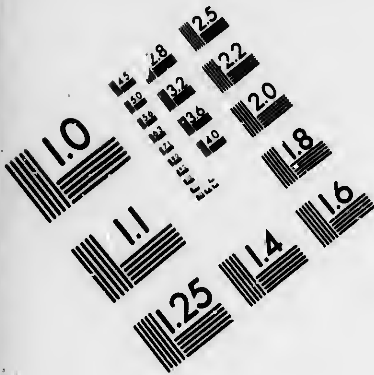

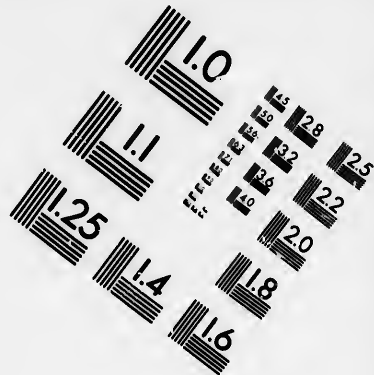

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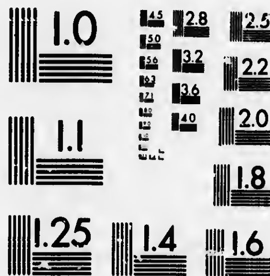

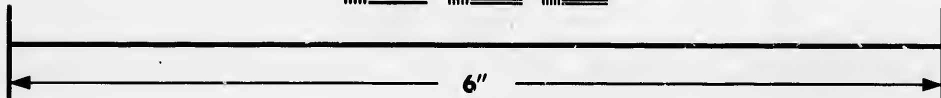

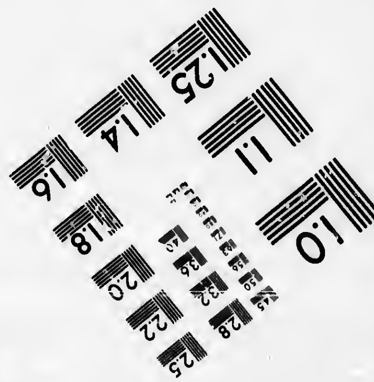

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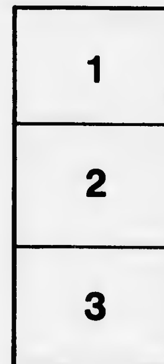

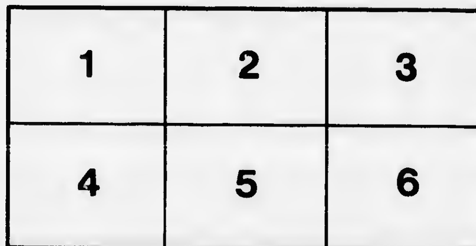

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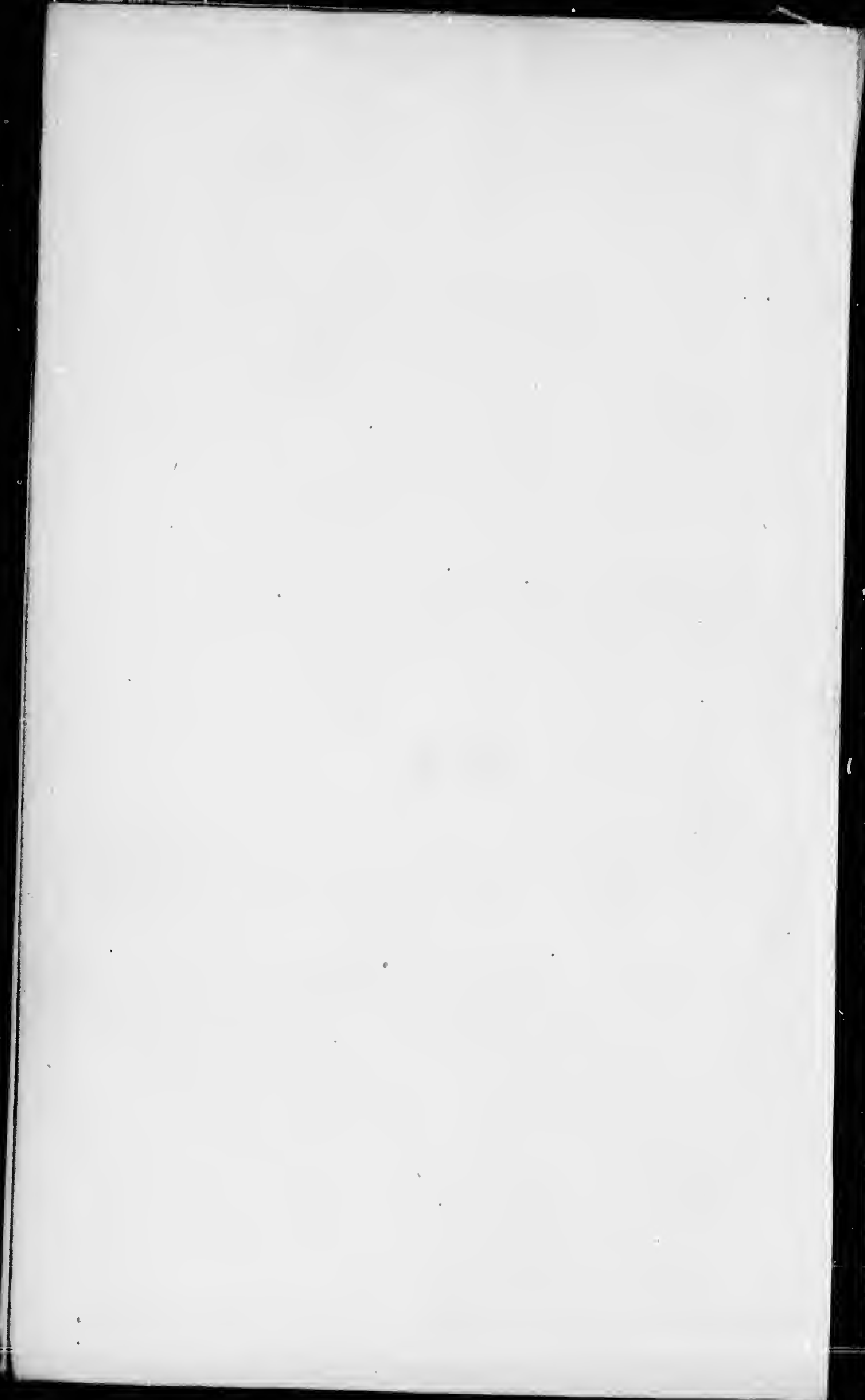

REMARKS
ON THE
PRINCIPAL ACTS
OF THE
THIRTEENTH PARLIAMENT
OF
GREAT BRITAIN.

By the AUTHOR of LETTERS concerning the Preſent State of POLAND.

> Gardons nous de ce reſpect humain, quand il s'agit des fautes publiques que le malheur des tems a arrachés a des corps reſpectables. On ne ſauriot trop les mettre au jour, ce ſont des phares qui avertiſſent ces corps toujours ſubſiſtans de ne plus ſe briſer aux mêmes ecueils.

VOL. I.

Containing REMARKS on the ACTS relating to the COLONIES, WITH A PLAN OF RECONCILIATION.

LONDON,
Printed for T. PAYNE, at the MEWS-GATE.
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PREFACE.

THE oppoſite and irreconcilable characters beſtowed by different perſons on the laſt parliament had long perplexed me. To the virulent effuſions of maddening faction, to the abuſive bead-roll of cant ſentences echoed from inferior quarters, I paid little heed; but when grave magiſtrates, in addreſſes to the throne; when famous orators, within the walls of the houſe itſelf, repreſented parliament as the betrayer, not the guardian of the rights of the people; when others as loudly exalted its wiſdom, firmneſs, and independence; it then became at once more intereſting, and more difficult to decide what was the character that parliament deſerved.

The intereſt which every citizen muſt take in ſuch a queſtion was much increaſed by the very firſt appearances of the election that ſucceeded. At firſt ſight it appeared that a large majority of the ſame members would be returned to the next parliament. If the thirteenth parliament then deſerved one half of the reproaches with which it had been ſo plentifully laden, we might expect before the end of the fourteenth to be in that ſort of ſtate, in which it would behove every prudent and every honeſt citizen to lay aſide all confidence in *electors* or *elected*, and take the charge of his ſecurity into his own hands.

To put my mind at eaſe, I determined to ſit down and examine coolly the principal tranſactions of that aſſembly; and, without borrowing my opinion either from its liſted advocates, or defamers, form my judgment from its own records.

Of

Of the reſult of that examination, what is here, with all due deference, ſubmitted to the public, is a part. In ſubmitting it, however, I would wiſh to obviate two objections to which this attempt may ſeem at firſt ſight liable. Some will cenſure it as *indecent*; for what can be more indecent, if we may believe a celebrated commentator*, than for a private man to paſs judgment on the acts of the legiſlature?—Others may ſlight it as *unfiniſhed*.

In anſwer to the firſt charge, that of indecency, I would aſk whether it be indecent to examine, to reflect? Now every man who reflects at all, muſt either approve, or diſapprove, or ſuſpend his judgment. If he approves, it is becauſe the thing approved of is conformable to

* Blackſtone, Com. iv. 50. He is there ſpeaking of a crime being of a much *groſſer* nature, than another which he there mentions, "ſince "it carries with it the utmoſt *indecency*, arrogance, "and ingratitude. Indecency, by ſetting up pri- "vate judgment in oppoſition to public au- "thority."

his own ideas: if he diſapproves, it is becauſe it is repugnant to his own ideas:—if he keeps himſelf in ſuſpenſe, it is becauſe it is partly conformable, and partly repugnant. There appears to me to be no more indecency in one of theſe operations than in another. If it be thought arrogant to expreſs that opinion, I have only to ſay, that even in the moſt deſpotic governments it is allowed to ſpeak freely of *deceaſed ſovereigns*.—In France it is permitted; in Egypt it was ordained. In this country, which ſome are pleaſed to call *free*, though not pleaſed, we find, with the only means by which it can be kept ſo;—in this country a diſſolved parliament is a deceaſed ſovereign.—In Egypt, a deſpotic government, the cuſtom of pronouncing orations at the embalming of their kings, was eſtabliſhed as a means of inciting the reigning prince to reform the errors, ſupply the defects, and perfect the good deſigns of his predeceſſor.—Let theſe Remarks be conſidered in the ſame light.—

Should

Should the end propoſed by them be in any degree attained, I ſhall have the merit of having ſerved my country.—Should it totally fail, there is no demerit in the endeavour.

The motive I can be ſure of: it is of the pureſt kind;—the wiſh of doing good;—unconnected with any party; too proud to be dependent on any: of too little conſequence to be ſought by any, I ſpeak, but as I feel.—Wherever I think parliament has acted as the faithful guardian of our rights and liberties, I ſhall gratefully applaud:—where I think it has ſacrificed them,—I ſhall as freely cenſure. For this I plead my motto in excuſe.

To the ſecond charge, that of offering but a part of a work to the public, I can only ſay, that *this* part is all that is *now* ready:—that it takes in the whole of the particular ſubject it treats of; and that this ſubject would form a *whole* of itſelf:—it is independent of, and but accidentally connected with any other:

—if this part is tolerably well executed, I shall be pardoned for sending it out alone; —if it be ill executed, the public I am sure will forgive me for not having troubled them with more.

I had another reason for not retaining this part till the whole was finished.—The subject of these remarks is now before the legislature. If ever therefore "my poor "opinion" * can be worth attending to, it is now.

I have only to add, that the objects of the legislature in the acts here examined, were some of the most difficult that ever came before this, or indeed any parliament. —It was therefore natural, that the acts themselves should be liable to the greatest objections. In other instances, I believe, it will be found, that we owe to it more beneficial acts than to any other parliament from the revolution to this hour.

* I believe this *phrase* is borrowed from a famous orator.—But I may venture to say, that we attach very different ideas to the same signs.

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DESIGN.

THE object of the acts here conſidered was to ſecure the dependence of the colonies upon the mother-country: a more important one has ſeldom come before a parliament; few in which greater, or more complicated intereſts were involved: "moſt "certainly it called for the whole wiſdom of "the wiſeſt among them *."

A ſubject in which not only the general intereſts of the ſtate, but the particular intereſts of ſo many individuals are ſo deeply concerned, muſt have produced many appeals to the public. Every man thought himſelf at liberty, ſome thought themſelves engaged to give their opinions; much novelty, therefore, will not be expected.

My chief aim will be, to collect the various arguments as they lie ſcattered in different writers, to reduce them each to its pro-

* Mr. Burke's Speech to the Electors of Briſtol.

per

per clafs, to prefent them to the reader in that point of view, in which alone they are applicable to the queftions we are are to examine.

In the difcuffion of thefe queftions we fhall reap little benefit from the dogmatic tone of general affertion, from the ingenuity of metaphor, or from the pompous difplay of "thofe gratuitous and acknowledged truths, "which being generally received, are little "doubted, and being little doubted have "been rarely proved *." To many of the latter clafs one general anfwer would fuffice. "To be prejudiced is always to be weak †."

What avails it to tell us, that "a colony "is to the mother-country as a member to "the body, deriving its action and its "ftrength from the general principle of vi- "tality ‡. The colonifts may fmile perhaps at the pomp with which the hackneyed metaphor is reproduced; but they will add, "If "you think us incurably tainted, fubmit us "to amputation, you will find we have a "principle of vitality within ourfelves; we "fhall not perifh like a putrid limb."

* See Taxation no Tyranny, p. 1.
† See ibid. p. 3.
‡ See ib. p. 28.

What

What avails it to tell us, that "the juſt, "wiſe, and neceſſary conſtitutional ſuperiori- "ty of Great Britain over her colonies ſhould "be maintained unimpaired, and undiminiſh- "ed *?" But *one* American has yet denied the poſition †.

What avails it to tell us, that the ſuperiority of Great Britain over her colonies is not to annihilate the liberties of the Americans, is not "to put them in a ſituation "not becoming a freeman *?" Theſe truths, what courtier is *hardy* enough to diſpute?

If you mean to inſtruct us, go one ſtep farther, teach us to apply each our own maxim to our own caſe: define this conſtitutional ſuperiority of Great Britain: teach us to reconcile Britiſh ſuperiority with American liberty *. This is not a queſtion of the ſchools, to be decided by random maxims, or apophthegms of the ſages.

What avails it to cite detached unconnected opinions from writers on our laws? This is not a queſtion before a common court of juſtice, acknowledged to be com-

* Mr. Burke's Speech to the Electors of Briſtol.

† Dr. Franklin, as cited by Dr. Tucker, but it is ſince ſaid the performance which the dean refers to is not Dr. Franklin's.

petent by both the contending parties. On this question the opinions of judges and council have no doubt their weight; but will the Americans allow them to be decisive? If they would, with all due deference to so formidable a body, the writings of lawyers are like two-edged weapons, they cut at friend and foe. Whoever is acquainted with them will be ready enough to acknowledge, that there is not in the world a more fluctuating, we may boldly say, a more fallacious guide.

There is no maxim so unconstitutional, no two maxims so contradictory, that I would not undertake to prove from the writings or opinions of some of them *. It

* Thus Lord Coke is cited by the author of "the "Appeal to Justice, and the interest of the people of "Great Britain in the present Disputes with America." Coke had said, "that it is against the franchise of the "land for freemen to be taxed but by their *own con-* "*sent.*" This position was not true in his time: it is still less so in ours: it would disfranchise three-fourths of the inhabitants of Great Britain: three-fourths of us neither are taxers, nor give our voice in the choice of taxers, nor even our consent to the nomination of those who do chuse them. Our security is not that our *consent* is given to every tax, but that our interests and those of the *taxers* are so involved, that in general *we* cannot be taxed without *their* being taxed with us.

It may ſerve the purpoſe of party but not of truth, to mutilate or to miſapply more reſpectable authorities*.

Hard

The ſame writer lays great ſtreſs on the opinions of the judges in the time of Henry VI. and Richard III. reſpecting the power of taxing Ireland. A courtier perhaps might think him anſwered, by citing the opinions of the judges in the time of Charles I. reſpecting ſhip-money. He cites from Bracton, "Auxilia "fiunt de *gratia & non de jure*, cum dependeant ex gratia "tenantium, et non ad voluntatem dominorum." A maxim as plainly contradicted by fact as that other of Lord Coke. Few men I believe pay taxes out of mere *good-will*. To furniſh means for the defence of the community againſt foreign foes, and for the ſecurity of each man's property againſt the fraud or violence of domeſtic invaders—whatever political fanaticiſm may tell us, is a matter of *ſtrict* duty: if Bracton's authority is all-concluſive, what will this writer ſay to another quotation? I hope, and I believe it will, be leſs agreeable to *his* taſte. "Rex eſt vicarius, et mi-"niſter Dei in terrâ, omnis quidem ſub eo eſt, et ipſe "ſub *nullo* niſi tantum ſub *Deo*." I mention this only to ſhew the abſurdity of relying on general and detached maxims laid down by our lawyers.

* The author of the Appeal has prefixed to his work a reſolution of the houſe of commons: he cites it thus: "Reſolved, That the ancient and undoubted rights of "every free man are, that he hath a full and abſolute "property in his goods and eſtate, and cannot be taxed "but by common conſent." The reſolution ſtands thus upon the Journals:—"Reſolved upon the queſ-"tion, that the ancient and undoubted right of every "freeman

Hard words may ſerve to ſhew a man's ſpleen, but they ſerve little to fortify his opinion. Virulent and abuſive language * may carry off a fit of paſſion, but will neither perſuade nor convince.

The only method of determining fairly on the conduct of the late parliament in this important buſineſs, will be to enquire

" freeman is, that he hath a full and abſolute property " in his goods and eſtate, and that no tax, tallage, loan, " benevolence, or other like charge, ought to be com- " manded or levied by the *king*, or *any of his miniſters*, " without common aſſent by *act of parliament*." See Journals of the Houſe of Commons,, Vol. I. p. 878.

The reader ſees, that this reſolution is levelled againſt the unconſtitutional power aſſumed by the *crown*. It was never intended to define the power of *parliament*. To mutilate or miſapply citations of ſuch authority, in a queſtion of ſuch magnitude, is at once impolitic and unfair.

* The author of the Appeal above cited, talks (p. 37). " of the *ideots* who are conducting our preſent mea- " ſures." Of Lord North's ſnuffing up the incenſe of adulation " in the very ſincerity of his vanity and " folly." One feels pain at meeting with theſe illiberal phraſes in a book, which does not otherwiſe want merit. The writers on the miniſterial ſide have kept pace with their antagoniſts in this application of abuſive terms, &c. The phraſes of " rebels," " babes of " grace," are by many of them dealt out with a very liberal hand. The author of " Taxation no Tyranny," in his " terrific " ſtyle, talks of " airy burſts of malevo- " lence ;" and adviſes us " to repel their arguments " with ſcorn rather than refute them by diſputation."

I. *As*

I. *As to the point of Right.*

1. As to the *crown* alone, what is the power with which the conſtitution inveſts that *branch* of the legiſlature over countries conquered, or otherwiſe acquired?

2. As to the *whole body* of the legiſlature, whether its operations can be reſtrained by any acts of the aforenamed branch of it.

3. Again as to the whole body of the legiſlature, whether on the particular point of taxation there be any other principle in the conſtitution to reſtrain its operations?

II. *As to the point of fact.*

1. What were the privileges originally granted by the crown to the colonies?

2. What power preceding parliaments exerciſed over them.

When theſe queſtions are fairly diſcuſſed, and not before, we may venture to give our opinions.

III. *On the merits of the proceedings of the laſt parliament.*

1. Whether they were conſiſtent with the ſpirit of the conſtitution.

2. Whether they were conſiſtent with the dictates of ſound policy.

To enter on the two laſt ſubjects of enquiry before the other points are fully ſettled, would at leaſt be prepoſterous. It would be to begin where we ought to end.

If

If the power vested in the crown, over conquered or acquired countries, be circumscribed within certain bounds, by certain acknowledged rules, all acts done in the exercise of that power, must be measured by those rules, on their conformity to which their validity will depend.

If the acts done in the exercise of that power do not bind or restrain parliament, it is in vain to cite those acts. On this supposition charters are useless parchments,—because *ineffective*.

If there be any principle in our constitution, by which the Americans can claim an exemption from parliamentary taxation, then too charters will be found but useless parchments, because *unnecessary*.

If there be no such principle, then allowing to charters their utmost force, the colonists can plead no exemption from thence, till they have shewn it to be there either specified, or of necessity implied.

If different interpretations be put on the same grants by the contending parties, we must then appeal to usage to decide between them.

If the proceedings of the last parliament be questioned, we must exactly know the situation in which the preceding parliament had left it.

PART I.

ENQUIRY INTO THE MATTER OF RIGHT.

SECT. I.

What is the power with which the Constitution invests the Crown over countries conquered or otherwise acquired?

IN examining this question, some propositions may perhaps be advanced, which are allowed on all hands: these, if any such there be, require no proof; it will be sufficient to state them. If disputed propositions are advanced, we must appeal to history, and precedents, in support of them. History and precedents are *here* the most unexceptionable proofs.

If the king has for a long ſucceſſion of years invariably exerciſed certain powers over conquered, or acquired countries; if the Engliſh or Britiſh parliament has looked on, and allowed the exerciſe of theſe powers; ſuch a tacit conſent is equivalent to a poſitive inſtitution; is a conſtant act of recognition. Precedents then, if uncontradicted by precedents of an oppoſite nature, are concluſive.

Let us begin with the caſe of conquered countries. No man diſputes, that the conſtitution has veſted in the king the power of making war, and making peace. He may grant what terms of capitulation he pleaſes: he may make what articles of peace he ſees fit. This is allowed on all hands.

Terms of capitulation, articles of peace, ought to be underſtood in their plain and natural ſenſe; ought to be ſtrictly, and religiouſly obſerved. This too is allowed on all hands.

Should

Should the king grant improper terms of capitulation, should he sign improper articles of peace, the consequences *might* be fatal to himself: they *ought* to be so to his ministers, and advisers. But still the people capitulating, or treating, ought either to be maintained in the rights and privileges which had been granted them, or restored to the situation they were in at the time of capitulating or treating.

The same, I apprehend, holds true of acquired countries—of settlements, made either in countries vacant, as was the case of Barbadoes; or in countries purchased of, or ceded by the original inhabitants, as was the case of Ireland, and of our colonies in North America.

It appears, that the constitution has vested in the king the power of granting such forms of government to the founders of new settlements, as he judges to be best for the purposes of the settlements; in the same manner as it invests him with the power of granting such

terms of capitulation, ſuch articles of peace to a conquered country, as he judges beſt for the ſecurity of the conqueſt.

Let us conſider the caſe of Ireland.

" An odious fugitive (ſays Dr. Leland*) " driven from his province by faction " and revenge, gains a few adventurers " in Wales, whom youthful valour, or " diſtreſs of fortune, led into Ireland." Theſe adventurers embarked under the ſanction of a general licence from Henry II. king of England. They aſſiſted Dermod, king of Leinſter, in the reduction of his revolted ſubjects. He, in return for this aid, inveſted them with divers towns and diſtricts. This I think can hardly be called a *conqueſt*; it was a *ſettlement* granted by a *friend*, and not a conqueſt made upon an *enemy*.

