



England's Balme

Or

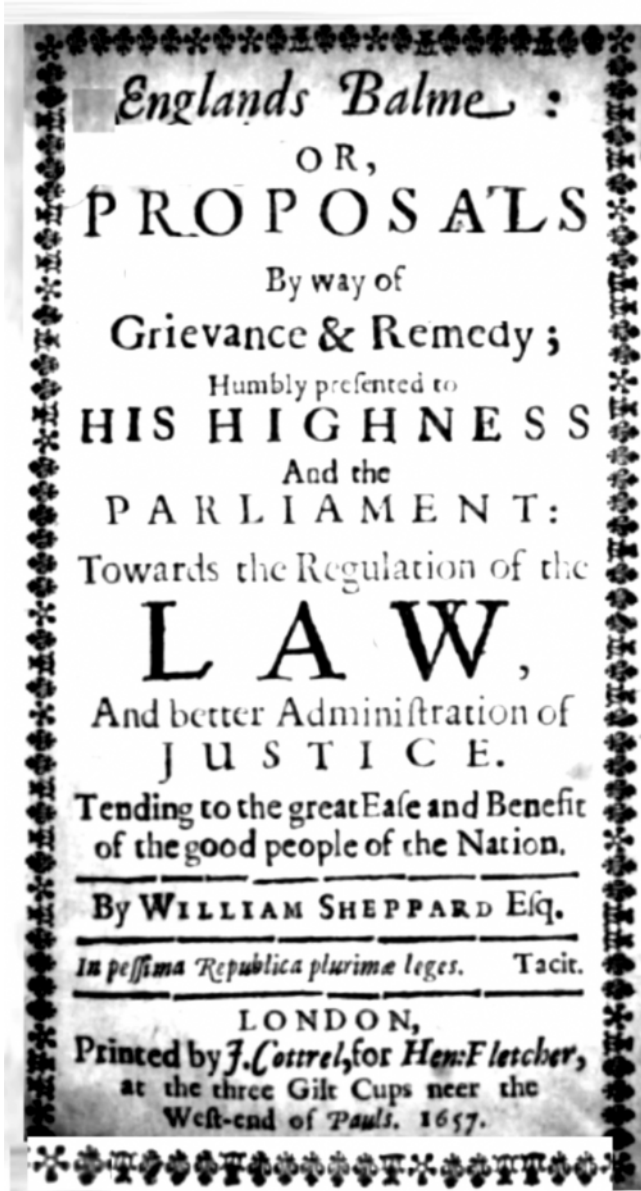
Proposals Towards
The Better Administration

Of

Justice

By William
Sheppard Esq

1657



The Original Cover

England's Balme

Or

Proposals

By way of
Grievance & Remedy;
Humbly presented to

His Highness

And the

Parliament

Towards the regulation of the

LAW

And better administration of

JUSTICE

Tending to the greatest ease and benefit
Of the good people of the nation

By William Sheppard Esq.

In pessima Republica Plurimæ Leges. Tacit.

LONDON

Printed by J. Cottrel, for Hen: Fletcher, at the
three Gilt Cups near the West end of Pauls

1657



Dedicatory

Address

To The Reader

**Chap 1 Of the exceptions against the Law
in General**

**Chap II Of Certain things in general,
said to be evil.**

**Chap III Of Certain things proofed in
Generl.**

**Chap IV Of certain notorious and special
grievances.**



DEDICATORY



TO HIS HIGHNESS the Lord protector of the Commonwealth of England, Scotland, and Ireland, and the dominion's thereunto belonging; and to his Highness honourable counsel.

May it please your Highness



HIS PIECE COMPOSED for a ground work in order to the regulation of the law, which in truth is that taking away of heavy burdens, and the work of a general Reformation; there is none that may more justly challenge a share in the dedication of it, than your Highness, by whose care it hath been brought forth: and to whom should children complain of the wrongs done to them by their brethren, if not to their father? Or who should be told if not the master, the disorders of the family?

At your and the Parliaments feet therefore I do lay it down: And (knowing well your Resolutions to the work,) I shall not need to use any quickening to move you forward therein; otherwise I should say thus much: when all engines in all ages have been used in government, for the satisfying of the

governed this has been found to be the Chief, to answer this question, *who shall show us any good?*

It is probable that by this work you may bow the hearts of the people as one man, and unite them to you; that they will no more say, as **1 Samuel; 10:27** *How shall this man save us?* But rather as in **1 Samuel; 11:12**; *Who is he that said? Shall this Man reign over us? Bring the men &c.* And may not this cause them the sooner digest the things they dislike? *To arise for the poor and needy, to set him at liberty from him that doth oppress him.* (**Psalms 12(10):5.**), Is God's work, well becoming the gods of the earth. If woe will be to the rulers that write (as Laws) the things which prove grievous to the people, blessings will be upon them which help to take them away.

