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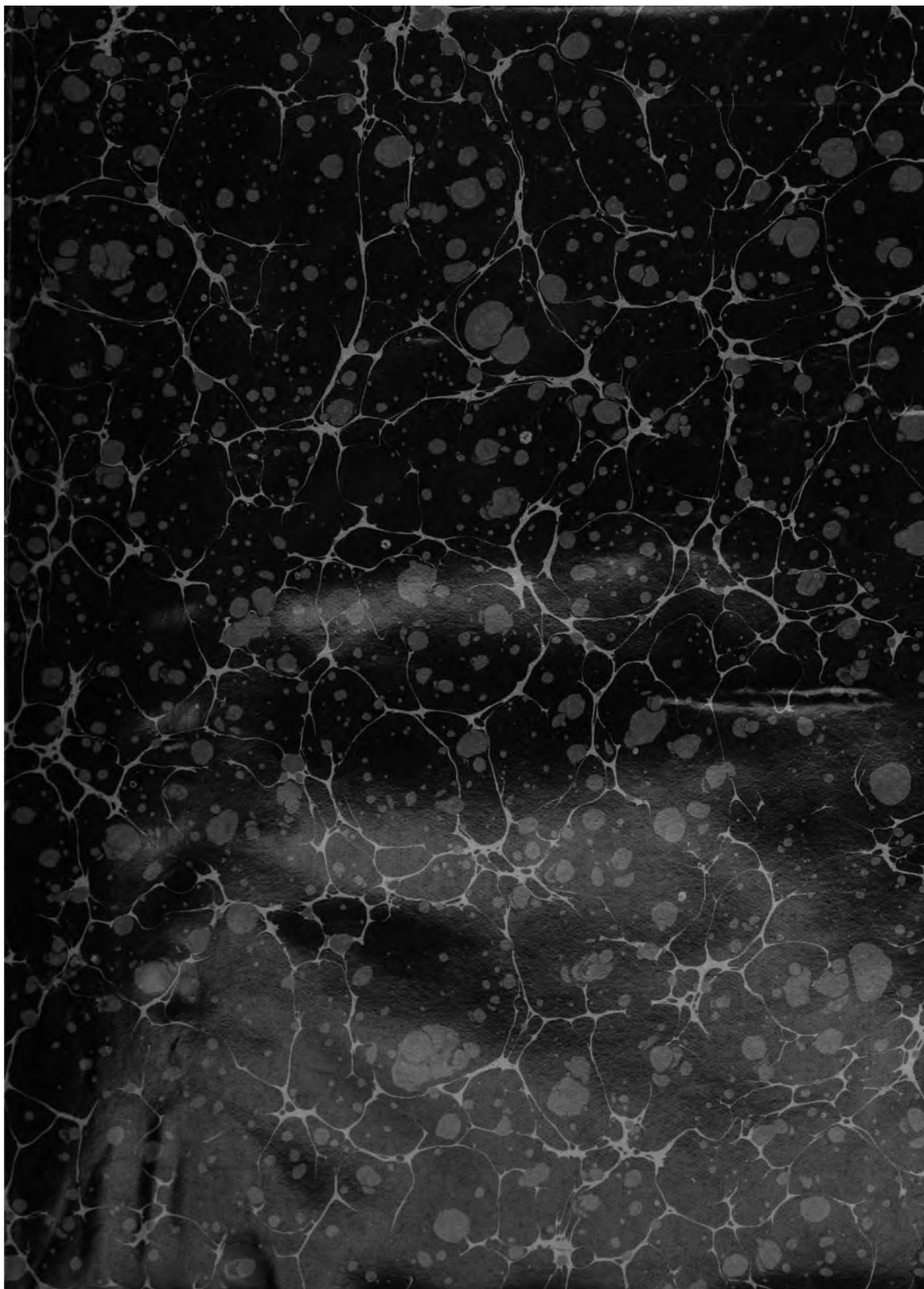
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CHARGES  
OF THE  
GOVERNOR



