

TRIAL

OF

WILLIAM PENN,

(Founder of Pennsylvania,)

AT THE OLD BAILEY, LONDON,

BEFORE THE

LORD MAYOR, RECORDER, AND ALDERMEN,

SEPT. 1670.

York :

W. L. MACKENZIE.

1830.

[Price Four Pence.]

TRIAL OF WILLIAM PENN.

NOTWITHSTANDING a body of soldiers had taken possession of the meeting house in Gracious street,"* Aug. 15th, 1670, William Penn preached in the immediate vicinity as before. On this, he was apprehended, committed by the lord mayor, and tried for the same, along with Wm. Meade at the Old Bailey, on the first, third, fourth, and fifth of September following. On this occasion, the bench consisted of:

Samuel Starling, lord mayor.

John Howel, recorder.

Thomas Bludworth

William Peak

Richard Ford

Sir John Robinson

Joseph Sheldon

Richard Brown

} Aldermen.

John Smith

James Edwards

} Sheriffs.

It is important here that the names of the jury should be also recorded, not only as a mark of respect to them, but also as an example to their fellow subjects, viz.

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| 1. Thomas Veer | 7. William Plumstead |
| 2. Edward Busbel | 8. Henry Heley |
| 3. John Hammond | 9. James Damask |
| 4. Charles Wilson | 10. Henry Mitchel |
| 5. Gregory Walklet | 11. William Lever |
| 6. John Brightman | 12. John Bailey |

The indictment purported "that William Penn and William Meade, the latter, late of London, linen draper, with divers persons to the jurors unknown, to the number of three hundred, did unlawfully assemble, and congregate

* Grace Church Street.

† Mr. Meade had been originally a tradesman in London; but, during the civil wars, he, like many others, obtained a commission in the army, and was known by the appellation of Captain Meade. It is not at all improbable, that he took the same side as William Penn's father, and, indeed, his conduct on this occasion displays somewhat of the republican intrepidity of those days.

themselves with *force of arms*, &c. to the disturbance of the peace of Our Lord the King, and that William Penn, by agreement between him and William Mead, did take upon himself to preach and speak, in contempt of the said Lord the King, and of his law, to the great disturbance of his peace," &c.

Having pleaded 'not guilty,' the court adjourned until the afternoon, and the prisoners being again brought to the bar, were there detained during five hours, while house breakers, murderers, &c. were tried. On the 2d of September, the same ceremony took place as before, with only this difference, that on one of the officers pulling off the hats of the two prisoners, the lord mayor exclaimed: "Sirrah, who bid *you* put off their hats? put on their hats again!"

Recorder to the prisoners. Do you know where you are? Do you know it is the King's Court?

Penn. I know it to be a court, and I suppose it to be the King's Court.

Recorder. Do you not know there is respect due to the court? And why do you not pull off your hat?

Penn. Because I do not believe that to be any respect.

Recorder. Well, the court sets 40 marks a piece upon your heads, as a fine for your contempt of the court.

Penn. I desire it may be observed, that we came in to the court with our hats off (that is, taken off) and if they have been put on since, it was by order of the bench; and, therefore, not we, but the bench should be fined.

After this, the jury were again sworn, on which Sir J. Robinson, lieutenant of the Tower, objected against Edward Bushel, as he had not kissed the book, and therefore, would have him sworn again; "though, indeed, it was on purpose to have made use of his tenderness of conscience in avoiding reiterated oaths to have put him by his being a jurymen, apprehending him to be a person not fit to answer their arbitrary ends."*

* See a scarce and valuable tract, printed for William Butler, 1692, and entitled, "The people's ancient and just liberties asserted, in the trial of William Penn and William Mead, at the sessions held at the old Bailey, &c. against the most arbitrary procedure of that court." "Wee unto them that decree unrighteous decrees, and write grievousness, which they had prescribed to turn away the needy from judgment, and take away," &c. *Ibid.* x. 1. 2.