Esai; 10:1 *Væ sis qui perscribunt molestiam, &c. piscator*

And if there be any way for us to have our fasting and prayer at home accepted, and our works abroad prosperous, surely it will be by **loosing the bands of wickedness, undoing the heavy burdens, letting the oppressed go free, and breaking every yolk.** (**Esai; 59:1, 2, 4, 6, 8, 9, 13, 14.**)

Hab 1, 4. & Amos 5. 7.

For whiles we speak oppression, and revolt conceive and utter words of **falsehood**, the Law is slacked, Wrong knowledge **630**

Amos; 12:21, 22, 23. Mica 3: 4, 9, 10

Judgement proceedeth, "judgement is turned away backward, justice standeth afarre off; truth is fallen in the street, and Equity cannot enter. May we not (if this be our case) cry and not be heard; look for the light, and see nothing but darkness?"

Proverbs; 21:3. Mica; 6:8. 2 Chronicles 17: 5-6.

For "to do judgement and justice is more acceptable than sacrifice. And now that the ye be up and doing what you can; and that you may have your heart lifted up with cheerfulness and courage in the work, (which is in the wayes of the Lord,) and therein do worthily and be famous; and be able to do so much, as it may be said of you, as Hezekiah, "That after him there was none like him, nor any before him; and he prospered wheresoever he went forth."

Ruth; 11. 2 Kings: 18: 5, 7 and 23, 25

Which shall be the prayer of,

My Lord,

**Your Highness his most humble and faithful
servant,**

W. S.





**To the Right Honorable,
The Lords & Gentlemen
Assembled in
Parliament**

Right Honorable,



WHEN I WAS FIRST CALLED BY HIS HIGHNESS, from my country, to wait upon him, to the end he might advise with the and some others, about some things tending to the regulation of the law; which I understood to have respect not only to the doctrine it self, and the things of amiss therein; but also, to all grievances and complaints of the nation: the Reformation whereof, must be either by the making of new laws that are wanting, or the Execution of old Laws that are made.

As to which work, I could not think myself alone (without help of others) fit, nor durst I presume to attempt more in it then this only, to look them out, and take them up from the mouth and pen of others; and these to contract into heads of grievances, and of some remedies annexed, as Questions all Cases to be debated only by such helpers as I expected in the work; and so by us to have been offered to the consideration of the next Parliament. And this rude model being thus prepared, and this parliament now convened and fitting, it hath been advised, that it be offered to your honors. And indeed I could not do otherwise, but I must acquaint you with what I have seen and heard; which cannot hurt

but may, by the blessing of God upon it, contribute something to the work you are about. At your feet therefore I do humbly lay this, having many other things almost in a readiness, (as occasion shall be) to communicate to your honors.

1 Kings 13:21; 2 Chronicles 34-33

And to whom should the sick complain of their diseases, but to their physician? And now O that God would set it home upon your hearts, that are called to be our healers, and to the work of healing at this time, do set upon the making of wholesome Laws for the general Cure of the whole body herein: and that you will not be satisfied with particular Acts, but to proceed to a Settlement and Reformation (at least in the main things) of the whole: so as it may be said of you, as of the good kings of Israel, they have taken away all the abominations according to the law of Moses.

We all agree, there are many things apparently evil, to be removed and prevented; and many things apparently good, to be introduced. Will any man oppose? Will not all men assist to the affecting hereof? That offensive, oppressive, and superfluous laws be removed, defective Laws supplied, doubtful laws cleared, and all the good laws abridged, and well executed: that quick and speedy justice be done for the recovery of Right, Relief against wrong: and for this, that all the courts of justice be regulated: that men's Properties and Liberties be well settled and secured: that men may make the uttermost Improvement of their Estates, without prejudice to the public: that evil men and matters be discouraged, and the good encouraged: and such – like things as these.