Soon afterwards Henry went over in perſon to Ireland. He claimed the whole of the iſland. His claim was founded on

* Hiſtory of Ireland, vol. i. p. 21.

a grant

a grant from the late pope Adrian. The adventurers reſigned into the hands of Henry the diſtricts ceded to them by Dermod. To the Engliſh ſettlers in theſe diſtricts, Henry, by his *own* authority, without the intervention of the Engliſh parliament, gave the full enjoyment of the Engliſh government *there*, in their new ſettlements. With the native chieftains, who acknowledged themſelves his tributaries, he made a ſolemn compact *.

He granted, by his *own* authority, the city of Dublin to the inhabitants of Briſtol, with all the liberties and free cuſtoms, in this new ſettlement, which they had enjoyed at Briſtol.

By his *own* authority he granted the town of Waterford to the Oſtmen, with the like enjoyment of the laws of England.

The privileges of the Engliſh law, ſo much at leaſt as conſiſted in the enjoy-

* See Leland's Hiſtory of Ireland, vol. i. p. 77, et ſeq.

ment *there* in Ireland of the ſame conſtitution as the Engliſh ſubjects enjoyed in England, were ſucceſſively granted to the principal of the Iriſh lords, as they ſubmitted to the king.

Some time afterward we ſee Henry, of his own mere motion, and power, granting the lordſhip of Ireland to his ſon John. It was done (ſays the hiſtorian *) in "conſilio generali: coram epiſcopis, "et principibus terræ." But it does not appear, according to Dr. Leland, that they acted as adviſers and counſellors, much leſs as co-legiſlators; they were purely and ſimply *witneſſes* to the act. Their preſence was required, not to add *authority*, but mere *publicity* to the grant. In conſequence of this grant, John ever afterwards, during the lives of his father and brother, and before his acceſſion to the throne of England, uſed the title of *lord of Ireland.*

* See Leland's Hiſtory of Ireland, vol. i. p. 129, et ſeq.

At

At the ſame time Henry, of his own authority, made other grants: — of the kingdom of Cork, as it was called, to Milo de Cogan and Robert Fitz-Stephens; of the kingdom of Limerick to Herebert Fitz-Herebert; and ſo of other diſtricts to others, to hold of *the king, and of his ſon John.*

In the year 1210, John, now king of England, arrives in Ireland. He eſtabliſhes courts of judicature in Dublin. He divides his acquiſitions into different counties; appoints to each its ſheriffs and officers: and, aſſiſted by lawyers of both kingdoms, cauſes a regular code and charter of laws, upon the model of thoſe in England, to be drawn up, and eſtabliſhed for the common benefit of the land. This charter was confirmed by the *king's* ſeal, was depoſited in the Exchequer of Dublin, for the direction of the judges, and the information of all his ſubjects. All this, it ſeems, was done by his own

authority; without aſking the advice, or conſent of his parliament *.

Henry the third had no ſooner renewed and confirmed the Great Charter, granted by John his father to his Engliſh ſubjects, than he tranſmitted a duplicate of it to Ireland for the benefit of his Iriſh ſubjects, "with thoſe alterations only (ſays Dr. "Leland†) which the local neceſſities of "Ireland required."

This too was done by the authority of the king *alone*. By his *own* authority Henry extended ſome of the proviſions ‡, if not all, contained in the ſtatute (or as it ſhould be called the ordinance §) of Merton, to his land of Ireland.

Edward the firſt, by his own authority, after conference and deliberation, not with his *parliament*, but with his *council* ‖, ex-

* See Leland's Hiſtory, vol. i. Alſo Vaughan's Reports, Craw v. Ramſay.

† Vol. i. p. 200.

‡ Ib. p. 236.

§ See Barrington on this ſtatute.

‖ See Leland, vol. i. p. 244.

tended

tended the benefit of the Engliſh laws to other ſettlements within the king's land, or as the patent expreſſes it, "belonging "to the community of Ireland."

It does not appear that any conſent of the Engliſh parliament was taken for the paſſing of this patent; but there is extant an inſtruction to the governor, directing him to take the conſent "of the "people of *that land* (the part of Ire-"land within the Engliſh pale) or at leaſt "of the prelates and nobles."

Laſtly, by an ordinance of Edward III. an Iriſh parliament was inſtituted, and "regulated according to the inſtitution of "the parliament of England *." "By "this parliament (ſays the royal ordi-"nance) we will that our affairs, and thoſe "of our land, be, agreeably to juſtice, "law, cuſtom and reaſon, faithfully treat-"ed, debated, diſcuſſed, and finally *deter-"mined.*"

* See Coke, Inſt. IV.—Leland, vol. i. p. 313.

This

This ordinance completely eſtabliſhed that form of government in Ireland, which had been promiſed to the firſt ſettlers. And from the time of the firſt promiſe, during all the ſucceſſive gradations to this its complete eſtabliſhment, the king acted *alone*, by his own authority, without any participation with, or oppoſition from the Engliſh parliament. Nor is there any marks to ſhew that the Engliſh parliament conſidered any of theſe different grants of their ſucceſſive kings, otherwiſe than as legal. Nor was any objection made to this laſt ordinance; or to the power thereby conveyed to this new erected parliament. Yet a trying occaſion ſoon preſented itſelf. The Engliſh had often and liberally contributed to ſupport the king in his purſuits in Ireland. They at laſt grew uneaſy under this burthen. But how did they conduct themſelves? Under the preſſure of this uneaſineſs what meaſures did the Engliſh parliament purſue? They expreſſed their uneaſineſs; they

they remonstrated against supporting this burthen; they sollicited the king * to make a strict enquiry into the deficiencies of the royal revenues in that realm; but they did not venture either to call the supposed delinquents to account, or to supply the deficiencies by assessing any levy, by their own authority, on the subjects of Ireland.

Edward on his part did not apply to his English parliament to compel his Irish subjects to contribute their quota to the support of their own government. He summoned an *Irish* parliament to meet him in *England*.—The summons was obeyed, but not without reluctance; but not without a saving of their rights; but not without declaring this to be an act of *favour*, the voluntary effect of their reverence to the king.

These are the several acts exercised by the kings of England *alone*, over the Irish nation, from the settlement of the first colony to the full establishment of the Irish

* A. D. 1376.

par-

parliament. I have been the more particular in ſtating them, as apprehending that of all the poſſeſſions acquired by England, no other was acquired in a manner ſo much reſembling the mode of our acquiſitions in North America. Ireland can no more be called a *conqueſt* than North America. Ireland was a *colony*. The firſt ſettlements in America were yielded by the inhabitants to a ſet of adventurers, ſubjects to the crown of England: the firſt ſettlements in Ireland were yielded by the lawful proprietor, to a ſet of adventurers ſubjects to the crown of England. The ſettlements in America were granted to the ſettlers as already belonging to the king: thoſe in Ireland were yielded by the ſettlers to the king, and regranted by him. Certain conditions were granted to the firſt adventurers in America; certain conditions were granted to the firſt adventurers in Ireland. The ſettlements in America were extended; partly by driving out the natives,

tives, partly by compacts with the natives. —So were the settlements in Ireland.

I know of no law, or received maxim, by which the power of the crown has been in this instance abridged. And therefore whatever power the king could constitutionally exert over Ireland, the same he could exert over America. Whatever rights he could constitutionally grant to Ireland, the same he could grant to America. I do not now mean to push the parallel farther. The present question is not whether he *did* actually grant the *same* privileges to the one as to the other. That question will meet us in its proper place. What I contend for now is only this:— That the terms on which the king got possession of America, were similar to the terms on which he got possession of Ireland; that therefore if he had a constitutional right of conveying certain powers, and granting certain exemptions to the settlers in Ireland, he had the same constitutional right of conveying certain powers, and

and granting certain exemptions, to the ſettlers in America *.

* The parallel between Ireland and our American colonies has ſince been urged, and carried much farther by two oppoſite parties. The one ſaid, that Ireland was an example of a ſubordinate ſtate enjoying the full excluſive power of taxation, and internal legiſlation.—" No man (it was ſaid) " would pretend that we had a right to tax Ireland. " Thoſe who attempted it, contradicted themſelves " by allowing it was a right which we *ought* not " to exerciſe; which we *could* not exerciſe."—The oppoſite party allowed the parallel between Ireland and America, but maintained our right of taxing Ireland; ſtill allowing *that* right to be unexerciſeable. Had the gentleman, who advanced this doctrine, taken the pains of defining what he meant by *right*, he would have found it difficult to maintain his propoſition. A third party urged, that Ireland and America ſhould never be compared together. His reaſons were ſomewhat ſingular:—" Ireland (ſays he) has *one* parliament: America has " *many*. Ireland provides for its own civil govern" ment: the civil government of America is, in " part at leaſt, in great part, ſupported by Great " Britain. Ireland does more: it gives many thou" ſand a year toward the military eſtabliſhment of " Great Britain: nay, it *ſubſidiſes* Great Britain; " large ſums are given in *penſions*." The latter

Iſ

If from Ireland we turn our eyes to *Wales*, we shall see the king exerting the same power.

part of the argument was what logicians call—" argumentum ad hominem."—His auditors, many of them, felt the force of it. The nation at large might wish perhaps that, in this respect, Ireland did *less*. To give pensions may be of service to a *minister*, of great comfort to a *certain* class of men, but I fear has done little good to the *people* of Great Britain. The rest of the argument has more of shew than of reality.—" Ireland has one parliament, and " America many."—By what rule of logic did this noble orator confound all the *different* provinces of America under the one general title of *America*? " Ireland has one parliament; (says Massachuset's Bay) and so have *we*;" each province may say the same: it was a dangerous idea to hold forth. Too soon perhaps all the provinces, disunited by force from the mother country, may form a band of union between themselves: they may then have *one* parliament. Ireland did not always provide for its own civil government: did not always contribute so liberally to the military and civil establishments of England. America thinks you are pressing her too warmly to pay her contributions; and truly many an honest Englishman may wish her not to be too forward in *subsidising*. We have subsidies enough, and to spare, for every warrantable purpose of government.

" What

" What is called the ſtatute of Wales (12 Edward I. A. D. 1284.) ſays Mr. Bar-" rington, is certainly no more than re-" gulations made by the king in *council* " for the government of Wales *."

This act of the king appears to have been made upon the fulleſt information. Some of the laws and cuſtoms, which prevailed in Wales before the conqueſts of Edward, are retained; others altered; others entirely aboliſhed.

The preamble to the ordinance ſpeaks of Wales as of a fief of the crown.—Edward knew it was a conqueſt—" And as con-" queror (ſays Mr. Barrington) had a right " to make uſe of his own words in the pre-" amble to his own act."—Had it been a fief, this ordinance would have been illegal.—" For he never pretended (ſays lord

* This diſtinction was lately quoted, and approved in the very maſterly ſpeech of Lord Mansfield, made on pronouncing judgment againſt the claim of the crown to the right of taxing the Grenadas.

" Mansfield)

Mansfield) "that he could make laws to "bind any *part of the realm*, without the "aſſent of parliament."

Berwick was a conquered diſtrict.—Edward the firſt, in whoſe reign it was conquered, by his own authority, confirmed to it the laws and uſages, by which it had been governed before it's reduction.—This charter was confirmed, or renewed, or extended by different kings, from Edward to the time of James, when Berwick was incorporated into the kingdom of England.

New York was conquered from the Dutch. Charles II. granted it to the duke of York, to hold of the crown. The form of its conſtitution, and political government, was entirely changed, and a new one preſcribed by the king's letters patent.

Jamaica, at the time of the Reſtoration, had loſt all its Spaniſh inhabitants.—Charles invited new ſettlers by proclamation; he promiſed them protection; he granted them lands:—he appointed the conſtitution, and political government of the iſland:—firſt

a governor and council; then a governor, council, and aſſembly.

Nor was this power of the king over conquered, or acquired countries, either diſputed by the nation, or relinquiſhed by the crown even after the Revolution.

At the time of the Revolution the charter of the New Englanders ſtood vacated by a judgment of the court of king's bench. They petitioned king William for the renewal of it: whilſt the petition was yet under conſideration, the king enquired "whether, without breach of law, *he* "might appoint a governor over New "England?" To which the lord chief *juſtice*, and other lords of the council, anſwered, "That (whatever might be the "*merits* of the cauſe) inaſmuch as the char-"ter of New England ſtood vacated by a "judgment againſt them, it was in the "*king's power* to put them under what "form of government *he* thought beſt for "them.*"

In

* See Neale's Hiſtory of New-England, Vol. ii. p. 476.

The

In Gibraltar and Minorca the king not only preſcribed the firſt form of government,

The reader will eaſily perceive, that the caſe of New England, in this inſtance, was, in many reſpects, different from that, either of a conquered or new ſettled country. Here were no enemies to yield themſelves on certain conditions; no aliens, no ſubjects to expoſe themſelves to expences and hazards on a promiſe of certain privileges.—They were ſubjects who (if the ſentence againſt them was juſt) had violated their part of a compact:—and were therefore to receive from the ſovereign power, ſuch conditions as it was his pleaſure to allow them. Yet even *here* the interference of parliament was not propoſed; but it was ſaid to be in the *king's* power to put them under what form of government *he* thought beſt for them. It is probable, that governor Barnard had this tranſaction in view, when, in the preface to his letters, he regrets it "as an unfortunate omiſſion of policy, that at the Revolution the conſtitution of the government of America was not ſettled by *parliament*; and the rights of the imperial ſtate over them acknowledged, with ſuch regulations and limitations, as the ſeveral natures of them, upon conſtitutional principles and good policy, ſhould require."--And no doubt, the preſent only excepted, there never was a moment where the parliament could have taken on itſelf the power of regulating the forms of government in the different colonies, on ſuch unexceptionable grounds.

vernment, but continues to this hour to exercise every act of legislation.

From all these precedents, *one* point is clear,—and that point is all we at present want:—that the constitution, as it stands at this hour, has invested the king with, and that the king has constantly exercised, the right of prescribing the form of the constitution and political government in all our conquests, and in all our settlements.

It is not fair to ask us for the precise written law, which invests him with this right.—The non-existence of such a written law, does not prove the non-existence of the right. Many of the rights of individuals depend upon custom:—many of the rights of each of the branches of the legislature, depend likewise upon custom.

The cases of Gibraltar and Minorca are still different from the last, or indeed from any other, because the terms of capitulation were different: hence the powers of the king, in his subordinate legislative capacity, are more enlarged, more discretionary, than in our other colonies.

In this caſe the cuſtom is unvaried. uncontradicted by any oppoſite precedent *.

The parliament has always acquieſced in it; and where is the difference between the *expreſs* will, and a permiſſive will, of parliament, thus circumſtanced; where the right has been ſo long exerciſed on one ſide, and acquieſced in on the other? Could greater, or other expectations, have been raiſed in the colonies by a poſitive than by this tacit declaration of the acquieſcence of parliament? Would it not be as unjuſt to deſtroy the expectations raiſed by this tacit, as the expectations raiſed by any poſitive declaration?

The parliament, no doubt, might preſcribe bounds to the exerciſe of this right in the king as to future conqueſts or ſettle-

* It is upon this very ground that the Houſe of Commons defends its excluſive claim to the right of bringing in and framing all money-bills; and that the Houſe of Lords defends its claim to the exerciſe of the judicial power. See Com. Journ. Vol. ix. p. 240, & ſeq.

ments;—but as no bounds are hitherto ſet to it, the power he exerciſes in preſcribing forms of government to countries already conquered, or ſettled, is a power that ſeems warranted by the conſtitution.

For what do we mean by the *conſtitution?* The queſtion muſt be anſwered one time or other: as well may we anſwer it now as at any other time. Is it not that aſſemblage of inſtitutions and cuſtoms which compoſe the general ſyſtem, according to which the ſeveral powers in the ſtate are diſtributed?

I ſay cuſtoms as well as inſtitutions;—for, I repeat it again, it is upon cuſtom that a great part of our political as well as of our civil government depends.

Not that we are hence to conclude, that the conſtitution is unalterable, or that any power in it is not liable to be put under, or reſtrained by, ſuch other controuls and and checks, as the wiſdom of the preſent or future parliaments may adopt.

The

The Americans have indeed diſcovered, —"that in all free ſtates the conſtitution "is *fixed*;"—that is, as the ſequel explains it, *unalterable*:—"the ſupreme legiſlative "power of the ſtate (they tell us) derives "its authority from the conſtitution:"—they then aſk us with an air of triumph,—"If that power can overleap the bounds "of the conſtitution, without ſubverting "its own foundation *?"

I really do not know what theſe gentlemen mean by the conſtitution;—for after all my reſearches, I never could find out the *immutable laws* of nature, in which they are ſo converſant; and to which they refer us, as the proper ſtandard by which to try the validity of acts of parliament. But if the conſtitution means, as I ſuppoſe it to mean, the aſſemblage of inſtitutions and cuſtoms, by which the different powers in the ſtate are diſtributed; then, ſo far is

*See Letter from the repreſentative of Maſſachuſet's Bay to lord Camden, dated January 29, 1768, in The true Sentiments of America.

the legiſlative power from deriving all its authority from the conſtitution, that the conſtitution itſelf is in great part created by the legiſlative power;—then it is not true, that the conſtitution is ſo fixed, as never to be changed.

Moſt certainly the Engliſh conſtitution has not always been *fixed.* It often has been changed. It has been changed by parliament.—To theſe changes we owe our preſent liberty. Suppoſe a greater degree of liberty to be poſſible, is the ſame authority incompetent to make theſe changes, by which ſo deſireable an object may be attained?

No doubt the Engliſh conſtitution is more fixed, that is, leſs liable to change, than the conſtitution of any other country, ancient or modern.—No doubt this is a very eminent advantage.—But whence ariſes this advantage? From the *diviſion,* not from the *impotence,* of the legiſlative power; from the difficulty of uniting the different branches in any ſcheme of alte-

ration,

ration, not from their inability to effect alterations when they are united. Let them be once united, and you may ſay of them as truly as of any other legiſlature, "Elle change la conſtitution comme "Dieu crea la lumiere *."

In this inſtance therefore, as well as in any other, parliament may change the conſtitution, by abridging or controlling the power of the king. But till it is abridged or controlled, the power itſelf and the exerciſe of it are ſurely conſtitutional.

* See Conſtitution d'Angleterre, chap. xii.

SECT.

SECT. II.

Can the operations of the whole body *of the legislature be restrained by any act of the Crown?*

TO answer this question it will be necessary to state, and distinguish, the several capacities in which the king may be considered as acting.

The king gives his assent to a bill proposed to him by the two houses of parliament. The bill becomes a *law*. That is, a command concerning *sorts* of actions; addressed either to *all* the subjects of the realm in general, or to *sorts* of subjects. Here the king acts in his *supreme legislative* capacity. It is *legislative*, for the power of legislation is the power of issuing *commands* concerning *sorts* of actions. It is supreme, because it is derived from, dependent on, no other power.

No act of the king in this capacity can be applied to the present question. He acts

acts here as a conſtituent part of parliament. His conſent to a bill is not ſo much the exerciſe of any poſitive power, as the non-exerciſe of a negative power. The initiative, that is, the power of putting the legiſlative in motion, is the function of the other conſtituent parts of parliament. To the king is reſerved only the tribunitial power, the power of negation, of rejecting what he does not approve *.

The king iſſues a proclamation. This too *may* be a command concerning *ſorts* of actions, addreſſed to ſorts of perſons. Such a command is an act of legiſlation. Therefore here too the king acts in a legiſlative capacity. The power he exerciſes here is called a power of *ſubordinate* legiſlation †. For though the command be

* See Conſtitution de l'Angleterre, paſſim

† I call this a power of *ſubordinate legiſlation* in compliance with cuſtom. I would rather wiſh to call it a power of *diſcretionary execution*. For tho' indeed theſe are commands concerning *ſorts* of actions, and addreſſed to *ſorts* of *perſons*, and ſo have one

be concerning *sorts* of actions, and addressed to *sorts* of persons, yet these sorts of actions are comprised in a more general sort, concerning which a command has been issued by that legislative power, which is called the *supreme*.

The circumstances under which, and the sorts of persons to whom these commands of the subordinate legislation are to be addressed, are specially pointed out by the supreme legislation. In a word,

one property of acts of legislation; yet this power wants that independence which I have been always accustomed to attach to the idea of legislation. I have always thought that there is much truth in that remark of a very sensible writer †: "The "legislative power (says he) is that power in any "state, which can make laws binding upon every "other member of the state, not to be repealed "or *controlled by any other power but by itself only.* "Nothing short of this is legislation. Call any "other power by what name you please, it is not "legislative. It is subordinate to it, dependent "upon it, delegated from it, created by it."

† See the Defence of the Proceedings of the House of Commons in the Middlesex Election, printed in 1770, quarto, p. 31.

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the will of the ſubordinate legiſlation is directed as to its object, circumſcribed as to its exerciſe, and controllable as to its effects, by the ſupreme legiſlation.

No act of the king in this capacity can be applied to the preſent queſtion.

The king iſſues a command concerning *individual actions*, addreſſed to *individual perſons*. That is, he commands individual perſons, each compriſed within a ſort of perſons, already deſigned by the legiſlature, to perform certain particular actions, each compriſed within a ſort of actions already commanded to be done by that ſort of perſons *. Here the king acts in his executive capacity.

Clearly

* For inſtance, it is a general command of the legiſlature, that all perſons, importing certain merchandiſes from certain places, do pay ſuch and ſuch duties; and that the duties ſo paid be given by the receivers to other perſons, who are to apply them to ſuch and ſuch purpoſes. Theſe are all general commands, concerning ſorts of actions to ſorts of people. The legiſlature has no individual *perſon* in contemplation. John Stiles imports ſuch merchandiſes from ſuch places. The king, as executive

Clearly no act of the king in this capacity can be applied to the preſent queſtion.

The king grants a capitulation, or makes a treaty. In what capacity does he act then?

He does not act in his ſupreme legiſlative capacity. He never acts in that capacity but in conjunction with the other conſtituent parts of the parliament. No command is iſſued; nor are the perſons, whom he has in contemplation in this capacity,

ecutive magiſtrate, commands John Stiles to pay the duties; commands a particular officer to receive them, and to accompt for them to other perſons: he commands thoſe perſons to apply them to their reſpective purpoſes. John Stiles refuſes to obey this comm nd: the king, as executive magiſtrate, commands his offi ers to ſeize the goods, ſell them, &c. Here all theſe general commands are applied to individual actions and perſons. The ſame reaſoning may be applied to criminal caſes. Where the chief executive magiſtrate commands the conſtable to arreſt, the juſtice to commit, the goaler to receive, the judges and jury to try, and the ſheriff to execute the ſentence pronounced by the judges.

pacity, the sorts of persons to whom, nor the actions the sorts of actions concerning which, his right of issuing a command is acknowledged.