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# CHARGES

OF

*HIS EXCELLENCY THE GOVERNOR,*

**FIRST COMMISSIONER**

UNDER

**HIS MAJESTY'S COMMISSION OF PIRACY,**

FOR THE

**ISLANDS OF MALTA, GOZO AND THEIR DEPENDENCIES,**

TO THE

**GRAND AND PETTY JURIES**

**ASSEMBLED AT THE PALACE OF VALLETTA, ON THE  
16TH AND 20TH NOVEMBER 1815, AT THE  
OPENING OF THE FIRST GENERAL  
SESSION OF**

**OYER & TERMINER**

AND

**GENERAL GOAL DELIVERY,**

*For all Offences committed upon the Seas, or  
elsewhere, within the Jurisdiction of the*

**ADMIRAL OF GREAT BRITAIN.**

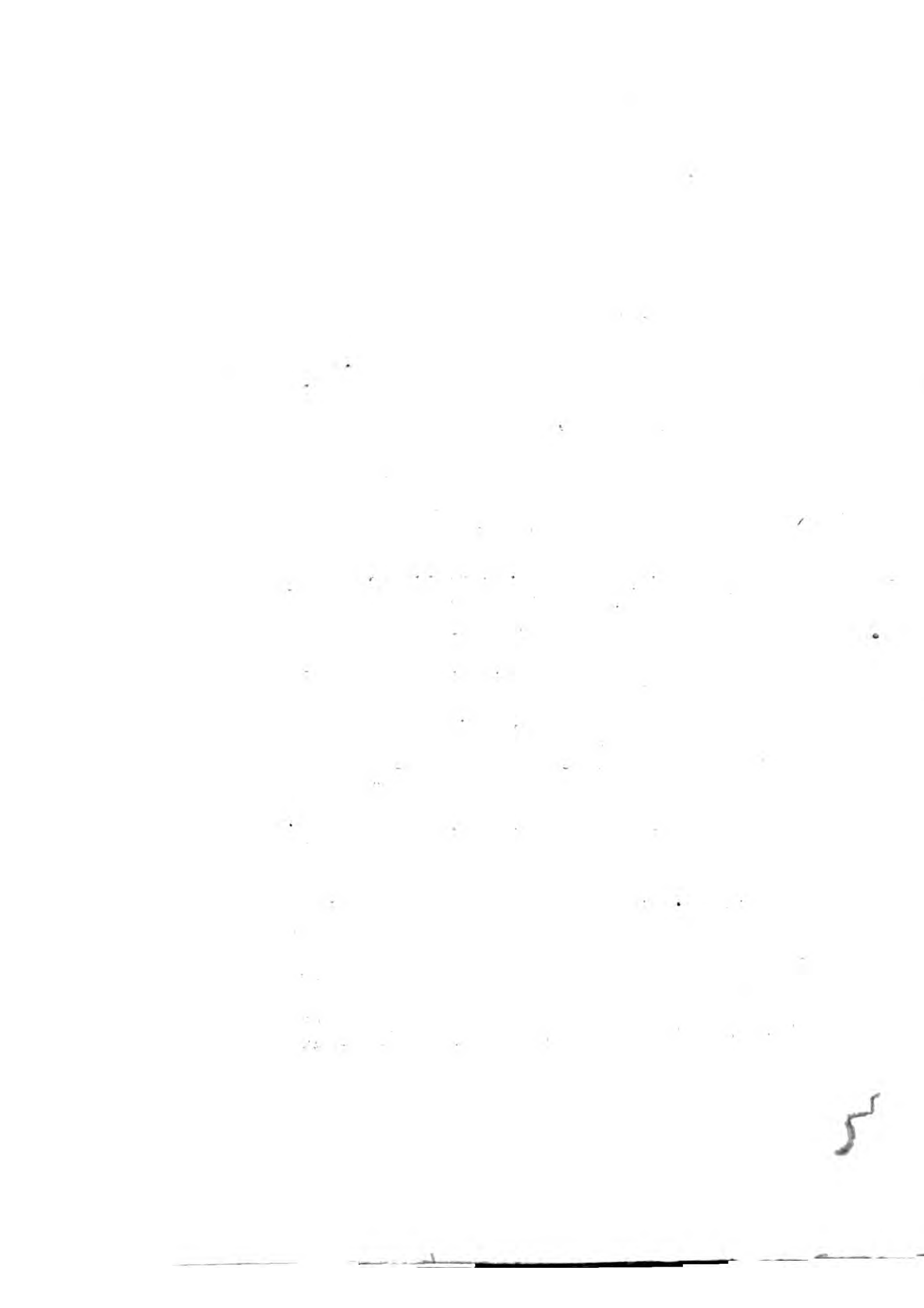
RHODES HOUSE  
7 DEC 1937  
L.I.

