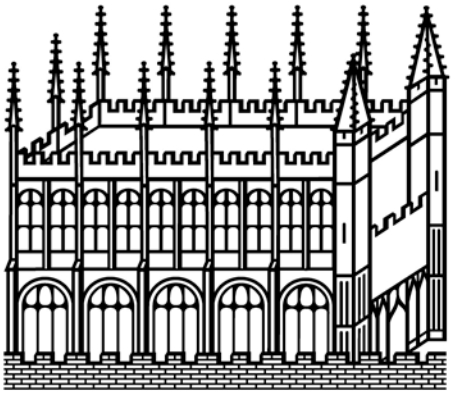

OF ALL THE

LETTERS

Which paſſed between the Right Honourable

THE LORD CHANCELLOR,

Redmond AND THE Simpson

SHERIFFS OF LONDON AND MIDDLESEX,

AND BETWEEN THE

SHERIFFS AND THE SECRETARY OF STATE,

RELATIVE TO THE

EXECUTION OF DOYLE AND VALINE.

In rebus novis conſtituendis,
Aut urgens Neceſſitas aut evidens Utilitas:

We feel not the one, we ſee not the other.
Sir F. Bacon's Quotation and Comment.

LONDON:

PRINTED FOR R. DAVIS, IN PICCADILLY.

MDCCLXX.

ADVERTISEMENT.

THE editor of theſe letters purpoſes in *due* time to explain to the public all the late extraordinary tranſactions in Spitalfields: to lay before them what ſort of diſturbances have really happened for ſome years paſt in that neighbourhood; together with their cauſes; the conduct of adminiſtration, of the military, of the Sheriffs, of the juſtices of the peace, of the manufacturers, and of the journeymen weavers: with remarks on the act of parliament 6 Geo. III. on the proſecution and trials of the unhappy ſufferers, and on the applications which were made for mercy.

The reaſons which ſtill ſubſiſt in ſome meaſure for the delay of the above publication, do not operate on the following letters: the queſtion which is the ſubject of them being abſolutely independent of, and unconnected with all other circumſtances.

GENUINE COPIES

OF ALL THE

LETTERS, &c.

ON Saturday the twenty-firſt day of October, 1769, the Recorder of London paſſed ſentence at the Old-Bailey on ſeveral capital convicts (amongſt whom were John Doyle and John Valline) in the following words:

"You, the ſeveral priſoners at the bar, ſhall be "taken hence to the place from whence you came, "and from thence to the USUAL place of execution; "where you are to be ſeverally hanged by the neck "till you are dead, and may God Almighty be "merciful to your ſouls."

On Thurſday the ninth of November the Sheriffs received the following copy of a warrant from the Recorder for the execution of John Doyle and John Valline:

London and Middleſex } To the Sheriffs of the city of London, and to the Sheriff of the county of Middleſex, and to the Keeper of his Majeſty's gaol of Newgate.

WHEREAS at the ſeſſion of gaol delivery of Newgate for the city of London and county of Middleſex, holden at Juſtice-Hall in the Old-Bailey on Wedneſday the eighteenth day of October laſt, John Doyle and John Valline received ſentence of death for their offence in the indictment againſt them mentioned: And WHEREAS it hath been duly ſignified to me that it is his Majeſty's pleaſure that the ſaid ſentence be executed in the moſt convenient place near Bethnal-Green Church, in the county of Middleſex. Now it is hereby ORDERED, that the execution of the ſaid ſentence be made and done upon them the ſaid John Doyle and John Valline, on Wedneſday the fifteenth day of this inſtant month of November, at the moſt convenient place near Bethnal-Green Church, in the ſaid county of Middleſex.

GIVEN under my hand and ſeal this ninth day of November, 1769.

JAMES EYRE, Recorder.

The Sheriffs were much ſtartled at this variation from the ſentence which Mr. Recorder had pronounced in court: they therefore laid their doubts before counſel; and, in conſequence of that opinion, which the reader will find hereafter*, wrote the following letter to Lord Weymouth, one of his Majeſty's principal ſecretaries of ſtate:

* See Mr. Serjeant Glynn's opinion, page 21.

My

My Lord,

THE incloſed will inform your lordſhip of the difficulty we are under reſpecting the execution of Doyle and Valline, two convicts now under ſentence of death in Newgate. We propoſe to wait on his Majeſty to-morrow morning to deliver a like paper into his own hands, of which we think it proper previouſly to tranſmit you this copy, that his Majeſty may be apprized of it.

We are, my Lord,

Your Lordſhip's moſt obedient ſervants,

JAMES TOWNSEND.
JOHN SAWBRIDGE.

London,
Nov. 13, 1769.

(Incloſed Copy.)

To the King's moſt excellent Majeſty.

Moſt Gracious Sovereign,

THE Recorder of London having ſignified to us, the Sheriff of the county of Middleſex, that it is your Majeſty's pleaſure that the two convicts, John Doyle and John Valline, now under ſentence of death in Newgate, who at the laſt ſeſſions of gaol delivery, holden for the city of London and county of Middleſex, were ſentenced to be hanged at the USUAL place of execution, ſhould, notwithſtanding, be executed in the moſt convenient place near Bethnal-Green Church; we humbly conceive it our duty to lay before your Majeſty our doubts,

whether we can lawfully comply with this your Majeſty's pleaſure, to which, upon all occaſions, it is our moſt earneſt wiſh to be able to conform.

On the moſt mature deliberation and inquiry which the time has permitted, we are adviſed that the ſentence pronounced by the court is our warrant for execution, to which we muſt look; and that we ſhall not be juſtifiable in departing from it.

We therefore humbly pray that your Majeſty will be graciouſly pleaſed to reſpite the ſaid execution, that the ſame may be re-conſidered; and to give us ſuch farther directions as may SATISFY OUR doubts.

JAMES TOWNSEND.
JOHN SAWBRIDGE.

Lord Weymouth's anſwer.

Arlington-ſtreet, Nov. 13, 1769.

Gentlemen,

I Have received your letter of this day's date, which was left at my office by Mr. Reynolds at near eleven o'clock this night, incloſing a paper to which you refer me for the difficulty you are under reſpecting the execution of Doyle and Valline, and acquainting me that you propoſe to wait on his Majeſty to-morrow morning, to deliver a like paper into his own hands, of which you think it proper previouſly to tranſmit me a copy, that his Majeſty may be apprized of it. I beg leave to inform you that your intended mode of application to the King is irregular *. I am ready to receive and lay before

* The Secretary is miſtaken. Both the King and the Parliament are acceſſible by right to the Sheriffs of London. If they prudently waved the point it was not becauſe they were ignorant or regardleſs of the rights of the citizens.

his

his Majeſty, in a proper manner, any doubts which you may entertain with regard to the diſcharge of your duty on this occaſion, and ſhall not fail to ſignify to you his Majeſty's further commands thereupon.