He does not act either in his subordinate legislative, or in his executive capacity. They presuppose a more general command concerning the same actions and persons.

What does he do then? He makes a *compact*. He plights the *faith* of the nation to the observance of that compact. He acts as sole *agent*, as sole *representative* of the whole legislature. He is invested with a *full discretionary* power, to be used as *he* thinks best, and most conducive to the benefit of the whole.

This certainly is the exercise of a very different power from those which are exerted in either of his other capacities. The capacity itself then is different; no name has been found for it, unless that general undefined one of *prerogative*. But though no name has been invented, the thing ex-

ifts, and ought to have a name; let us call it his *procuratorial* capacity.

The powers which he exercifes in this capacity, this agency, this reprefentation, are not perhaps derived from any pofitive act of the legiflature: they are derived from cuftom, from the fame fource as moft of the powers of the other conftituent parts of the ftate are derived.

Had this plain and obvious diftinction of the different capacities in which the king may be confidered as acting, been fufficiently attended to, much ufelefs argument on the prefent fubject had been fpared.

When the king acts in his procuratorial capacity, when he grants a *capitulation*, or makes a *treaty*, there is no conflict between different and contending branches of the fovereignty. It is not the executive power that binds the legiflative; nor a part of the legiflative that binds the whole. But the legiflature is bound by its

its own conſtitutional agent and repreſentative.

A capitulation is granted at the beginning of a war. It is ſtipulated, that till a definitive treaty of peace, the laws of the conquered country ſhall in all points continue in full force. The war laſts twenty years. Will any man pretend that the parliament has a conſtitutional right of infringing this ſtipulation? Of changing, during this interval, the laws of the conquered country? Surely not. For no one diſputes but that all the articles of a capitulation are to be religiouſly obſerved.

A definitive treaty is ſigned. The country is yielded to Great Britain. One article of the treaty is, that the laws of deſcent and ſucceſſion ſhall remain inviolate, ſuch as they were before the conqueſt. Will any man ſay that the parliament can infringe this article? Surely not. For all the articles of a peace are to be religiouſly obſerved.

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Another article of the treaty is, that the mode of government, which obtained *before* the conqueſt in the conquered country, ſhall ſtill obtain *after* the conqueſt. In conſequence of this agreement all alterations in the old laws, all additions to them, are to be made by the chief executive magiſtrate, with the advice of his council *. Is the parliament bound by this

* This I apprehend to have been the caſe of Berwick upon Tweed before its incorporation into the kingdom of England. This I apprehend to be ſtill the caſe with Minorca and Gibraltar. Upon no other principle can I conceive that an order of the king in council ſhould be binding in Minorca or Gibraltar, any more than a proclamation of the king, unauthoriſed by parliament, ſhould be binding in London or Middleſex.

Upon the ſame principle the different regulations made by ſucceſſive kings in Ireland may be juſtified. They were all acts neceſſary to give full effect to this one original grant, "that the "ſubjects of the Engliſh pale in Ireland ſhould "enjoy the Engliſh conſtitution *there* in Ireland." To this purpoſe theſe regulations were made by the ſole authority of the king, in his ſubordinate legiſlative capacity, till the eſtabliſhment of an Iriſh

parlia-

this article? Certainly it is. This too is its own act, for it is the act of its own avowed conſtitutional agent.

Let us ſee how far this reaſoning is applicable to acquired countries.

A Number of men, ſubjects of the realm of Great Britain, aſſociate, with the deſign of peopling and cultivating a derelict country: or of purchaſing from the natives, or acquiring by ſome other means, a tract of land thinly inhabited, and ill cultivated. They apply to the king for a charter. The king grants it. Now in what capacity can the king be conſidered as acting when he grants this charter?

parliament. From that time the regulations ceaſed. The king governed his Iriſh ſubjects by an Iriſh parliament.

The illimited power which I attribute to the king in his procuratorial capacity may be thought to be pregnant of danger. It may be ſo. Let it then be limited. Let the legiſlature draw the line, beyond which its agents ſhall not go. But till that line be drawn, the power exiſts, and has been uniformly exerciſed.

 Plainly,

Plainly, he does not act in his ſupreme legiſlative capacity, nor in his ſubordinate legiſlative, nor in his executive capacities.

Every reaſon aſſigned above, in the caſe of his granting a capitulation, or ſigning a treaty, is applicable to the preſent caſe of granting a charter. By a charter I mean only an *original* charter, granted to new ſettlers.

He acts then, when he grants ſuch a charter, in the ſame capacity as when he grants a capitulation, or makes a treaty. He acts in his procuratorial capacity.

In fact, to grant a capitulation, and to grant ſuch a charter, are acts of the very ſame nature. Both are compacts, to both the faith of the nation is plighted.

When the king grants a capitulation what does he? He ſays to the enemy, "Submit yourſelves to the power of Great "Britain, and I, the agent, the repre-"ſentative of the ſovereignty of Great "Britain, will, in the name and by the

" authority of that ſovereignty, aſſure to
" you ſuch and ſuch conditions."

What does he elſe when he grants a charter? " Go, ſays he to the ſubjects, " poſſeſs yourſelves of this country; " people it, cultivate it, ſubmit it to the " power of your country, and I, the a- " gent, the repreſentative of your ſove- " reign, will reward your labours by the " aſſurance of ſuch and ſuch conditions."

Can any reaſon be aſſigned why the faith of the nation plighted to *an enemy*, by the avowed conſtitutional agent and repreſentative of the nation, ſhould be deemed ſacred; and the *ſame* faith plighted to a *ſubject* by the *ſame* agent, and repreſentative, ſhould not be deemed *equally* ſacred?

We may then, I think, ſafely conclude, that in granting a charter the king acts in the ſame capacity as when he grants a capitulation; that the one act is juſt as conſtitutional, juſt as valid as the other; that the terms of the one are to be as ſacredly

 obſerved

obſerved as the terms of the other: that if either of them do in expreſs terms reſtrain the parliament from exerciſing certain acts of its ſupreme power over the conquered or acquired country, the parliament is bound by that reſtriction, ſo long as the inhabitants of the conquered or acquired country adhere to the conditions on which the capitulation or charter was granted; but that to all other purpoſes they are ſubject to the ſupreme power of parliament, and can by no *after* act of the crown be releaſed from that ſubjection. For the *one great* condition on which the capitulation or the charter is granted is, that the conquered or acquired country becomes *ſubject* of the *realm* of Great Britain.

The unconſtitutional maxims adopted by the Stuart family, threw no ſmall obſcurity on this queſtion. They were wont to conſider all conquered or acquired countries as belonging to the king *alone*;

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as being part of his foreign * dominions, in the ſame manner as Gaſcony or Normandy, and as ſubject therefore to the authority of the king alone. Charles I. aſſerted this excluſive authority in a letter to the ſpeaker of the houſe of commons.

After the Reſtoration, this idea was, in part at leaſt, abandoned; and the countries acquired, whether by conqueſt or coloniſation, began to be conſidered as parts of, or belonging to the realm.

Still however the line between reſpective powers of the king and parliament over them were far from being preciſely drawn. It was far from being fixed, in what capacity the king acted when he granted charters.

The idea of a diſtinct ſovereignty in the king over the colonies, unconnected with, and independent of the parliament, was indeed *apparently* given up. But many of the practices, which are to be juſ-

* See Pownal's Adminiſtration of the Colonies, ed. 5. vol. i. p. 122.

tified only by that idea, were ſtill retained.

I ſhall only mention two. The firſt is, the giving to the king in council the power of hearing and determining, in *dernier reſort*, all cauſes ariſing in the colonies. This regulation was a conſequence of conſidering the colonies as part of the king's foreign dominions. Appeals lay in Normandy to the duke in council. They lie at preſent from Jerſey, Guernſey, &c. to the king, as duke of Normandy. But if the colonies are part of the realm, ſuch appeal is unconſtitutional.

This is not only unconſtitutional, but it is againſt an expreſs law. For by the act, 10 Cha. I. c. 10. for regulating the privy council, and taking away the ſtar-chamber, it is ſaid (ſect. iii.) "that the coun-"cil table hath of late aſſumed unto itſelf "a power to intermeddle in civil cauſes, "and matters only of private intereſt be-"tween party and party, &c. &c. By "which

"which (says the act) great and manifold "mischiefs have arisen." For remedy, the act not only abolishes the star-chamber, and the jurisdiction of several other courts erected on the same model, (sect. iii. and iv.) but likewise declares "that neither "his majesty, nor his privy council have, "or ought to have any jurisdiction, &c. "by English bill, &c. to determine, or "dispose of lands, &c. of any of the sub-"jects of this kingdom," (sect. v.) Now are not all the colonies parcels of this kingdom? And if so, is not a judicial power thus exercised by the king in council over the colonies, exerted in the teeth of an act of parliament?

By a provision in 6 Anne, ch. 6. the two privy councils of the two kingdoms are consolidated into one; which privy council is to have the same powers as the privy council of England *lawfully* had before the union, *and none other*. Colonies were now established. Yet here no power

power of appeal is given to the king in council.

In truth, the conſtitution is ſo totally a ſtranger to this power aſſumed by the king in council over the colonies, that it has left him in a ſtate of utter debility, uninveſted with any coercive power to enforce the execution of his judgments. Of this debility a cauſe, at this moment depending in one of our colonies, afforded a ſtriking proof. An order was ſent to expedite it. This order produced the ſame effect on the judges as an equal quantity of blank paper. And as if ſimple diſobedience were not enough, they treated it with ſcorn *.

The ſecond practice, which iſſues from the ſame ſource, and is equally unconſtitutional, is the ſtanding direction iſſued by the king to governors. They are authoriſed

* It was called "a *Whitehall mandate*." And as a reaſon for paying no regard to it, their reverences obſerved, "that the privy council might "err as well as they."

thoriſed, it ſeems, to exerciſe this power, not only according to their firſt commiſſions, and the terms of the charter, but "by ſuch *further powers, inſtructions, and* "*authorities* as ſhall at any time *hereafter* "be granted or appointed them, under the "ſignet or ſign manual, or by *order of* "*the king* in his privy council." Here the executive power takes upon itſelf to modify, to curtail, or extend the orders of the ſupreme legiſlative power, or what has been done or granted by the king in his procuratorial capacity. This ſurely is ſomething more than a *ſubordinate* power of legiſlation. It is a power that rides *paramount* over all.

Another miſtake, which has been conſtantly perſiſted in ever ſince the Revolution, is attributing to the king in his *ſubordinate legiſlative capacity*, powers which belong to him only in his *procuratorial capacity*.

Thus we have ſeen in the laſt ſection, that when the province of New England

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had forfeited its charter, king William granted it a second. And it was declared in council that he had a *right* to do so.

From the question of the king, and from the answer of the council, it is clear that both king and council considered the granting of the *original* charter, and the granting of this *second* charter, to be acts of the *same* power, exercised by the king in one and the *same capacity*. For all this, it appears pretty evident from what we have before laid down, that though called by the same name, they are acts of different powers, exercised by the king in different capacities.

The original charters granted to new settlers appear to be treaties, capitulations, compacts, made by the king in his procuratorial capacity. But these charters once forfeited, the settlers are in all points subject to the power of parliament. They are in the case of countries surrendering without terms, or settlers emigrating without a charter. A subsequent charter is

is no treaty; no compact; is not granted by the king in his procuratorial capacity. It contains only privileges, granted in his subordinate legislative capacity; and these privileges are not only revocable by any subsequent commands of the supreme legislature, but are no farther valid than as they are conformable to such of its commands as are now actually subsisting.

This is not a mere dispute of words; the distinction is important in its consequences.

Whatever the king does in his subordinate legislative capacity, is not only subject to the controul of the supreme legislative power; that is, to that body, of which he is an essential part, on the proceedings of which he can put an absolute negative; but besides this controul there is another in the judicial power, to which, I apprehend, what he does in his procuratical capacity is not always subject.—When he grants charters, or makes treaties in virtue of this power, no court can judge of the

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propriety of them. They are ſacred to *them* as acts of parliament. If he makes regulations in his ſubordinate legiſlative capacity, the courts of juſtice *are* judges of their *legality*. They *can* tell whether the regulations are founded on original capitulations, or charters, on the laws allowed to be in force in the reſpective colonies, or in the general laws of the empire; and if they are not founded on any of theſe, the courts can give relief.

Farther, if the grant of capitulations, or charters, and all the other and ſubſequent regulations, made by the king in conquered or acquired countries, are made in virtue of one and the ſame power, then they are all, or none, controulable by the ſupreme legiſlation.—Of two conſequences one would follow: Either the king is always *abſolute* in conquered or acquired countries, independent of parliament, and uncontroulable by it; or *capitulations* and *charters* loſe their properties, and ceaſe to have the force of compacts.—

If,

If, on the other hand, the grant of capitulations, or original charters, be conſidered as acts of the king in his procuratorial capacity; and all ſubſequent acts of the king, as acts either of the ſubordinate legiſlative, or of the executive power; we have at once the line we were in ſearch of; a line ſhewing how far parliament is bound or reſtrained by any act of the king in the exerciſe of that power, with which he is inveſted over conquered or acquired countries.

The powers or exemptions granted by capitulations, or original charters, are what it cannot vacate. In all things elſe the inhabitants of conquered or acquired countries are ſubject to the power of parliament.

SECT.

SECT. III.

Is there any other principle in the constitution to restrain the operations of the whole body of the legislature on the particular point of taxation?

WERE a country to surrender to Great Britain, without any capitulation or treaty whatever, it would from that moment become subject to the British legislature, that is, to the authority of parliament; for the king would hold it in right of his crown, and he could by no act of his, after it's surrender, exempt it from the power of parliament. Whatever power the parliament could constitutionally exert over the other subjects of Great Britain, the same power it could exert over the inhabitants of a country thus surrendered without treaty or capitulation.

Were a number of British subjects to emigrate, and take possession of a vacant country,

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country, would they by ſuch an emigration ceaſe to be Britiſh ſubjects? I ſuppoſe not. Would they then ceaſe to be under the juriſdiction of the Britiſh legiſlature? I ſuppoſe not. Subjection to the juriſdiction of the Britiſh legiſlature is the very circumſtance which conſtitutes a Britiſh ſubject.

Conſider the ſurrendering country as making a capitulation or treaty; conſider the emigrating ſubjects as praying, obtaining, and accepting a charter, what would be their ſituation then? In this caſe they make a compact with the king, acting in his procuratorial capacity, as agent and repreſentative of the whole legiſlature. In this capacity, and by this compact, the king engages to repeal, as to *them*, certain laws, and to eſtabliſh others. A capitulation, a treaty, or a charter, does this, or it does nothing. It gives them powers, which, as Britiſh ſubjects, they had not by law. It exempts them from reſtraints, and

from duties, to which, as Britiſh ſubjects, they were ſubjected by law.

What powers then muſt ſuch compact be underſtood to have given them? Such powers as are therein *ſpecified*, and moreover ſuch *other* powers, *not* ſpecified, as it is neceſſary they ſhould enjoy, in order to exerciſe ſuch powers as *are* ſpecified. It gives them *theſe* and *no other*.

From what duties and what reſtraints muſt ſuch a compact be underſtood to have exempted them? From ſuch duties, and ſuch reſtraints as are therein ſpecified; and moreover, from ſuch *other* duties and reſtraints as are *not* ſpecified: but from which it is neceſſary to be exempted, in order to their full enjoyment of exemption from ſuch duties and reſtraints as *are* ſpecified. From *theſe*, and *no other*, it exempts them.

Whether among the powers conveyed, and the exemptions granted to the colonies by their charters, the excluſive power

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of fixing their own internal legiſlation, and a full exemption from internal taxation by the Britiſh parliament, be indeed ſpecifically named; or be neceſſary to the full exerciſe of the powers, or to the full enjoyment of the exemptions that *are* ſpecified, is a queſtion which will meet us in its proper place.

But may we not go farther? May we not ſay, that a caſe may be put, in which, beyond theſe, ſtill other powers and exemptions, neither ſpecifically named in the compact, nor neceſſary to the exerciſe and enjoyment of ſuch as *are* ſpecifically named, may yet fairly be ſuppoſed to be conveyed and granted by a charter? It ſhould ſeem ſo, if thoſe who accepted it did, from the beginning, underſtand the charter to have conveyed ſuch other powers and exemptions; if in conſequence of that interpretation, they have ever ſince conſtantly and uniformly exerciſed thoſe powers, and enjoyed thoſe exemptions; and if thoſe who by themſelves, or by their agent, granted the charter, did at the beginning acquieſce in this

interpretation, and have ever ſince conſtantly and uniformly allowed the exerciſe of thoſe rights, and the enjoyment of thoſe exemptions.

This language we may allow, I think, to be agreeable to the ſpirit of the conſtitution. The uniform exerciſe of any power, by any branch of the community, from the very foundation of that community, during ſo long a ſpace of time, in the face of the legiſlature is, according to the definition we have already given of the conſtitution, a ſufficient proof that ſuch a power is conſtitutional.

If therefore the Americans ſhould have been miſtaken in their interpretation of their charters; if they ſhould have ſuppoſed them to have conveyed more powers, or granted more exemptions, than they really were meant to convey or grant:— yet if that interpretation was coeval with the charters themſelves; if their conduct was guided by it; and if, for more than a hundred years, parliament has looked on

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an unconcerned ſpectator, would not this be equivalent to what is called *cuſtom* in the common law? Would it be politic all at once to aſſume a power to which parliament has no right; or having ought to have *aſſerted*, if not *exerciſed* it long before?—Would there be no injuſtice in treating as groundleſs, expectations authoriſed by the ſilence of parliament, imbibed by the preſent coloniſts, with the prejudices of their earlieſt infancy?

It is now aſſerted, that a full exemption from internal taxation by parliament, was always ſuppoſed by the grantees to be conveyed by the charters; and that this ſuppoſition has been conſtantly acquieſced in by parliament. What truth there is in this, is likewiſe a queſtion, which will meet us in another place.

In the mean time there is another principle, on which the right of impoſing internal taxes over the colonies, has been combated; a principle which has no relation to any particular charters; or to the

ſpecific powers or exemptions grounded on them.

In ſupport of this principle, the venerable name of Locke is * rung inceſſantly in our ears :—he is to prove it to be founded in ſome immutable law of nature. And if this be not enough, ſhould the apoſtolic order be inverted, ſhould this immutable put on mutability, then the whole phalanx of lawyers, from Coke down to Blackſtone, are to be brought up in array. They are to prove it an eſſential part of the Britiſh conſtitution.

The principle is this.—That no power on earth has a right to take away any part of any man's *property* † without his own

* It is remarkable, that thoſe who now cite Locke, to prove a want of power in the parliament, ſhould be the ſame who, on another occaſion, cited the ſame Locke, to prove the king has a diſpenſing power.

† The term property is here uſed for the *thing* over which we exerciſe the right of *property*, and not for the *right* itſelf.

2

own *consent* freely given, either in *person*, or by his own representative, *freely* chosen. This right of nature (it is said) is particularly recognised by the constitution of our own country, where taxes are a *free gift*.

To judge of the validity of this maxim, the first point necessary will be to understand it. A point which has been overlooked, or overleaped by the greater part of those by whom the maxim is adduced.

To understand it, it will be necessary to define the terms of it.

This proceeding, I am sure, Mr. Locke would not have objected to, though peradventure in the present instance he forgot to adopt it.

What is property? It is that *thing*, I apprehend, or *good* which you, the proprietor, have a right to use in a particular manner, and you *alone*, to the exclusion of every other man whatever.

Whence arises this right? From the command of the *law*. It is the law which

ſays to *you*, the proprietor, take this thing, uſe it, enjoy it. It is the law, which ſays to every other man, do not take it, do not uſe it, do not enjoy it.

Take away the fence which the law has ſet around this thing, this good, whatever it be, and where would your right or property be then?

If this be a true definition of the term *property*, and to my underſtanding it appears ſo, what does this boaſted maxim come to at laſt? Or how will you apply it to the point in queſtion? It comes out after all, that the payment of a *tax* is not the giving up *any part* of our own property; it is the aſſignment only of a certain portion of the common ſtock to the ſupport and maintenance of government.

That this idea of a tax has not been ſufficiently attended to, ariſes perhaps from taxes being generally paid in *coin*, and not in *kind*. Where the tax is paid in kind it will appear leſs revolting.

Tythes,

Tythes, for inſtance, is a tax, and a very heavy, and perhaps an impolitic one too. Yet it appears at firſt ſight that in the payment of this tax we do not give up any part of our property. The meaneſt farmer will underſtand you, when you tell him, that nine ſheaves belong to (are the property of) himſelf, and the tenth belongs to (is the property of) the parſon.

Let the ſame farmer compound for his tythes, and he will ſoon loſe ſight of this idea, he will ſoon begin to complain that he gives a part of his property to the parſon. Yet clearly the money paid in lieu of the tenth ſheaf is the purchaſe money *for* the tenth ſheaf. The law has ſaid to the farmer, nine ſheaves are yours: the ſame law has ſaid to the parſon, the tenth is yours. The law has ſaid to the parſon, meddle not with the nine ſheaves: the ſame law has ſaid to the farmer, meddle not with the tenth.

Is not the ſame reaſoning applicable to

taxes paid for the ſupport of *civil* government? Are not theſe too the *property* of the civil magiſtrate?

The queſtion then is not who is to give away *our* property; no man, no *body* of men is to do it. But who is to apportion and diſtribute the ſeveral parcels of the common ſtock. For when the legiſlature veſts the property of ſo many acres of land; or the property of whatever thing or good you pleaſe in me, it is always with the implied reſervation of ſo much of the produce thereof as the legiſlature *then* has, or at any future period *ſhall* keep back for the ſervice of the community in general.

Taxes then cannot, in a proper ſenſe, be called a *gift*, much leſs a *free* gift. For in the ſtrict and proper ſenſe nothing is *given*, if by *given* is meant ceding that which is our *own*, that which we have a right to withold.

The commons indeed, in impoſing aids and taxes make uſe of the terms "*give* "*and*

"*and grant.*" And the term is in them allowable enough. For the commons are invested with the whole property of the kingdom, in trust that they shall apportion and distribute to the supreme executive magistrate, that which is necessary to the support of his department of the government; and that they shall cooperate in securing to each man his share of the remaining parcel; which share *alone* is his property, and to be disposed of as he pleases. They give and grant to the magistrate, that which is necessary to the exigencies of the magistrate; and in the *same sense they give and grant* the residue, to every man his share.

On this false notion, "that the payment of taxes is the giving up a part of "our property," is ingrafted another idea, no less false, "that taxes cannot in a free "state be granted but by the *consent* of "the giver."

This

This idea of *consent* has been much insisted on by lawyers. It may therefore be right to state their opinions in their own words.

It would be tedious to cite them all. Let us then content ourselves with the words of a learned leader of them, who is himself a host.

"No subject of England (says he *) can "be constrained to pay any aids or taxes, "even for the defence of the realm, or "support of government, but such as are "imposed by his *own consent*, or that of "his *representative* in parliament."