Who amongst us all (if this be our case) would not have all these things done, and who amongst us, will not get by the doing hereof? And now what withholdeth but that it may be done? Much speech have been of Reformation, little done. We are now born in our expectation that after all our refinings, some singular thing will be done, to answer the prayers, Tears, and Cries of all the good people of the nation for many years, and for the prevention of the new breaking out of wrath upon this poor distracted nation for, by righteousness the throne is established, and justice exaltive the nation: so shall you be called, the repairers of our breaches,

and restorers of our paths to dwell in; and all generations shall call you, blessed for ever: which that you may do, shall be the payer of,

**My Lords and Gentlemen,
Your most humble Servant,**

Will: Sheppard





To The Reader

Dear Countrymen,



His plaine draught, you will see what it is, & whereunto it attends, and how it is come to light. It is a short Model of most of the Sores of the Nation, and of some Cures to be applied. The grievances are not mine, nor by me first approved; but are the Complaints of others and as there is nothing of Offence given in it; so I hope none will take from it; neither from others, nor (I hope) from you my Brethren at Law: to whom I have but this Word to say, That the taking away of the abuse, will not take away, but establish the use of Law: to take away the Weeds, will not hurt the Wheat.

If it be of God, its foundation will be more stable and firm: for every plant that he hath not planted, shall be plucked up.

However it be taken or mistaken, I can (I bless God) for this and all the rest of my labors, make my Appeal to him, the searcher of all hearts, that (though with much weakness) I have prosecuted one end entirely, The Glory of God, and therein the good of my Country: so that I with a veil may be drawn over me and mine, that his Honor may be more conspicuous and apparent. It hath been to me (as in all Ages to good men) a grief to see, that of all Nations the English should live like Wolves and Tygres in matters of *Meum* and *Tuum*: I have cast in my Dose for the Cure, and with wiser heads and stronger hands would take up the work.

1 Cor. 6:6; Gal. 5:15.

My fears are, that either the Sword, or some other Plague, will cleave to us, if we thus live in the Flames of Contention; with a little water would both quench, and be like the pool of Bethesda, if timely applied. And that this **PARLIAMENT** may do it, and suffer it to be done.

Whitehall
October 1st, 1656.

Your truly-loving
Country-man

W. Sheppard





Chapter I

Of The Exceptions Against The Law in General

Section I Grievance What



We call that a grievance here, that is objected by some, that is objected by some to be a Rule or practise in the Law, that is either ill in it self, or doth oftentimes prove to be evil; And that wherein a better Rule or Practise may be found out and used: Or the want of a Rule or Law, that may serve to prevent or take away some evil that is or may be, or to introduce some good that is not: or the departing from, or neglect of execution and practise of a Rule of Law that is good.

For there are some of our Laws said to be repugnant to the Laws of God having in them that which tendeth to maintain and countenance Idolatry, Superstition, Oppression or Tyranny; Others are said to be ensnaring, and dangerous; Others ridiculous, and a reproach to the Government of the Nation; Others Useless; Others superfluous. Some evils there are to be removed; Some mischiefs there are to be prevented; Some offences to be punished for which the punishment appointed by Law, is thought to be too heavy; and some for which the punishment is thought to be too light: Some things appointed by the Law to be punished as offences, that are thought not to be any offences at all: Some benefits and advantages there are to be introduced, and many other excellent things there are to be done,

much to the profit and advantage of the Nation and people, but there are not Laws to enable and warrant the doing of them.

And as the Laws, so the grievances therein, and exceptions against them against them, and administration of Justice under them, are either against such of them as concern the being of the Nation; As Constitution thereof, touching the supreme Magistracy in Legislative power, and the like: or such of them as concern the well-being thereof; As the Distribution of Justice therein: and these have relation some of them to spiritual, Ecclesiastical, or Religious Matters; And some of them to civil Matters.

They are also either against the whole Law, or against some parts thereof only. And these are also either against the Theory or Principles of the Law; where are some things that are not in the practice: all they are against the Practice, Proceedings, and Execution of the Law; where are some things used forbidden by the Doctrine or Rules of the law: or they are against the Theory and Practice both. And these are some of them more grievous; as the Law or Practice by and under it, of the tediousness, Charge and Hazard of suits in Law; the Law of wreck, occupancy, and suchlike: or less grievous; as the Laws of descent to the eldest son, and suchlike. Those that are in the practice or proceeding, and Doctrine both, are either in the proceedings in Civil or Criminal Actions, or in other things.

Sect II - Grievance

IN THE DOCTRINE OR THEORY OF THE LAW in the General, these things are accepted against.

