

**CRIMINAL LAW, FALL, 2009 - HANDOUT # 4**

**HRS RULES OF EVID., RULE 306: PRESUMPTIONS IN CRIMINAL PROCEEDINGS.**

**(a) Presumptions against the accused.**

(1) Scope. Except as otherwise provided by statute, in criminal proceedings, presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are *prima facie* evidence of other facts or of guilt, are governed by this subsection.

(2) Submission to jury. When a presumed fact establishes an element of the offense or negatives a defense, the court may submit the presumption to the jury only if a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find the presumed fact beyond a reasonable doubt.

(3) Instructing the jury. The court may not direct the jury to find a presumed fact against the accused. Whenever a presumption against the accused is submitted to the jury, the court shall instruct the jury that, if it finds the basic facts beyond a reasonable doubt, it may infer the presumed fact but is not required to do so. In addition, if the presumed fact establishes an element of the offense or negatives a defense, the court shall instruct the jury that its existence, on all the evidence, must be proved beyond a reasonable doubt.

**(b) Presumptions against the State.** Except as otherwise provided by statute, in criminal proceedings, presumptions against the State, recognized at common law or created by statute, impose on the State either (1) the burden of producing evidence, or (2) the burden of proof.

**(c) Inconsistent presumptions.** If two presumptions are mutually inconsistent, the presumption applies that is founded upon weightier considerations of policy and logic. If considerations of policy and logic are of equal weight, neither presumption applies.

**Overbroad statute will fail.** – If a statute is clear in its terms but sweeps so broadly as to include constitutionally protected conduct as well as unprotected conduct, it will fail. *State v. Kame`enui*, 69 Haw. 620, 753 P.2d 1250 (1988).

**Proscriptions must be stated with clarity.** – Due process of law requires that a penal statute or ordinance state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, or it is void for vagueness. *State v. Kame`enui*, 69 Haw. 620, 753 P.2d 1250 (1988).

**Statutes must give the person of ordinary intelligence a reasonable opportunity to know** what conduct is prohibited, so that he or she may choose between lawful and unlawful conduct. *State v. Kame`enui*, 69 Haw. 620, 753 P.2d 1250 (1988).

**Improper shifting of burden of proof.** – There was a substantial risk that the jury may have reached its verdict by improperly shifting the burden of proof from the prosecution to defendant, and such burden shifting violates the due process clauses of the fourteenth amendment to the United States Constitution and article I, § 5 of the Hawaii Constitution. *State v. Maelega*, 80 Haw. 172, 907 P.2d 758 (1995).

Trial court's failure to instruct jury that statutory presumption contained in § 708-801(4) was a permissive inference of fact, and thus not binding upon jury as factfinders, violated defend-

ant's due process rights. *State v. Mitchell*, 88 Haw. 216, 965 P.2d 149 (Ct. App. 1998).

**Statutory Interpretation:** Statutes in derogation of the common law will be strictly construed and under the rule of strict construction it is not to be presumed that the lawmakers intended to abrogate or modify a rule any further than that which is expressly declared or clearly indicated. *Akai v. Lewis*, 37 Haw. 374, rehearing denied, 37 Haw. 380 (1946).

Decisions of the supreme court rejecting common law are given the force of a statute. *Kahanamoku v. Advertiser Publishing Co.*, 25 Haw. 701 (1920).

**§ 1-15 Construction of ambiguous context.**

Where the words of a law are ambiguous:

- (1) The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.
- (2) The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.
- (3) Every construction which leads to an absurdity shall be rejected.

**Police power.** – An act providing for the erection of public laundries, forbidding the carrying on of the business of laundry keeping or washing for hire within a circuit of three miles from the junction of Nu`uanu and King streets in Honolulu, was an exercise of the police power with regard to the comfort, welfare and safety of society, and was constitutional. *The King v. Tong Lee*, 4 Haw. 335 (1880).