To prove that every Englishman has really a representative in parliament, the same commentator informs us, "that only such are excluded (from the privilege of voting for a representative) as "can *have no will* of their own; that there "is hardly a *free agent* to be found, but

* See Blackstone's Commentaries, vol. i. p. 140. 5. edit. octavo, printed at Oxford, 1773.

"what

"what is intituled to a vote in ſome place
"or other in the kingdom *."

That we may not however ſuppoſe that the conſent of our repreſentative depends upon our own perſonal conſent, the learned commentator reminds us (of what is moſt certainly true) that "the repreſen-
"tative, once choſen, is not bound to
"conſult with, or take the advice of his
"conſtituents upon any particular point,
"unleſs he himſelf thinks it proper or pru-
"dent ſo to do †."

When the learned commentator comes to conſider the foundation of the excluſive privilege of the commons, by which all grants of ſubſidies muſt originate in their

* See Blackſtone's Commentaries, vol. i. p. 172. The learned author is rather hard upon us in this paſſage. At a ſingle ſtroke he deprives, I believe, three fourths of our fellow citizens of free will and free agency. Upon another occaſion he is as ſingularly generous; he beſtows free will and free agency on rays of light, watches, &c. &c. See ib. p. 38.

† See his Commentaries, vol. i. p. 159.

houſe,

houſe, he rejects the general reaſon aſſigned for it, "that the ſupplies are raiſed "upon the body of the people, and there-"fore it is proper that *they alone* ſhould "have the right of taxing themſelves,"—and aſſigns another, "that they are a *tem-"porary elective* body, freely nominated by "the people, and therefore leſs liable to be "influenced by the crown; and when "once influenced, to continue ſo; than the "lords, who are a permanent and here-"ditary body, created at pleaſure by the "king*."

The attentive reader will obſerve, that

* See his Commentaries, vol. i. p. 169. The circumſtance of their being a *temporary and elective* body, is no doubt *one* good reaſon why the commons ſhould be entruſted with the power of a taxation; as the circumſtance of the lords being a *permanent* and *hereditary* body, is a very good reaſon why they ſhould *not* be entruſted with it. The danger however would, I apprehend, ariſe, not from the influence of the *crown*, but from *partial* attachment to their own intereſts. The diſtinction of terres, *nobles*, &c. would ſoon ariſe, if the power of taxing were intruſted with the peers.

the

the citations produced, though all occurring within the compass of a very few pages, are not easily reconcileable to each other.

In the first it should seem that the privilege of granting aids is appropriated to the commons, on account of their *representative* capacity; in the last it is no longer on that account, but because they are a temporary and elective body.

In the first it should seem that *their* consent to a tax makes such a tax constitutional; because *their* consent is the expression of the consent of their *constituents*. In the second it appears, that the consent of the constituents is a matter of perfect indifference.

These contradictions I found, I did not make them.

" No subject can be constrained to pay " any tax but by his own consent freely " given, either in person, or by his own " representative." This is the fence which our lawyers tell us the constitution has

placed

placed around Mr. Locke's *natural* right of not parting with our own property, but with our own *consent*.

This is a question of facts: let us then appeal to facts.

If there be any truth in this assertion, it must follow, that the constitution has given to every man who is to contribute to a tax, the right of voting for his representative. No man who has eyes to see, and who chuses to make use of them, can seriously believe this to be the case in England.

Many, who are not poor enough to be ranked among the non-willing, (supposing with our commentator that want of *wealth* implies want of *will*) are yet burgesses of no borough, have no freehold, have none but copyhold lands; these men have no votes.

Many a man hires a piece of ground for a long term; he gives perhaps ten pounds a year; he builds on it; the rent of the house he builds is sixty or eighty pounds

pounds a year: ſurely he is *rich* enough to have a *will* of his own. He ought therefore to have a *vote*.

The holders of ſtock are ſurely rich enough to have a will of their own. Their attachment to the conſtitution cannot reaſonably be ſuppoſed to be leſs ſtrong, leſs enlightened, leſs active than that of landholders. Their *all* depends upon the preſervation of the conſtitution. Yet theſe men have no votes.

How many hundreds of our fellow citizens have large capitals engaged in manufactures: ſurely they are rich enough to have a *will*. Yet neither have theſe men any votes.

Sum up the number of citizens under theſe ſeveral deſcriptions; add the other numerous claſſes of citizens, who, though rich enough, as the phraſe is, to have a will, have yet by the conſtitution *no right* to vote. Then ſum up the number of theſe who *have* that right, ſtrike the ballance, and it will be found that the non-

voters are nearly three fourths of the whole mafs of citizens.

Here then the maxim fails; it is not effential to the character of a freeman who is to contribute to a tax, that he have a right of voting for his reprefentative. The greater part of the fubjects of England, though they contribute to taxes, have no right of voting for their reprefentatives.

Nor even of thofe who *have* a right to vote can it with any degree of truth be affirmed, that their own perfonal confent, or the perfonal confent of their reprefentative is neceffary to render a tax *legal*. If it could, it would follow, that no *reprefentative* could be chofen but by the *unanimous* confent of every *conftituent*, that no *law* could pafs without the *unanimous* confent of every *reprefentative*.

Here too, thank heaven, the maxim fails.

There exifts a country, if indeed Poland can be faid to exift, where this idea of perfonal individual confent was adopted and carried

carried into execution. With what ſucceſs, let its preſent melancholy ſtate declare. The whole fabric of the Poliſh government, all the abſurdities with which it teems, are the natural conſequence of this very principle; that no ſubject ſhould obey a law, or pay a tax, which is not impoſed by his own free conſent, given by himſelf or his repreſentative.

Yet this principle, pregnant with ſuch fatal conſequences, have many of the friends of America choſen as a ſhield to protect the colonies againſt the power of the Britiſh legiſlature. This principle has the ſame extravagance laid down as the corner ſtone of Britiſh *freedom*.

Still however we are told, "repreſentation and taxation are inſeparable." Aſk for proofs, urge the number of perſons not repreſented and yet taxed, you may puzzle, but you will not convince.

One gentleman* aſks himſelf "what "are the exact bounds and limits of "real repreſentation?" I was impatient to hear the queſtion anſwered by ſo *able* and *acute* a writer.

But alas! "he excuſed himſelf from "entering into the matter†." What a loſs to the world! Why did he not prove in his own *conciſe* and *nervous* ſtyle, that the Americans ſhould be "excepted and "exempted from the reaſons and the "rules which obtain and take place in the "caſe‡ of other unrepreſented ſubjects?" But it is probable, to make uſe again of his own happy expreſſion, "the matter ſeem-"ed to him ſo clear, that whoever ſhould "multiply words on this ſubject, would "hardly do it for the ſake of being con-"vinced§." Whether this gentleman's

* Author of the Conſiderations on the Meaſures carrying on with reſpect to the Britiſh Colonies in North America.

† See p. 130.

‡ See ib. p. 19.

§ See ib. p. 13.

aim

aim be to convince himſelf or others I know not. But words ſurely he does multiply.

Others, rather than give up their favorite poſition, tell us, that the *land* is repreſented *.—Be it ſo—though it is true only of *freehold* land; but whoſe conſent is it that is given then? Is it that of the beaſt who grazes on the land, or the plant that grows on it, or only of the land itſelf?

But if neither authority nor argument will convince us, the letter of acts of parliament muſt do the buſineſs.—The caſes of Cheſter and Durham are cited as concluſive.

I allow all the weight that is due to them; and yet I might perhaps have been miſtaken enough to have cited them in defence of the oppoſite opinion. So far from proving that repreſentation and taxation are inſeparable, they prove the contrary. The Durham act expreſsly ſays, that before the

* This idea occurs in ſeveral American writers.

inhabitants of that county were reprefented, "they were liable to *all* payments, "rates, and fubfidies, *equally* with the in-"habitants of other counties, cities, and "boroughs, who had their knights and "burgeffes in parliament*." Allow the act to prove, that it is expedient, that thofe who are taxed fhould be reprefented, yet to make the cafe of the Americans parallel to the cafe of thofe who were the objects of this act, they muft petition to fend knights and burgeffes to parliament:—and be refufed. Nor does this Durham act fupport the neceffary connection between *confent* and reprefentation, any more than between reprefentation and taxation.—Reprefentatives are not fpoken of as men who ftand in the *place* of another, empowered to give the *confent* of that other.—They are not faid to reprefent, that is, act in the name, or by the authority, of their conftituents: but to reprefent, that is, dif-

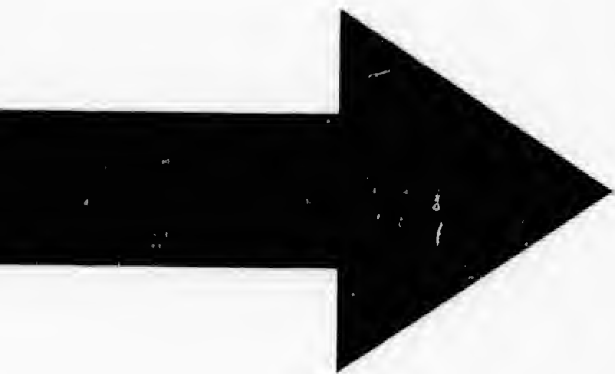
* 25 Car. II, c. 9.

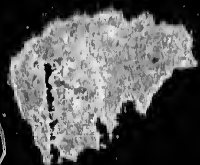
play,

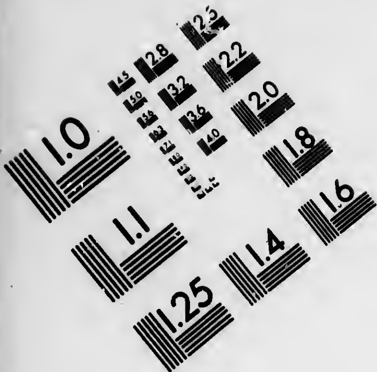
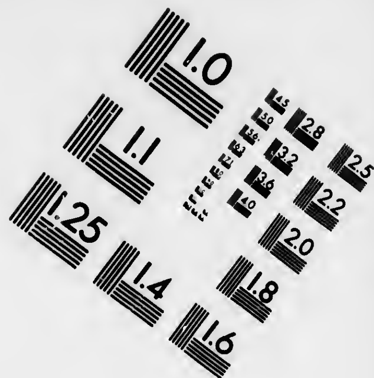
play, set forth—"the *condition of their* "*country*." What is this to the plea of not being taxed without consent?

I may here perhaps be told, I expect to be told, that I am destroying the distinguishing characteristic of English happiness: beating down the strong bulwark of English liberty. If an Englishman has no property but what government pleases to leave him; if government can take what he has, without his *consent*, where is the difference between him and the subject of a despotic prince: between an Englishman and a Turk?

It is not my fault if I cannot see *property* where it is not. I can form no idea of property, other than that which I have given. That *only* is my property which the legislature declares to be so. In this a Turk and an Englishman are indeed on the same footing. I cannot therefore consider a *tax*, imposed by the legislature, as a part taken from my property. It is only a diminution of the share I have hitherto, or should o-





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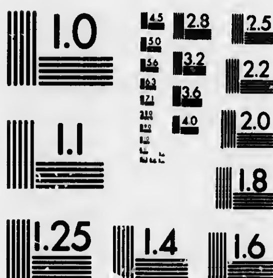
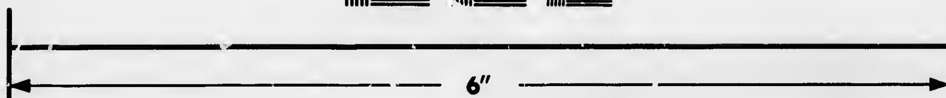

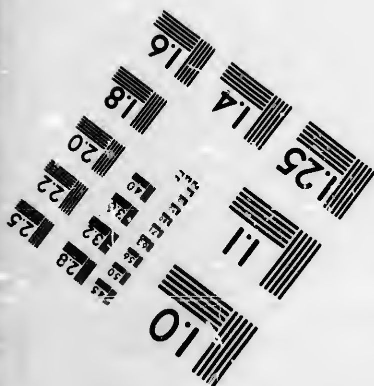
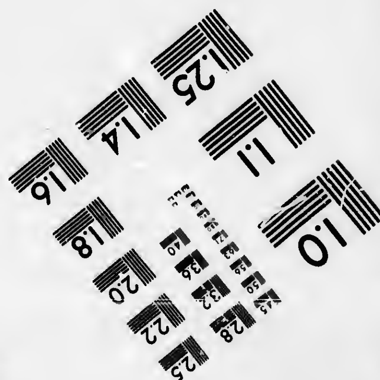

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therwiſe have, enjoyed out of the common ſtock.

I cannot believe that my *conſent* is neceſſary to render this diminution a legal, conſtitutional act; becauſe I know that neither was my own conſent ever aſked, nor, of ſix hundred men only excepted, that of any other man in the kingdom. The conſent of the reſt is no more aſked, or given, than our conſent was aſked or given by our godfathers and godmothers, to the baptiſmal vow they made for us at the font.

What the commons agree to, becomes, notwithſtanding, a command of the legiſlature. We are bound to obey it. We may, we can be, we are conſtrained to obey it.

Neither in this is there any difference between an Engliſhman and a Turk.

The reſemblance however does not ſtartle me: though there be ſome features alike, there is difference enough to diſtinguiſh us.

That

That difference will be found in the nature of the body, to whom our conſtitution has ſo wiſely entruſted the power of taxation; the power of apportioning and diſtributing the whole ſtock of the community. It is the circumſtances, it is the particular relation, *that* body ſtands in, to the whole community, which makes this power, ſo dangerous in the hands of a deſpotic government, to be ſo very innocent in theirs: and which therefore conſtitutes in this reſpect the eſſential difference between a ſubject of Great Britain, and the ſubject of a deſpotic government.

In deſpotic governments the power of taxation, the power of apportioning and diſtributing the whole ſtock of the community is veſted in a ſingle man, or in a fixed and permanent body of men; they *may* have, they almoſt always think they have, a ſeparate and diſtinct intereſt from the reſt of the community. In England, this power is veſted in a temporary and elective body. They cannot have, they

cannot

cannot think they have, a ſeparate and diſtinct intereſt from the reſt of the community. They are *now* a part of the taxing power; they may ſoon ceaſe to be a part of it.

In an abſolute government every diminution of my ſhare in the public ſtock, is juſt ſo much added to the ſhare of him who is to apportion and diſtribute that ſtock. In our government it is quite otherwiſe. Every diminution of my ſhare in the public ſtock neceſſarily cauſes a proportionable diminution in the ſhare of thoſe who are to apportion and diſtribute that ſtock; and the conſtitution has provided that their ſhare ſhall not be ſmall. If I loſe a buſhel, each of them will loſe a load;—if I pay ſhillings for the windows that light my cottage, each of them will pay pounds for the windows that illuminate his houſe *.

This

* I can recollect but one inſtance where this perhaps does not hold altogether.—And that is in the duties laid on beer that is brewed for ſale.—If all

This is my ſecurity. It is a real and permanent one. I underſtand what it means:—it is obvious to my ſenſes; but I underſtand nothing of a conſent which was never given, which was never even demanded.

But do the commons of Great Britain ſtand in the ſame relation to the inhabitants of America? If they do not, have the commons of Great Britain, according to the ſpirit of the conſtitution, a right to lay internal taxes in America?

If they *do not* ſtand in the *ſame relation*, we are, I think, warranted in ſaying, that, according to the ſpirit of the conſtitution, they have *not* the *power* which is entruſted in conſequence of that relation.—For if it be true, that the coloniſts, by emigration, were not releaſed from their *allegiance*, it is equally true that they forfeited not their *rights.*

all the duties on malt and beer were conſolidated, and laid on malt in the firſt inſtance, it would be at once more equitable, and, I ſhould apprehend, more fruitful in the product, as well as leſs expenſive in the collection.

rights. If they are ſubjects to one purpoſe, they are ſubjects to all. Now it is the conſtitutional right of a Britiſh ſubject that the legiſlature do not tax him, but by the mediation and authority of a certain body of men, who ſtand to him in that particular relation we have above deſcribed; and in which the commons *do* ſtand to every inhabitant of Great Britain.

Does that relation ſubſiſt ?—In ſtrictneſs of ſpeech I think it does.—The advocates for the colonies tell us that the acquiſition of America has trebled our manufactures; has almoſt doubled the value of our lands*. The ruin, or the oppreſſion of America, would deprive us of theſe advantages; and would therefore be as ſeverely felt by the members of the houſe of commons, as the ruin or oppreſſion of Great Britain. In ſtrictneſs of ſpeech then, the commons cannot tax America without at the ſame time taxing themſelves.

* See Mr. Pitt's ſpeech on the repeal of the ſtamp act.

The

The reciprocality of interefts is as real between them and the Americans, as between them and the other fubjects of Great Britain.

But though it be as *real*, it is not fo immediate in its effects, nor fo *apparent* to thofe who are to pay the tax, perhaps not always to thofe who are to impofe it. Poffibly therefore it might not produce the fame effects on the minds of the taxers: moft certainly it would not give the fame fenfe of fecurity to the *taxed*.

To give the parliament therefore a right of taxing the Americans, without violating the fpirit of the conftitution, fomething farther perhaps may be required.—The act of taxation itfelf muft create the circumftances which are wanting to render the reciprocality of interefts, not only as real, but as apparent, as well to thofe who are to impofe, as to thofe who are to pay, the tax. This it fhould feem is what might be done without much difficulty.

A ſhort plan for this purpoſe will be offered at the concluſion of this volume.

And under theſe reſtrictions it ſhould ſeem, that the parliament would have a conſtitutional power of taxing the Americans.

SECT.

SECT. IV.

Summary of the arguments on the matter of right.

FROM what has hitherto been ſaid it appears, that by the conſtitution the king is inveſted with the power of granting what form of government he thinks beſt to all conquered or acquired countries.

That articles of capitulation, and treaties of peace, though made by the *king alone*, are binding on the whole legiſlature.

That the terms of original charters granted to ſubjects forming new ſettlements, though granted by the *king alone*, are by parity of reaſon binding on the whole legiſlature.

That this power has been exerciſed by ſucceſſive kings, and recognized by the tacit conſent of ſucceſſive parliaments, as appears in the caſes of Ireland, of Wales, of Berwick upon Tweed, of New-York,

of Jamaica. And ſince the Revolution in a more remarkable inſtance.

From theſe precedents the power may fairly be concluded to be conſtitutional.

It has farther appeared, that in the exerciſe of this power the king acts neither in his ſupreme legiſlative, nor in his ſubordinate legiſlative, nor in his executive capacity; but in another capacity, diſtinct from them all:—as the conſtitutional agent, and repreſentative of the whole legiſlature; of the whole nation: and which therefore we have called—his *procuratorial* capacity.

That in this capacity he does not iſſue commands, but enters into *compacts*.

That theſe compacts, whether made with enemies or ſubjects, are binding on the whole legiſlature; being indeed the acts of the legiſlature itſelf; inaſmuch as they are the acts of that perſon who, by the conſtitution, is appointed the agent and repreſentative of the whole legiſlature.

It

It appears farther, that by these compacts the parties contracting, whether conquered or settled, do agree with the king to recognise themselves and their country to be subject to the supreme legislature of Great Britain: and the king on his part does agree with them to repeal, as to them, certain laws and establish others; to convey to them certain powers, which, as subjects they would not have by law; and to exempt them from certain restraints to which, as subjects, they would be subjected by law.

From hence it follows, that the Americans have, by the constitution, a right to all the powers and exemptions specified in their original charters; to all the powers and exemptions *not* specified, but necessary to the enjoyment of those which are; and we have ventured to allow farther, to all such as from the beginning of the contract were, and down to the present time have been, by both parties, understood and allowed to be intended by them.

But thefe powers and exemptions except-ed, they are to every other purpofe fubject to the fupreme legiflature of Great Britain. So that whatever power the fupreme legif-lature of Great Britain could exercife over other fubjects, the fame it can exercife over them.

It appears therefore, that unlefs an ex-emption from internal taxation by the fu-preme legiflature of Great Britain be a-mong the exemptions thus fpecified, or neceffary to the enjoyment of fome other power or exemption that *is* fpecified, or at leaft fuch as hath always been under-ftood on *their* part, and allowed on the part of the *legiflature* to be intended in the original charters, the fupreme legiflature *may* exercife this power of internal taxa-tion over its fubjects in America, under certain reftrictions.

For it has appeared that by the pay-ment of a tax we do not give up any part of what is our *property*; that the Britifh houfe of commons is vefted with the whole

property

property of the kingdom in *truſt* to apportion what is neceſſary to the governors for the ends of government; and that what *remains* after the payment of ſuch portion, and that *only* is our property.

It appears farther, that when our conſent, or the conſent of our repreſentative is ſaid to be neceſſary to ſuch appointment, the perſonal conſent of each individual ſubject, or of each individual repreſentative, is what cannot be intended.

For it has appeared that by far the greater part of the inhabitants of Great Britain *do not* give their conſent either to the *levying* a tax, or to the *nomination* of thoſe who levy them. Nay, that in no period of time they ever did. For at no time was this right attached to others than to burgeſſes of certain boroughs, and to landholders of a particular deſcription.

And it has therefore appeared, either that repreſentation and taxation are not inſeparable, or that repreſentation means ſomething different from what it has been

by many underſtood to mean. The term "body of repreſentatives" has by many been underſtood to mean, a body of men choſen by the *whole*, or by a *majority* of the community. But it appears that there is no ſuch body; the term therefore appears to mean a body of men choſen by a *part* of the community; but ſo circumſtanced and related to the reſt, that they cannot have or *think* they have any ſeparate intereſts of their own to purſue, to the prejudice of the reſt.

It appears that the houſe of commons does ſtand in theſe circumſtances, and under this relation to the inhabitants of Great Britain.

Theſe circumſtances, and this relation, conſiſt firſt in their being an *elective*, ſecondly in their being a *temporary* body; and laſtly, in their being themſelves a part of the perſons *taxed*, at the ſame time that they are the *taxers*.

The two firſt of theſe circumſtances are equally true with reſpect to the Americans,

cans, as with respect to the greater part of the inhabitants of Great Britain.

With respect to the last and most material circumstance, it appears that modes of taxation *might* be invented, which would create that relation, that indivisibility of interests.

And it has therefore been, we think, fairly concluded that *such* a mode of taxation would be constitutional. Because the commons would, under these circumstances, exert no other power over the inhabitants of America, subjects of Great Britain, than they can by the constitution exert over *all* the other subjects of Great Britain.

To taxation therefore, under this mode, no constitutional objections can lie but such as are drawn either from the express words or necessary implication or ancient uniform construction of the original charters.

Can such objections be drawn from thence?

PART II.

ENQUIRY INTO THE MATTER OF FACT.

SECT. I.

What were the privileges granted to the first settlers in North America by the Virginian Charters?

WHAT were the privileges originally granted by the crown to the colonies? A review of the charters is the only means of anſwering this queſtion.