- 1 The length and tediousness of it, that it is so large and voluminous, that it can hardly be read in many years.
- 2 The obscurity of it, that it is not to be understood, when it is read.
- 3 The incertainty of it, that the Judges do not agree amongst themselves. The Judges of one court differing about it from the Judges of another Court: The Judges of the same Court

differ from one another. The same Men differing from themselves; And some of it upon Queries, and Remains doubtful: And by their Exposition of Statutes and Ordnances, they make them speak what they please.

Remedy

As to the cure hereof, it is offered to consider of these things:

1. If there be any such Laws, (as before) repugnant to God's Law, dangerous, reproachful to the nation, useless, idle and superfluous what to do with them.
2. To consider some things that lengthen the Laws much: as that of Tenures, Common Recoveries, Entails Tythes, and the like; and what to do with them, to abridge the Law.
3. To consider of some of them that remain; as of the Sabbath, of Purveyance, of Masters and Servants, to make an abridgement of them, and many of them into one.
4. To make one plain, complete, and Methodical Treatise or Abridgement of the whole Common and Statute-Law, comprehending the Heads thereof, to which all cases may be referred: And therein, to make those things that are now obscure and incertain, clear and certain. And to have all the Judges subscribe it for the settled Law, and to have it confirmed by the Parliament.

Be sure over these things a little further in the next chapter.





Chapter II

Of Certain Things In General, Said To Be Evil In The Doctrine And Practice Of The Law Of The Nation.

Section 1 Grievance

It is to be observed,



HAT THERE ARE VERY MANY THINGS IN THE DOCTRINE AND PRACTICE OF THE LAW of the Nation, that will at least seem to be repugnant to the Laws of God, and the evil in themselves; as tending to uphold Heathenism, Idolatry, Superstition, anti-Christianism and Profaneness, or injustice and oppression.

Of this sort are (as it is said) all the Laws that speak to the countenance of Anti-Christian Religion and Jurisdiction here: Such as the Dedication of times and places to Saints, Angels, the sun, moon, and the like: Imposing of times of fasting, and abstinence from meat; keeping of Holy-Dayes, as religiously as the Lord's day: Profaning of God's Holy Name, by swearing without good cause, and without a calling, or in an evil cause: as in the case of Abjuration, Combate, or Homage; or in an evil manner, as by God and his Saints; And by one's faith: by the abuse of a customary form of prayer in the tryal of Prisoners; and such are the

Laws directory, that do bind to such and such opinions, and set a punishment to be inflicted on them which are otherwise minded; as, such as deny the baptising of infants to be Lawful, or affirm that such Baptism is void, and that such persons ought to be baptised again; or that it is not Lawful to teach children to pray, or that the Churches of England are no true Churches, or affirm anything in derogation of the Directory. And he that is an Anabaptist is disabled to make a Will, be an Executor, or receive a legacy; and besides, lyable to corporal punishment.

And so for other Opinions that are questionable to be the truth, they are to be punished with corporal punishment; and for other Opinions they are to be put to death; And by the Laws that do seem to countenance the Prayers of the dead, as the tenure free Almes, which may be created at this day. And the Laws that seem to speak him and Heretick and liable to persecution, that doth hold anything against the Doctrine of the Church of England: and the Laws that countenance the abuse of Christ's Ordinance of Excommunication making the person Excommunicate lyable to Imprisonment and disability to sue, till he be absolved by his Ordinary: and such as forbid men to preach the Gospel, that are not set apart:

Nor to have a benefice with cure, till he is is twenty three years old, and have agreed to the Articles of Religion. So the Laws of Plurality of Benefices, Firstfruits, and Tenths, are said to be of this Nature: And of this sort also are said to be all the laws that speak to this purpose, That the supreme magistrate here hath a headship over the Church of Christ, and made by himself or his Commissioners, make Laws to bind the conscience: so the manner and order of Ordination of Priests and Deacons, and the Book and Cannons concerning the same, are said to be of this Nature.

Of this sort also are the Laws that make it an offence, and very pœnal, to disturb Idolaters in their Idolatrous Service. And of this sort are the Laws that countenance Men's fighting with, and killing of one another; as in the case of Tryal by Combate, in appeal of writ or right; and the strange way of Tryal, called Ordeal; and Clergie granted to a Man to have his life in case of Manslaughter. And many others, which are not fully and clearly repeated.

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Remedy

It is offered to be considered what to do with these laws.

Section II Grievance

It is objected,

THERE ARE VERY MANY THINGS IN THE DOCTRINE AND PRACTICE OF THE LAW, that are all seem to be this day of very little use: as the Laws about Captains, Soldiers, Musters, Armour, and Armes, Castles, Fortresses and Bulwarks, Liveries Retainer, Purveyance and Purveyors, Pewter and Brass, Malters and Malt, prices of Vessels; lent, Fish, and Fishing; keeping Sheep, Farms, Tyle, and suchlike: and some that are now of no use at all to us.