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**FROM: HOWELL'S STATE TRIALS, VOL. 6, Page 951 (6 How. 951).1**

**230. THE TRIAL OF WILLIAM PENN AND WILLIAM MEADE, AT THE OLD BAILEY, FOR A TUMULTUOUS ASSEMBLY: 22 CHARLES II. A. D. 1670. [WRITTEN BY THEMSELVES.]<sup>1</sup>**

**PRESENT,**

Sam'l Starling, mayor;

Tho. Howell, Judge of Recorder's Court;

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<sup>1</sup>[To the account printed in 1670 there is this Introduction : "As there can be no observation where there is no action; so it is impossible, there should be a judicious intelligence, without due observation. And since there can be nothing more seasonable than a right information, especially of Public Acts; and well knowing, how industrious some will be, to misrepresent this Trial to the disadvantage of the cause and prisoners, it was thought requisite, in defence of both, and for the satisfaction of the people, to make it more public; nor can there be any business wherein the people of England are more concerned, than in that which relates to their civil and religious liberties, questioned in the persons above named, at the Old-Bailey, the 1st, 3rd, 4th, and 5th, of Sept. 1670."]

Tho. Blutworth, William Peak, John Robinson, Richard Ford, and Joseph Sheldon, aldermen;

John Smith and James Edwards, sheriffs; and

Richard Browne.

**Cryer:** O Yes!<sup>2</sup> Thomas Veer, Edward Bushel, John Hammond, Charles Milson, Gregory Walklet, John Brightman, William Plumsted, Henry Henley, Thomas Damask, Henry Michel, William Lever, John Baily, you shall well and truly try, and true deliverance make betwixt our sovereign lord the king, and the prisoners at the bar, according to your evidence. So help you God!

The Indictment sets forth, “That William Penn, Gentleman, and William Meade, late of London, linen draper, with divers other persons to the jurors unknown, to the number of 300, the 14<sup>th</sup> day of August in the 22<sup>d</sup> year of the king, about eleven of the clock in the forenoon, the same day, with force and arms, etc. in the parish of St. Bennet Grace-church in Bridgeward, London, in the street called Grace-church street, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the peace of the said lord the king: and the aforesaid William Penn and William Meade, together with other persons to the jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid William Penn, by agreement between him and William Meade, before made, and by abetment of the aforesaid William Meade, then and there, in the open street, did take upon himself to preach and speak, and then and there did preach and speak unto the aforesaid William Meade, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of people in the street aforesaid, then and there, a long time did remain and continue, in contempt of the said lord the king, and of his law, to the great disturbance of his peace; to the great terror and disturbance of many of his liege people and subjects, to the ill example of all others in the like case offenders, and against the peace of the said lord the king, his crown and dignity.”

What say you, William Penn and William Meade, are you Guilty, as you stand indicted, in manner and form, as aforesaid, or Not Guilty?

**Penn:** It is impossible that we should be able to remember the Indictment *verbatim*, and therefore we desire a copy of it, as is customary on the like occasions.

**Court.:** You must first plead to the indictment, before you can have a copy of it.

**Penn:** I am unacquainted with the formality of the law, and therefore before I shall answer directly, I request two things of the court: 1. That no advantage may be taken against me, nor I deprived of any benefit, which I might otherwise have received. 2. That you will promise me a fair hearing, and liberty of making my defence.

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<sup>2</sup> From the Norman French “Oyez,” [Listen] – a command to stop talking and listen to the proceedings.

**Court:** No advantage shall be taken against you; you shall have liberty; you shall be heard.

**Penn:** Then I plead Not Guilty in manner and form.

**Clerk:** What sayest thou, William Meade, art thou Guilty in manner and form, as thou standest indicted, or Not Guilty?

**Meade:** I shall desire the same liberty as is promised William Penn.

**Court:** You shall have it.

**Meade:** Then I plead Not Guilty in manner and form.

**Obser.** [The Court adjourned until the afternoon.]

**Clerk:** O Yes, etc. Bring William Penn and William Meade, to the bar.

**Mayor:** Sir, who bid you put off their hats? Put on their hats again.

**Obser.** Whereupon one of the officers putting the prisoners hats upon their heads (pursuant to the order of the court) brought them to the bar.

**Court:** Do you know where you are?

**Penn:** Yes.

**Court:** Do not you know it is the king's court,

**Penn:** I know it to be a court, and I suppose it to be the king's court.

**Court:** Do you not know there is respect due to the court ? —

**Penn:** Yes.

**Court:** Why do you not pay it then?

**Penn:** I do so.

**Court:** Why do you not pull off your hat then?

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

**Court:** Well, the court sets forty marks a piece upon your heads, as a fine for your contempt of the court.

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

**Meade:** I have a question to ask the Court: am I fined also?

**Court:** Yes.

**Meade:** I desire the Jury, and all people to take notice of this injustice of the Court. Who spake to me to pull off my hat? and yet hath he put a fine upon my head. . . .