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**CHARGE**  
OF  
*HIS EXCELLENCY THE GOVERNOR,*  
**FIRST COMMISSIONER**  
UNDER  
**HIS MAJESTY'S COMMISSION OF PIRACY,**  
TO THE  
**PETTY JURY;**  
*Delivered the 20th of November, 1815.*

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## CHARGE, &c.

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GENTLEMEN OF THE GRAND JURY,

THE situation in which you are now placed, is of a nature so novel in this country, that I shall feel it my duty, as HIS MAJESTY's Representative in these Islands, and as First Member of the Commission of Piracy, to explain to you the paramount reason for which you are this day assembled, and the important functions you have this day to fulfil.

You have been summoned, and are now sitting, as the Grand Inquest, for trying and ascertaining how far there is such fair and legitimate ground of suspicion against the conduct of one of your fellow subjects, as to call upon him, in the face of God and his country, to defend himself against the allegation stated in the indictment which will be placed in your hands.

As HIS MAJESTY's Representative in these Islands, I will fairly own to you, Gentlemen, that had I possessed any discretionary power on the subject, I would not have advised the present mode of proceeding.

As there is no man who appreciates more highly than I do the blessings of the British Government, so there is no man who knows better than I do, that the excellency of that Government does not consist in theoretical or nominal perfection; but in the practical blessings it confers on those who happily live under it. I venture to state, Gentlemen, without any disparagement to you—(all of whom I have the honor of personally knowing, and whom I have caused to be selected, on the present occasion, from a perfect conviction of the good this Island has already received from your exertions as Consuls,)—that I look not to any considerable benefit, from the presentment you may make upon this occasion. But I do look forward with considerable expectation to the advantages that will arise, from your feeling and knowing, that in your hands is placed this day the decision,—whether one of your fellow subjects is to be brought forth for trial,—or whether he is to be instantly released, and his character entirely freed from the imputation charged against him. It is in the contemplation of these privileges that you must find the great wisdom of the laws of our land, and one of the real sources of the whole national character of England—this is the main spring and support of that independance which so proudly characterizes the British name.—For every individual in England knows, that he has a right to judge his fellow men, in the same manner that he may himself be possibly called upon to be judged by them: he therefore feels and knows, that,—having himself an intention to act honorably and honestly,—his fellow men, in trying him, will be actuated by the same feelings and similar principles.

But, the situation of the British Government and the feelings of the British people were not produced by the enactment of the law, or by any theoretical opinion or speculation of any kind. The present state of the public mind in Great Britain has been produced by the practical lessons of many centuries; and, con-

aidering the subject in every point of view, I have no hesitation in stating, that the greatest blessing we enjoy, is the temper of our minds, derived from experience, and not from the sudden operation of any new law or laws, however wise in themselves.

I am sorry to say, Gentlemen, that I feel and know the minds of the people here are not exactly fitted for the same beneficial effects; but, I confidently trust, that the experiment which is now to be made, for the first time, may lead to a general system of sober reflection and consideration, which may, at some future period, place these possessions in such a situation as to admit of extending the provisions of a Trial by Jury, beyond its present limited sphere.

Under these feelings, then, I am not prepared to say, that you would have been assembled at the present moment, had I not been imperatively obliged to call you together by the law of the land.