I am, Gentlemen,

Your humble ſervant,

WEYMOUTH.

The next morning, Tueſday November 14, the Sheriffs waited on Lord Weymouth, and delivered into his hands a petition to be by him preſented to his Majeſty, of which ſee the copy before given.

On Tueſday night, November 14, the Sheriffs received the following letter from Lord Weymouth:

Gentlemen, St. James's, Nov. 14, 1769.

I Did not fail to lay before the King the paper which you tranſmitted to me laſt night, copy of which you put into my hands this morning, relative to the difficulties you are under reſpecting the execution of Doyle and Valline, and his Majeſty has been graciouſly pleaſed to reſpite the execution for a week.——As upon the moſt mature deliberation and inquiry which the time has permitted, you are adviſed that the ſentence pronounced by the court is your warrant for execution to which you muſt look, and that you ſhall not be juſtifiable in departing from it, I am commanded to ſignify to you his Majeſty's pleaſure that you tranſmit to me, for his Majeſty's information, the opinion or opinions which you have taken on this occaſion, that his

his Majeſty may be the better enabled to give you ſuch further directions as may SATISFY your doubts, *according to your requeſt.*

I am, Gentlemen,

Your moſt obedient ſervant,

WEYMOUTH.

Reſpite for one week.

To the Recorder, &c.

Sir, St. James's, Nov. 14, 1769.

I Am commanded to ſignify to you his Majeſty's pleaſure that the execution of the ſentence of death paſſed upon John Doyle and John Valline, at the laſt ſeſſion held at the Old-Bailey, be reſpited for one week from the time appointed for their execution.

I am, Sir,

Your moſt obedient humble Servant,

WEYMOUTH.

To James Eyre, Eſq; Recorder of the city of London; the Sheriffs of the ſaid city and county of Middleſex; and to the Keeper of Newgate, and all others whom it may concern.

Letter

Letter from the Sheriffs to Lord Weymouth.

My Lord,

WE deſire your Lordſhip to expreſs our thankful acknowledgment of his Majeſty's great goodneſs in graciouſly condeſcending to our requeſt, and permitting us to lay before his Majeſty the reaſons which induced us to doubt of the legality of the Recorder's directions relative to the execution of Doyle and Valline.

* And firſt, my Lord, we ſuppoſe it is agreed by all that the judgment pronounced is our warrant for execution, to which we muſt look: every execution which is not purſuant to the judgment is unwarrantable: the Sheriff is to purſue the ſentence of the court: if he varies from the judgment it has been held murder: and the judgment pronounced on Doyle and Valline is, that they be carried to the USUAL place of execution.

2. The King cannot by his prerogative vary the execution, ſo as to aggravate the puniſhment beyond the intention of the law†: and the ends of

* The reader will find on examination that the firſt objection, and great part of the ſecond, are taken almoſt literally from Coke, Hale, and Foſter.

† If I am not very much miſtaken, there is no prerogative whatever in the crown, except that of *mercy*, with regard to the ſentence of the law; nor can it in any manner interfere therewith, but for the purpoſe of *mitigation*. Miniſters for their own particular reaſons may wiſh to exert a power of *aggravation*; but a good king never will, and an Engliſh king never can, deſire or exerciſe ſo ungracious a power: becauſe in England a king can do no wrong. No pretence of benefit or advantage to the ſociety, by the *example* or otherwiſe, will juſtify the addition of the ſlighteſt circumſtance of affliction, infamy, or ſuffering to the puniſhment of an offender; nor ſhall an individual

ſuffer

public juſtice are effectually anſwered if the offender ſuffereth death, the *ultimum ſupplicium*, without any

ſuffer one pang beyond the ſtrict letter of the law, for the pretended benefit of the univerſe.

Such pretence of *example* would carry us a great way indeed. The law alone will judge of the neceſſity of example, for which purpoſe only all puniſhments are ordained: nor has ſhe ever delegated that diſcretion to another. And therefore when it was deemed expedient to *aggravate* the puniſhment of murder, the aggravation, though merely ideal, became law, and an act of parliament was paſſed to cauſe all future murderers to be executed within a limited time, and to be diſſected afterwards.

The immortal Coke, and the great chief-juſtice Hale, were ſo provident and jealous in this point, that they held it murder in a Sheriff if, even by the King's command and authority, he beheaded any criminal who had been ſentenced to be burned, or to be hanged. And yet they could not but conſider ſuch an alteration of the ſentence as a mitigation. But who ſhall be left to judge of that? not the King, nor his miniſters. The wiſe judges I have mentioned, were afraid to truſt ſuch a power in any hands; becauſe they knew not what that diſcretion might lead to, and what cruelties might not be practiſed even under the pretence of mercy and mitigation. Therefore they wiſely yielded to the prerogative a remiſſion of any part or parts of a ſentence; but any ſort of *alteration*, though under the faireſt pretences, they totally diſallowed: and this notwithſtanding many precedents to the contrary; adhering ſtrictly to that only ſafe, becauſe certain rule — *judicandum eſt legibus, non exemplis*. The learned and juſt judge Foſter, who, (for what reaſons I know not) was never diſpleaſed to contradict Lord Coke, is of a contrary opinion in this particular. He is willing to allow to the prerogative an alteration of the ſentence from burning, hanging, &c. to beheading; purely for the ſake of *mercy*: for he is very careful at the ſame time to declare that the prerogative is bounded on the other ſide; that it cannot aggravate the puniſhment; that it cannot go beyond the letter of the law in point of rigour; and he ſeems to pay much regard to the deſire and prayer of the party or his friends. For my own part, I confeſs myſelf ſtrongly attached to the deciſion of Coke and Hale, for the reaſons already given: and I believe that every man who can abſtract himſelf from particular caſes and individuals, and conſider only the general conſequences of general maxims, will likewiſe abide by their opinion. Admit

the

circumſtances of infamy or rigour which the judgment doth not import. The king undoubtedly can

the power of *alteration* in the crown, either for the ſake of *example* or of *mitigation*, and I will ſhew you, by one inſtance amongſt many, how the ſame dreadful conſequence may flow from either pretence: eſpecially as the way is now laid open to it by the late ſentence of the Recorder pronounced on the eleventh of laſt December, which you will find at the end of theſe letters.

