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Alfredus

Exeter *Freeman's Oracle*, 13 June 1788

Mess'rs PRINTERS, So many weeks have elapsed since the FARMER made his last appearance in your paper, (except in a piece called the ANTIFEDERALIST, No. 2. and another under the signature of *Amen*, burlesqueing in a high strain of irony, his own performances) that I was ready to conclude the gentleman had prudently taken my advice, and that I should feel the strokes of his *flail*, instead of the scratching of his *comb*. But your last paper has undeceived me. As the dispute between him and me has become too personal to be of any utility to your readers, I shall, on my part, close it with as much brevity as possible.

The introduction to his address displays such uncommon brilliance of wit and keenness of satire, that the public cannot be surprized, though they may be chagrined, at its appearing so late. As I am conscious of my inability to equal, I shall not attempt to imitate him; but rather place the palm of victory on his brow, and retire, with as much good humour as possible, from the field. It is certainly no disgrace to be outdone by a writer, to whom SWIFT in all his pride (and no man ever possessed more) would not have blushed to acknowledge his inferiority, even in that species of writing, in which he principally excelled.

The *marrow* of the FARMER's address (I should have said the *bone, the strength*; for the marrow lies in the first paragraph) consists in a lengthy quotation from Judge BLACKSTONE, on the subject of *trial by Jury*. With this gentleman I am not so unfortunate as to differ in sentiment. He considers juries as the law supposes them and as they ought to be, honest intelligent men — *I* consider them as we find them in our courts, composed of men of every different description. *He* highly applauds the establishment, and I heartily join with him. *I* severely reprobate the flagrant abuse of it prevailing in this part of America, and in this I believe he would as heartily join with me.

When the right of trial by jury was first obtained by our ancestors the body of the people were in a state of abject vassalage to the Barons, who were of course their only judges, arbitrary in their decisions and unaccountable to any superior authority for the exercise of their judicial right. By this means the lives of their subjects, or rather, *slaves*, were entirely at their disposal; and innocence had no protection from the tyranny and injustice of their lords. In this situation, the right of trial by a jury of their peers was a most inestimable privilege. The jury formed an inexpugnable barrier between the tyrannical will of the savage Baron and the life and liberty of the weak, defenceless vassal. In this view of the privilege it deserves all the panegyrics that ever have been lavished upon it. But thanks to heaven, we are strangers to vassalage and arbitrary power. We are tried by laws of our own making and judges of our own appointing. When those

are found to be unsalutary we abrogate them—when these prove unfaithful to their trust we impeach and remove them. The circumstances therefore, that made the right of trial by jury so dear to our ancestors that their posterity still pay a blind reverence to it, as the only Palladium of their liberties no longer exist in our governments, because we are strangers to arbitrary power, and therefore stand in no need of protection from it. It is however an eligible mode of trial in criminal and in some civil cases, and is therefore wisely retained in our courts, and provided for, in all the former, under the New Constitution. In addition to this, Congress may extend it as much further as they please. The Farmer’s representing me, therefore, as an enemy to juries, and of consequence to the liberties of the people, because I am satisfied with the constitution, on this head, and because I do not happen to believe that the administration of the juror’s oath is capable of giving discernment to a simpleton and integrity to a knave, demonstrates that he is grossly deficient either in understanding or honesty.

The Farmer does not, nor can he as an honest man, deny, that the advantages of a trial by such juries as we commonly see impannelled are altogether on the side of the defendant. If the design of judiciary courts is to protect guilt, or in softer terms, to give the transgressor every chance to escape punishment, then such modes of trial as facilitate this impunity are just and right.—But if the strict and impartial administration of justice is the only object of their establishment, then such modes must be extremely faulty. Now it matters very little to the public whether this defect be in the mode itself or in a confirmed abuse of it. A trial by jury is favourable or injurious to justice, according as it is a good or a bad one; and the latter in all cases is much worse than none at all.

But the Farmer charges me with “passing unjust and illiberal sarcasm on our jurors,” and holds me up to the public as an object of abhorrence. If intimating that our jurors are not all intelligent and honest men is an illiberal and unjust sarcasm I confess I am guilty of it. Nor do I fear to make myself more guilty still by declaring that I believe that, out of twelve jurors in the state, there are two, who are either incapable of determining, in cases of the least intricacy, where justice lies, or perfectly indifferent whether it takes place or not. The latter are always on sale, and a drink of grogg will frequently purchase them. This may be called a “bold and impudent stroke;” but those on whom it falls may make the most of it; nor do I fear the indignation of any but fools, knaves and the Farmer for giving it.

But this gentleman will say that I asperse our jurors by the lump when I charge them with perverting justice. But this I deny. The law most *absurdly* requires the concurrence of the whole twelve jurors in the verdict. I say *absurdly* because, by this regulation, while the whole jury must unite to give a verdict in favour of the plaintiff, one voice shall be sufficient to acquit the defendant. Suppose, for instance, in an action of trespass, eleven of the jurors should without hesitation pronounce the defendant guilty—the twelfth says he is not, and obstinately persists in it against every argument of his brethren—The law says they must agree to a man; as he will not agree with the rest in pronouncing him guilty they must agree with him in acquitting him, for the law requires it. They, however, are by no means involv’d in the guilt, for their sentence was the result of necessity not choice; and they are no more to blame than they would be for not performing, in a given time, a piece of work, assigned to twelve, and which could not possibly be done by less, while one of the number should refuse to put to his hand. I have therefore, no apology to make either to jurors or to their redoubtable champion.

The Farmer concludes his address by kindly advising me to quit writing and confine myself to the “business which God and nature have qualified me for and fixed me in.” Whether I see fit to take this friendly hint or not, I must confess it comes with peculiar propriety from him, because he has enforced it by his own example. For after having served (or rather received pay and rations) as a commissioned officer, from the commencement of the war to the year 1780, during which time it is asserted that he most religiously kept the command, which says *Thou shalt not kill*, he discovered (what every body else knew from the first) that he had stept a little aside from the employment, for which nature had calculated him. He therefore modestly retired from the fighting department, and undertook an ^(a) office, in which the small pittance of courage he possessed, and the sword his country had put into his hands, might not be altogether useless. If he could not meet the enemy of America like a hero in the field, he demonstrated, while in this employ, that he could, on a march, with his *virgin* sword, belabour the sides of a restive horse, or break the head of a drunken waggoner.

(a) *W-gg-n-M-st-r G-n-r-l to the army* [Thomas Cogswell].

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