be attentively considered. It has been declared by some, that grand juries are only to inquire, "whether what they hear be any "reason to put the party to answer"—"that a probable cause to call him to answer is as much as is required by law." But, indeed, such a declaration is very little consonant to the oath (the best evidence of the law) which every grand juryman is obliged to take. He swears that he "will inquire diligently"—"that "he will present the truth, the whole truth, and nothing but the truth" As little is such a declaration consonant to ancient authority and practice.——"In "those days," says my lord Coke, speaking of the reign of Edward I. "In those days (as yet it ought to be) "indictments, taken in the absence of the party, were "formed upon plain and direct proof, and not upon "probabilities or inferences." Still as little is such a declaration consonant to the voice of reason and sound sense. An indictment has been styled, and with no small degree of propriety, the verdict of the grand jury. "It ought to import all the truth, which is requisite by law; and every part material ought to be "found by the oath of the indictors." Now, is it consistent with reason or sound sense, that a verdict, found upon oath—upon an oath to make diligent inquiry—should be the vague, perhaps the visionary result merely of probability? Ought not moral certainty to be deemed the necessary basis of what is delivered under the sanction of an obligation so solemn and so strict? The doctrine, that a grand jury may rest satisfied merely with probabilities, is a doctrine dangerous as well as unfounded: It is a doctrine which may be applied to countenance and promote the vilest and most oppressive purposes: it may be used, in pernicious rotation, as a snare in which the innocent may be entrapped, and as a screen, under the cover of which the guilty may escape.

It has been alleged, that grand juries are confined in their inquiries to the bills offered to them, to the crimes given them in charge, and to the evidence brought before them by the prosecutor. But these notions are much too contracted: They present but a very imperfect and unsatisfactory view of the duty required from grand juries, and of the trust reposed in them. They are not appointed for the prosecutor, or for the court: They are appointed for the government, and for the people; and of both the government and the people it is surely the concernment, that, on one hand, all crimes, whether given or not given in charge, whether described or not described with professional skill, should receive the punishment which the law denounces; and that, on the other hand, innocence, however strongly assailed by accusations drawn up in regular form, and by accusers marshalled in legal array, should, on full investigation, be secure in that protection which the law engages that she shall enjoy inviolate. The oath of a grand juryman—and his oath is the commission under which he acts—assigns no limits, except those marked by diligence itself, to the course of his inquiries: Why then should it be circumscribed by more contracted boundaries? Shall diligent inquiry be enjoined? And shall the means and opportunities of inquiry be prohibited or restrained? No. Their inquiries should be made concerning the accusers, concerning the accusation, and concerning the party accused. Concerning each of those topics of inquiry, they should inquire of one another mutually—of the witnesses produced on the part of the prosecution—of such other witnesses as shall be offered in a proper manner, and by proper persons. They ought to go farther still—they ought to send for such as any of them think able to give testimony that will be pertinent and material.

It would be easy—it might be useful—to dilate under each of those heads; but the nature of this address will not permit the attempt.

We have not even yet seen the full extent of the trust reposed in grand juries. They are a great channel of communication between those who make and administer the laws, and those for whom the laws are made and administered. All the operations of government, and of its ministers and officers, are within the compass of their view and research. They may suggest public improvements, and the modes of removing public inconveniencies: They may expose to public inspection, or to public punishment, bad public men, and bad public measures.

Such and so important is the office of grand juries: Mature deliberation, sound judgment, and strict impartiality, are essentially requisite to the adequate fulfilment of their high trust. They ought, therefore, to be composed of men distinguished by their talents and their virtues—of men entitled to the first grade of character in the county or state, for the body of which they are selected to inquire. It is the duty of the returning officer that such men be returned. When this is done, grand juries preserve and illustrate the dignity and excellence of their institution.

The law has provided, as far as it is possible by law to provide, that no improper persons should be placed on juries. If any reasonable exception can be taken, either to the whole pannel, or to particular jurors returned on it—the whole pannel, or such jurors, will, on a challenge for such cause, be quashed or set aside; and an indictment, found by a grand jury, who, or any of whom, are liable to such exceptions, will be adjudged to be null and void.

In a trial, on which the life of the person accused depends, he enjoys a peculiar privilege—a privilege suggested and sanctioned by the finest feelings of humanity—he may challenge a certain number of jurors without shewing any the most remote cause of rejection. In difficult and dangerous emergencies, how sudden, how inconstant, how capricious, are oftentimes the emotions of the soul! When on the voice of the jurors the prisoner's life is suspended, is it unnatural to suppose, that his mind, fluctuating, trembling and solicitous, should conceive prejudices, even unaccountable ones, on the view of some who are called and appear to pronounce his fate? That the supposition is not unnatural, some, who have experienced only the sensations of professional sympathy on such occasions, can, in the strongest manner, bear witness. Tender indulgence is shewn to human nature in that trying hour; and he, who has so many other embarrassments surrounding and pressing him, is relieved from the very excruciating one, however unfounded—an unfavourable opinion of his jury. Besides; when he challenges for cause, unless he succeed in establishing that cause, in the opinion of others, as well as in his own, his challenge will be set aside. In his timid and suspicious state, he will apprehend that his unsuccessful challenge will not be entirely without its effect in the mind of the juror, whose impartiality has been questioned, and whose resentment may, therefore, be provoked. His alarm will then be increased by the consequences of the very means which he took to prevent it. To remove all these disquietudes from his doubting mind, the law allows a challenge for cause, that has been over-ruled, to be succeeded by one that is peremptory.

The relative powers of courts and juries form an interesting subject of inquiry. It is of the utmost consequence that it be fully and accurately understood. A well known distinction between their provinces has been long recognized and established. The judges decide questions of law: the juries decide questions of fact. When these questions can be decided separately, there is no difficulty or doubt concerning their separate powers. But, in many cases, the question of law is so intimately and inseparably blended with the question of fact, that the decision of one necessarily involves the decision of the other. It will be readily admitted on all hands, that, in the resolution of points of law, the greatest regard ought to be paid to the direction of the judges. But still the question occurs—Suppose a difference in sentiment between the judges and the jury with regard to the law—and suppose the law and the fact to be so closely interwoven, that one cannot be settled without embracing, at the same time, a determination of the other: What is to be done? The jury must do their duty, and their whole duty; they must decide upon the the law as well as the fact. This doctrine is peculiarly applicable to criminal cases; and from thence, indeed, derives its peculiar importance. When a person is to be tried for a crime, the accusation charges against him not only the particular fact which has been committed, but also the motive to which it owed its origin, and from which it receives its complexion. The first is neither the only, nor the principal, object of examination and discussion. On the second depends the innocence or the criminality of the action. The verdict must decide not only upon the first, but also, and principally, upon the second: for the verdict must be co extensive and commensurate with the charge. It is not unusual, and, on many occasions, it is prudent, for the jury to draw up and exhibit, in a special verdict, a particular statement of the facts, and to pray from the court a judgment of the law resulting from them. But this they are not obliged to do. They may, if they please, find a general verdict, which determines equally the fact and the law.

It may seem, at first view, to be somewhat extraordinary, that twelve men, untutored in the study of jurisprudence, should be the ultimate interpreters of the law, with a power to overrule the directions of the judges, who have made it the subject of their long elaborate researches, and have been raised to the seat of judgment for their professional abilities and skill. But a deeper examination of the subject, will reconcile us to what, at first, may appear incongruous. In criminal cases, the design is, as has been already intimated, closely interwoven with the transaction: and the elucidation of both depends on a collected view of particulars, arising not only from the testimony, but