"The time and place of execution being no part of the judgment; and the Recorder's warrant a lawful authority to the Sheriffs," * a convict, under pretence of *example*, may be taken from the bar and executed inſtantly in the priſon. He may likewiſe, under pretence of *mitigation*, be executed at any time in his cell; either, as it may be ſaid, to cover the diſgrace of the criminal's family, or to ſave himſelf the ſhame of being made a public ſpectacle. And in either caſe you have the Sheriffs juſtified for private execution by the Recorder's warrant; and the Recorder by the King's ſign manual. Our hiſtory informs us that by a ſtretch of prerogative, a convict once ſuffered PRIVATELY in the priſon a death unknown to the laws: he was drowned in a butt of wine. This act was not rendered leſs illegal by the acquieſcence and choice of the criminal. The law of execution differs from that of inheritance. The crown and the convict cannot join together to alter the ſentence, as the poſſeſſor and next heir may to cut off the entail of an eſtate.

In the caſe of Lord Stafford, when the Sheriffs of London and Middleſex laid their doubts before the Houſe of Commons, relative to the alteration of the ſentence, the point of law was not even conſidered. The Sheriffs were in ſhort directed to acquieſce and behead him. And the reaſon is plain, and acknowledged by the ſpeaker; becauſe the Commons were in a hurry: they were ſure that by the debate the execution would be delayed, they were fearful it might be avoided: and they were determined at all events, that Lord Stafford ſhould not eſcape in the queſtion. However this we may clearly diſcover from the Sheriff's doubts, as well as from the opinions of Coke and Hale, and the reaſoning of Foſter, that the power of alteration in the crown, even in the article of beheading, has never been eſtabliſhed by ſuch uncontroverted uſage as makes law.

* See the opinion of the judges, page 31.

wholly pardon the offender, or he can mitigate his puniſhment with regard to the pain or infamy of it: the mercy of the crown is not bounded; but it cannot go beyond the letter of the law in point of rigour: for the law proceedeth in both caſes with a perfect uniformity of ſentiment and motive. The ſame benignity of the law which hath left the prerogative free and unconfined in one caſe, hath ſet bounds to it in the other. Now, my lord, it will not be ſaid that the preſent alteration is, or is intended as a mitigation of the judgment pronounced. To force, in a manner, the wives and children of the unhappy ſufferers, to be ſpectators of the infamous death of their huſbands and fathers, by executing them as near as conveniently may be to their own houſes, cannot be intended, nor will it be eſteemed a matter of royal grace*; nor is it granted at the prayer of the parties or their friends.

* It may be ſaid that the aggravation here objected to is merely ideal, and not any real corporal ſuffering. The diſtinction is not worth debating.—To walk about Weſtminſter Hall and other places, with diſgraceful papers on their heads declaring their offences, was formerly one of the puniſhments inflicted upon libellers: will any man pretend that the crown can by its prerogative add this ſlight aggravation where it is not a part of the ſentence; becauſe it is merely an ideal, and not a corporal ſuffering? Can the crown for the ſame reaſon command a felon to be drawn upon a ſledge; or to be mounted on an aſs, and ſo led through the ſtreets?—No.—To make it unlawful, it is ſufficient that it be ſomething which the offender would not willingly undergo, and which the law has not expreſsly commanded him to ſuffer. The execution of Mr. Alderman Corniſh, on the 23d of October, 1685, oppoſite King-ſtreet, in Cheapſide, will ſerve at the ſame time to ſhew us how ill-qualified Kings generally are to ſelect proper objects for examples of ſeverity, and that the alteration in diſpute has always been conſidered as an *aggravation* of the puniſhment: for hiſtorians tell us "that this particular ſeverity towards Mr. Cor-"niſh juſtly gave occaſion to much indignation."

Cuſtom

Cuſtom may ſometimes give a ſanction to a practice founded in humanity, and not repugnant to any law of ſubſtantial juſtice. But we do not ſuppoſe that either immemorial uſage or cuſtom can be urged in behalf of this alteration; or, if they could, that they would make it juſtifiable; becauſe it would not be a practice founded in mercy; and undoubtedly where that is not the caſe (perhaps even where it is) *judicandum eſt legibus non exemplis.*

3. Our doubts, my lord, are ſtill farther increaſed, and become more important when we conſider the conſequences to which an admiſſion of this power would lead us. If the crown can in one inſtance, contrary to the ſentence, appoint a different place of execution, it may in all: if it can change the *uſual* place of execution to *Bethnal-Green*, it may to Newgate-ſtreet, or even to Newgate itſelf: and thus our boaſted uſage of public execution (not leſs neceſſary to the ſatisfaction and ſecurity of the ſubject than public trial) may make way for private execution, and for all thoſe dreadful conſequences with which private executions are attended in every country where they have been introduced*.

* Where TRIALS are not public, the innocent may more eaſily be puniſhed, and the guilty go free: the judge may be unjuſt with leſs ſhame and more ſafety.

The new trial of REVISION, by which Balfe and Mac Quirk were acquitted, was private: and the proceedings of that court, with the ſentiments of its ſeveral members, have never yet been divulged.

Where EXECUTIONS are not public, the convict may ſuffer ſecret cruelty and torture, and die a death which the laws have not appointed; whilſt the miniſter without infamy may withdraw from puniſhment the hired ruffian whom he dares not pardon.

4. Had this power of alteration been in the crown (which we humbly conceive not to be the caſe) yet we imagine that his Majeſty's pleaſure has not been properly notified to us, and that the Recorder's authority alone would not be ſufficient to juſtify us for acting in conſequence of it, and for departing from the ſentence pronounced by the court*

This kind of jealouſy is neither new nor extravagant: to it we owe that wiſe proviſion which our laws have made, whereby the Coroner is directed to ſit on every body that ſhall die in priſon. From Fleta we learn what may be, by what has been actually practiſed.——*Diligenter* eſt inquirendum ſi aggravatio pœnæ ſicut detentio ubi ſuſpenſio corporis per pedes, ſciſſura unguium, onus ferri et hujuſmodi tormenta ſint cauſa evaſionis. Cuſtodes gaolarum pœnam ſibi commiſſis non augeant, nec priſones quicquam judicium excedendo torqueant vel redimant, ſed omni ſævitiâ remotâ, pietateque adhibitâ, judicia in ipſos promulgata debité exequantur. Vero cum deceſſerint, antequam per coronatorem videantur et de morte talium *diligenter* inquiratur, non debent ſepeliri: contingit enim quandoque hujuſmodi impriſonatos per pœnam injuſtam mori.