**Obser:** J. Robinson, lieutenant of the Tower, disingenuously objected against Edward Bushel, as if he had not kissed the book, and therefore would have him sworn again: though indeed it was on purpose to have made use of his tenderness of conscience in avoiding reiterated oaths, to have put him by his being a juryman, apprehending him to be a person not fit to answer their arbitrary ends. The Clerk read the Indictment, as aforesaid.

**Clerk:** Call James Cook into the court, give him his oath. James Cook, lay your hand upon the book . The evidence you shall give to the court, betwixt your sovereign the king, and the prisoners at the bar, shall be the truth, and the whole truth, and nothing but the truth. So help you God.

**Cook:** I was sent for from the Exchange to go and disperse a meeting in Gracechurch-Street, where I saw Mr. Penn speaking to the people, but I could not hear what he said, because of the noise. I endeavoured to make way to take him, but I could not get to him for the crowd of people; upon which Capt. Meade, came to me, . . . and desired me to let him go on; for when he had done, he would bring Mr. Penn to me.

**Court:** What number do you think might be there?

**Cook:** About three or four hundred people.

**Court:** Call Richard Read, give him his oath.

**Obser.:** [Read being sworn was asked, What do you know concerning the prisoners at the bar?

**Read:** My lord, I went to Gracechurch-Street, where I found a great crowd of people, and I heard Mr. Penn preach to them; and I saw capt. Meade, speaking to lieutenant Cook, but what he said, I could not tell.

**Meade:** What did William Penn say?

**Read:** There was such a great noise, that I could not tell what he said.

**Meade:** Jury, observe this evidence, he saith he heard him preach, and yet saith, he doth not know what he said. Jury, take notice, he swears now a clean contrary thing to what he swore before the mayor when we were committed: for now he swears that he saw me in Gracechurch-Street, and yet swore before the mayor, when I was committed, that he did not see me there. I appeal to the mayor himself, if this be not true. But no answer was given.

**Court:** What number do you think might be there?

**Read:** About four or five hundred. . . .

**Penn:** Did he speak to me, or let me know he was there? for I am very sure I never saw him.

**Clerk:** Call [Mr. Blank] into the court.

**Court:** Give him his oath.

**Blank:** My lord, I saw a great number of people, and Mr. Penn, I suppose, was speaking; I saw him make a motion with his hands, and heard some noise, but could not understand what he said. But for capt. Meade, I did not see him there.

**Court:** What say you, Mr. Meade, were you there?

**Meade:** It is a maxim in your own law, "*Nemo tenetur accusare seipsum*," which if it be not true Latin, I am sure it is true English, "That no man is bound to accuse himself." And why dost thou offer to ensnare me with such a question? Doth not this shew thy malice? Is this like unto a judge, that ought to be counsel for the prisoner at the bar?

**Court:** Sir, hold your tongue, I did not go about to ensnare you. . . .

**Penn:** I affirm I have broken no law, nor am I Guilty of the indictment that is laid to my charge;

and to the end the bench, the jury, and myself, with these that hear us, may have a more direct understanding of this procedure, I desire you would let me know by what law it is you prosecute me, and upon what law you ground my indictment.

**Court:** Upon the common-law.

**Penn:** Where is that common-law?

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

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

**Court:** Sir, will you plead to your indictment?

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

**Court:** You are a saucy fellow, speak to the Indictment.

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

**Obser:** At this time several upon the Bench urged hard upon the Prisoner to bear him down.

**Court:** The question is, whether you are Guilty of this Indictment?

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

**Court:** You are an impertinent fellow, will you teach the court what law is? It is "*Lex non scripta*" that which many have studied 30 or 40 years to know, and would you have me to tell you in a moment?

**Penn:** Certainly, if the common law be so hard to be understood, it is far from being very common; but if the lord Coke in his Institutes be of any consideration, he tells us, That Common-Law is common right, and that Common Right is the Great Charter [*Magna Charta*] . . .

**Court:** Sir, you are a troublesome fellow, and it is not for the honour of the court to suffer you to go on.

**Penn:** I have asked but one question, and you have not answered me ; though the rights and privileges of every Englishman be concerned in it.