The firſt charters were called by the general name of the *Virginian charters*. The territory they take upon them to diſpoſe of, is a tract of land mentioned in

in them under the name of *Virginia*, and deſcribed as lying between the 34th and 45th degrees of Latitude. A tract in which are compriſed a large part of the colony of New England, together with the entire colonies of New York, New Jerſey, Penſylvania, Maryland, Virginia, and North Carolina, and a ſmall fragment of South Carolina.

The earlieſt of theſe charters grants to Sir Thomas Gates, and others, the whole precincts above deſcribed, to be divided into two ſeveral plantations. It was granted by king James I *.

The preamble ſets forth, that certain perſons therein named, and others not named, had beſought the king to grant them his "licence to deduce colonies" into ſuch parts of America, as lying be-

* See Collection of Charters printed for Owen, Almon, and Blyth, in 4to. 1766, No. I. The charters in this collection are referred to as authentic by Mr. Mauduit, in his Short View of the Hiſtory of the Colony of Maſſachuſet's Bay.

tween four and thirty, and five and forty degrees of northern latitude, did either already appertain * to the king, or at least were not in the possession of any other *christian* prince:

That these adventurers meant to divide themselves into "two several colonies and "companies;" the one consisting of certain knights and others of the city of London and elsewhere, who meant to begin their plantation in some convenient place, between four and thirty and one and forty degrees; the other consisting of certain knights and others of Plymouth and other places, who meant to begin their

* There is nothing more ridiculous than this assertion, that these lands did already *appertain* to the king, or that such as did *not* appertain to him, might yet be occupied by his order, provided they did not belong to any *christian* prince. This language was borrowed from the crusaders, and can be justified only by the madness of fanaticism. It is melancholy, but useful, to observe how long the *effects* of popular errors remain, even after the errors themselves are exploded.

their plantation in ſome convenient place between thirty-eight and forty-five degrees of latitude:

That the king greatly commends, and graciouſly accepts their deſires for the furtherance of a work which might tend to the *glory of the divine majeſty*, in propagating the chriſtian religion *: And therefore,

Grants to the claſs of adventurers of the *city of London* the title of *firſt* colony, with leave to begin their plantation at any place on the coaſt of America between thirty-four and forty-one degrees, and to take poſſeſſion of all the lands, &c. within the precincts there deſcribed, there to inhabit and fortify, according to their beſt *diſcretion*, and the diſcretion of the council of that colony.

His majeſty grants to the adventurers from *the weſt of England* the title of the

* To which purpoſe his majeſty gives them leave to rob and plunder *all but* chriſtian princes.

ſecond,

second, or *Plymouth colony*, with leave to begin their plantation at any place on the coaſt of America between thirty-eight and forty-five degrees of northern latitude; and inveſts them with the ſame exclusive privileges with which by the preceding article he had inveſted the firſt, or London colony.

By the preceding clauſes *all* the lands lying between thirty-eight and forty degrees incluſively, were left open to each company alike. Firſt occupancy it ſeems was to fix and determine the property.

It is therefore provided that the plantations of thoſe who ſhall ſettle laſt, ſhall not be made within one hundred Engliſh miles of thoſe who ſhould be firſt planted.

The king ordains that each of theſe colonies ſhall have a *council* to govern and order *all* matters and *cauſes*, which may ariſe *within* the colony, " according to " ſuch laws, ordinances, and inſtructions, " as ſhall be in that behalf given and ſign- " ed with his hand, or ſign manual, and

" paſs

"paſs under the privy-ſeal of his realm of "England."

The king fixes the number of each of theſe councils, who "are to be *ordained*, "*made*, and *removed* from time to time, "according as ſhall be *directed* and com-"priſed in the ſame *inſtructions*."

Beſides theſe colonial councils, one ſuperior domeſtic council is eſtabliſhed, to conſiſt of thirteen perſons, to be *appointed by the king*, to be called "the council of "Virginia, to have the ſuperior *manag-"ing* and *direction only* * of all matters "that may concern the government, as "well of the ſeveral colonies as of any "other place within the aforeſaid pre-"cincts of thirty-four and forty-five de-"grees of northern latitude."

The coloniſts are allowed to work, for their own profit, all the mines of gold, ſilver, and copper, as well within, as on the main land on the back of the colonies, paying to the king one fifth part of

* That is, I ſuppoſe, *they only*.

all

all the gold and ſilver, and one fifteenth part of all the copper to be found there, without *any other manner* of profit or account to him.

The right of coinage alſo is allowed them.

They are allowed to carry over all ſuch perſons as are willing to go with them, and not "*ſpecially reſtrained* by the *king*," with "ſufficient ſhipping, and furniture "of armour, weapons, ordinance, pow-"der, victual, and all other things ne-"ceſſary for the plantations, their uſe "and defence."

They are empowered to make a defenſive war. That is, to repel by force all "*intruders*" into their ſettlements, all "*annoyers*" of them.

They are allowed to impoſe *a duty of two and a half per cent.* on all merchandiſes imported into the ſaid colonies by perſons not being of the ſaid *colonies*, but being of realms or dominions under the *obedience* of the king, and a duty of *five* per cent. on all merchandiſes imported by

by perſons neither being of the colonies, nor ſubjects under the *obeyſance* of the king. And to enforce the payment of theſe duties, they are allowed to *ſeize, and detain*, the perſons, ſhips, and goods of the importers.

The duties thus collected are appropriated: during the ſpace of *twenty-one years*, "they are to be wholly employed "to the *uſe*, benefit, and behoof, of the "ſaid ſeveral plantations, where ſuch traf-"fick ſhall be made. At the expiration "of that term they are to be taken to the "uſe of the king, and collected by ſuch "officers and miniſters as the king ſhall "appoint."

They are allowed to "tranſport goods, "chattel, armour, munition, and furni-"ture, needful for their apparel, food, "defence, or otherwiſe, out of the realms "of England and Ireland, and *all* the o-"ther dominions of the king, without *any* "cuſtom, ſubſidy, or other duty during "the ſpace of *ſeven* years."

The

The inhabitants of the colonies, and ſuch of their children, as ſhall be born within the precincts of them, are to enjoy "all the liberties, franchiſes, and im-"munities, *within any of the king's other* "dominions, to all intents and purpoſes, "as if they had been abiding, and born "within the realm of England, or any "other of the ſaid dominions."

The king farther engages, on petition being made, to grant to ſuch perſons as the reſpective council of each colony ſhall name, all the lands contained within the precincts of the colonies "to be holden "of the king, as of his manor of Eaſt "Greenwich in Kent in *free, and common* "*ſoccage* only, and not in capite."

Three years afterwards the king granted a ſecond charter, explanatory of the firſt. So far as the firſt related to the "firſt or London colony." It is dated the 23d of March, 1609 *.

* See Collection of Charters, No. II.

A great

A great number of new adventurers, including all the companies of London, are here named. They, and ſuch others as they ſhould hereafter aſſociate, are erected into a body corporate, under the title of "The treaſurer and company of adventurers, and planters of the city of London, for the firſt colony of Virginia."

Under this name they are allowed to purchaſe lands in England or Wales; to plead, and to be impleaded.

The grant of lands is extended, and they are to be apportioned, and diſtributed, by the treaſurer and company, to the ſeveral adventurers: proper regard being had both to the proportion, merit, and ſervices of each adventurer.

A new domeſtic council is appointed *: the treaſurer and members of the council, pro hac vice, are named by the king; but are hereafter to be nominated, diſplaced,

* In the former charter *one* domeſtic council had "the ſuperior managing and direction" of *both* colonies: now a domeſtic council ſeems to have been appointed to each of them ſeparately.

or

or continued, not (as in the former charter) by the king, but by a majority of the adventurers. Each member newly choſen to take the oath of counſellor before the Lord Chancellor, the Lord High Treaſurer, or the Lord Chamberlain.

To this council power is given to conſtitute and confirm, or to diſcharge and change, all officers, governors, and miniſters, needful to the government of the colony.

The council has farther the power of eſtabliſhing, or changing the form of government in the colonies; of making, and abrogating laws to be obſerved within the precincts of the colony, or upon the ſeas in going or coming.

The governors and officers appointed by the former charter, are commanded to be obedient to the governors and officers appointed under the preſent charter.

The council has the power of admitting new freemen, of disfranchiſing old ones.

It has the ſame power of engaging ſettlers, and of free exportation for ſeven

years, as was granted by the former charter.

The company is freed from all subsidies, and customs, in Virginia, for one and twenty years; and *for ever* from all taxes upon goods imported thither: as also from all taxes upon goods exported thence into England, or other the king's dominions, five per cent. only excepted: which sum being paid, they may within thirteen months after their first landing in England, or other the king's dominions, re-export them for sale in *foreign* parts, without *any custom, tax, or other duty.*

The power of imposing duties on non-freemen, is confirmed and extended. The duties (over and above what are paid by the freemen) are to be five per cent. for non-freemen, who are subjects of the king's dominions, and ten per cent. for non-freemen, who are not subjects. The duties are appropriated as before in the former charter.

The treaſurer and company, and the governors and officers, appointed by them, are veſted with a full power "to correct, "puniſh, pardon, govern, and rule all "adventurers, according to ſuch orders, "as by the ſaid council ſhall be appoint-"ed; and in defect thereof, according to "the *good diſcretion* of the ſaid governor "and officers:—as well in caſes capital "and criminal, as in civil, both marine "and others.—So that the ſaid ſtatutes, "ordinances, and *proceedings*, be as *con-"veniently* as *may* be, agreeable to the "laws and policy of England."

The governor in chief is veſted with the power of executing martial laws in caſes of mutiny and rebellion, in as large and ample a manner, as the lieutenants of counties are in England.

All privileges granted by the former charter, and not revoked by this, are re-confirmed.

And it is provided that no new adventurer ſhall be permitted to go into the co-lonies,

lonies, till he has taken the oath of supremacy. A precaution intended to prevent the spreading of the Romish superstition.

About two years after this, another charter was granted, to extend and explain that which we have now given an account of*.

By this charter, weekly meetings, and general quarterly courts are directed to be holden.

A power is given of suing defaulters, and compelling them to make good their engagements.

A power is given of conferring the freedom of the company to *aliens*; provided they be subjects of states in amity with the king.

A power of administering, not only the oaths of allegiance and supremacy, but such other oath as the council shall think

* See Collection of Charters, No. iii.

fit, to perſons employed in the plantation; and to ſuch witneſſes as may be called to clear up any matter in controverſy.

Another power there is, if poſſible, ſtill more extraordinary than any of the preceding: a power, than which, had it been exerted, none could well bid fairer to bring a colony to ruin.

It ſeems complaint had been made, that artificers and others, after having received premiums for engaging in the ſervice of the company, had either refuſed to go to America at all, or being *there* had miſbehaved themſelves; and on their return, being convened before the council here, had behaved contemptuouſly to that court; and had endeavoured, by *ſlanderous reports* to diſcourage others from "joining in the adventure."

To remedy this evil, the king empowers *any two* of the council to bind over ſuch perſons to their good behaviour, and to proceed againſt them as is uſual in other

like caſes in the realm of England :—" or " elſe" (ſays the charter) " at their *diſcre-* " *tion*, to *remand*, and *ſend back* *, the " ſaid offenders, unto the ſaid colony in " Virginia, *there* to be *proceeded* againſt, " and *puniſhed*, as the governor, deputy, or " council there, ſhall think *meet* : or other- " wiſe according to ſuch laws and ordi- " nances, as are and ſhall be in uſe there, " for the well ordering, and good govern- " ment of the ſaid colony."

The more attentively we conſider theſe charters, the more we ſhall be convinced, that they cannot operate to the ſupport of the claims ſet up by the Americans of this day.

One of the grants is evidently *illegal*. It gives a power, which the king could *not* convey, in whatever capacity he be conſidered as acting. In his *procuratorial* ca-

* To wit, as well thoſe who had returned from thence, as thoſe who had never been.

 pacity,

pacity, no doubt, he might give *powers*, and grant *exemptions* to the coloniſts, which they had not by law. But he could not, therefore, deprive his other ſubjects of the protection they enjoyed by law, or ſubject them to burthens, to which they were *not* liable by law. Yet the king aſſumes the power of doing this. He conveys to the council a right of exerciſing that power in a manner more wanton and cruel, than was ever practiſed by the Star-chamber. Any *two* of the council might ſend any *man*, accuſed of certain miſdemeanors, to America *; there to be *puniſhed* as the governor and council *there*—at once judges and parties—ſhould think meet.

* The Americans are vehemently offended at the acts of parliament made for ſending to England, perſons charged with treaſonable violations of the laws, or with homicide or mayhem, committed in the execution of them. The ſame perſons ſcruple not to aſſert their right to all the benefit of a charter, which ſends Engliſhmen over to America to be tried for ſlander.

Among

Among the miſdemeanors recited, one is, "*ſpreading of ſlanderous reports* of the county of Virginia." Who can doubt but merchants, intereſted in the ſucceſs of the plantation, would have conſtrued a true and fair account of the hardſhips to be undergone, and the difficulties to be ſurmounted, by the firſt ſettlers, into *ſlanderous reports?*

But, beſides that ſuch a clauſe is enough to vitiate the whole of the third charter, we may remark upon the *general* view of them all, that they certainly had not any ſuch ſtate of America as the preſent in contemplation; and that they contain ſcarce any proviſion *applicable* to it.

The *pretext* ſet forth for eſtabliſhing theſe colonies, was the old ſtale one of "*promoting the glory of God.*" A pretext which no man, who has turned over a ſingle page of hiſtory, can hear of without ſhuddering. The *real* motive on the part

of the *adventurers*, was the hope of eſtabliſhing a lucrative *trade*: on the part of the *crown*, was the hope of *enriching* itſelf by the diſcovery of *mines* of gold and ſilver. To this purpoſe, two excluſive trading companies are eſtabliſhed.

These companies, it is true, are inveſted with ſome of the powers of ſovereignty; that is, ſuch of them as appeared neceſſary to the ſupport of their excluſive trade. What rights does this convey, to the coloniſts, to thoſe who were to *cultivate* and *inhabit* the wilds of America? Does it convey to them the right of enjoying *there* in America all the bleſſings of the Engliſh government?

As to Ireland, the privilege of enjoying in Ireland the Engliſh form of government (if we may believe Dr. Leland, and his authorities) was granted to the adventurers who ſettled in that country; but is any thing *like* this promiſed to the adventurers who ſettled in America? No; all the

Engliſh

English rights they could ever have exercised *here* in *England*, are indeed preserved to *them*, and to their children *born* in America. What follows? They may come then at any time and claim them.

It may not perhaps be difficult to give the reason for the English form of government, having been communicated to the first settlers in Ireland, and not to the first settlers in America. The *adventurers* and *settlers* in Ireland were the same persons; the chiefs who led over their friends and dependents to fight for Dermod, meant to settle there themselves; and they therefore asked and obtained the communication of the English law in their new settlements. But the original adventurers, and the original settlers in America, were two different classes of people; the one were servants of the other. The adventurers therefore obtained as many of the powers of sovereignty as they could for themselves; but for the *settlers* they asked only,

only, that they might not forfeit the rights they could otherwiſe have exerciſed here, that they might not be puniſhed as fugitives, nor their children diſinherited as aliens.

Their lands 'tis true are granted in free and common ſoccage, and compreſſed, by force of a fiction, within a ſmall diſtrict of the mother country. What right reſults from this? Make the moſt of it, no other than that of voting in the election of repreſentatives for that diſtrict.

The king indeed promiſes that he will lay no impoſts, for a certain limited period; and accepts a ſtipulated ſum in lieu of all impoſts thereafter. But what exemptions did the ſettlers gain by this? The power of impoſing taxes on them was ſtill veſted in a council eſtabliſhed at *London*; that is, in an elective ariſtocracy. By the firſt charter this council was to be appointed by the king, and though the ſecond charter gave the power of appoint-

ment

ment to a majority of the adventurers, yet what did the ſettlers gain by this? The electors reſided in England, and the council ſate in England.

The Americans, I believe, would hardly contend for ſuch a government as this. They would think themſelves ſafer, I am perſuaded, in the hands of a Britiſh parliament, than in thoſe of an ariſtocratical council ſo elected.

The proviſions of theſe charters were calculated for an excluſive trading company. Colonization was conſidered only as ſubſervient to commerce: the rights of the coloniſt would have been buried under the weight of mercantile intereſt.

But in truth theſe companies ſubſiſt no longer. The lands which were granted to them, have, either by the authority of ſucceeding kings, or by the acts of their own council, been parcelled out to other adventurers. A cluſter of governments have ariſen, and if the preſent claims of the Americans are to be ſupported by

charters, it muſt be by the charters granted to theſe later ſettlers *.

* It was thought, however, neceſſary to ſtate theſe original charters; they at leaſt ſerve to ſhew the ſpirit with which the firſt ſettlements were undertaken. There appear to have been other charters explanatory of the firſt, ſo far as it related to the grants made to the Plymouth company: as the two laſt are explanatory of it, ſo far as it relates to the grants made to the London Company. But they are not to be found, ſo far as I know, in any printed collection.

SECT.

S E C T. II.

What were the privileges granted by the crown to the people of New England, by firſt charter of Maſſachuſet's Bay?

THE patentees of what was ſtyled the ſecond, or Plymouth company, in the Virginia charters, had ſpent large ſums of money with the hope of effecting a permanent and advantageous ſettlement *. Tired out with repeated loſſes, they were on the point of abandoning the adventure, when ſome other men of fortune took it up. In the year 1620, theſe laſt obtained a new patent explanatory of the firſt †.

It was about this time that one White, a clergyman of Dorſetſhire, was looking out for a ſettlement for ſome ejected miniſters,

* See Mauduit's Short Hiſtory of Maſſachuſet's Bay.

† Ib. I do not find that this charter is any where extant in print; but it is referred to by the firſt charter of Maſſachuſet's Bay.

ſters. He entered into a treaty with the Plymouth company, by order and in the name of Sir Henry Roſewell, and five other gentlemen of Dorſetſhire, to whom the company ſold the part of New England * therein deſcribed as lying at the bottom of Maſſachuſet's Bay.

Theſe new adventurers found the undertaking to exceed their forces. Other gentlemen being applied to, aſſociated with them. A new draught of the former patent was made out, in which the names of the new aſſociates were inſerted, and the tranſaction was confirmed by the king.

The council reſiding *in England* were ſtill the directors, and ſupreme managers,

* This name of "New England" was given to an indefinite part of the territory within the limits of the Plymouth colony, by Charles I. then prince of Wales, at the inſtance of a captain Smith. This captain Smith was a principal man in the Plymouth colony, and had drawn a plan of this part of it. The extent of it appears no otherwiſe than by means of ſuch and ſuch names of places that are ſtill current.

of

of the whole. The perſons ſent out to order and diſpoſe of the ſettlement, were ſent under *their* authority, and acted by their direction.

It was about this time, that the low church party began to feel the ſeverities of Laud's perſecution: as thoſe ſeverities increaſed, men of higher rank, and larger property, began to look out for an aſylum. They applied to the company, and offered to go over to the new ſettlement with their families and dependents. It was now for the firſt time, that any part of North America began to be viewed in the light of a fixed abode. The colony till now had ſerved to no other purpoſe than that of the ſeat of a factory, who were changed from time to time as the purpoſes of commerce made convenient. It now began to wear the face of a ſettled plantation. This new race of inhabitants, excluded from *all proſpect* of a return to their *native* country, turned their eyes to this vacant region as to their home. Diſdaining therefore to

ſubject

ſubject themſelves to the controul of their inferiors, and fearing to receive laws from a country groaning under the perſecutions from which they were about to fly, they inſiſted on the cuſtody of the charter, as the pledge of their ſecurity.

It can, I think, hardly be doubted, but that ſuch a transfer of the charter was *illegal*; for, according to the terms of the charter, the governor, deputy-governor, and aſſiſtants were to reſide and hold their courts in England. By what legal power then could the charter be transferred to a governor, deputy-governor, and aſſiſtants, who were to reſide and hold their courts in America?

This difficulty was either not attended to, or over-ruled. A general aſſembly was called on the 29th of October, 1629. A new governor, deputy-governor, and court of aſſiſtants were choſen, out of ſuch of the members as offered to go and ſettle in America. They ſailed from Southampton at

at the end of March 1630, and took the charter with them.

Of that charter the following is an abridgment *:

It begins by reciting the grant made by king James I. in 1620. " by which all the tract of land between forty and forty-eight degrees of northern latitude was granted to the Plymouth company †.

It then recites " that the council established at Plymouth, had granted to Sir Henry Rosewell, and others, that part of the premises, which is now called Massachuset's Bay. This last grant the charter confirms; and, as if for greater security, re-grants the same lands afresh directly from the king, with the usual reservation to his majesty of the fifth part of all gold or silver ore.

* This charter is printed at the end of Mr. Mauduit's Short View of the History of Massachuset's Bay.

† This charter was explanatory of the first general charter of Virginia, cited above.

The grantees, and ſuch perſons as they ſhould hereafter aſſociate with them, are made a body corporate, *by the name of the governor and company of Maſſachuſet's Bay*, in *New England*, with perpetual ſucceſſion; a capacity of pleading and being impleaded, of purchaſing lands or goods, of granting or ſelling them, and of uſing a common ſeal.

The charter goes on to regulate the government of the corporation. It appoints that there ſhould be one governor, one deputy-governor, and eighteen aſſiſtants. Thoſe who are to be the firſt inveſted with theſe offices, and hold them for the year enſuing, are named in the charter.

Their ſucceſſors are to be choſen *annually*, by the majority of the company, out of the freemen of the company. They are to take an oath of office, and are removeable for miſdemeanors.

Once every *month* the governor is to aſſemble the court of aſſiſtants, which is, "to order and diſpatch all ſuch buſineſſes

"and

"and occurrents, as ſhall from time to "time happen, concerning the company "or plantation."

Once every quarter, or, if the court of aſſiſtants ſhall ſee fit, more frequently, the governor is to aſſemble a general court of *aſſiſtants* and *freemen*.

Theſe general courts are to admit freemen, to elect officers, "to make laws and "ordinances for the good and welfare of "the company, and for the government "and ordering the lands and plantations; "which laws and ordinances are *not* to be "*repugnant* to the laws of England."

The patentees and their aſſociates are empowered to engage ſettlers, as well ſubjects as ſtrangers. To employ ſhipping; tranſport armour, weapons, ordnance, ammunition, cattle, and all manner of merchandiſes, free of all duties for ſeven years.

They are likewiſe exempted from all ſubſidies *in New England*, "for the like ſpace "of *ſeven years*; and from all taxes and

" impoſitions, *for the ſpace of twenty and* " *one years* * upon all goods and merchan- " diſes, *at any time or times hereafter*, ei- " ther upon importation thither, or ex- " portation from thence, into England, or

* I can have no reaſon to doubt of Mr. Mauduit's accuracy. I ſuppoſe therefore this is a *true* copy. The reader will, however, remark, that it differs eſſentially from the ſecond charter of king James, cited above. There a total exemption from taxes and impoſitions is granted for *twenty-one* years, here only for ſeven; there five per cent. is the *perpetual* tariff after the expiration of the twenty-one years, here it is the tariff after the expiration of *ſeven* years, and to continue only for twenty-one years. In the firſt inſtance the king renounces *all* right of impoſing taxes for a certain conſideration *for ever*, here he renounces it for the ſame conſideration, but *only* for *twenty and one years*. I own, however, from the turn of this whole clauſe, it looks as if the words—" for the ſpace of twenty " and one years" had crept in by ſome miſtake of the tranſcriber. If it had not, inſtead of ſaying " at " any time or times hereafter," it ſhould have been, " at any time or times within the ſaid twenty and " one years;" and ſo again, after the word " thenceforth" ſhould have followed, " during " the ſaid twenty and one years."