* The Recorder's warrant as an authority for execution is utterly unknown to the law; nor is any mention made of it in any law-book on any occaſion. Hale ſays, "The uſe heretofore was, and regularly ſhould be ſo ſtill, that if ſentence of death be given by the Lord High Steward, a warrant under the ſeal of the Lord Steward, and in his name ſhould iſſue for the execution; and the like by *three at leaſt* of the commiſſioners of oyer and terminer where ſentence of death is given by them." Co. P. C. p. 31. "But uſe hath obtained otherwiſe before commiſſioners of goal-delivery: for there is no warrant under the ſeal of the juſtices for execution; but only a brief abſtract or calendar left with the Sheriff or Gaoler: and I remember Mr. Juſtice Rolle would never ſubſcribe a calendar, but after judgment given would command the Sheriff in court to do execution; and for not doing it he fined Varney the Sheriff of Warwickſhire 2000l." Hale P. C. p. 501.

On the circuits it is the cuſtom for the Sheriffs to give two Sundays between the ſentence of death and its execution: and if within that time the judge does not reprieve, nor the crown pardon,

For theſe reaſons, and for thoſe contained in the opinion, which, ſince your lordſhip requeſts it, accompanies this, we humbly pray his Majeſty either to ſuffer the ſentence of the court to be executed at the *uſual* place of execution, or to permit us to have the ſanction of the Judges opinion on a matter of ſo great importance to ourſelves, and as we conceive, to the whole nation.

We are, my Lord,

Your Lordſhip's moſt obedient ſervants,

Nov. 15, 1769. JAMES TOWNSEND.
JOHN SAWBRIDGE.

Incloſed Caſe, and Mr. Serjeant Glynn's Opinion.

C A S E.

A Man convicted for felony without benefit of clergy, receives ſentence in court in the words fol-

pardon, the Sheriff "*purſues the ſentence of the court.*" In London and Middleſex, where the King is reſident, it is uſual not to proceed to execution, but to wait for the declaration of the King's pleaſure, as to the exertion of his prerogative to reprieve or pardon; which pleaſure is ſignified by the Recorder. viz. either that his Majeſty has been graciouſly pleaſed to reprieve or pardon the convict: or that it is his pleaſure to forbear ſuch interpoſition, and that *the law ſhall take its courſe.* So far and no farther is the Recorder's warrant a lawful authority. The royal prerogative of mercy is a dam interpoſed between the ſentence and the convict; and when that is removed by the ſignification of the King's pleaſure by the Recorder, the judgment inſtantly ruſhes in like a flood, and by its own force and power bears off the criminal to execution.

lowing,

lowing, viz. "That you be taken hence to the "place from whence you came, and from thence "to the USUAL place of execution, where you are "to be hanged by the neck until you are dead."

For the execution of this ſame man, the following is ſent by the Recorder:

London and Middleſex. } To the Sheriffs of the city of London, and to the Sheriff of the county of Middleſex, and to the Keeper of his Majeſty's gaol of Newgate.

WHEREAS at the ſeſſion of gaol delivery of Newgate for the city of London and county of Middleſex, holden at Juſtice-Hall in the Old-Bailey on the of laſt, A. B. received ſentence of death for his offence in the indictment againſt him mentioned: And whereas it hath been duly ſignified to me that it is his Majeſty's pleaſure that the ſaid ſentence be executed in the moſt convenient place near Bethnal-Green Church, in the county of Middleſex. Now it is hereby ordered, that execution of the ſaid ſentence be made and done upon him the ſaid A. B. on the day of this inſtant month of at the moſt convenient Place near Bethnal-Green church, in the ſaid county of Middleſex.

Given under my hand and ſeal this day of 1769.

JAMES EYRE, Recorder.

Your

Your opinion is deſired, whether a Sheriff will by law be juſtified in executing ſuch warrant of the Recorder?

Mr. Serjeant Glynn's opinion.

I Confeſs a very great difficulty in anſwering this queſtion *. If the place is a *material* part of the ſentence, the omiſſion of which would vitiate the judgment, the execution muſt be conformable to it, and I know no authority that can juſtify a deviation from it. The King may pardon all or part of the ſentence, but cannot alter it; the Sheriff's authority is the ſentence, he is bound to look to it, and ſee it rightly executed. If the place is *not material*, then I ſhould conceive it to be in the Sheriff's diſcretion, he being reſponſible for the fitneſs and propriety of the place. I know not how to account for the many inſtances of execution in places different from the judgment by command of the Judges upon the circuit; or his Majeſty in London and Middleſex, than as recommendations to the Sheriffs and intended indemnities to them againſt

* Sir Fletcher Norton finds no difficulty at all in this caſe. He ſays, that after judgment the body is the King's, and he may do what he pleaſes with it.

Mr. Recorder of London finds as little difficulty. He has ſaid a hundred times, that he does not ſee why the criminals ſhould not be hanged upon the leads in the Old-Bailey; and that if he ſaw any probability of diſturbance without doors, he would execute them within.

The old lawyers (amongſt whom may juſtly be reckoned Mr. Serjeant Glynn) differ from theſe worthy moderns. Coke, in his inſtitutes, ſays, "Albeit judgment be given againſt a man in caſe of treaſon or felony, yet his body is not forfeited to the King; but until execution remains his own." And Mr. Juſtice Foſter,

the conſequences of departing from ancient uſage. There are certain caſes in which the Sheriffs muſt diſobey ſuch commands, viz. If the crown commanded an execution in a private room or a church, &c. Though I am not determined in my judgment with reſpect to the *materiality* of the place in the ſentence, I have no doubt of the concluſion that muſt follow from either propoſition: If it is *material*, no power can change it; if it is *not material*, the Sheriff is intruſted with the execution of the ſentence, and muſt have it in his power to judge of the place *. I ſhould adviſe the Sheriffs to repreſent to his Majeſty the doubts conceived by them; the more ſo as I cannot but doubt of the propriety of ſignifying his Majeſty's pleaſure through the Recorder, being much inclined to think that the Sheriffs cannot in any caſe be juſtified but by the commands of the King or the court directed to them.

Nov. 13, 1769. JOHN GLYNN.

Foſter, in the caſe of Macdonald, where Mr Attorney-General advanced "that a perſon under an attainder is *civiliter mortuus*, his perſon and eſtate are abſolutely at the diſpoſal of the crown," ſays that, "the perſon of a man, even under an attainder, is not abſolutely at the diſpoſal of the crown. It is ſo, for the ends of public juſtice, and for no other purpoſe. The King may order execution to be done upon him according to law." And Mr. Glynn is clear, that "there are certainly caſes in which the Sheriffs MUST diſobey, viz. If the crown commanded an execution in a *private* room, or in a church," &c.

* According to Coke, "the judgment doth belong to the judge, and he cannot alter it; the execution belongs to the Sheriff, and he cannot alter it." The Sheriffs formerly uſed to execute a perſon attainted of treaſon, whenever and wherever they found him, being charged ſolely with the execution, and reſponſible only for the identity of the perſon attainted.