Of this sort are all the Laws about Tenures by Knights service, and Capite: to which belong all the Laws concerning Wardship of body and Land, Primer Seisin, Mesne, Rates, Marriage, Relief, livery, Ouster-le-main, court awards, Escheators, Feodaries, and the like; all which are now taken away: and all the Laws about bishops, Dean and Chapter's, and suchlike eat Ecclesiastical persons:-

To which belong all the Laws about their Spiritual Courts and Jurisdictions, of Canons, Citation, Libel, Suspension, Excommunication, License, Faculty, Prohibition, Consultation, and such like things, All which are now gone with them. and of this sort are all the Laws that were pardons, Loanes, subsidies, and such like, that are of no use to us. And so the Law of Villaines; to which doth belong *Libertate Probanda*, *Minumission*, and some other things now gone with them. And so the Laws about the abolishing of Religious Persons and Houses, as Abbots

and Abbeys, Templars, Bishops, Deans and Chapters, and the like, which are gone also. And of this sort also are the Laws about the Oath of Supremacy, Engagement, Sanctuary, bigamy, and the like; all which are also useless to us, and yet not fully and clearly repealed, and taken away: So likewise most of the Laws about Sequestration, and about the ordering of the Estates of Papists and Delinquents; most of the general Pardons, most of the Acts and Ordinances about Accompts, Excise Assessments, at this day are of little or no use to us.

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Section III Grievance

THERE ARE SOME LAWS THAT ARE OR SEEM TO BE OF DANGEROUS consequence: as the Laws that entail Crown-Land upon Henry 8 and established a succession of the Crown upon his heirs; And the Laws that by the change of times may be turned to occasion Persecution against the people of God: Of this sort are the Laws against Lollards Conventicles; And the Laws about the Disturbing of a Minister in Divine service; speaking or doing against the Directory and such like, that do still remain, or are not clearly repealed.

It is offered to be considered what to do herein.

Remedy. Grievances.

It is objected,

There are some Laws that are or seem hard, cruel, burdensome and oppressive to the people. And of this sort and of this sort are most of the Forest Laws; And all such Laws as do punish a man, that doth not offend, as some cases in the Law of Wreck and Deodand: or where the punishment doth exceed the offence in the manner, or matter; as the manner of death for treason, and where on refuseth to plead in case of Felony: And for the matter, where a man is to dye for theft, perhaps for stealing a small matter; for a hawk, killing a Beast in the forest, and flying away after Hue and Cry.

That it is Treason for a Popish Priest to be here, though he live in peace and without offence. So where one Man is punished less for a greater, and another for a lesser offence: as, where one escapeth by Clergy for manslaughter, and another is hanged for stealing, because he cannot read: of this sort are the punishments for hauking, hunting, shooting, extreme, and beyond the offence: Imprisonment long, for not delivering a hawk when demanded: Imprisonment a year for a Hound: Imprisonment a year for taking the eggs of a wild-fowl, Excommunication for chiding or quarrelling in a Churchyard: to lose one of a mans ears all be burnt with a hot iron, that doth but offered to draw a weapon, with intent to strike in a Church or Churchyard, To lose ones hand that doth strike in the Lord Protectors Palace. Out of this sort of hard Laws, is the Law that doth forbid Ministers to take or buy Leases of Land; and many other such like.

It is ordered to consider what to do herein.

Remedy

Section IV Grievance

It is objected further,

That there are some Laws wherein the punishment is too little for the offence: As corruption in Judges, Extortion in Officers burning in the hand for Murder; and many other such like.

Remedy

It is offer'd to be considered what to do in these cases.

Grievance

There are some Laws that are or seem to be unreasonable: As, the Laws of wreck, occupancy and such like. Of this sort are the Laws concerning Destruction and waste upon an attain for false verdict. Or upon a forfeiture for Felony: And to this is reduced the Laws of first-fruits and tenths the effects whereof is to take away from some Preachers, and perhaps them that have more need, and to give it to others, and to them perhaps that have lesse need; and this with a great charge and trouble to the State, and likewise to the Preachers giving and taking. So that some men should have leave to hold Pluralities of Benefices above others. And diverse others.

Remedy

It is offered to be considered what to do in these cases.