The Commission for trying piratical offences upon the high seas, and within the jurisdiction of the Admiral of England, rests under the Great Seal, and is now lying upon the table. It is one, emanating from the Sovereign, but restricted by the law. That law, formerly admitted under a statute of the 11th and 12th of William III, that a trial of this kind should proceed very much in a manner similar to the common practice in this Island. That is to say, that the Judges should act in the double capacity of Judges and Jurors; and at once form their opinion, both with regard to the fact and the law; but, by an act of Parliament passed in the 46th year of his present MAJESTY, it is enacted, (and you are sitting under this law now), that the fact should be taken out from the consideration of the Judges, and that the whole Trial should proceed, according to the law of the land, in the form of a Grand and Petty Jury.

This day, then, a new and unaccustomed mode of trial is introduced into this part of HIS MAJESTY'S Dominions.

The Trial by Jury has long been one of the most valued privileges of the people of Great Britain, having been inseparably interwoven with the principles of their Political Constitution. Its nature is accurately defined by the laws of the land, duly appreciated by the people, and its beneficial result has been clearly ascertained by the experience of many centuries.

But, on the first introduction of this branch of our Juridical Constitution among those to whom it has not been hitherto practically known, it becomes indispensably necessary to enter upon the investigation of certain elementary considerations, which, however familiar to the minds of Englishmen, without such explanation, cannot be clearly understood by those, whose habits of life, and mode of thinking, have been formed upon principles widely different.

The Trial by Jury is founded upon this axiom, derived to us from the earliest ages of our Constitution,—that, in all judicial enquiries, the most effectual way to guard against the abuse of power is, to divide such inquiries into two distinct branches, *viz.*—the fact and the law;—to place the fact under the immediate consideration and decision of the sound and impartial judgment of the fellow subjects of the individual concerned;—to leave the law to be decided on by persons whose education and habits fit them alone for such decisions. Every individual, of a fair and unbiassed judgment, is fully able to decide on the value and weight of specific evidence that is brought before him, and it is therefore wisely enacted, that the power of deciding, whether a man be, or be not guilty, should rest with the Jurors, who are to settle the fact. But, however competent for this part of their duty, it is not to be expected that persons engaged in different pursuits of life can be enabled to form any thing like a sound legal decision on what may be laid before them, and it is

therefore most wisely left to those persons who, from experience and practice, must be able to form an opinion, sound in itself, and to instruct the Jurors in all points of law that may occur.

But the law of England, not content with these provisions for the security of its subjects in their dearest interests, has established a preliminary measure of precaution by the institution of the Grand Inquest, of which you are this day sworn members.—An institution, the object of which is, that the evidence, on the part of the Crown, should undergo a distinct and impartial scrutiny, for the purpose of ascertaining its consistency and probability, before the interests of the party accused are subjected to that definitive trial, which is to establish the momentous question of his guilt or innocence, in the face of the world. But, tempering this jealousy with the greatest prudence, our Constitution has further established, that such previous inquiry shall not be carried beyond this question of consistency and probability; and, therefore, the proceedings before the Grand Jury are *ex parte*, and exclusively relate to the evidence in support of the indictment:—any ulterior discussion might give to the decision of the Grand Jury an effect equally prejudicial to the character and to the defence of the prisoner, which it is the principle of our law never to compromise in any other manner than by a free, open, and impartial investigation. Thus, the determination of the Grand Jury, while it operates on the one hand as a check against malicious, frivolous, or oppressive accusations; on the other, leaves the public mind, and the judgment of the definitive tribunal, free from all bias of unfavorable impression, with respect to the party accused.

Having thus briefly explained to you the important nature of the office which you are this day called upon to perform, it next becomes my duty to direct your attention to the peculiar line of con-

duct, which is required from you, in the discharge of it; and I shall conclude my address with such observations, as I consider necessary for the explanation of the law of England, as it is more immediately applicable to the business which is likely to come before you.