James Cook, the first witness being called, swore that he saw Mr. Penn speaking to the people in Grace church street, but *could not hear what he said*, on account of the noise. Richard Read deposed exactly in the same manner, and to the same effect; but added, that he "saw captain Mead speaking to lieut. Cook, yet what he said he could not tell." The third witness was equally incompetent to prove any thing against Mr. Penn; and as "for captain Mead," said he, "I did not see him there."

Mr. Recorder Howell. What say you, Mead, were you there?

William Mead. It is a maxim of our own law, *pene tenetur accusare seipsum*; which, if it be not true Latin, I am sure it is true English, "that no man is bound to accuse himself; and why dost thou offer to ensnare me with such a question? Doth not this show thy malice? Is this like unto a judge that ought to be counsel for the prisoner at the bar?"

Recorder. Sir, hold thy tongue; I did not go about to ensnare you.

Penn. We confess ourselves to be so far from recanting, or declining to vindicate the assembling of ourselves to preach, pray, or worship the eternal, holy, just God! that we declare to all the world, that we do believe it to be our indispensable duty to meet incessantly upon so good an account; nor shall all the powers upon earth be able to divert us from reverencing and adoring our God who made us.

Alderman Brown. You are not here for worshipping God, but for breaking the law; you do yourselves great wrong in going on in that discourse.

Penn. I affirm I have broken no law, nor am I guilty of the indictment that is laid to my charge; and to the end, the bench, the jury, and myself, with these that hear us, may have a more direct understanding, I desire you would let me know by what law it is you prosecute me, and upon what law you grounded my indictment?

Recorder. Upon the common law.

Penn. Where is that Common law?

Recorder. You must not think that I am able to run up so many years, and over so many adjudged cases, which we call common law, to answer your curiosity.

Penn. This answer, I am sure, is very short of my question; for, if it be common, it should not be so hard to produce.

Recorder. Sir, will you plead to your indictment?

Penn. Shall I plead to an indictment that hath no foundation in law? If it contain that law you say I have broken, why should you decline to produce that law, since it will be impossible for the jury to determine or agree to bring in their verdict, who have not the law produced by which they should measure the truth of this indictment, and the guilt, or contrary, of my fact?

Recorder. You are a saucy fellow; speak to the indictment. [At this time, several upon the bench urged hard upon the prisoner to bear him down.]

Penn. I say it is my place to speak to matter of law, I am arraigned a prisoner; my liberty, which is next to life itself, is now concerned; you are many mouths and ears against me, and if I must not be allowed to make the best of my case, it is hard: I say again, unless you show me, and the people, the law you ground your indictment upon, I shall take it for granted, your proceedings are merely arbitrary.

Recorder. The question is—Whether you are guilty of this indictment?

Penn. The question is not whether I am guilty of this indictment, but whether this indictment be legal?—It is too general and imperfect an answer, to say it is the common law, unless we knew both where and what it is: for where there is no law, there is no transgression; and that law which is not in being, is so far from being common, that it is no law at all?

Recorder. You are an impertinent fellow; will you teach the court what law is? It is *Lex non scripta*; that which many have studied thirty or forty years to know, and would you have me to tell you in a moment?

Penn. Certainly, if the common law be so hard to be understood, it is far from being common; but if the lord Coke, in his Institutes, be of any consideration, he tells us that common law is common right, and that common right is the great charter of privileges confirmed, 9. Henry 3. 29, 25. Edward I. 1 and 2; Edward III. 8. Coke. Instit. 2 p. 56. I design no affront to the court, but to be heard

At my just plea, and I must plainly tell you, that if you will deny me *Oyer* of the law, which you say I have broken, you do at once deny me an acknowledged right, and evidence to the whole world, your resolution to sacrifice the privileges of Englishmen, to your sinister and arbitrary designs.

Recorder. Take him away: my lord, if you take not some course with this pestilent fellow to stop his mouth, we shall not be able to do any thing to-night.

Lord Mayor. Take him away, take him away, turn him into the Baile Dock.

Penn. These are but so many vain exclamations: Is this justice or true judgment? Must I, therefore, be taken away, because I plead for the fundamental laws of England? However, this I leave upon your consciences who are of the jury (and my sole judges) that if these ancient fundamental laws, which relate to liberty and property, and are not limited to particular persuasions in religion, must not be indispensably maintained and observed, who can say he hath a right to the coat upon his back?