Reſpite

Reſpite for a Fortnight.

To the Recorder, &c.

Sir, St. James's, Nov. 20, 1769.

I Am commanded to ſignify to you his Majeſty's pleaſure that when the reprieve which his Majeſty was graciouſly pleaſed to grant on the 14th inſtant to John Doyle and John Valline, two perſons under ſentence of death in Newgate (which was for one week from the time that had been appointed for their execution) ſhall expire, the execution of the ſaid ſentence of death ſo paſſed upon them, be farther reſpited for a fortnight.

I am, Sir,

Your moſt obedient humble ſervant,

WEYMOUTH.

To James Eyre, Eſq; Recorder of the city of London; the Sheriffs of the ſaid city and county of Middleſex; and to the Keeper of the gaol of Newgate, and all others whom it may concern.

On Thurſday, November 23, the Sheriffs received the following letter from the Right Honourable the Lord Chancellor:

Gentlemen,

I Have the honour to ſend you herewith incloſed a copy of the caſe and queſtion referred, by his Majeſty's command, to the twelve judges, and hope the caſe is ſo ſtated as to bring the point upon which your doubts have been conceived, fully and completely before their lordſhips. I have this day laid the caſe before my lords the judges, who will return their anſwer as ſoon as they have conſidered and formed their opinion upon the ſame *.

I have the honour to be,

With the greateſt reſpect,

Gentlemen,

Your moſt obedient faithful ſervant,

Nov. 23, 1769, CAMDEN.
Lincoln's-Inn-Fields.

Incloſed caſe referred to the Judges.

JOHN Doyle and John Valline were convicted at the laſt ſeſſion of gaol delivery for the county of Middleſex, at the Old-Bailey, of felony without benefit of the clergy, and received ſentence of death.

The ſentence pronounced in court by the Recorder of London was as follows, "That you, the ſe-

* The caſe was ſo extremely clear to my lords the judges, that their lordſhips took very little time indeed,—I cannot exactly ſay how many minutes,—to conſider—to form their opinion—and to give their anſwer.

veral

" veral priſoners at the bar, be taken hence to the " place from whence you came, and from thence " to the *uſual place* of execution, where you are to " be ſeverally hanged by the neck till you are dead, " and may God Almighty be merciful to your " ſouls."

His Majeſty was afterwards pleaſed to ſignify his pleaſure to the Recorder, by his SIGN MANUAL, that he ſhould by his warrant direct the priſoners to be executed in the moſt convenient place near Bethnal-Green Church, in the county of Middleſex, whereupon the Recorder of London iſſued his warrant in the following words:

London and Middleſex. } To the Sheriffs of the city of London, and to the Sheriff of the county of Middleſex, and to the Keeper of his Majeſty's gaol of Newgate.

WHereas at the ſeſſion of the general gaol delivery of Newgate, for the city of London and county of Middleſex, holden at Juſtice-Hall in the Old-Bailey, on Wedneſday the 18th day of October laſt, John Doyle and John Valline received ſentence of death for their offence in the indictment againſt them mentioned: And whereas it hath been duly ſignified to me that it is his Majeſty's pleaſure that the ſaid ſentence be executed in the moſt convenient place near Bethnal-Green Church, in the county of Middleſex: Now it is hereby ordered, that the execution of the ſaid ſentence be made and done upon them the ſaid John Doyle and John Valline on Wedneſday, the 15th day of this inſtant month of November, at the moſt convenient place near

Bethnal-Green Church, in the ſaid county of Middleſex.

Given under my hand and ſeal this 9th day of November, 1769.

JAMES EYRE, Recorder.

The Sheriffs of London have entertained a doubt whether it is lawful for them to execute the ſaid convicts, according to the tenor of the above warrant, at the moſt convenient place near Bethnal-Green Church, in the county of Middleſex.

Therefore the queſtion is, Whether it is lawful for them to execute the ſaid convicts, according to the tenor of the above warrant, at the moſt convenient place near Bethnal-Green Church, in the county of Middleſex?

The Sheriff's letter to the Lord Chancellor.

My Lord, Nov. 24, 1769.

WE return your Lordſhip many thanks for your letter, and for the copy of a caſe which accompanied it.

We are ſorry to ſay that the caſe is not ſo ſtated as to bring the points upon which our doubts are conceived fully and compleatly before the judges. My Lord, it is ſo far from being *full* and *compleat*, that it is not the *ſame* caſe. It differs eſſentially, as we conceive, from the caſe which we delivered to

Lord

Lord Weymouth to be laid before his Majeſty; and on which his Lordſhip taught us to expect ſuch farther directions as might SATISFY our doubts.

It is not the ſame caſe:—For the copy incloſed by your Lordſhip ſtates his Majeſty's pleaſure ſignified by a ſign manual. [Note, This ſign manual is not given, as the ſentence and the Recorder's warrant are, for the judges' conſideration. *]

His Majeſty's pleaſure, my Lord, ſignified by a ſign manual, makes no part of our caſe. To us there is no ſuch ſign manual. *De non apparentibus et non exiſtentibus eadem eſt ratio.* This difference is material: for on it is founded our fourth objection in the caſe, as ſtated by us.

It is not full and compleat:—For the copy incloſed by your Lordſhip concludes that the queſtion is, whether it is *lawful* for the Sheriffs to execute the ſaid convicts, according to the tenor of the Recorder's warrant, at the moſt convenient place near Bethnal-Green Church, in the county of Middleſex. The queſtion in our caſe is not only whether it is *lawful*; but alſo whether it is *neceſſary:* not only whether the Sheriffs *lawfully may*; but whether *by law they muſt* execute according to the tenor of the Recorder's warrant.

The caſe, of which your Lordſhip has favoured us with a copy, conſiſts of four parts;

The ſentence of the court.

The Recorder's warrant.

A ſtating of a ſign manual,—*which is not our caſe.*

A concluſion,—*which is not our queſtion.*

* Very many reaſons will ſuggeſt themſelves to the reader to make him wiſh for a ſight of ſuch a ſign manual, with which no law book can furniſh him. He will be curious to know its FORM, the MATTER it contained, by whom it was COUNTERSIGNED, &c. &c.

The

The caſe and queſtion therefore referred by his Majeſty's command to the twelve judges is neither our caſe nor our queſtion.