You will observe, then, in the first place, that you are required by the terms of your oath, "diligently to enquire and due presentment make, of all offences within the jurisdiction of the Court before which you are sworn."

Having attentively perused the indictment, and informed yourselves of its intent and purport,—(to which end you may at all times demand such explanation as you shall judge proper from the Registrar of the Court),—you will next proceed severally to examine the witnesses for the prosecution, whose names are indorsed on the indictment, and such as shall be sent to you by order of the Court, and ascertain from them those facts, relative to the criminal act therein stated, which they may respectively be enabled to testify. But this examination is to be purely *ex parte*, and you are distinctly to understand, that you are to hear nothing on the part of the prisoner, and nothing in his defence. And, if the result of these examinations shall produce, in your minds, a conscientious conviction, that there is such a reasonable probability in the charge, as requires a full examination of the witnesses on both sides, you will discharge your duty by causing the Bill to be indorsed by your foreman, according to the usual form, which is simply as follows:—that if you find it a true bill, your foreman will indorse the indictment with the words "*Billa vera*,"—if you do not find it a true bill, your foreman will then endorse "*Ignoramus*," and return it accordingly to the Court.

Gentlemen,—the next point, which you are to observe, is the injunction in your oath, “to keep the King’s counsel, your fellows’, and your own,” an obligation which is intended to secure the most unrestrained freedom in your own communications, and to prevent the circumstances, which may have transpired before you, from having any undue influence on the minds of others;—and therefore it becomes a sacred, and indispensable part of your duty.

You are, next, solemnly called upon before God to free your hearts and minds from all corrupt influence,—from malice,—hatred—or ill will on the one hand,—from fear,—favor,—affection—or interest on the other: that, under the impress of justice only, you may give your opinion upon the matter before you, in doing which, you will discharge the important trust reposed in you, with a clear conscience before God and man.

With respect to those points of law, which are likely to occur, in the course of your deliberations, they must, of necessity, be few and simple.

It would be a perversion of your office, to enter into the nice and technical discussions with which the sophistry of the profession has confounded the original simplicity of the criminal code; and it is no less out of the scope of your duty, to consider the ultimate legal consequences of the opinion you may pronounce; these constitute the exclusive province of the Court, which is bound, by an oath not less strict and solemn than your own, to discharge its duties with justice and impartiality.

All that you are entitled to enquire about may be summed up in two points,—that the crime laid in the indictment was actually committed about the time therein mentioned; and, that there is such a probability that the person accused was guilty of it, as to call on him for a satisfactory answer.

Under the first of these heads, it may be expedient to observe, that where the subject of the



indictment is a theft, the removal of the property from its place in the least possible degree, if clearly done by the person accused with the intent to steal, is as completely a theft, in the contemplation of the law, as would be the conveyance of it to his own residence.—For, it is a maxim in our law, that it is the disposition of the mind, evinced by any overt act, which, in all cases, where the question relates to the criminal violation of property, constitutes the crime.

It is also necessary, that an actual or qualified ownership should be proved in the party to whom the property is stated to belong; and, that the theft should not have taken place, subsequently to the day mentioned in the indictment.

These are the only points to which you will have to attend upon such accusations. Any difference of quantity or value being a matter exclusively reserved to the Court and second jury, except in cases where the description of the crime depends upon the amount of the value, and in these cases, a very general sort of proof is all that you are authorized to require; as in the case which is likely to come before you, and which being on the Statute of the 22nd of Charles II. Cap. 5, requires that some general proof should be produced to show, that the value of the property, alledged to be stolen, exceeds twenty shillings of English money.

With these observations on the legal points to be submitted to your investigation, I should now conclude my address; but, as many of you are wholly unaccustomed to the formalities of an English indictment, it is expedient, that I should state to you, that the forms of our law require that every felony should be stated to have been committed “with force and arms,” — a technical expression, which signifies no more than this,—“in violation of the law.”

In the same manner, in cases of theft, the words—“take and carry away” are also necessary, but to prove the act of carrying away, the same slight de-

gree of removal, which I have before described to you, as constituting a theft, is all the evidence which our law requires.