Recorder. Be silent there.

Penn. I am not to be silent in a case wherein I am so much concerned, and not only myself, but many thousand families besides.

They now dragged him in the Baile Dock; but William Mead, being still left in court, spoke as follows:

"You men of the jury, here I do now stand to answer to an indictment against me, which is a bundle of stuff, full of lies and falsehoods; for therein am I accused, that I met *vi et armi, illicite et tumultuose*. Time was when I had freedom to use a carnal weapon, and I thought I feared no man; but now I fear the living God, and dare not make use thereof, nor hurt any man. You men of the jury who are my judges, if the record will not tell you what makes a riot, a route, or an unlawful assembly, Coke, he that once they called the lord Coke, tell us, that a riot is when three or more are met together to beat a man, or to enter forcibly into another man's land, to cut down his grass, his wood, or break down his pales."

Recorder. I thank you, sir, that you will tell me what the law is.—[Scornfully pulling off his hat.]

Mead. Thou mayest put on thy hat, I have never a fee for thee now.

Alderman Brown. He talks at random; one while some other religion; and now a quaker, and next a papist.

Mead. Turpe est doctori cum culpa redarguit ad ipsum [It is shameful for a man who pretends to instruct, when he is confuted by his own accusation.]

Lord Mayor. You deserve to have your tongue cut out.

Recorder. If you discourse in this manner, I shall take occasion against you.

Mr. Mead having been now also thrust into the Baile Dock, the following charge was given to the jury, *in the absence of the prisoners:*

Recorder. You have heard what the indictment is. It is for preaching to the people, and drawing a tumultuous company after them; and Mr. Penn was speaking—If they should not be disturbed, you see they will go on; there are three or four witnesses that have proved this, that he did preach there, that Mr. Mead did allow of it; after this, you have heard by substantial witnesses what is said against them. Now we are upon the matter of fact, which you are to keep to and observe, what has been fully sworn, at your peril.

Penn. [With a loud voice, from the Baile Dock] I appeal to the jury, who are my judges, and this great assembly, whether the proceedings of the court are not most arbitrary, and void of all law, in offering to give the jury their charge in the absence of the prisoners. I say it is directly opposite to, and destructive of, the undoubted right of every English prisoner, as Coke, in the 2d Inst. 29, on the chap. of Magna Charta speaks.

Recorder. Why ye are present; you do hear, do you not?

Penn. No thanks to the court that commanded me into the Baile Dock; and you of the jury take notice, that I have not been heard; neither can you legally depart the court before I have been *fully* heard, having at least ten or twelve material points to offer, in order to invalid their *appointment*.

Recorder. Pull the fellow down; pull him down.

Mead. Are these proceedings according to the rights

and privileges of Englishmen, that we should not be heard?

Recorder. Take them away into the hole.

The jury were now desired to go up stairs, in order to agree upon a verdict; and the prisoners remained in the "stinking hole." After an hour and a half's time, eight came down agreed, but four remained above, until sent for. The bench used many *threats* to the four that dissented; and the recorder, addressing himself to Mr. Bushel, said: "Sir, you are the cause of this disturbance, and manifestly show yourself an abettor of faction. I shall set a mark upon you, sir."

Alderman Sir J. Robinson, lieutenant of the tower. Mr. Bushel, I have known you near this fourteen years; you have thrust yourself upon this jury, because you think there is some service for you; I tell you, that you deserve to be indicted more than any man that hath been brought to the bar this day.

Mr. Bushel. No, sir John, there were three-score before me; and I would willingly have got off, but could not.

Alderman Bludworth. Mr. Bushel, we know what you are.

Lord Mayor. Sirrah, you are an impudent fellow; I will put a mark upon you!

The jury being then sent back to consider their verdict, remained for some time; and, on their return, the clerk having asked in the usual manner: "Is William Penn guilty of the matter wherein he stands indicted, or not guilty?" the foreman replied, "Guilty of speaking in Gracious street."

Court. Is that all?

Foreman. That is all I have in commission.

Recorder. You had as good say nothing.