" other

"other of the king's dominions, except
"only the five pounds per centum, due for
"cuſtom upon all ſuch goods and mer-
"chandiſes as after the expiration of the
"ſaid ſeven years ſhall be imported into
"England, or other the king's domini-
"nions, which five pounds per centum
"*only*, being paid, it ſhall *thenceforth* be
"lawful to export the ſame goods, &c.
"into foreign parts without any cuſtom,
"&c. to be paid."

The rights of natural-born ſubjects *here* in England, and within any of the king's dominions, are preſerved to the ſettlers and their children.

In favour of thoſe who were to ſettle this tax, this is the whole of what was ſtipulated; and theſe therefore are all the privileges to which the preſent coloniſts can be underſtood, under this charter, to have ſucceeded.

The governor, aſſiſtants, and freemen, in England, ſtand on a very different footing; they indeed in their general courts

are empowered to make "all manner of "wholesome and reasonable orders and "laws, not contrary to the laws of England." I cite the *words* as not knowing how to give the *sense*.

The objects of these laws are described. And these objects are:—to settle the forms and ceremonies of government and magistracy, necessary for the plantations; to name and style all sorts of officers; to distinguish and set forth the several duties, powers, and limits of their offices; to prescribe forms of oaths (warrantable by the laws of England) for the due execution thereof; to dispose and order their elections, and to impose *lawful* fines, mulcts, imprisonment, or other *lawful* correction on the breakers of these laws.

With respect to the settlers then it should seem, that the charter submitted them to an absolute government; for I see no limitation prescribed to the power of the council over them: unless it be that the power of taxation is not expressly given. To all other

other laws made and published, not by the settlers, not by a legislative body residing among them, but by a company residing *here* in England, the planters are required to pay all due obedience.

The only limitation of the power of the council is contained in these words, which follow immediately after the words empowering the council to inflict fines, mulcts, &c. "according to the course of "*other corporations*, within this our realm "of England."

SECT. III.

Abstract of the charters of Connecticut and Rhode Island.

"GOD in his providence (Mr. Hutchinson very gravely remarks) "bringeth good out of evil *." His proof is, "that it is to bigotry and blind zeal "we must attribute, if *not* the settlement, "yet at least the *present* flourishing state "of North America."

True it is that bigotry and blind zeal contributed to unpeople England, as it had to unpeople other parts of Europe; and that those who were driven by it from hence took refuge in America. Equally true it is that the same spirit of bigotry and blind zeal raged *among* the new emigrants with tenfold greater fury than it had ever raged *against* them here; that it

* See his History of Massachuset's Bay, vol. i. p. 3.

forced

forced them aſunder with greater violence than it had collected them together. They were like the men of Babel; no man underſtood his brother. But bigotry and blind zeal no more contributed to render America *flouriſhing*, than the multiplicity of languages contribute to make men knowing.

Thus much is certain, bigotry and blind zeal brought diſperſion out of union. Hence new ſettlements were formed, and new charters ſued for.

By degrees part of theſe religioniſts fell away from the reſt. Some ſettled upon the river Connecticut. Another part went and occupied Rhode Iſland. Each of theſe diviſions bethought themſelves of applying for, and found means of obtaining a ſeparate charter *. From that diſtrict, of which the whole had been already granted to the whole body of the adventurers under the Plymouth charter, two large

* See Collection of Charters, No. vi. and vii.

diftricts were diffevered in favour of a part of that body, without the privity of the reft. Thefe new tribes were each of them erected into "a body corporate," and enjoined to ufe the powers vefted in them "according to the courfe "of *other corporations within* the kingdom of England."

Mean time nothing can be more ftriking than the difference between the fituation of the adventurers under thefe two laft charters, and that of thofe under the firft. On the one hand exemptions were granted to the patentees of Maffachufet's Bay, which were not granted to the patentees of Connecticut and Rhode Ifland. On the other hand more extenfive powers were granted to the latter in one or two effential points.

The reafon of this difference is obvious. In the charter granted to the patentees of Maffachufet's Bay the king had in contemplation only a fet of merchants and adventurers refiding in England, and carrying

rying on by their factors and agents an exclusive trade to a certain part of America. In granting the charter to the patentees of Connecticut and Rhode Island, he had in contemplation to prescribe a form of government for a number of subjects *already settled there*.

Thus, for instance, the general court of the company of Massachuset's bay was to consist of the governor, or deputy-governor, and such of the *assistants and freemen* as were present; that is, all the freemen had a right of being present, and voting at these courts. In Connecticut and Rhode Island, the freemen of the different towns and districts were to elect *deputies* to deliberate, and vote for them in the general courts.

To the patentees of Massachuset's Bay, an exemption from the payment of all customs on goods exported from England was granted for the space of seven years. To the others, this exemption is expresly denied.

The

The patentees of Maſſachuſet's Bay had no power of erecting courts of judicature. To the others this power is given.

In theſe charters, it is not the moſt ſanguine advocate of the Americans that can find any thing, to juſtify their claim of independence on the parliament or laws of England. On the contrary, the laws of England are throughout referred to as the ſtandard, by which the validity of their own regulations is to be tried. The legiſlative powers conveyed to them are to be uſed in the manner "that *other corporations* in *England* uſe them." And ſurely no corporation in England did ever ſuppoſe that their powers of ſubordinate legiſlation exempted them from the ſupreme legiſlation of parliament.

In the charter of Rhode Iſland we find the following clauſe. "Many of the inhabitants cannot in their private opinion conform to the public exerciſe of

"religion

"religion according to the liturgy and "ceremonies of the church of England, "or take and subscribe the oaths and articles made and established in that behalf; and for that the same, by reason "of the remote distances of those places "will, as we hope, be no breach of the "unity and uniformity established in this "nation, we have therefore thought fit "to ordain—that no person, within the "said colony, shall, in any wise, be molested, or called in question, for any differences in opinion in matter of religion—any law, statute, &c. of *this realm* "to the contrary notwithstanding."

Here then we see a specific law of *this* realm, I mean the act of uniformity, by which the colonists thought they *should* be bound, unless they had a specific *exemption*. The object of this law was such, as would render the observance of the law itself, in these uncultivated and distant regions, a matter of the greatest possible indif-

indifference to the government in England.

Suppofing the Englifh clergy to be as intolerant as the moft uncandid of their enemies have ever reprefented them, yet here were no endowments to tempt their avarice. The fcene was too remote to be galling to their pride. Few, if any, of the fettlers were of the church of England. They were of various fects, no one of which but had teftified its hatred to the reft. Yet even this law they thought *might* legally be put in execution againft them. They felt that they were legally fubject to it. And they therefore prayed a fpecific exemption from it. If without that fpecific exemption they would have been fubjects to this law, why not to others?

The charter of Maffachufet's Bay contains nothing more than an exclufive right of trading within a particular diftrict of America. This right is conveyed to a

company

company residing in England. That company had extensive privileges, but hardly any of the powers of political government. They had indeed the power of imposing commercial duties, but they could lay no domestic taxes, either on freemen or non-freemen. They could erect no courts. The people whom they sent out, or such of the adventurers as went of their own accord, had no other protection for their rights than what was to be found in the courts *here* in England; the same protection which a Gentoo may find at present. The patentees were exempted from customs and duties for a given time; but *such* an exemption so limited, is itself the strongest confirmation of the right.

Some of these defects are supplied in the charters granted to Connecticut and Rhode Island. But in neither of *these* is there expressed or implied any thing like a total emancipation from the power of

par-

parliament, except as to the ſingle object of conformity to the church of England: nor does any reaſon appear why ſuch an emancipation ſhould be neceſſary to the exerciſe of any power, or the enjoyment of any exemption that is there expreſſed.

SECT.

SECT. IV.

What were the privileges granted by the Crown to the New-Englanders, by the second Charter of Massachuset's Bay?

IN the general slaughter made of corporations, toward the latter end of the reign of Charles II. the company of Massachuset's shared the common fate. It was in the year 1683, that a monster called a *quo warranto* was let loose upon them, from the court of King's Bench, to devour their privileges. And in the year following, another of the same breed, called a *scire facias*, out of the court of Chancery, to summon them to make their appearance within a month. Having neither wings to fly with, nor command over the waves to still them, they came not within the time. For this contempt judgment was entered up against them. From this time the crown saw them prostrate at its feet.

At the resurrection of the constitution under king William, entreaty was used with his majesty to restore the ancient charter. The request, as to the specific terms of it, was refused. They were denied what they asked for; but, what is singular, they were granted more: a charter was granted them, in many respects more beneficial than their old one.* It is

* See this charter in the Appendix to Neale's History of New England, vol. ii. number I. It is reprinted in the collection printed for Almon. I could not read without surprize the following passage in a book attributed to Mr. Burke †. The writer is speaking of this colony. "Some time "after the revolution (says he) they received a new "charter, which, though very favourable, was "much *inferior* to the extensive privileges of the "former charter, which indeed were too extensive for a colony." Surely this writer had not attended to the first charter, or had forgot that it was granted to a company *residing* in *England*. And therefore with all it's *extensive privileges wanted* all the powers necessary to constitute a political government.

† See Account of European Settlements in America, vol. ii. p. 169, edit. 5.

this

this new charter which goes by the name of the second charter of the Massachuset's Bay.

This charter (after reciting the several charters heretofore granted to the company of Plymouth, and to the patentees of Massachuset's Bay, and the vacating of this last charter on a writ of scire facias in court of Chancery); sets out with naming as the subject of its disposal, the colony of Massachuset's Bay: to which, however, we find now, for the first time, aggregated a number of other settlements, known by the respective names of "New "Plymouth; the province of Maine; the "territories called Acadia, or Nova Sco-"tia;" with the intermediate wastes.

It is remarkable, that the terms under which they stand characterised in the charter, are those of *factories*, and colonies: the first of which seems to shew the *legal* idea entertained of the settlers under the former charters. The law considered them as *factors*, or *agents*, of a

company: the governing part of which was ſuppoſed to be fixed, and reſident in England.

The "factories and colonies," thus incorporated, are not declared (as in the former charters) "a body corporate and "politic, capable of pleading, and being impleaded," &c. but are erected into "one "real province."—A very different kind of ſociety, and requiring far other powers than a mere body corporate.

The affairs of the province accordingly are to be adminiſtered by a governor, deputy-governor, and ſecretary; all three at the nomination of the crown; by twenty-eight aſſiſtants, or counſellors, to be annually choſen by the general aſſemblies; and laſtly, by repreſentatives to be deputed by the reſpective towns and diſtricts.

The council is to conſiſt of the governor, or deputy-governor, and ſeven, at leaſt, of the aſſiſtants.

The

The general courts, or assemblies, are to consist of the governor, or deputy-governor, the assistants, and the representatives.

With the governor is lodged the power of summoning the council, and general courts. Both, or either, as often as he sees fit. But the general courts he is obliged to summon once a year at least.

He may adjourn, prorogue, or dissolve them at his pleasure. He has a negative on all laws; as also in the election of counsellors.

He has the command of the militia *within* the province: he may erect, or demolish forts, and commit the government of them to such persons as he pleases.

These are acts in which, by the charter, he is bound only by his *own* discretion.

Other acts are not to be done but with "the advice, or consent" of the council.

 It

It is with their "advice and consent" that he is to appoint judges, commissioners of oyer and terminer, sheriffs, justices of the peace, and other officers, belonging to the council, or courts of justice; to do all that is necessary for the probate of wills, and granting administrations; to issue his warrant for disposing of the taxes levied by the general assemblies, for the defence and support of the government, according to such acts as shall be in force within the province; and to grant commissions for exercising martial law.

It is with the general assemblies that it lies to elect annually the assistants or counsellors; and to amove them for misdemeanors; to fix the number of representatives, which each county, town, or place, is to depute: the right of voting, however, being restricted to freeholders of forty shillings a year, or men possessed of some other estate of the value of fifty pounds; to erect courts; to make all manner of "wholesome and reasonable "laws,

"laws, either with penalties, or without, "not *repugnant* to the laws of England;" to appoint annually all civil officers, except those reserved to the crown, or to the governor as above-mentioned; to set forth the several duties, powers, and limits of the officers appointed by themselves; to prescribe the forms of oaths to be taken by such officers, such oaths, as before, not to be "*repugnant* to the *laws* of *England*;" to impose "fines, mulcts, imprisonments, and other punishments;" "to impose, and levy proportionable and "reasonable assessments and taxes, on the "estates and persons of all the proprietors, "or inhabitants of the province;" and, finally, to authorize the governor, when they see fit, to lead the militia out of the limits of the province.

It is in the name of the king, that all courts of justice are to be holden; and they are to have a power of "hearing "and determining, all manner of pleas, "real, personal, or mixed; in causes cri-

"minal or civil; on matters capital, or "not capital; and of awarding, and "making out execution thereon."

To the inhabitants in general, are granted all the liberties of natural-born ſubjects within any of the king's dominions; the right of appealing to the king, in dernier reſort, from any "judgment or ſentence," in any perſonal action, wherein the matter in difference exceeds the value of three hundred pounds ſterling: to *ſuch* of them as poſſeſs a freehold of the yearly value of forty ſhillings, or a perſonal eſtate of the value of fifty pounds, is granted a right of voting at the election of repreſentatives to ſerve in the general aſſemblies; and, laſtly, by an expreſs proviſion, to all except Papiſts, a full liberty of conſcience.

To the king himſelf are reſerved, the powers of erecting courts of admiralty; of nominating the governor, lieutenant-governor, and ſecretary; of receiving appeals in *perſonal* actions; of diſallowing, ſo it be within three years after their en-

actment,

actment, any laws made by the general assemblies.

From these laws, however, are excepted, such as shall be made to pass any grant of lands within the three colonies of Massachuset's Bay, New Plymouth, and the province of Maine only. Laws for these purposes are exempted from disallowance. Finally, to the king are reserved all trees of a certain diameter; and, as in former charters, the fifth part of all gold or silver ore, and of all precious stones.

Many, we are to observe, are the powers granted in this charter, which were wanting in the former. Among others, that of levying taxes on themselves is particularly observable.

It is from this specification, whereby the power of taxation is, by the parliament, speaking through the king, communicated to the colonies, that some are forward to infer the parliament's having renounced it for itself. But this inference seems not just.

The

The circumſtance of two taxing powers over the ſame body of perſons taxable; of two taxing powers, I ſay; a ſubordinate one beſides the ſupreme; of two ſuch taxing powers, eſtabliſhed for raiſing funds for different purpoſes, is by no means new. The truth is, nothing can be leſs ſo. We ſee it every where. Look around us any way, it ſtares us in the face. Not a pariſh in the kingdom, but has a power of taxing itſelf; or, to ſpeak more accurately, not a pariſh in which there is not a certain body of men, the veſtry, to whom within the limits of that pariſh, for certain purpoſes of that pariſh, belongs a power of laying taxes on the reſt. Are then the perſons thus taxed, are they by virtue of their being ſubjected to the authority of this one taxing body, exempted from the authority of every other taxing body? and in particular from the ſupreme univerſal taxing authority of parliament? No: they are again taxable by a ſecond taxing body, viz. the veſtry as above, with

two

two juſtices ſuperadded, for certain other purpoſes of that pariſh. They are a third time taxed, if the pariſh be a corporation, by a third taxing body, the rulers of that corporation, for the purpoſes of the corporation. They are a fourth time taxed by a fourth taxing body, the juſtices of the county, for the purpoſes of the county. Laſtly, they are a fifth time taxed by parliament; a fifth, and univerſal taxing body, for the univerſal purpoſes of the whole empire.

The inference in itſelf then is nothing leſs than juſt. That to king William in particular, who granted the charter, it did not appear juſt; that he never meant it *ſhould* be made; that he never thought it *would* be made, is what the grantees had early, and authentic proofs of.

To himſelf, we may remember, the king had reſerved the power of nominating the chief officers, the governor, deputy-governor, and ſecretary.

The

The reservation, it seems, gave great offence; so much, that the agents thought it necessary to go into arguments to justify them for having accepted the charter with such a clog to it.

In the course of those arguments, the idea of exemption from parliamentary taxation is *there* broached. We shall see how it was *here* received. Consider, say they to their constituents; consider, tho' you have not those powers, how ample are these you have.

"The general court has," (by this charter) "with the king's approbation, *as much* "*power* in New England, as the king and "parliament have in England. They "have *all* English liberties:—can be touch-"ed by *no law*: by *no tax*, but of their "own making *."

The province caught up the idea. Accordingly the first act of the new legisla-

* See Neale's History of New England, vol. ii. p. 479.

ture

ture was (ſays Mr. Hutchinſon *) a ſort of Magna Charta, aſſerting their claims, and privileges; among which this was not forgotten.

It is among the principal of theſe aſſertions, "that no aid, tax, tallage, aſſeſ-"ments, cuſtom, loan, benevolence, or "impoſition whatever, ſhall be laid, aſſeſſ-"ed, impoſed, or levied on any of their "majeſties ſubjects, or their eſtates, on any "pretence whatſoever, but by the act and "conſent of the governor, council, and "repreſentatives of the people, aſſembled "in general court."

That the *province wiſhed* to have the charter interpreted in the ſenſe their agents put upon it, is abundantly apparent. Did the *king* then interpret it in that ſenſe? We ſhall ſoon ſee. *He diſallowed the act.* It was expreſsly put to him, whether that, which they wiſhed for, was his meaning? and his anſwer was as expreſsly in the negative.

* See Hutchinſon's Hiſtory of Maſſachuſet's Bay, vol. ii. p. 64.

negative. "Did your majeſty mean to exempt us," ſay the repreſentatives, "from parliamentary taxation?" Says the monarch—"No.—You the ſubordinate le-"giſlative body of this my province ſhall "not be the *only* body having power to "lay taxes. Others, *one* other ſuch body "at leaſt there ſhall be beſides." What ſhall be this body? The king alone? That, I truſt, will hardly be maintained. If any one can find out another, beſides the parliament, let him produce it.

SECT.

SECT. V.

What were the privileges conveyed by the crown to the proprietor and inhabitants of Maryland in the Charter of Maryland?

BESIDES these governments, which alone are called *chartered*; there are others, which though equally derived from charters, are called *proprietary*.

These Mr. Juſtice Blackſtone defines to be governments, "granted out by the "crown to individuals, in the nature of "feudatory principalities, with all the in- "ferior regalities and ſubordinate powers "of legiſlation, which formerly belonged "to the owners," as he thinks proper to call them, "of counties palatine."

The firſt of theſe proprietary governments, (or indeed of any of the colonies founded for the expreſs purpoſe of ſettling) which was diſmembered from the general

general grants of Virginia, was *Maryland.* It was granted, by a charter of the year 1632, to Cæcilius, Lord Baltimore *, a Roman Catholic, who "was induced," we are told, "to attempt this ſettlement, "in hopes of enjoying liberty of conſci-"ence for himſelf, and ſecuring it to ſuch "of his friends, to whom the ſeverity of "the laws might looſen their ties to their "mother country †."

The conſtitution given to the colony by this charter, is remarkably different from that of any other we have yet ſeen.

In the firſt place, the whole colony, that is, we are to underſtand the ſoil of it, is under the uſual reſervation of the fifth part of all gold and ſilver ore granted to that lord and his heirs, to be holden of the king, as of his caſtle of Windſor in free, and common ſoccage by *fealty* only.

* Collection of Charters, No. IV.

† Account of the European Settlements in America. Vol. ii. p. 227.

Then

Then comes a clauſe, which ſeems ſtrongly to characteriſe the light in which the continent of North America, as we have before intimated, had till that time been conſidered; I mean that of a ſtation for *factories*, and not for ſettlements; a country to trade in rather than to cultivate. A ſpecial appellation is accordingly beſtowed on the country granted in this charter; it is erected into a *province*, in order (ſays the charter) "that the country "thus granted may be eminent above all "other parts of the ſaid territory, and "dignified with higher titles."

It is declared in expreſs terms to be no longer a part of Virginia, or any other colony whatever, nor dependent on them, nor ſubject to their laws, but entirely ſeparated from them; to be ſubject to the crown of England only, and thereon to depend.

To lord Baltimore is granted the ſole and abſolute proprietorſhip, as we have already intimated, of all the lands, as alſo

the patronage of the churches, ſaving only the faith and allegiance to, and ſovereign *dominion* of the king. With the power of granting out ſuch parcels of the premiſes, and that under ſuch tenures, and for ſuch cuſtoms and ſervices as he ſees fit, to be holden of himſelf *immediately*: which that they may be, every law and cuſtom in general to the contrary, and particularly the ſtatute of "quia emplo-"res" is diſpenſed with: power is alſo given him to erect manors, with courts baron.

Thus much for the rights given to him as proprietor of the ſoil.

In his political capacity are conferred on him in general, all the temporal rights of what kind ſoever which "any biſhop "of Durham *ever had* in the biſhoprick "or county palatine of Durham."

In particular, as to his legiſlative powers, he is to ſummon the freeholders or their deputies, "when, and as often, "and in ſuch ſort and form" as to him ſhall

ſhall ſeem meet. And on ſudden emergencies, without convoking ſuch aſſembly, to him ſingly is given the power "of making ordinances having the force "of law; provided ſuch laws be not repugnant to the laws of England, nor "extended in any ſort to bind, charge, "or take away the right and intereſt of "any perſon in his life, members, free-"hold, goods or chattels." He may preſcribe forms of judicature and manners of proceedings.

As to the executive power, in him it is all lodged, and he may either exerciſe it in perſon, or by deputies of any denomination. He may appoint judges to hold pleas, award and determine in all cauſes whatſoever. And, what is properly ſpeaking part of the legiſlative, that is a diſpenſing, rather than a part of the executive, power, he may pardon all offences, whether *before* or after judgment *.

* Would the patriots of Maryland lay claim to this clauſe of their charter?

To him alſo is given the power of levying troops, with all the authority of a captain-general; the power of conferring titles of honour, provided they be not ſuch as were then uſed in England; of erecting incorporate towns into boroughs, and boroughs into cities; of erecting and appointing ſea-ports, harbours, and other places where *only*, goods are to be laden or unladen in the province; with the ſole diſpoſition of the cuſtoms and duties to be aſſeſſed and paid thereat.

Thus much concerning the political powers given to him ſingly.