Above all, I cannot too often repeat to you the injunction to bear in mind, that, as a Grand Inquest, you are neither called upon, authorized, nor furnished with adequate means to decide upon the guilt or innocence of the prisoner; but solely to declare your opinion on this simple question,—whether the evidence, adduced before you, is so relevant to the act stated in the indictment, and induces such suspicion of the party indicted, as to require, for the ends of public justice, that he should be called upon to answer the charge before a tribunal competent to proceed to further examination.

With these observations, the Court commits to your preparatory investigation the business of the present Session.



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of evidence which I have before me described to you as being of a kind which is all the evidence which

you have before you. I cannot too often repeat to you that you are to bear in mind, that as a Grand Jury you are neither called upon to decide upon the facts, nor to decide upon the merits of the case, but solely to decide upon the question—whether the evidence adduced before you is so relevant to the issue in the indictment and induces such a verdict as to require, for the sake of public justice, that he should be called upon to answer the charge before a tribunal competent to proceed to further examination.

With these observations, the Court commences to your laboratory investigation the business of the present Session.

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**CHARGE**  
OF  
*HIS EXCELLENCY THE GOVERNOR,*  
**FIRST COMMISSIONER**  
UNDER  
**HIS MAJESTY'S COMMISSION OF PIRACY,**  
TO THE  
**GRAND JURY;**  
*Delivered the 16th of November, 1815.*

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## CHARGE, &c.

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### GENTLEMEN OF THE JURY,

Altho' it is wholly unusual, in the practice of the English Courts, to address any observations to the Jury, previously to summing up the evidence in the case before them,—the peculiar circumstances under which you are this day assembled, induce me to depart from that established precedent; in order to impress upon the minds of such of you, as may not be practically acquainted with the office which you are called upon to perform, the nature of the duties required from you.

The general principles, on which the Trial by Jury is founded, and which the laws of England have adopted for its regulation, have already been sufficiently discussed, in the course of the charge which I delivered to the Members of the Grand Inquest; and which I was, therefore, anxious to give you all an opportunity of hearing.

The object of my present address to you, is—to point out, in a more particular manner, the distinction between the several functions of that preparatory Inquest, and those of the Jury impanelled for the

actual trial of the prisoner upon the indictment found against him.

I shall, therefore, observe to you, in the first place, that—although from the general practice of the English Bar, and from the knowledge which I have of the liberal character of HIS MAJESTY'S Advocate, I am well assured that he will not, in the opening of the case, seek to produce in your minds any unfavorable impression against the prisoner, beyond that which may necessarily result from the statement of the Charge,—yet, as his duty requires him to address you *ex parte*—you must accredit what he may deliver no further than it may be confirmed, as to facts, by the evidence adduced in support of it, and, in points of law, by the sanction of the Court.

I say, in points of law, because,—notwithstanding the British Constitution has, with the most careful circumspection, endeavoured to separate the consideration of the law from that of the fact, and to reserve the former for the exclusive jurisdiction of the Court,—yet, it is utterly impossible, in some few particulars, to establish an entire division between them; and, therefore, I feel it more especially incumbent on me to direct your attention and guide your judgment, respecting those points, to the investigation of which the greater part of you have not hitherto been accustomed.

The first thing to be established before you in evidence, according to the tenor of this indictment, is, that, on or about the day therein mentioned, a felony of the nature described was actually committed; and to constitute such a felony, it is requisite, that there should appear to have been some overt act done with a felonious intent, for the purpose of stealing and carrying away the property specified;—but, according to all concurrent authorities in the law of England, as recognised by innumerable decisions, any severance, or removal of the property in the slightest degree, is sufficient to constitute such a taking and carrying away as the law requires to be proved.

The next matter to be considered is the property of the article which is the subject of the indictment; which must be proved to exist, either in a direct or qualified degree, in the person to whom it is therein stated to belong.