* A naked opinion of the judges on the caſe referred to them will not SATISFY our doubts as to that due execution of our office, to which we are bound by law and oath. For by ſtating, as part of the caſe, the ſign manual (of which we know nothing) the judges perhaps may not confine their conſideration to the validity of the Recorder's warrant, which yet is the only one we have for execution, except the ſentence of the court, with which it militates: and by concluding that the queſtion is whether it is *lawful* for the Sheriffs to execute the convicts according to the tenor of the Recorder's warrant, *our* queſtions may chance to receive no anſwer: for ſhould their lordſhips the judges be of opinion that theſe words—the *uſual* place of execution—are not a *material* part of the ſentence; and ſhould they, obſerving the diſcretion which is ſtill left to the Sheriff even in the Recorder's warrant; and that if the diſcretion is in the crown, and not in the ſheriffs, it cannot be delegated by the crown to the Sheriffs: ſhould the judges upon this or any other account be farther of opinion that the place is left to the diſcretion of the Sheriff, making himſelf reſponſible for the fitneſs of the place; their lord-

* When a returning officer is fearful of getting into a ſcrape, and is deſirous of being ſafe, he is adviſed to make a ſimple return without reaſon or circumſtance. The judges in Sir Edward Coke's caſe would have acted wiſely had they followed the ſame method, and given a *naked* opinion, without ground or principle: for they would then have avoided the everlaſting reproach of having laid it down as a maxim that "an oath may "be well enjoined by the King and order of ſtate, without par-"liament." When the reaſons for an opinion are unknown, its illegality cannot be ſo eaſily detected.

ſhips

ſhips might then very well anſwer the queſtion referred to them in the affirmative: and might thereby ſeem to veſt the diſcretion in the crown, whilſt the very reaſon of their anſwer would be that they judged it to be in the Sheriffs.

For theſe and many other reaſons, my Lord, we wiſh humbly to intreat his Majeſty that the ſame method may be followed with us as was practiſed in Sir Edward Coke's caſe; who, after having been chief-juſtice, was appointed Sheriff of the county of Buckingham, and taking four exceptions to the oath propoſed to him, both his exceptions and his reaſons were by the lord keeper laid before all the judges, and received each a ſeparate anſwer with *their* reaſons *.

In the ſame manner we pray that this letter and *our* objections, as we delivered them to the ſecretary of ſtate, may be laid before the judges; that ſo *our* caſe and our queſtions may receive an anſwer, ſince it is intended to ſatisfy *our* doubts.

We are, my Lord,

With the greateſt reſpect,

Your lordſhip's moſt obedient,

And faithful humble ſervants,

JAMES TOWNSEND.
JOHN SAWBRIDGE.

* See Cro. Car. Fol. 25.

Letter

Letter from the Lord Chancellor to the Sheriffs.

Gentlemen,

I Received your letter at Weſtminſter this morning, and have tranſmitted it to Lord Weymouth, and am inclined to believe, that when you have ſeen the Judges opinion that was ſent to me laſt night, and which I have deſired Lord Weymouth to ſend you a copy of, you will be ſatisfied that the Recorder's warrant is a lawful authority for you to ſee execution done according to the tenor of the warrant.

If the warrant is a lawful authority, I conceive that you will be under a neceſſity to obey it. I will only add, that your reaſons and petition, together with Serjeant Glynn's opinion, were tranſmitted by me to Lord Mansfield, and I dare ſay have been peruſed by the Judges, though they make no part of the caſe.

After you have peruſed the Judges opinion, I ſhould be obliged to you if you would ſtate your own caſe with your queſtion, which will be taken into conſideration; if you remain diſſatisfied, and it ſhould appear that any material fact has been ſtated that ought to be omitted, or any thing omitted that ought to have been ſtated, or if the queſtion has been defectively or improperly drawn.

I have the honour to be,

With the greateſt reſpect,

Your moſt obedient faithful ſervant,

Weſtminſter-Hall,
Nov. 25, 1769. CAMDEN.

On

On Friday the firſt of December the Sheriffs received the following letter from Lord Weymouth.

St. James's, November 30, 1769.

Gentlemen,

HIS Majeſty having thought proper to take the Judges opinion upon the difficulties you were under with regard to the execution of Doyle and Valline, in order to ſatisfy your doubts upon that head, I am commanded to acquaint you, that the Judges are of opinion, "that the time and place "of execution are in law NO PART of the judg-"ment, and that the Recorder's warrant was a "lawful authority to the Sheriffs as to the time "and place of execution*."

I am, Gentlemen,

Your moſt obedient humble ſervant,

WEYMOUTH.

Sheriffs of London and Middleſex.

* The common law of England is founded on reaſon, nature, and the law of God, as declared in the ſcriptures; accordingly theſe laſt are for ever quoted as authorities by all ancient and approved writers on the common law. *See Bracton, Coke, &c. paſſim.*

In holy writ we find that all executions were commanded to be done without the camp before the Iſraelites were ſettled, and without the town afterwards. See Exodus xxi, 14. Leviticus xxiv, 23. Deuteronomy xvi, 18—xvii, 5—xxi, 19—xxii, 24. Numbers v, 2—vi, 9, 11—xv, 35, 36—xix, 1—xxxi, 19. 1 Kings ii, 28—xxi, 13. Matthew xxvii, 31, 32, 33. Mark xv, 20. Luke iv, 29—xxiii, 26. John xix. 17. Acts vii, 58. Hebrews xiii, 11, 12. The learned commentators

Letter from Lord Weymouth to the Recorder.

Sir, St. James's, Nov. 30, 1769.

THE Sheriff having expreſſed doubts with regard to the execution of Doyle and Valline, it was thought proper to take the Judges opinion on that

on theſe and other paſſages will furniſh abundant matter to the curious, who have leiſure for the ſearch. Amongſt others Le Clerc ſuppoſes that "one political reaſon of this law might be to hinder the people from being hardened into cruelty or inſenſibility by frequently viewing the death and dead bodies of men."

The ſame has been the rational practice of all other nations.

The places of execution in England were likewiſe all of them without the towns: and ſo ſtrictly is this practice adhered to by our law, that to conform thereto, it has in ſome inſtances been forced to depart from ſome other eſtabliſhed maxims. London, York, Exeter, &c. are counties: they have ſheriffs and other officers of their own. Upon what other principle than the above, can we account for their executing criminals without their ſeveral reſpective juriſdictions; which notwithſtanding is the conſtant uſage. Though the ſheriffs, conſtables, &c. of London are bound to go out of their own county and to execute their own convicts at Tyburn, is it pretended that the Crown or the Recorder can ſend them any where elſe; to the extremities of the county of Middleſex, or of any other county? May the Sheriffs of York, Exeter, &c. be likewiſe ſent to the extremities of Yorkſhire, Devonſhire, &c. May the Sheriff of Cornwall be ſent thirty leagues by ſea to execute in the Scilly Iſlands, which are within the county, for the benefit of the example to their inhabitants? And yet, all theſe and many more conſequences muſt follow from the Judge's opinion, if it were law. May the Crown and the Recorder at their pleaſure bring a nuiſance to my door or my eſtate, and treſpaſs on my lands by virtue of a ſign manual or a warrant? The Recorder thinks he may, and did actually direct the Sheriffs to commit ſuch a treſpaſs on the 26th of July 1768, for his warrant of July 21, 1768, runs thus. "It is hereby ordered that "execution of the ſaid ſentence be made and done upon them

"the

matter, which I ſend you herewith; and I am to acquaint you, that, having laid the ſame before the King, It is his Majeſty's pleaſure, that there ſhall be no further reſpite for thoſe convicts.