**Court:** If I should suffer you to ask questions till to-morrow morning, you would be never the wiser.

**Penn:** That is according as the answers are.

**Court:** Sir, we must not stand to hear you talk all night.

**Penn:** I design no affront to the court, but to be heard in my just plea: and I must plainly tell you, that if you will deny me Oyer of that law, which you suggest I have broken, you do at once deny me an acknowledged right, and evidence to the whole world your resolution to sacrifice the privileges of Englishmen to your sinister and arbitrary designs.

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

**Mayor:** Take him away, take him away, turn him into the bale-dock. . . .

**Penn:** [I]s this justice or true judgment? Must I therefore be taken away because I plead for the fundamental laws of England?

However, this I leave upon your consciences, . . . that if these ancient fundamental laws, which relate to liberty and property, (and are not limited to particular persuasions in matters of religion) must not be indispensably maintained and observed, who can say he hath right to the coat upon his back? Certainly our liberties are openly to be invaded, our wives to be ravished, our children slaved, our families ruined, and our estates led away in triumph by every sturdy beggar and malicious informer, as their trophies[.] . . .

**Court:** Be silent there.

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

**Obser:** They having rudely haled him into the Bale-dock, William Meade, they left in court, who spake as followeth.

**Meade:** You men of the jury, here I do now stand, to answer to an Indictment against me, which is a bundle of stuff, full of lies and falshoods; . . . I say, I am a peaceable man, therefore it is a very proper question what William Penn demanded in this case, an *oyer* of the law, on which our Indictment is grounded.

**Court:** I have made answer to that already.

**Meade:** You men of the jury, . . . if the Court will not tell you what makes a riot, a rout, or an unlawful assembly, . . . the lord Coke, tells us what makes a riot, a rout and an unlawful assembly. A riot is when three or more, are met together to beat a man, or to enter forcibly into another man's land, to cut down his grass, his wood or break down his pales.

**Obser:** Here the Court interrupted him, and said, "I thank you, sir, that you will tell me what the law is," scornfully pulling off his hat.

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

**Mayor:** You deserve to have your tongue cut out. . . .

**Court:** If you discourse on this manner, I shall take occasion against you.

**Meade:** Thou didst promise me I should have fair liberty to be heard! why may I not have the privilege of an Englishman? I am an Englishman, and you might be ashamed of this dealing.

**Court:** I look upon you to be an enemy to the laws of England, which ought to be observed and kept, nor are you worthy of such privileges as others have.

**Meade:** The Lord is judge between me and thee in this matter.

**Obser.** Upon which they took him away into the Bale-dock, and the Court proceeded to give the Jury their charge, as followeth:

**Court:** You have heard what the Indictment is, It is for preaching to the people, and drawing a tumultuous company after them, and Mr. Penn was speaking; if they should not be disturbed, you see they will go on; there are three or four witnesses that have proved this, that he did preach there; that Mr. Meade, did allow of it: after this you have heard by substantial witnesses what is said against them : now we are upon the matter of fact, which you are to keep to, and Observe as what hath been fully sworn at your peril.

**Obser:** The prisoners were put out of the court into the Bale-dock, and the charge given to the jury in their absence, at which W. Penn with a very raised voice, it being a considerable distance from the bench, spake.

**Penn:** I appeal to the jury . . . and this great assembly, whether the proceedings of the court are not most arbitrary, and void of all law, in offering to give the jury their charge in the absence of the prisoners ; . . .

**Obser.** The Court being thus unexpectedly lashed for his extrajudicial procedure, said with an enraged smile.

**Court:** Why, ye *are* present, you *do* hear, do you not?

**Penn:** No thanks to the court, that commanded me into the Bale-dock; and you of the jury, take notice, that I have not been heard, neither can you legally depart the Court before I have been fully heard, . . .

**Court:** Pull that fellow down, pull him down.

**Meade:** Are these according to the rights and privileges of Englishmen, that we should not be heard, but turned into the Bale-dock, for making our defence, and the jury to have their charge given them in our absence? I say these are barbarous and unjust proceedings.

**Court:** Take them away into the Hole: To hear them talk all night as they would, that I think doth not become the honour of the court . . .

**Obser.** The Jury were commanded up to agree upon their verdict, the prisoners remaining in the stinking hole. After an hour and a half's time eight came down agreed, but four remained above; the court sent an officer for them, and they accordingly came down.

The Bench used many unworthy threats to the four that dissented; and the Court, addressing himself to Bushel, said, "Sir, you are the cause of this disturbance, and manifestly shew yourself an abettor of faction; I shall set a mark upon you, Sir."