Grievances

It is objected,

That there are many Statue-Laws about the same thing, made in several times, and some of these very long: as those about Servants, Labourers, Apprentices and Artificers, chusing of Knights and Burgesses to the Parliament; the Lords-day, Assize of Bread and Beer, Cloth; Jurors, Juries and Enquests, Mault-making, Maintenance, Popery and Priests; and many others. And some of these are very dark and obscure: and some of the common and Statute-Law is in Latine some in French.

It is offered,

To consider of bringing all the Laws about one thing, into one Law, and to make that Law as short and cleer as may be; and to have that which is in Latine and French Englished.

It is Objected,

That the Laws are exceeding long and voluminous.

Grievance Remedy

It is offered to be considered of a way to abridge them.

It is objected,

Grievance

That the Law is defective in many case; for either it hath provided no Remedy, or means to recover Right; or not an apt or a compleat Remedy. The which is offered to be considered what to do therein. We shall open these things further, and more particularly, in the following Chapters.

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Chapter III

Of Certain Other Things Proofed in General, Tending To The Regulation of The Law, And To The Reformation of Administration of Justice: Through The Nation.

Sect. I

As To Civil Actions, it is offered to consideration the things following.

1. That a more safe, quick, and a cheape way to recover a mans right, and have relief against wrong.
2. That there be enough of Courts of Justice; rather to many, then too few: And that they be not overburdened with business.
3. That all the Courts of Justice, great and small, be Courts of Record; And they be all well Regulated, good Judges and Justices set in them.
4. And all their Proceedings and Fees printed and hunged up in the place where the Court sits. And that there be one and the same Method of proceeding in them all, (as near as may be;) and that according to the Model set forth, of all the Courts great and small of the Nation. And that a Commission issue out presently to certain chosen men to do it.
5. That the Courts continue at **Westminster** as they now be: but that when any thing of the Law doth arise in a Court of Equity, it

is ended in the same Court, and on the other side, if a matter of Equity arise in a Court of Law, it shall be ended there: And that all the great Courts of Law at **Westminster**, the Provincials, the great Sessions or Assizes, be also Courts of Equity.

6. That the lesser causes be dispatched in the proper Counties in the County Hundred Courts, &c.

7. That all the Provisions that may be, to prevent suits in Law, be made, and to see that no man sue another without good cause or, (at least) colourable cause: And then the Plaintiff in the suit have all the favour and furtherance that may be, as to sue in what Court he will to go in his suit in what way he will, in the old or new way, and the like.

8. That the Sheriffs and other Officers of the great Courts, be paid by the State, and have Pay according to their abilities, as the Judges are paid; and receive no fees of any man for any thing in any of these Courts; And that all the fees be paid, be received by the Commissioners, (Attorneys and other Officers to be some) And by them the Officers to be paid their Salary.

9. That the hearing and Tryal, of causes be more quite and easy.

10. That Officers of all the Courts, be as few as may be: And that they come freely to their Offices, and be not put to buy them.

11. That no Judge, or any of his Servants, have any Fees of the people; or the disposal of any Office or profit out of it, in his own Court.

Sect II

As to Criminal matters,

1 . THAT ALL LAWS AGAINST THE COMMON OFFENCES, be penned after one manner, and one way.

2. That Bridewel and wearing Papers and Colters, declaring their offence, be much used in punishment of offenders.
3. That Malefactors may come speedily to tryal and not Lye long in Prison before Tryal.
4. That a more easy way be devised for Conviction and Tryal of offenders; and that it be without charge to the Prosecutors.
5. That Officers be made of the most able men, and have all encouragement in the Execution of their offices, their charge be born by the Publick, that they be forced to give an account of the Execution the Warrants sent to them.
6. To give rewards to them that are industrious in Prosecution of Malefactors.
7. That all Fines and Forfeitures go to the County Treasury.

We shall open these further in the particular Grievances and Remedies which follow.





Chapter IV

Of certain notorious and special Grievances objected to be in the Doctrine and Practice of the Law together.

There are certain special and notorious Grievances said to be in the Doctrine and Practice of the Law together some of which have relation to Criminal matters, and the Laws made about them: and some have relation to other things. And as touching Criminal matters, and the Laws made about them,

It is objected,

General Grievances

That there are many good Laws made for the Punishment for the profanation of Gods Day and Name, Drunkenness, Tipling, Whoring, Roguing, Wandering, Idleness, Ale-felling against command, Perjury, Disorderly Servants and Labourers, Fornication, Bastardy, keeping..... **Remainder of book is missing**