I am, Sir,

Your moſt obedient humble ſervant,

WEYMOUTH.

" the ſaid John Granger, Daniel Clark, Richard Cornwall, Pa-
" trick Lynch, Thomas Murray, Peter Flaharty, Nicholas
" M'Cabe, on Tueſday the 26th of this inſtant month of July,
" *at and in the open fields*, ſituate on the north ſide of the public
" highway leading from Rag Fair to Sun-Tavern-Fields, in
" the pariſh of St. George in the eaſt, in the county of Mid-
" dleſex."

In ſome places by the extenſion of the neighbourhood, houſes have ſurrounded the old place of execution. In that caſe, though it may be very proper for the legiſlature to interfere, yet the inhabitants cannot juſtly complain: for the nuiſance was not brought to them; nor is the inconvenience ſo great at the uſual place of execution, ſince no accident can be ſuppoſed to happen by ſurprize to pregnant or weak women, &c.

Not many months ſince the inhabitants of the neighbourhood of Tyburn, applied formally by counſel to the Judges at the Old Bailey, that another place of execution more remote might be appointed: Lord Cheſterfield (not knowing that the Recorder could do it without him,) conſented to the appointment of any other convenient place in his manor. The Judges liſtened with that attention which the difficulty of the caſe required. They did not think the place of execution either diſcretionary or immaterial, but a part of the ſentence. They thought it a weighty matter, which deſerved much conſideration. They refuſed to do any thing in it themſelves; and no: dreaming of the King's ſign manual, or the Recorder's warrant, adviſed an application to Parliament.

Note, This application to the Judges was not made by the Secretary of State.

Letter from the Sheriffs to the Lord Chancellor.

My Lord,

WE did not receive from Lord Weymouth any account of the Judges opinion, given on Friday, Nov. the 24th, 'till laſt Friday the 1ſt of Dec.—We thought it not right to trouble your Lordſhip with a reply whilſt we were in daily expectation of that opinion.—And we waited with the greater impatience leſt your Lordſhip, not imagining that ſuch a delay could have happened, ſhould ſuppoſe us either backward to acknowledge our ſatisfaction; or negligent to avail ourſelves of your Lordſhip's very kind and candid offer of farther conſideration if we remained diſſatisfied.—We cannot but lament, my Lord, that by the incloſed letter from Lord Weymouth our doubts are OVERRULED without being SATISFIED.—We can account for it no otherwiſe than by ſuppoſing. IF *the Judges ſaw our objections and our queſtions*, that they deemed them too trivial to deſerve an anſwer.—Whilſt we ſubmit intirely to the Judges opinion, as conveyed to us by Lord Weymouth, we are unhappy to be ſent to execution without the leaſt information where this diſcretion is lodged, or by whom it is exerciſed.—We have received, as in our laſt letter we apprehended, a naked opinion from the Judges "that the place of execution is "in law no part of the judgment, and that the "Recorder's warrant is a lawful authority to the "Sheriffs as to the place of execution."

If we have had our doubts, and have been miſtaken in our opinion, we hope, your Lordſhip will excuſe us when you conſider, that even the Recorder,

corder, ſo converſant in theſe matters, and whoſe warrant is for the future to be our authority, was himſelf uncertain: for when he directed us in court to the USUAL place of execution, he muſt either have ſuppoſed it a part of the ſentence, or that he was exerciſing a diſcretion in that particular veſted in himſelf.—His ſubſequent warrant contradicted both theſe ſuppoſitions.

Suppoſing the place to be no part of the ſentence, how could we avoid being ſtartled when we ſaw?

Firſt, A diſcretion exerciſed by the Recorder, directing us to the USUAL place of execution.

Secondly. A diſcretion exerciſed by the crown, ſetting aſide the Recorder's diſcretion.

Thirdly, This diſcretion of the crown not ſignified to us by writ or ſign manual, but by warrant from the Recorder, whoſe diſcretion it overruled.—And

Laſtly, A diſcretion left to ourſelves to execute, not IN, but as NEAR to a *church** as we ſhould judge convenient.

We need not repeat to your Lordſhip many other reaſons as well as thoſe we have before given to juſtify our conduct.—The Judges have determined, and we do not preſume to heſitate on their deciſion.—What is now ſaid is not meant to cauſe any farther trouble, but only as an apology for

* Had the Sheriffs judged it convenient they might by the warrant have executed the criminals in the church porch, or in the church-yard. We have often heard of churches as places of refuge; but this is ſurely the firſt time in any nation that ever a CHURCH was choſen as a land mark for a criminal execution.

that

that which we have already occaſioned to your Lordſhip.

We are my Lord,

With the greateſt eſteem and reſpect,

Your Lordſhip's moſt obedient, and

faithful humble ſervants,

Dec. 2, 1769. JAMES TOWNSEND.
JOHN SAWBRIDGE.

Letter from the Sheriffs to Lord Weymouth.

My Lord, London, Dec. 2.

THE opinion of the judges, as conveyed to us by your lordſhip, has over-ruled our doubts, and we muſt requeſt your lordſhip to preſent to his Majeſty our moſt humble thanks for his Majeſty's royal condeſcenſion, in directing our caſe to be laid before the judges.

We are, my Lord,

Your Lordſhip's

Moſt obedient humble ſervants,

JAMES TOWNSEND.
JOHN SAWBRIDGE.

We

We ſhall be obliged to your lordſhip if you will direct Mr. Serjeant Glynn's opinion to be returned to us.

Letter from Lord Weymouth to the Sheriffs.

Gentlemen, St. James's Dec. 4, 1769.

I Am glad to find that the opinion of the judges has over-ruled your doubts*.—I ſhall not fail to lay before the King your thanks for his Majeſty's goodneſs upon this occaſion.—As Mr. Serjeant Glynn's opinion was tranſmitted to me by you as one of the reaſons which induced you to doubt of the legality of the Recorder's directions, and was, by me, laid before his Majeſty, *the original muſt remain in my office*, but I ſend you the incloſed copy.