In the case before you, the description and value of that property also form material parts of your consideration, inasmuch as the statute, on which the indictment is founded, relates exclusively to naval stores above the value of twenty shillings of English money. The high degree of penalty, attached to this offence, has been found absolutely requisite for the protection of this species of property, in consequence of the facility of depredation, to which, by reason of its nature and extent, it is necessarily exposed.

In point of time, you will observe, that if it should appear, the felony, alledged to have been committed, was committed on a day, subsequent to that laid in the indictment, no other proof whatever can be sufficient to convict the prisoner:—for, you are to try the issue of “guilty or not guilty,” according to the terms of the indictment, and it would be utterly absurd to declare, that a man was guilty of an act at a time previous to the commission of it.

The taking and removal of the property must be considered merely as an overt act relating to the felonious intent of stealing; for, unless from evidence you have cause to infer such intent, the very substance of the crime will remain doubtful.

This intent, however, is, in all instances, to be collected from the peculiar circumstances attending the case, and from the particulars of the prisoner's conduct, as evincing either a design, or a consciousness of guilt; and, therefore, to lay down any general rules for judging of it is impracticable. But every man of experience and sound judgment will easily discern the character of an action, in the incidental circumstances which attend it.—It is a



matter on which the ordinary affairs of life afford us daily opportunities of exercising our discrimination; and in judicial, as well as in less important cases, our judgment must be determined by the dictates of plain sense and reason, and not by any refinement of legal sophistry.

Above all,—the point which ought more especially to engage your attention, is the weight and effect of the evidence to be adduced before you,—and the degree in which it affects the prisoner at the bar.

The law of England,—instead of adopting subtle and futile distinctions between complete and partial proof, and measuring the punishment according to that proportion,—has wisely considered that the terms of the question are distinctly alternative,—that the party accused must either be guilty or innocent,—and that, as in the former case the interests of the public require a judgment of conviction, so in the latter, those of the prisoner as imperiously demand an absolute acquittal; and, therefore, it recognises no medium between those extremes, and, instead of compromising those sacred claims by any half measure, (which must always lead to a conclusion false in itself), has established as the standard of its judgment the feelings—persuasions—and unanimous verdict of twelve men, unbiassed, impartial, and in all respects fully qualified to decide on the force of testimony, and estimate the value of those interests which depend on their decision.—Such, Gentlemen, is the nature of your office on this occasion.

The observations, which I have before made upon the spirit of our laws, will show the indispensable necessity of admitting the sufficiency of a smaller degree of proof than is required by the Civil Law; which is supposed by some to allow an intermediate judgment between guilt and innocence, and to permit the infliction of punishment on such qualified conviction; therefore it is, that the law of England does

not require the concurrent testimony of two witnesses to any fact; but the clear and consistent evidence of one witness, whose credibility and character are unimpeached, when supported by any confirmatory circumstances, affords a competent and satisfactory degree of proof.

You are not to expect (for rarely in the nature of things can you find) full—direct—and positive evidence of the guilt of any party accused before you: the very essence of guilt is privacy;—and crime is almost always committed under circumstances, which preclude the possibility of such testimony.—All that you are authorized to enquire, is, that the guilt of the prisoner, as alledged in the terms of the indictment, should be established by the reasonable proof of such concurrent circumstances, as may induce you fairly, in your consciences, to adjudge him guilty of the offence, alledged against him.

Vague and unconnected suspicions ought not to have any weight with you. All rumours which may have reached your ears must be laid out of your consideration: attend only to what is actually sworn;—and, if the result of it be a conscientious persuasion that the prisoner is guilty, you must do your duty to God and your country, by pronouncing him so, regardless of legal consequences,—for these rest wholly in the consideration of the Court.

If you do not feel such a conviction, you must declare him—not guilty:—and if your judgment hangs in equal balance, in consequence of any fair and reasonable doubt, you are, in that case, to give him the benefit of such doubt, and acquit him of the charge.

Gentlemen, I have considered it necessary to state these observations to you, previously to the production of the evidence, that you may be the better able to apply them thereto in the progress of the trial.