**J. Robinson.** Mr. Bushel, I have known you near this 14 years; you have thrust yourself upon this jury, because you think there is some service for you: I tell you, you deserve to be indicted more than any man that hath been brought to the bar this day.

**Bushel:** No, Sir John, there were threescore before me, and I would willingly have got off, but

could not.

**Bloodworth:** I said, when I saw Mr. Bushel, what I see is come to pass, for I knew he would never yield. Mr. Bushel, we know what you are.

**Mayor:** Sir, you are an impudent fellow, I will put a mark upon you.

**Obser:** They used much menacing language, and behaved themselves very imperiously to the jury, as persons not more void of justice than sober education: After this barbarous usage, they sent them to consider of bringing in their verdict, and after some considerable time they returned to the Court. Silence was called for, and the jury called by their names,

**Clerk:** Are you agreed upon your verdict?

**Jury & Bushell** Yes.

**Clerk:** Who shall speak for you ?

**Jury & Bushell** Our Foreman..

**Clerk:** Look upon the prisoners at the bar; how say you? Is William Penn Guilty of the matter whereof he stands indicted in manner and form, or Not Guilty?

**Bushell:** Guilty of speaking in Grace-church street.

**Court:** Is that all ?

**Bushell:** That is all I have in commission.

**Court:** You had as good say nothing.

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

**Bushell.** My Lord, This is all I had in commission.

**Obser.** Here some of the jury seemed to buckle to the questions of the Court: upon which, Bushel, Hammond, and some others, opposed themselves, and said, they allowed of no such word as an unlawful assembly in their Verdict; at which the Court, Mayor, Robinson and Bloodworth took great occasion to vilify them with most opprobrious language; and this verdict not serving their turns, the Court expressed himself thus:

**Court:** The law of England will not allow you to part till you have given in your Verdict.

**Jury & Bushell:** We have given in our Verdict, and we can give in no other.

**Court:** Gentlemen, you have not given in your Verdict, and you had its good say nothing; therefore go and consider it once more, that we may make an end of this troublesome business.

**Jury & Bushell:** We desire we may have pen, ink, and paper.

**Obser.** The Court adjourned for half an hour; which being expired, the Court returns, and the Jury not long after. The Prisoners were brought to the bar, and the Jury's names called over.

**Clerk.** Are you agreed of your Verdict?

**Jury & Bushell:** Yes.

**Clerk:** Who shall speak for you?

**Jury & Bushell:** Our Foreman.

**Clerk:** What say you? Look upon the prisoners: Is William Penn Guilty in manner and form, as he

stands indicted, or Not Guilty?

**Bushell:** Here is our Verdict; holding forth a piece of paper to the clerk of the peace, which follow:

We the jurors, hereafter named, do find William Penn to be Guilty of speaking or preaching to an assembly, met together in Gracechurch-street, the 14th of August last, 1670, And that William Meade, is Not Guilty of the said Indictment. . . .

**Obser.** This both Mayor and Court resented at so high a rate, that they exceeded the bounds of all reason and civility.

**Mayor:** What, will you be led by such a silly fellow as Bushel? an impudent canting fellow? I warrant you, you shall come no more upon juries in haste: You are a Bushell indeed, (addressing himself to Bushell), I thought you, had understood your place better.

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

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

**Court:** Stop that prating fellow's mouth, or put him out of the court. **Mayor** You have heard that he preached, that he gathered a company of tumultuous people, and that they do not only disobey the martial power, but civil also.

**Penn:** It is a great mistake: we did not make the tumult, but they that interrupted us: The jury cannot be so ignorant as to think that we met there, with a design to disturb the civil peace, . . . : it is very well known that we are a peaceable people, and cannot offer violence to any man.

**Obser:** The court being ready to break up, and willing to huddle the prisoners to their gaol, and the jury to their chamber, Penn spoke as follows:

**Penn:** The agreement of 12 men is a verdict in law, and such a one being given by the jury, I require the clerk of the peace to record it, as he will answer it at his peril. And if the jury bring in another verdict contradictory to this, I affirm they are perjured men in law; And looking upon the jury, said, You are Englishmen, mind your privilege, give not away your right.

**Jury & Bushell:** Nor will we ever do it.

**Obser:** One of the jury-men pleaded indisposition of body, and therefore desired to be dismissed.

**Mayor:** You are as strong as any of them; starve them; and hold your principles.

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

**Jury & Bushell:** We are agreed, we are agreed, we are agreed.

**Obser:** The court swore several persons, to keep the Jury all night without meat, drink, fire, or any other accommodation; they had not so much as a chamber pot, though desired. . . .