I am, Gentlemen,

Your moſt humble ſervant,

WEYMOUTH.

Sheriff of Middleſex.

* Lord Weymouth is glad that the Sheriffs' doubts have been OVER-RULED. The Sheriffs would have been glad if, according to promiſe, their doubts had been SATISFIED.

John

John Doyle, and John Valline, were executed at Bethnal-Green, on Wedneſday Dec. 6, 1769 *.

* It has long been evident from every domeſtic meaſure of adminiſtration, that there is a ſettled plan, a wicked conſpiracy to expoſe and ſet aſide the civil power of this country. The preſent is one flagrant inſtance.

It is pretended that the civil power is too weak to keep the peace in the neighbourhood of Spitalfields: a barrack has been therefore built, and ſoldiers have regularly mounted guard there for a long time paſt; they have likewiſe been employed as conſtables to apprehend offenders, for which purpoſe, and not to quell a riot, they were firſt ſent thither.

After every method had been uſed ſtill more to exaſperate and incenſe thoſe unhappy people, the civil power is ordered, out of the common courſe, into that very neighbourhood to *execute* the criminals it could not *apprehend*.

The Sheriffs ſaw plainly the ſnare and the wickedneſs of thoſe who laid it for them; but being as ſolicitous to preſerve as the others to deſtroy the authority of the civil power, they were determined to ſupport it at the hazard, and, if neceſſary, at the expence of their lives. Without the aſſiſtance of the military the Sheriffs *executed* thoſe whom Lord Barrington's WORTHY magiſtrates could not *apprehend*. And they performed this without the murder of any women or children; though they too had Lord Weymouth's warrant for a general and promiſcuous carnage: for they were *trifled with and inſulted* (much more than the juſtices in St. George's-Fields) by ſome few deſperate perſons who perhaps were employed for that very purpoſe.

It ſhould here be conſidered that the Sheriffs, and not the Recorder, are by our laws anſwerable for the execution. Has the wiſdom of our laws then given to the Recorder, who is *not* anſwerable, the power of appointing a place of execution to the Sheriffs, who *are* anſwerable? Certainly! If the deciſion of the judges on this point is law. Let us ſee the immediate conſequence. The Recorder appoints that place of all others where the Sheriffs could leaſt of all anſwer for the execution; and where, had he himſelf been Sheriff, (he who had before declared that if he ſaw any probability of diſturbance without doors he would execute the criminals within) he would leaſt have choſen to go to. If this arrangement is the wiſdom of the law, it differs widely from every thing elſe that is called by that name.

The

The next ſentence which Mr. Recorder of London paſſed was on Monday the eleventh of December; when he pronounced the following words ONLY.

" You the ſeveral priſoners at the bar ſhall be " ſeverally hanged by the neck till you are dead, " and may God Almighty be merciful to your " ſoul *."

* The Recorder juſtified himſelf for his FIRST ſentence, by declaring that it was the conſtant manner of paſſing ſentence time out of mind, and that in it he had followed an uninterrupted courſe of precedents. We admit his juſtification, and believe he was right. Yet we inſtantly find Mr. Recorder very ready to reconcile the alteration to his ſentence, by telling the Sheriffs, that though in court he had ſaid " USUAL place of execution," they were to pay no regard, or as little as himſelf, to what he had ſaid in court; but were to be guided by his warrant, as he was by the ſign manual. Again after having reconciled the prerogative to his ſentence, we find him as ready to reconcile his ſentence to the prerogative: for in ſpite of what he had declared to juſtify his FIRST ſentence, of the *conſtant uſage time out of mind, and un-interrupted courſe of precedents*; the very next time of paſſing ſentence, that he might give the prerogative full ſwing, he varied from this conſtant uſage, and uninterrupted courſe of precedents, and introduced a new form, WARRANTED BY NO PRECEDENT. I ſay, warranted by no precedent: I appeal to all the preſent judges, whether any of them ever paſſed ſentence in this manner. We are not to be amuſed by the *careleſs* entries of — *Suſ. per Col.* — *Suſpendatur quo uſque*, &c. — They are not precedents or rules for judgment. In the trials of peers, or for high treaſon, the importance of the matter or the rank of the convicts, cauſe more care to be taken in the entry of the judgments, and they are accordingly all entered in a very different manner, with all the minute particulars. It may perhaps be worth remarking, that the judgment paſſed on Doyle and Valline, was not entered till after their execution; nor would it have been entered at all, if the omiſſion had not been accidentally diſcovered the next ſeſſions by one of the ſame nature.

If Mr. Recorder's firſt mode of paſſing ſentence was right, as he inſiſted, his ſecond muſt be wrong, and *vice verſa*; Mr. Recorder may chuſe.

In this new mode of paſſing ſentence, Mr. Recorder not only omits to mention any place of execution; but alſo leaves out "the being taken to priſon, and from thence to the place of execution." This laſt ſentence ought to have been executed inſtantly in court. No ſentence can be future; but muſt always take place the moment it is pronounced. The impriſonment after ſentence is therefore made part of the puniſhment; it is no longer *in cuſtodiam*, but *in pænam*. I will be bold to ſay, that the "being taken to the priſon, and from thence to the place of execution," is a *material* part of the ſentence, the omiſſion of which muſt vitiate the judgment: for if there is not an abſolute continuity; if there is the leaſt interruption in a ſentence, it is void; nor do we know by what power or authority the convicts were priſoners after ſentence, or were taken back to the gaol, or from thence to the place of execution.

That the "being taken," is a material part of the ſentence, appears likewiſe from hence, that even the particular manner of being taken, by way of ignominious aggravation, is appointed by law a *material* part of the puniſhment for treaſon. And yet if the "being taken," is likewiſe NO part of the ſentence for felony, it will follow from the judges opinion about the *place*, that the crown can for common felony, direct the criminal to be carried on a ſledge, hurdle, &c. as in caſes of treaſon: for that might likewiſe ſerve as an *example*, and the aggravation would be merely *ideal*, and not corporal ſuffering.

From amongſt many others of the ſame ſort I will only propoſe to Mr. Recorder's conſideration the following ſentence paſſed by the lord high-ſteward on the 18th of April, 1760.

"NOTHING remains for me, BUT to pronounce THE dread-"ful SENTENCE OF THE LAW; and THE JUDGMENT OF THE "LAW IS, and this high court doth award,

"That you Laurence Earl Ferrers *return to the priſon of the "Tower, from whence you came; from thence you muſt be led "to the place of execution*, on Monday next, being the 21ſt "day of this inſtant April, and when you come there you "muſt be hanged by the neck till you are dead, and your "body muſt be diſſected and anatomiſed."

If,