Other powers he is to exerciſe with the advice and conſent of the freeholders or their deputies: it is in general with their advice and conſent that he is to exerciſe the power "of making any laws whatſo-"ever, appertaining either to the *public* "ſtate of the province, or the *private* uti-"lity of particular perſons;" provided ſuch laws be "not *repugnant* to the laws "of England;" and in particular of impoſing

poſing cuſtoms and ſubſidies on all exports and imports. Of territorial taxes all this while no mention is to be found.

To the ſettlers in general is granted a free power of emigration, notwithſtanding the ſtatute of fugitives; to them, and to their children born in Maryland, are preſerved all the rights of natural born ſubjects in the kingdom of England and Ireland, with the right of exporting and importing all ſorts of merchandiſes, the product of England or Maryland, on paying the ſame duties as the *reſt* of the ſubjects of England for the time being, and *no more:* to ſuch of them as ſhould be freeholders, is given the power of voting, either in perſon or by deputy, as the proprietor ſhould appoint, in the legiſlative aſſembly.

To himſelf, as we before remarked, the king has reſerved the ſovereign dominion, with the fifth part of all gold or ſilver ore. To the ſubjects of England is reſerved the

right of fiſhing on the coaſt of Maryland, in common with the ſubjects of Maryland.

As to the right of taxation, the king renounces it for himſelf, his heirs, and ſucceſſors: and in terms which appear to me very forcible and deciſive.

"We covenant (ſays the charter) that "we, our heirs and ſucceſſors, will at no "time hereafter ſet, or make, or *cauſe* to "be ſet, *any* impoſition, rate, or contri-"bution *whatſoever*, in and upon the "dwellers and inhabitants of the aforeſaid "province for their lands, tenements, "goods or chattels, *within* the ſaid pro-"vince, or to be *laden* or *unladen* within "the ports or harbours of the ſaid pro-"vince." And "this declaration," as it is ſtyled, "is required to be received and "allowed in *all* his courts as ſufficient and "lawful diſcharge, acquittance, and pay-"ment *." How

* The abundans cautela of the lawyer has here, as is very apt to be the caſe, ended in obſcurity. By

How numerous and how material the points are in which this charter differs from every other that we have examined we may now perceive. But that which is most to our purpose to remark, is the king's absolute and formal renunciation of the right of taxing: a renunciation much too important, it should seem, not to have been made, as it is here, in terminis, wheresoever it was intended it should be understood to have been made.

As to the extent of this renunciation, it depends upon the relation which the colonies were supposed to stand in to the king. What that relation was, is a question that has been the subject of much controversy.

By *this declaration*, is meant the abovementioned *clause of covenant*: and when it is said that clause shall be received as payment of a sort of debt, which by the same clause was never to become due, nothing more is meant than this; that to any prosecution on account of such a debt, this clause rendering the tax whence the debt was to accrue illegal, should be a bar; as, were the tax legal, payment would be a bar.

Before we enter upon it, it may be proper to premiſe, that the interpretation we are in ſearch of for this clauſe, is the interpretation that according to probability was put upon it by the contracting parties, of whatever nature might have been the propoſitions aſſumed in that interpretation, whether true or falſe: as to this matter, it is probable, that between the ſentiments of the ſovereign and the noble favourite there was no great difference. The favourite, we have obſerved, was a Roman catholic, a diſciple of that ſect, whoſe prejudices run the ſtrongeſt in favour of the power of the crown.

Charles at this time unqueſtionably underſtood himſelf to be in poſſeſſion of the right of levying *certain* taxes by his *ſole* authority, without the concurrence of the two other eſtates, upon his *Engliſh* ſubjects. If he conſidered the colonies as ſtanding to him in the ſame relation as his Engliſh ſubjects, then this renunciation might

might be interpreted, as extending only to the right which he claimed over his Engliſh ſubjects, namely, the right of laying *certain* taxes without the concurrence of the other eſtates.

But it is likewiſe beyond a doubt, that Charles conſidered the colonies as entirely ſubjects to his *ſingle* authority, and not to that of the other eſtates; whom he ſuppoſed to have no more right of making laws to bind them, than they now have of making laws to bind Hanover. This opinion James I. had expreſſly avowed in a letter to the houſe *. It ſhould ſeem therefore probable, that in granting this charter Charles conſidered the colonies as ſtanding to him in this relation. And if ſo, it muſt, I think follow, that the covenant was *meant* and *underſtood*, to convey to the proprietor and inhabitants of Maryland, a full ſecurity againſt taxation by *any* power in England.

* Vide infra, Sect. VII.

This

This large interpretation of the clause in question, seems farther warranted by the words of the clause itself. It can hardly be said, I think, that when the king gives his consent to a tax, levied in his name, and by his authority, he does not "cause that tax to be set." And without the consent of the king a bill for taxation can no more acquire the force of a command than a bill for any other purpose. In a law for taxation, as well as in every other act of legislation, the immediate instrumentality is attributed to the king. Now the words of the clause of covenant are, that the king "will neither "set, nor *cause* to be set" any tax in Maryland. Hence therefore, I think, we may conclude, that according to the strict *letter*, as well as the spirit of the charter, the inhabitants of Maryland are taxable only by their own governors and assembly; and not by another body of men, whose commands are without ef-

fect,

fect, till ratified by the authority of the king.

This laſt argument appears to me concluſive; nor ſhould I ſcruple therefore to ſay, that by this charter, the proprietor and inhabitants of Maryland *were*, and ſuppoſing them to have kept their part of the contract inviolate, *ſtill are* exempted from parliamentary taxation.

But taxation only excepted, there ſeems no reaſon to ſuppoſe but that Maryland is, in *all* other reſpects ſubject to the ſupreme legiſlative power of parliament.

The inhabitants of that colony are expreſly ranked with the "*reſt of the ſub-*"*jects* of the kingdom of England." And with reſpect to them in particular, three ſtatutes at leaſt are manifeſtly repealed. Two of them, the ſtatute * of fugitives,

* Or rather ſtatutes, viz. 13 Eliz. c. 3.—14 Eliz. c. 6.—1 James I. c. 4. ſect. 8.

and

and the ſtatute of "quia emplores" by name; and the third, "de prærogativa "regia" by implication.

True it is that the repeal of the ſtatute of fugitives was of no farther uſe than to ſecure them againſt the loſs of their Engliſh poſſeſſions, or any other penalties that might at any time be inflicted on them *here*, for having quitted England. The operation of that ſtatute would have been ſpent in England. And from hence, therefore I allow, no argument can be drawn to prove that the ſettlers in Maryland conſidered themſelves as independant on the power of parliament. But the repeal of the other two ſtatutes was to enable them to purchaſe lands, to be holden *there*, in *Maryland*, directly of lord Baltimore, the immediate feoffor, and not of the king, the chief lord of the fee. It ſeems then, that the proprietor had no doubt but that the operation of theſe acts, had they not been repealed as

to him and his people, would have extended themſelves, and reached them *there* in Maryland. Now if he was convinced that *theſe* acts would, unrepealed, have operated there in Maryland, it is not eaſy to conceive upon what grounds he could imagine that any other act of the ſame power might not operate there as well.

SECT

SECT. VI.

What were the privileges granted by the crown to the proprietor and inhabitants of Penſylvania, by the charter of Penſylvania?

THE next of the proprietary governments in time, as well as ſituation, to that of Maryland, the only one indeed, beſides Maryland, now remaining, is *Penſylvania*. The grant of it made to the celebrated William Penn, the firſt proprietor, bears date the 28th of February, in the 33d year of Charles II. *

The differences and reſemblances between the conſtitution given to this colony, and the conſtitution given to the other proprietary colony, are ſuch, for the moſt part, as might be expected from the characters and circumſtances of the two proprietors.

* See Collection of Charters, No. VII.

Both

Both fled to America as to an asylum for their religion; but Baltimore fled from the nation; Penn from the hierarchy and the court. Baltimore looked towards the crown, as the protector of him and his tribe, against the necessary severities of the nation; Penn looked back to the affections of his fellow-subjects, as a rampart against the oppressions of the crown. Baltimore won from the favour of a steady tyrant, then in the zenith of his power, a permission of exercising in these distant regions that despotism, the image of which was alike dear to both: Penn extorted from the facility of a capricious tyrant a permission to communicate freedom to a body of fellow-sufferers, whose sighs for liberty heaved in unison with his own. Baltimore, whose spiritual prejudices fell into an easy alliance with his temporal ambition, thought a full power over the earth no more than a just recompense for his pains, in securing to them what was to give them their chance for heaven; Penn,

in the ardor of a generous enthusiasm, seems to have wished for no other power than what might suffice for the foundation of that common fabric of liberty, at which, with no other pre-eminence than that of chief labourer, he was working. Baltimore had turned his back upon a country, the majority of whose inhabitants were in a state of irreconcileable enmity with the tribe he headed; Penn kept an eye of affection still fixed upon a country, where he hoped to find as many friends as there were persons duly sensible of the value of liberty, and resolute to defend it.

Conformable to this difference in the views of the two grantees was the drift of the charters, respectively obtained by them.

That of the Maryland charter tends throughout to mark between the mother country, if such it might be called, and this new colony, as strong a line of separation as possible; that of the Pensylvania charter to continue as entire as possible the union

union between the parent and the infant state.

The above representation will appear sufficiently justified, by comparing with the Maryland charter a few of the clauses of the charter we are now about considering. To the king, but unhappily in a sense too literal; to the king, not, as in England, in the regular, independent repositories of his judicial power, the courts of Westminster-hall, but to the king, in conjunction with the feeble and invidious instrument of his prerogative, the council, is reserved the power of receiving appeals in the last resort. To the king too is reserved a negative on all laws.

By an express clause a large division of the laws, at that time in force in the mother country, are transported at once into the new colony; namely, the regulations concerning property, succession, and felonies; which regulations were to continue in force till altered by the proprietor, in

conjunction with the freemen, or their deputies.

To the proprietor and inhabitants, both present and to come, is granted the liberty of importing the products of the colony into England, and re-exporting them into other parts under certain regulations: one of these regulations is, that they shall pay the same duties "as the rest of the "subjects of the kingdom of England for "the time being, *shall* be bound to pay; "and do observe the act of navigation, "and other laws in that behalf made." The duties to be paid by other subjects, might, it is clear, be fixed by laws at any time thereafter *to be* made: these duties, to be fixed by laws then future, the Pensylvanians are to pay. It seems, therefore, but a natural construction to suppose, that by the laws mentioned in the succeeding paragraph were meant, not only laws *then* actually made, but also laws thereafter *to be* "made in that behalf."

Another

Another expreſs ſtipulation is, "that all "officers, and their deputies, who ſhall "from time to time be appointed by the "farmers and commiſſioners of his maje- "ſty's cuſtoms, for the time being, ſhall "be admitted and received into all the "ports and harbors of the province."

The proprietor is directed to maintain an agent, or attorney, in London, who is to be ready to appear in any of the king's courts in Weſtminſter, to anſwer for any miſdemeanors his principal may have committed, or, by wilful neglect, *permitted*, againſt the laws of trade and navigation; and to pay ſuch damages as the court ſhall adjudge, "and anſwer ſuch other forfei- "tures and penalties, as by the acts of "parliament in England are, or *ſhall be* "provided"

To conclude with a clauſe altogether deciſive upon the pretenſions which theſe coloniſts can found upon their charter:—the king covenants not to impoſe any *tax*, but

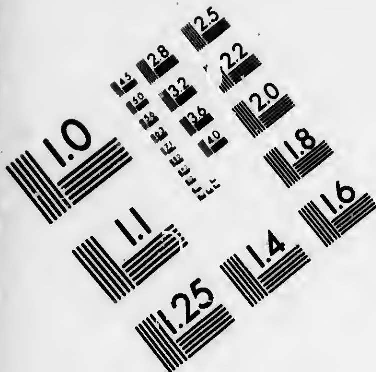
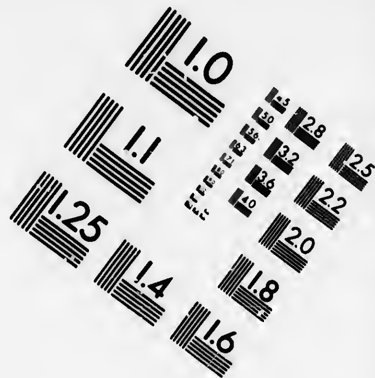
with the *consent* of the proprietor, or chief governor, or of the assembly, *or by act of parliament* in England.

To prove, by argument, that a charter thus worded, does not withdraw the province from the supreme power of parliament, with respect to this particular matter of taxation at least, it would be an insult on the reader's understanding to attempt. The very words of the charter preclude all argument. It cannot be supposed, that any assembly of Pensylvania could be ignorant of this; and yet one of them is not ashamed to assert, "that the "taxation of the people of this province "by any *other person whatsoever*, except "by the representatives they annually "chuse in assembly, is unconstitutional*." So then the charter, which stipulates that they *may* be taxed by the king and parliament,

* See the proceedings in consequence of the stamp act prefixed to the Collection of Charters, p. 10.

ment, is no longer a part of their conſtitution. Such is the force of "the *natural* "*rights* of mankind," and of "the noble "principles of Engliſh liberty," that a legiſlation, from it's firſt exiſtence *ſubordinate*, becomes, notwithſtanding the expreſs terms of the inſtrument which forms that legiſlation, if not de facto, yet de jure, "*perfectly free*" and independent. For ſo another of their reſolutions ſays it is "*or ought to be.*"

Upon the whole it appears, that according to the privileges originally granted by the crown to the colonies, Maryland *alone* is exempted from taxation: all the other provinces are, as to this point, in the ſame ſituation as if no charter had been granted.—The parliament may conſtitutionally tax them, provided the mode of taxation be ſuch, as to create the ſame relation between the Houſe of Commons and them, as between the Houſe of Commons and the inhabitants of Great Bri-

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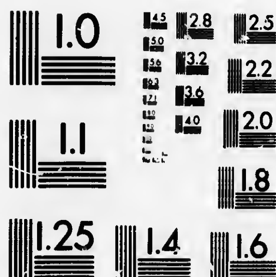
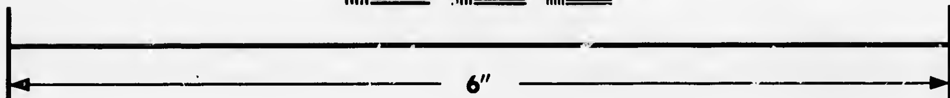

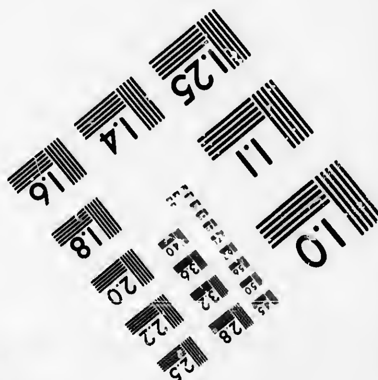

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tain. Under ſuch a mode of taxation they would be as effectually repreſented by the commons as the greater part of the inhabitants of Great Britain are repreſented by them.

SECT.

S E C T. VII.

What power did the parliament exerciſe over the colonies from their firſt eſtabliſhment, to the time of the commonwealth?

BEFORE we had examined into the privileges granted by the crown to the original ſettlers in America, we laid down ſome propoſitions very favourable to the cauſe of the coloniſts.

We ſuppoſed the king to act in the ſame capacity, when he * *covenanted* with them, as when he *treats* with foreign ſtates. We ſuppoſed charters to be acts of the ſame nature and force, as capitulations and treaties of peace. From thence we inferred, that the grantees have a legal right to all the powers and exemptions therein ſpecified; and alſo to all other powers and

* This is the term uſed in the proprietary charters.

exemptions *not* ſpecified, but neceſſary to the enjoyment of ſuch as *are* ſpecified.

We have examined no leſs than *nine* ſeveral charters, and in *eight* of them it appears, that an exemption from the power of parliament, or from parliamentary taxation, is neither among the exemptions, or powers ſpecifically granted, or neceſſary to the enjoyment, or exerciſe of ſuch as are ſo granted.

But we went farther: we ſuppoſed a caſe, in which the Americans might have a right to ſtill other powers and exemptions.—We ventured to ſuppoſe they had a conſtitutional right to any other powers and exemptions, which they had *conſtantly* and *uniformly* exerciſed and enjoyed, provided the legiſlature of England had as conſtantly, and uniformly, acquieſced in that exerciſe, and enjoyment.

Whether the excluſive power of internal legiſlation, and a full exemption from internal taxation, by the Engliſh parliament, be among the powers, and exemptions, uniformly

formly *enjoyed*, on the one hand, and as uniformly *allowed* on the other, can be proved only by the records of parliament.

Should it there appear, that from the establishment of the colonies, to the rise of the present troubles, parliament did no act to assert their right of controul or taxation over the Grantees *; or having attempted any, it did at any time afterwards renounce the right; then indeed the powers and exemptions, now contended for, do fall within the description we have given, and do, according to our principles, belong of constitutional right to the colonies.

* I use the term *Grantees* here, and not that of *Settlers*, or *Colonists*, because the original charters made, as we have already intimated, little or no provision for the liberties of any persons who could properly come under the denomination of *Settlers*, or Colonists. Under these charters the objects of favour were not the Ancestors of the present Americans, but either the members of a company resident in England, or merely the proprietor, and his heirs.

If,

If, on the other hand, it appears, that the charters were ſcarcely granted before parliament aſſumed and exerciſed, as far as occaſion called for it, its right of controul and taxation over the Grantees and Settlers: if it appears, that in the ſame early period, the Grantees and Settlers appealed to Parliament, as having ſupreme juriſdiction over them, if they preſented *petitions* to parliament, if they prayed to be *heard*, if they actually *were* heard by their council, if parliament never relinquiſhed its juriſdiction, but aſſerted it even againſt the formidable pretenſions of the Stuart family;—then ſurely it muſt follow, that neither the original Grantees *pretended*, nor the Parliament *allowed*, ſuch powers and exemptions, to have been conveyed by the charters.

Let us turn then to the records of Parliament.

On the 12th of May, 1614, juſt *eight* years after the grant of the firſt, and five

years only, after the grant of the second charter for planting colonies in America, the company, the Virginia company as it was called, *preferred a petition* to the House of Commons. It was received and read *.

On the 17th of the same month counsel was heard at the bar on behalf of the petitioners. The journals of that time are taken very imperfectly: however they furnish evidence enough to shew, that the matter was treated with much solemnity, and that the house was warm in the maintenance of its superintending power. We find an order made that the Lords Southampton, Sheffield, and others, who were Patentees, should be present "to hear the "treaty of the Virginia business.†" At the hearing it was moved, that the Treasurer, and those of the company of Virginia, should withdraw themselves during the debate. To this it was objected; if there was a bill depending concerning

* See Journals, vol. i. p. 481.

† See Journals, vol. i. p. 487, 488.

York,

York, the member for York would not withdraw, "for that it concerneth the "*Commonwealth*." A very remarkable argument; and which plainly inferred, the opinion of the members who alledged it, that Virginia was as much a part of the *ſtate*, and of the *realm*, as any county in England. The houſe acquieſced in this reaſon.

It happened that offence was taken at ſomething that had been urged by the counſel for the petitioners. For this he was ordered to be reprimanded, and to make his ſubmiſſion at the bar, but was indulged with the liberty of making it *ſtanding*. What the part of his argument it was that gave offence, does not particularly appear; ſome conjecture, however, may be made of the ſcope of it, from the reaſons aſſigned for their indulgence. "Though he di-"greſſed," obſerved the ſpeaker, "to mat-"ters of much weight, impertinent—took "upon him to cenſure ſome things, and "to adviſe,—yet the houſe would not be

"perſuaded

"persuaded that he came to offend with a "*high hand*." After returning thanks for the lenity of the house, the reprimanded Counsel petitioned, "that to *fill up the* "*measure* of their *grace*, hey would be "pleased to appoint a committee to consi-"der of the Virginia business *."

On the 17th of April 1621, a bill was read the first time for the free liberty of fishing on the coasts of Newfoundland, Virginia, New England, and other coasts, and parts of America †.

On the same day a report was made by Sir Edward Sands, from the sub-committee to the grand committee, concerning the causes of the decay of trade.—One cause assigned was, the importation of Spanish tobacco.—The remedy proposed, was, the cultivation of tobacco in Virginia, and the Summer Islands.

The motion was again taken into consideration the next day. A debate en-

* See Journals, vol. i. p 489.
† See Journals, vol. i. p. 578.

sued.

ſued.—Some were for an abſolute prohibition of tobacco.—It was urged, that ſuch a prohibition would totally ruin the coloniſts of Virginia; that the Company ſhould at leaſt be heard.—One of the patentees urged, that Virginia was holden of the manor of Eaſt Greenwich. And he a man who (as the Journals ſay) "had his in-"tereſt in Virginia" was the *only* member of the houſe who ſeemed to doubt of the Power of parliament over the colonies: the other members ſeem to have had *no* doubt that the Parliament had a right to order the Virginians "*to pluck up all* their "tobacco by the roots."

On the 23d of the ſame month another *petition* from two planters in Virginia was read to the houſe. This too was againſt the importation of Spaniſh tobacco. The King by proclamation had ordered all tobacco ſhipt at Virginia, to be forfeited; the Commons voted ſuch forfeiture illegal.

On the 25th of April, the bill for the free liberty of fiſhing on the coaſts of America,

merica, was read a ſecond time *.—In the debate upon this bill it was urged by a *ſervant* of the crown, "that it was not fit to "make any laws *here* for thoſe countries, "which as yet were not annexed to the "crown." Mr. Guy, one of the patentees, urged the ſame idea; but it was replied on the other ſide: "We *may* make "laws *here* for Virginia; for if the king "give his conſent to the bill paſſed *here*, "and by the lords, this will *controul* the "patent." It was added, that theſe colonies were not in the ſame predicament as Gaſcony, &c. for theſe laſt were *principalities* of themſelves.

The bill was accordingly *committed*. It was reported on the 24th of May†, and ordered to be engroſſed; and on the firſt of December it paſſed the houſe‡.

* See Journals, vol. i. p. 591.
† Ibid. p. 626.
‡ Ibid. p. 654.

On

On the 26th of April another petition from Virginia was presented to the houſe and read *. It was moved, and carried to reſpite the debate on it till the 29th. On that day the houſe was about to proceed upon this buſineſs, when "the ſpeaker "produced, and read, a letter from his "majeſty concerning this petition; the "petition by general reſolution was with-"drawn †.

This is all we know of the matter from the Journals: what was the ground of this general reſolution does not appear; nor with regard to the reſolution itſelf, is it perfectly clear what we are to underſtand by it. The word "reſolution" ſeems to be meant an act, a reſolution of the houſe itſelf: yet the withdrawing of a petition, is an act, which, however, the concurrence of the houſe, *to* whom the petition is preſented, may be neceſſary, is, in the

* See Journals, vol. i. p. 691.

† See ib. p. 694.

nature

nature of it, an act of the Petitioners themselves, *by* whom it is presented.

