

esses the power and authority of the Divine Teacher whom he worships, and leads him to disregard all rights, or usages, or laws which interfere with the end which he is thus taught to believe he has a divine commission to accomplish, or with the authority which he believes he is commissioned to enforce."

Before he was enlightened by these and similar arguments, the Lord President Hope, with all preceding lawyers, had fully admitted the independence and legislative power in spiritual matters which belonged to the Church of Scotland. In particular, he recognised the constitutional character of the right which the Assembly 1833 exercised, when it raised the ministers of the Parliamentary Churches to the standing of Parish ministers in reference to spiritual matters—He then said, "This was a matter within the proper province of the Assembly. They had the power to pass such an act, and they exercised that power.—And I see no conflict between the provisions of this act and those of the statute. The Parliament on the one hand, and the Assembly on the other, *each being supreme in its own province*, passed their respective enactments, both tending towards the same end, and the last being in supplement of the first. The Assembly made no disjunction of the parishes *quoad civilia*, but it declared the ministers to be members of all Church courts and it also declared them to possess all the privileges of the parish ministers of Scotland, AND THAT THE ASSEMBLY ALONE COULD DO." After the reception of the new light, the same Judge could allow himself to say, in the Auchterarder Case (Robertson's Report, vol. II P. 10), "that our Saviour is the Head of the Kirk of Scotland in any temporal or legislative or judicial sense, is a position, which I can dignify by no other name, than absurdity. The PARLIAMENT is the temporal head of the Church, from whose acts, and from whose acts alone, it exists as the national Church, and from which alone it derives all its powers."—His Lordship would seem to have imagined that what the Church of Scotland resisted in the seventeenth century was, not the supremacy of any earthly power, as in opposition to the supremacy of the Lord Jesus Christ; but the supremacy of the King, as in opposition to that of Parliament. It was, however, an act of Parliament which, in 1669, asserted "His Majesty's supremacy over all persons, and in all causes Ecclesiastical;" but ev-

en to that Parliamentary authority the Church would not bow; and it has been shown that that act was abrogated in 1690, as being "inconsistent with the establishment of the Church government now desired." With all deference, therefore, for his Lordship's opinion, and doing full justice to the learning and ingenuity of the Dean's argument, it may be observed, that this single circumstance shows that in 1690 Parliament did not feel that it had any supremacy over the Church of Scotland—that, on the contrary, instead of moulding that Church to its mind, it had just to accommodate its legislation to the already recognised principles of the Church which the nation desired to have established. The Lord President's arguments drawn from the Court of Cassation in France, and the Court of Queen's Bench in England, can be no warrant for the assumption of a similar jurisdiction by the Court of Session, which, by the very terms of its appointment, was confined within a more limited range of jurisdiction than these Courts, even in temporal affairs; and could still less be a warrant for the assumption of authority over a Church, which was established as a body whose principles and whose practice had uniformly repudiated the idea of acknowledging any head but the Lord Jesus Christ.

When views such as have been thus expressed by the Lord President could influence the judgments delivered in the Court of Session, it is not surprising to find that in the House of Peers the reasons assigned by the Law Lords who expressed their opinions on the Auchterarder Case, in the two different stages in which by appeal it was brought under their consideration, were drawn, not from the peculiar constitution of the Church which was established at the Revolution—not from the acts of the Scottish Parliament guaranteeing the privileges which were supposed to have been subsequently secured to her in perpetuity by the Act of Security at the Union with England, but from supposed analogies of English law, and from modes of proceeding in certain matters affecting the Church of England—a Church which expressly acknowledges the sovereign as supreme "in all causes Ecclesiastical." Overlooking the peculiarities of the establishment of the Church of Scotland, Lord Brougham is reported to have said, in delivering his opinion on the Case for damages against the Presbytery of Auchterarder