Lord Mayor. Was it not an unlawful assembly? You mean he was speaking to a tumult of people there?

Foreman. My lord, this was all I had in commission.

Here some of the jury seeming "to buckle to the questions of the court," Mr. Bushel, Mr. Hammond, and some others, opposed themselves, and said "they allowed of no such terms as an unlawful assembly;" at which the lord mayor, the recorder, Sir J. Robinson, lieutenant of the tower, and alderman Bludworth "took great occasion to vilify them with the most opprobrious language," and this

verdict not serving their turn, the recorder expressed himself thus: "The law of England will not allow you to part till you have given in your verdict therefore go and consider it once more."

On this the jury declared, that they had given in their verdict, and could give in no other. They withdrew, however, after demanding and obtaining pen, ink, and paper, and returning once more, at the expiration of half an hour the foreman addressed himself to the clerk of the peace, and presenting the following decision, said here is our verdict: "We the jurors, hereafter named, do find William Penn to be guilty of speaking or preaching to an assembly met together in Gracious street, the 14th of August last, 1670; and that William Mead is not guilty of the said indictment."

Foreman. Thomas Veer,
Edward Bushel," &c.

Lord Mayor. What! will you be led by such a silly fellow as Bushel? An impudent canting fellow; I warrant you, you shall come no more upon juries in haste; you are a foreman indeed! I thought you understood your place better.

Recorder. Gentlemen, you shall not be dismissed till we have a verdict that the court will accept, and you shall be locked up without meat, drink, fire, and tobacco; you shall not think thus to abuse the court; we will have a verdict by the help of God, or you shall starve for it.

Penn. My jury, *who are my judges*, ought not to be thus menaced; their verdict should be free, and not compelled; the bench ought to wait upon (for) them, but not forestal them. I do desire that justice may be done, and that the arbitrary resolves of the bench may not be made the measure of my jury's verdict.

Recorder. Stop that prating fellow, or put him out of the court.

Lord Mayor. You have heard that he preached, that he gathered a company of tumultuous people, and that they not only did disobey the martial power, but the civil also.

Penn. It is a great mistake; we did not make the tumult, but they that interrupted us! The jury cannot be so ignorant as to think that we met there with a design to disturb the civil peace, since, first, we were by force of

arms kept out of our lawful house, and met as near it in the street as their soldiers would give us leave; and secondly, because it was no new thing, and it is known that we are peaceable people, and cannot offer violence to any man. The agreement of twelve men is a verdict in law; and such a one being given by the jury, I require the clerk of the peace to record it, as he will answer at his peril. And if the jury bring in another verdict, contradictory to this, I affirm they are perjured men in law. Then looking towards them, he emphatically added, "You are Englishmen! mind your privilege, give not away your right!"

One of the jury having pleaded indisposition, and desired to be dismissed, the lord mayor said, "You are as strong as any of them; starve then, and hold your principles."

Recorder. Gentlemen you must be contented with your hard fate, let your patience overcome it; for the court is resolved to have a verdict, and that before you can be dismissed.

Jury. We are agreed!

The court now swore several of its officers to keep the jury all night, without meat, drink, fire, &c. and adjourned to seven o'clock next morning, which proved to be Sunday. They were then brought up as before, when, having persevered in their verdict, Mr. Bushel was reproved as a *factionous fellow*, by the lord mayor; on this he replied, that he acted 'conscientiously.' The other observed, that such a conscience would cut his throat; 'but I will cut yours,' added he, 'so soon as I can.'

Mr. Penn now asked the recorder, if he allowed the verdict given in respect to William Mead? That magistrate replied, no; as they were both indicted for a conspiracy, and one being found 'not guilty,' and not the other, it could not be a verdict.

Penn. If *not guilty* be not a verdict, then you make of the jury, and Magna Charta, but a mere *nose of wax*! I affirm that the consent of a jury is a verdict in law; and if William Mead be not guilty, I am clear, as I could not possibly conspire alone.

The jury again received a charge; were sent out; returned, and presented the same verdict. On this, the recorder threatened Mr. Bushel, and said, "while he had any thing to do in the city, he would have an eye upon

him?" The lord mayor termed him a pitiful fellow, and added, 'I will cut his nose.'