**Clerk.** O Yes, etc. — Silence in the court, upon pain of imprisonment.

**Clerk:** Are you agreed upon your verdict?

**Jury & Bushell:** Yes.

**Clerk:** Who shall speak for you? . . .

**Jury:** Our Foreman.

**Clerk:** Look upon the prisoners. What say you? Is William Penn Guilty of the matter whereof he stands indicted, in manner and form, etc. or Not Guilty? **Bushell:** Here is our Verdict in writing, and our hands subscribed.

**Obser.** The clerk took the Paper, but was stopped by the Court from reading of it; and he commanded to ask for a positive Verdict.

**Bushell:** That is our Verdict; we have subscribed to it.

**Clerk.** How say you? is William Penn Guilty, etc. or Not Guilty.

**Bushell:** Not Guilty.

**Clerk:** How say you? is William Meade,el Guilty, etc. or Not Guilty?

**Bushell:** Not Guilty.

**Clerk.** Then hearken to your Verdict; you say that William Penn is Not Guilty in manner and form as he stands indicted; you say that William Meade,el is Not Guilty in manner and form as he stands indicted, and so you say all?

**Jury & Bushell:** Yes, we do so.

**Obser:** The Bench being unsatisfied with the Verdict, commanded that every person should distinctly answer to their names, and give in their Verdict, which they unanimously did in saying, Not Guilty, to the great satisfaction of the assembly.

**Court:** I am sorry, gentlemen, you have followed your own judgments and opinions, rather than the good and wholesome advice which was given you; . . . but for this the Court fines you 40 marks a man; and imprisonment till paid. . . .

**Penn:** I demand my liberty, being freed by the Jury.

**Mayor:** No, you are in for your fines.

**Penn:** Fines, for what?

**Mayor:** For contempt of the Court.

**Penn:** I ask, if it be according to the fundamental laws of England, . . . since it expressly contradicts the 14th and 29th chapters of the Great Charter of England, which say, 'No freeman ought to be amerced but by the oath of good and lawful men of the vicinage.

**Court:** Take him away, take him away, take him out of the Court.

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

**Obser:** They hauled the prisoners into the Bale-dock, and from thence sent them to Newgate, for nonpayment of their fines; and so were their Jury. But the Jury were afterwards discharged

upon a *Habeas Corpus*, returnable in the Common-Pleas, where their commitment was adjudged illegal.

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The Copy of Judge KEELING'S Case,[9] takes out of the Parliament Journal. *December* 11th, 1667.

The House resumed the bearing of the rest of the report touching the matter of restraints upon juries; and that upon the examination of divers witnesses, in several clauses of restraints, put upon juries, by the Lord Chief Justice Keeling; whereupon the committee made their resolutions, which are as followeth:

1. That the proceedings of the Lord Chief Justice, in the cases now reported, are innovations, in the trial of men for their lives and liberties; and that he hath used an arbitrary and illegal power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government.
2. That in the place of judicature, the Lord Chief Justice hath under-valued, vilified, and condemned Magna Charta, the great preserver of our lives, freedom, and property.
3. That he be brought to trial, in order to condign punishment, in such manner as the House shall judge most fit and requisite.'

*December* 13th 1667.

Resolved, etc.'That the precedents and practice of fining or imprisoning jurors, for verdicts, is illegal. [ See Throgmorton's Case, vol. 1, p. 901; and the *Case of Lilburne's Jury*, Aug. 1653, *ante*, vol. 5, p. 445.

The practice heretofore in use of fining, imprisoning or otherwise punishing jurors, merely at the discretion of the court, for finding their verdict contrary to the direction of the judge, was arbitrary, unconstitutional and illegal; and is treated as such by sir Thomas Smith, 200 years ago; who accounted such doings to be very violent, tyrannical and contrary to the liberty and custom of the realm of England. [Smith's Commonw. 1. 3, c. 1.]

For, as Sir Matthew Hale well Observes [2 Hal. P. C. 313.] it would be a most unhappy case for the judge himself, if the prisoner's fate depended upon his directions: — unhappy also for the prisoner; for if the judge's opinion must rule the verdict, the trial by jury would be useless."

For the outcome of Foreman Bushell's case, see:

<http://www.constitution.org/trials/bushell/bushell.htm>