Penn. It is intolerable that my jury should be thus menaced; Is this according to the fundamental laws? Are not they my proper judges by the great charter of England? What hope is there of ever having justice done, when juries are threatened, and their verdicts rejected? I am concerned to speak, and grieved to see such arbitrary proceedings. Did not the lieut. of the tower render [treat] one of them (the jury) worse than a felon? And do you not plainly seem to condemn such for factious fellows, who answer not your ends! Unhappy are those juries who are threatened to be fined, and starved, and ruined, if they give not in verdicts contrary to their consciences.

Recorder. My lord, you must take a course with that same fellow.

Lord Mayor. Stop his mouth, jailer, bring fetters, and stake him to the ground.

Penn. Do your pleasure I matter not your fetters!

Recorder. Till now, I never understood the reason of the policy and prudence of the Spaniards, in suffering the *Inquisition* among them; and certainly it will never be well with us, till something like unto the *Spanish Inquisition* be in England.

The jury were once more required to give another verdict; Mr. Lee, the clerk, was also desired to draw up a special one, which he declined, and the recorder threatened to have the jurors carted about the city, as in Edward III's time. The foreman remonstrated in vain, that another verdict *would be a force on them to save their lives*; and the jury refused to go out of court until obliged by the sheriff. On this, the court immediately adjourned until next morning at seven o'clock, when the prisoners were, as usual, brought from Newgate, and, being placed at the bar, the clerk demanded, Is William Penn guilty, or not guilty?—*Foreman.* Not guilty! Is William Mead guilty? *Foreman.* Not guilty! The bench being still dissatisfied, each of the jury was required to answer distinctly to his name, which being done, and they proving unanimous, the recorder spoke as follows:

I am sorry, gentlemen, you have followed your own

judgments and opinions rather than the good and wholesome advice that was given you. God keep my life out of your hands! But for this the court fines you forty shillings man, and (commands) imprisonment until paid.

William Penn. I demand my liberty; being tried by the jury.

Lord Mayor. No, you are in for your fines, and are in the power of the court.

Penn. I ask if it be according to the fundamental laws of England, that any Englishman should be fined, or amerced, but by the judgment of his peers, or jury? since it expressly contradicts the 14th and 20th chapters of the great charter of England, which say, "*No freemen ought to be amerced, but by the oath of good and lawful men of the vicinage.*"

Recorder. Take him away, take him away; take him out of the court.

Penn. I can never urge the fundamental laws of England, but you cry, *take him away, take him away!* But it is no wonder, since the Spanish inquisition hath so great a place in the recorder's heart. God Almighty, who is just, will judge you for all these things.

Both jury and prisoners were now forced into the Bull Dock, for non-payment of their fines, whence they were carried to Newgate. These proceedings, of course, aroused the attention of a nation, justly jealous of the government of such a profligate and arbitrary Prince as Charles II. and indignant at the conduct of such a judge as Howell. Sir Thomas Smith, about a century before, had considered the fining, imprisoning, and punishing of juries, to be violent, tyrannical, and contrary to the custom of the realm of England. While the celebrated Sir Matthew Hale, who had been chief baron of the exchequer, and chief justice of the King's Bench, in this very reign, observed, in his *Pleas of the Crown*, p. 313, that it would be a most unhappy case for the judge himself, if the prisoner's fate depended upon his directions, and unhappy also for the prisoner, as, if the judge's opinion must rule the verdict, the trial by jury would be useless.

Edward Lushel, a citizen of London, whose name deserves to be handed down to posterity with applause, immediately sued out a writ of *habeas corpus*. Upon the re-

turn, it was stated, that he had been committed "for that, contrary to law, and against full and clear evidence openly given in court, and against the direction of the court in matter of law, he, as one of a jury, had acquitted William Penn and William ead, to the great obstruction of justice." This cause was at length heard in the superior court; and, after a solemn argument before the twelve judges, the above was resolved to be 'an insufficient cause for fining and committing the jury.'—They were accordingly discharged, and they brought actions for damages.—*Journal of Jurisprudence.*