From such premises, the conclusion formed by a respectable writer *, that this was a renunciation on the part of parliament of their right of cognizance over the colonies, seems rather hasty. That the withdrawing the petition was an act of the house itself, he seems to take for granted; that the ground of this withdrawing, was a consciousness of the want of right to do any thing in consequence of the petition, is another thing he seems to take for granted. 'Tis to such a consciousness he seems to impute the future inactivity of the parliament, their not "taking further cognisance of the plantations:" and *that*, "till the commencement of the civil wars." What follows immediately after, seems still more extraordinary: "upon this "ground," says he, (namely upon the ground of the house taking no further

* Pownal on the Administration of the Colonies.

cognisance of the Plantations till the time of the civil wars, meaning the wars in the time of Charles I.) " upon this ground it " was the King" (speaking of James I. predecessor of Charles) " considered the " lands as *his* demesnes, and the Colonists " as his subjects, in these his *foreign* do- " minions, not his subjects of the realm, " or state †."

What our author meant to give as the ground of James's opinion, was, I should suppose, the single transaction, whatever it was, *of*, or *in*, the house, whereby an end was put to that particular business: and it was some succeeding king, I suppose, (that is, Charles I.) by whom, if by any, such a notion must be conceived to have been entertained, as could arise from the continuance of a habit of acquiescence, from the time of that act to the time of the civil war.

† Pownal on the Administration of the Colonies, p. 50.

For

For my part, I muſt own, I cannot well underſtand how it is, that from barely knowing that a petition was withdrawn, we are warranted to conclude the ground of its being withdrawn to have been a conſciouſneſs of a want of right to proceed upon it. Eſpecially when we find this withdrawing accompanied at the time, or ſucceeded within a ſhort time afterwards, by ſuch reſolutions as in the nature of them muſt have been founded on the ſuppoſition of that right. The reſolutions I mean, are thoſe ſpoken of by this author, when he tells us that "the houſe came to "ſome very ſtrong reſolutions upon the "nullity of the clauſes in the charters, "and paſſed a bill for the diſannulling "them." Theſe are charters granted to, and eſtabliſhing the Plantations: and it ſeems rather extraordinary to go on in the ſame breath, and ſay that "the houſe took no farther cogniſ-"ance of the Plantations, till the com-"mencement of the civil wars." If

 by

by "no further cognifance," he means, no cognifance pofterior to thefe refolutions, it feems rather difficult to find a commencement, for the habit of acquiefcence which he infers from thence, and which he fuppofes to have been the ground of fome King's opinion about the matter. If, on the other hand, by "no further cognifance," he means no cognifance pofterior to the refolution whereby the Virginia petition was withdrawn; then his notion muft be, that the coming to ftrong refolutions, and even paffing bills upon the nullity of claufes in charters granted to the Plantations, is taking no cognifance of the Plantations. A propofition, which it feems rather difficult to fubfcribe to.

Indeed, fo far was the houfe from meaning to renounce its right of taking cognifance of the Plantations, that but one year afterwards, we find them re-afferting their jurifdiction over them. In the year 1625 they revived the bill for a free fifhe-

ry

ry. It was brought in on the 14th *; read the ſecond time, and committed on the 28th of February †; reported and ordered to be engroſſed on the 4th ‡; read a third, and paſſed the houſe on the 7th of March §.

The King refuſed, it ſhould ſeem, to give his conſent to this bill: and we find the committee of grievances claſſing the reſtraint of the Engliſh ſubjects in their fiſhery on the coaſts of America among the liſt of grievances ‖.

At the very beginning of the next Parliament, this bill was again revived. It was read the firſt time on the 24th of March; read a ſecond time, and committed on the 17th of April; reported on the 22d, and recommitted in order to give lord Baltimore time to be *heard* by his

* See Journals, vol. i. p. 819.
† See ib. p. 825.
‡ See ib. p. 830.
§ See ib. p. 831.
‖ See ib. p. 863.

council; read a third time, and paſt the houſe on the 16th of May *.

I do not ſee then, in what ſenſe it can be ſaid, that the houſe did from *that* time—that is, from the time the King's letter was read by the ſpeaker—take no *farther* cogniſance of the Plantations. Surely the ſtrong reſolutions, and the particular bill referred to by this author; ſurely the reviving and paſſing this laſt bill in two different ſeſſions; the hearing counſel againſt it, on behalf of one of the Patentees, was taking *cogniſance* of them.

Thus then ſtood the caſe, previous to the civil war. The Patentees and Planters, preſent divers petitions to the Commons of England: they are heard by their counſel: no objection is made to the juriſdiction of the Houſe, except by the *ſervants* of the crown. The Patentees, who were members of the upper houſe, were pre-

* See Journals, vol. i. p, 874, 884, 886, 998.

ſent at the debates: the Patentees who were members of the lower houſe, were allowed to debate, and vote: for this reaſon, becauſe the matter regarded the *Common-wealth* as much as would a debate concerning any Engliſh *County*. The houſe declares, that laws made in Parliament, were binding in the Colonies: aſſerts their power of preſcribing to them what products they ſhould, or ſhould *not* cultivate: diſtinguiſh between the Colonies and Norman poſſeſſions: and actually do paſs bills, diſpoſing of the property of the colonies.

That we do not meet with more frequent aſſertions of the power of the houſe over the colonies, is eaſy to be accounted for. The intermiſſions of parliament were frequent. When they met they had grievances of a higher nature, and which touched them more nearly, to enquire into. Their own domeſtic rights; their own civil, political, perſonal, liberty, all were attacked: all

 called

called for the ſtrongeſt, and moſt manly efforts to maintain them.

The acts we have already cited, are at once the plaineſt acknowledgements on the part of the Grantees, and the ſtrongeſt aſſertions on the part of Parliament, that the charters were by neither underſtood to have conveyed the powers, and exemptions, they are now pretended to have conveyed.

SECT.

SECT. VIII.

What power did the Parliament exercise over the Colonies from the beginning of the Civil War to the Restoration?

DURING a great part of the period comprised in this section, one or both of the Houses of Parliament assumed to themselves the *whole* power of all the three branches of the legislature; of King, Lords, and Commons. Were the present therefore a dispute between the King and the other branches of the Legislature, touching the limits of the separate powers each might respectively claim over the Colonies, all reference to ordinances past during this period would be impertinent. But the question is, what power the *whole* British Legislature, in whatever hands it be vested, may constitutionally exert over the Colonies: and to this question, I apprehend the

the ordinances of this Parliament are pertinent and conclusive.

In the year 1643, in consequence of a petition, as it is said from one of the plantations, an ordinance was passed appointing Robert Earl of Warwick "Governor in "chief, and lord high admiral of the "Plantations belonging to the King in "America." The powers intended to be conveyed by this ordinance seem to have been thought too extensive to be entrusted in the hands of one man. And therefore five Peers, and twelve members of the lower house, are appointed to assist the Earl. In conjunction with these Commissioners, or any four of them, the Earl is empowered to examine into the state of the Plantations; to send for papers and persons; to remove such governors and officers as they see fit; to appoint others, and to "assign over to them such part of "the power and authority, in this ordi- "nance granted to the chief Governor "and

" and Commiſſioners, as he ſhall think
" fit *."

The ſame ordinance, a few alterations and additions only excepted, was from time to time renewed and confirmed.

In the next year another ordinance was paſt, exempting the Planters of New England from all duties on goods imported from this kingdom into New England, for the uſe, and conſumption, of the inhabitants themſelves; and on all goods and merchandiſes of the produce of New England imported thence into England, " until both *houſes* ſhould take farther order " therein to the *contrary* †."

In the year 1646 another ordinance was paſſed, exempting the Plantations from all cuſtoms, ſubſidies, taxation, impoſition, or other duty, *except the Exciſe*; provided their trade was carried on in Engliſh Bottoms ‡.

* See Lord's Journals, vol. vi. p. 291.
† See ib. vol. vii. p. 75.
‡ See ib. vol. viii. p. 685.

It

It is then clear that the Parliament at *that* time thought they had a right to lay any tax they ſaw fit on the Americans. If they had not a general right to lay taxes, they could not have a right to affix certain conditions to a general exemption from taxation; much leſs could they have a right to adopt the particular mode of taxation preſcribed by this ordinance; a mode of all the leaſt expenſive, it is true, but which is generally conſidered as of all the moſt dangerous to liberty.

In the year 1650, an act was paſt to prohibit all trade with Barbadoes, Virginia, Bermudas, and Antego *.

The preamble to this act ſets forth, that " in Virginia, and divers other " places in America, there are Colonies and " Plantations, which were planted *at the* " *coſt*, and ſettled by the *people*, and by " the *authority* of this nation; which *are*, " and *ought* to be *ſubordinate* to, and *de-*

* See Scobel's Acts, ch. 28.

" *pendent*

"*pendent* upon, England, and *have* ever "ſince the planting thereof *been*, and *ought* "*to be*, *ſubject* to ſuch *laws*, orders, and "regulations as *are*, or *ſhall* be made by "the *Parliament* of England."

This declaration is ſtrong and pointed. But "no precedent (we are told *) can be "drawn from this period." The reaſon aſſigned for this aſſertion is, that "the "Parliament acted here, not as *Legiſlature*, "but as Sovereign:" if therefore "the "King could not legally exerciſe ſuch "powers over the Colonies, conſidering "the *inherent*, *natural*, and eſtabliſhed "rights of the coloniſts, we may, a for- "tiori, doubt the rights of theſe powers "in the two houſes, called *then* the Par- "liament, acting as Sovereign."

It is not perhaps at firſt ſight eaſy to underſtand the diſtinction here intended between "Sovereign" and "Legiſlature." From the context only we are led to con-

* See Adminiſtration of the Colonies, vol. i. p. 126.

clude

clude, that by "Sovereign" is meant the King in his executive capacity; that is, in that capacity in which he has a power of iſſuing commands concerning individual actions, addreſſed to individual perſons. But the ordinances here referred to, are commands concerning ſorts of actions addreſſed to ſorts of perſons. They could not therefore, it ſhould ſeem, be iſſued by the two Eſtates, as ſuppoſing themſelves to ſtand in the place of the King in his executive capacity; but by the two Eſtates, as ſuppoſing themſelves *alone*, and without the concurrence of the King, to be inveſted with the whole legiſlative power. On this ſuppoſition, however falſe, it does not appear, that the two Eſtates meant to aſſume a greater power than that which is now lodged in the three Eſtates, in the King, Lords, and Commons taken together. The power of the whole, taken together, is *now* the ſame as it was *then*. The only change effected ſince, is in the diſtribution of the diſtinct powers of the reſpec-

tive

tive branches of the whole. If therefore the proceedings of this Parliament may not serve as "a *precedent*," they may yet serve as a strong *testimony*, that it was *then* the general opinion that the supreme power of England, in *whatever hands* that power was lodged, had a right of making laws and levying taxes in the Colonies. It is a proof at least, that the opinion of those times was, that the Colonies always had *been*, and ought *to be*, subject to the laws of England, whether those laws had taxation or any other object in view: that the enforcement of obedience to those laws was perfectly consistent with the *established** rights of the Colonies.

* I mention only *established* rights, because I know of *no* other rights in a state of civil society. The terms of *natural* and *inherent* rights, when applied to men in such a state, are to my understanding, perfectly unintelligible. I may do wrong perhaps in making this avowal—But such is the narrowness of my capacity, that I think the *Citizen* is to look for his *rights* in the laws of his country.

Nor

Nor let it be forgot that theſe were the opinions of men who ſtand high in the eſtimation of the world; men whoſe names are delivered down to us with the endearing epithets of Champions of liberty, and defenders of the rights of mankind. "In "all the annals of recorded time (ſays an "hiſtorian, whom Freedom has marked as "her own*) never had fortune reared ſo "tall a monument of human virtue, as "were the atchievements of this Aſſem-"bly."—"They had recalled the wiſdom "and glory of ancient times."—"Eng-"land bade fair to outdo, in the con-"ſtitution of her government, every cir-"cumſtance of glory, *wiſdom*, and *felicity*, "related of ancient and modern empire." —"Engliſhmen were on the point of en-"joying a fuller meaſure of happineſs, "than had ever been the portion of hu-"man ſociety." The opinion of men

* M'Cauley's Hiſtory of England, vol. v. p. 91.

like

like these, on such a subject as this, must surely have its weight with the friends of freedom. Let it not be forgotten then, that these architects of virtue, these restorers of glory and of wisdom, these creators of human happiness, considered our colonies in America as subject in *all things* to the supreme power of England; treated them as subjects; regulated their internal rights; laid on them internal taxes.

SECT. IX.

What powers did the Parliament exercise over the Colonies from the Restoration to the Accession of his present Majesty?

"AFTER the Restoration, when *many* "of the rights of the subject, and "of the constitution were *settled*, the con-"stitution of the colonies (we are told) "received their *great alteration.*" This alteration, it is added, consisted in this, "that the king participated the sove-"reignty of the colonies with the parlia-"ment*."

Thus far the author I am quoting; at the same period, according to him, the constitution of England was *settled*, that of the colonies *altered*. I must own I am not able to perceive the ground of this distinction. *Altered* perhaps is the term I

* Administration of the Colonies, vol. i. p. 127.

might

might prefer for both; but if I called the one a *ſettlement*, I ſhould call the other by the ſame name. For if it be true that before the Reſtoration the king refuſed to participate with the other eſtates the ſovereignty over the colonies; it is equally true, that he took more than what is now allotted to him as his ſhare in the ſovereignty over England. If it be true, that after the Reſtoration he conſented to participate with the other eſtates the ſovereignty over the colonies; it is equally true, that he left the other eſtates in the undiſturbed enjoyment of their ſhare in the ſovereignty over England. Why one of theſe caſes ſhould be ſtyled "an *alteration*," and the other "a *ſettle-* "*ment*," is, I own, more than I am able to underſtand.

One alteration no doubt there was.— The coloniſts at firſt appealed to the parliament, as to a protector, againſt the power of the crown; and then the *ſervants* of

of the *crown* denied the competence of parliament to interfere. Now the ſervants of the crown appeal to parliament as alone having the power of regulating the colonies: and lo! the *coloniſts* deny the competence of parliament to interfere.

We have ſeen that, before the civil war, bills were carried through both houſes for regulating the trade of the colonies, and for limiting their internal rights; to theſe bills the king refuſed his conſent. There were no bills for taxation, becauſe the colonies ſeem to have afforded nothing taxable. During the civil wars the two eſtates went farther, ordinances were made for taxing the colonies; to theſe the conſent of the king was not aſked. Since the Reſtoration the three eſtates have acted in concert, and ſeem to have exerciſed when, and as they ſaw fit, over the colonies, the ſame power which, during the civil wars, had been exerciſed by the lords and commons alone.

No,

No; we are told *, till the present reign, "the policy of Britain towards her colonies was purely commercial; and the "commercial system wholly restrictive. "It was a system of monopoly.—That "from hence alone she proposed to make "the colonies contribute; directly, I mean, "(says the gentleman) and by the operation of her superintending legislative "power, to the strength of the empire."

The gentleman ventures to say, "that "from the year 1660, to the unfortunate period of 1764, a parliamentary "revenue from thence was never *once* in "contemplation. That this nation never "thought of departing from this system "of its own choosing, until the period "immediately on the close of the last "war."

I am not a very venturous man, yet here, I think, I may *venture* to say something: I may venture to say, that gentle-

* See Mr. Burke's speech on American taxation, p. 38, 39, 44.

men who ſay thus are either themſelves under a miſtake, or mean to lead others into one. This I may venture to ſay, having proof before me: the fact is not as alledged. A parliamentary revenue has been thought of often; ſometimes even *raiſed*; raiſed by parliament, and quietly ſubmitted to by the colonies. Monopoly was in ſome inſtances extended over the colonies in favour of England. True; ſo was it in other inſtances over England in favour of the colonies.

I ſhould not have the courage to contradict an aſſertion made ſo ſolemnly, by ſuch a man in ſuch an aſſembly, if I were not ſupported by the higheſt authority, no leſs than the records of parliament.

To this authority let us appeal; let us turn to the ſtatutes, there we ſhall ſee that few parliaments have ſat ſince the æra of the Reſtoration, which have not paſt acts, not only for regulating the trade of the colonies, but alſo for ordering and limit-

ing,

ing, their internal rights, and for *laying taxes* on them.

The navigation act * has been so often cited in this controversy, that it would perhaps be sufficient barely to name it; but I would wish to observe, that the colonies ought not to consider it barely as a *restrictive* act. True it is, that it lays the colonies under certain *restrictions*; but then it is equally liberal in securing them *certain advantages*. *Their* ships are considered as English ships; their *mariners* as English mariners †. So far then as the increase of navigation and mariners was in contemplation, the colonies participate in the benefits of this act, as fully as the English themselves. Considering it as a restrictive act, and it does more than regulate the trade of the colonies; for it not only prescribes in what vessels, and to what places, the goods of the colonies may be exported,

* 12 Car. II. c. 18.

† 13 & 14 Car. II. c. 11. sect. 6.

but limits one of their internal rights; it prefcribes what perfons may act as merchants, or factors, in the colonies.

The idea of this act was borrowed from the ordinances of the long parliament, and from the acts of Cromwell. In purfuance of the fame idea, three years afterwards the parliament paffed another act, "to maintain," as they exprefs themfelves, "a greater correfpondence and kind-"nefs between the Colonies and England, "to keep them in a firmer *dependence* on "it, to make this kingdom a ftaple, not "only of the commodities of the planta-"tions, but alfo of the commodities of "other countries for fupplying them*."

To this purpofe the act puts their trade under farther regulations, directing, that no European goods fhall be *imported* into the plantations, but fuch as fhall be fhipped in *England*, and proceed directly on board

* See 15 Car. II. c. 7.

Englifh

English * ships, navigated by an *English* * master, and with three fourths at least of the crew *English* * mariners. The penalty is forfeiture of the goods and vessel, one third to the king, one to the governor of the plantation, if the seizure is made there, and one third to the informer. And to facilitate the recovery of the penalties, the informer has his option of suing either in the king's courts of the plantation where the offence is committed, or in any *court* of *record* in England.

As a counterbalance to these restrictions, the same act grants them certain privileges in the exportation of sea coal. It confirms and increases the penalties of a former act † forbidding the plantation of *tobacco* in England, " because " says the act, " the " planting of it is a discouragement to the " colonies," remarking at the same time,

* Under these terms, as we observed above, are included vessels built in the plantations, and subjects of the plantations.

† 12. Car. II. c. 34.

that

that notwithſtanding the penalty impoſed by the former act of *forty ſhillings* a rod, the planting of tobacco in England did *ſtill continue.*—This ſurely was no mean ſacrifice to the welfare of America, and the ſyſtem of *monopoly* is not *entirely* in favor of England.

Though the penalty for planting tobacco in England or Ireland, impoſed by this laſt act, was no leſs than ten pounds a rod, ſtill the profits ariſing from it were ſo great, that this proviſion was inſufficient to prevent the planting of it; and therefore, by another act *, power is given to juſtices of the peace "to *pluck* up and utterly deſtroy" all tobacco planted in England or Ireland.

The legiſlature whilſt it takes theſe efficacious means of ſecuring to the coloniſts the monopoly of tobacco, repeats and enforces its former directions for keeping them in a *firmer dependence* on England,

* 22 & 23 Car. II. c. 26.

and

and preventing their trade from being diverted elſewhere than to this kingdom, "which hath (ſays the act) and doth daily "ſuffer great prejudice by the tranſporting "of great number of the people thereof "to the ſaid plantations for the peopling "of them."

About three years after this, the legiſlature went farther. It paſſed an act laying *a tax* for the purpoſe of *raiſing a revenue* ‡.

This act begins by allowing the importation of train-oil, whale-fins, &c. *caught* and *imported* in Engliſh veſſels, free of all cuſtoms and duties, and the importation of fiſh, &c. caught and imported in veſſels built in the plantations, on payment of certain *duties* there named.

It then recites, that the liberty which had been granted, of tranſporting free of all duty the productions of one colony to another, had been abuſed,—that the coloniſts were not content with enjoying this

‡ 25 Car. II. c. 7.

freedom

freedom from duties on goods tranſported for their *own conſumption*, in which they had a manifeſt advantage over the Engliſh, who paid large duties for the ſame articles, but had tranſported and vended large quantities of their goods *to other ſtates* of Europe.

To prevent this, it is ordered, that ſecurity ſhall be given to tranſport all ſuch goods directly to England, Wales, or Berwick. In default of ſuch ſecurity a duty is impoſed on certain enumerated goods, to be collected *there* in America by *officers* to be appointed by the commiſſioners of the cuſtoms in *England*, under the authority and direction of the lord treaſurer of England, or commiſſioners of the treaſury. The penalties to be the ſame as for nonpayment, or defrauding his majeſty of his cuſtoms in England.

It has been very juſtly remarked *, that the duties impoſed by this act, cannot be con-

* See Controverſy between Great Britain and her Colonies reviewed, p. 168.

confidered as meant folely to *regulate* the trade, but are evidently intended to *raife a revenue*. The reafons affigned for this affertion appear to be conclufive.

The act declared, that the Englifh fubjects paid *duties* on thefe commodities, that the trade from one colony to another was greatly *increafed*. This is at once affigning a reafon *why* the trade between one colony and another could *now bear* the impofition of duties, and pointing out the *meafure* of duties to be impofed; accordingly the duties impofed by this act on goods exported from one colony to another, were the fame as were *then* paid on the fame commodities confumed in England. Thefe taxes therefore were *expected* to be paid, and therefore were intended to raife a revenue.

There is only *one* exception to this:— the duty on logwood carried from one colony to another, is fo high as to exceed the poffible profits of that trade. In this in-

ſtance, therefore, and this *alone*, the tax was intended to operate as a prohibition.

The act was worded very *incorrectly*. Of two conſtructions, the coloniſts very naturally embraced that which was moſt favourable to themſelves. They conſidered the payment of theſe duties, as a diſcharge from giving the ſecurities not to go to any *foreign* market.

This clauſe is therefore explained by another act made in the year 1696 *. It is there repeated, that theſe duties are to be paid on goods tranſported from one *colony* to another. And it is farther provided, that notwithſtanding the payment of ſuch duty, the ſame ſecurity is to be given, that the goods are to be exported only to ſome part of his majeſty's dominions.

This explanation of the former Act affords a corroborating proof, that the duties impoſed by that act were intended to raiſe a revenue. And as a ſtill farther proof we

* See 7 & 8 Will. III. c. 22.

may

may obſerve, that the officers to whom theſe duties are to be paid, are called "the officers for collecting and managing "his majeſty's *revenues.*" They have the ſame powers of viſiting, ſearching, and entering warehouſes, wharfs, &c. as the officers of the cuſtoms in England.

About this time it ſhould ſeem the colonies had paſſed ſome laws to defeat or counteract ſome other law made here in England relating to the colonies; and therefore the laſt act declares, "that all "laws, bye-laws, uſages or cuſtoms, at "*this* time, or which *hereafter* ſhall be in "practice in any of the ſaid plantations, "which are in any wiſe *repugnant* to the "*before-mentioned* laws, or any of them, "ſo far as they do relate to the ſaid plan-"tations, or any of them, or which are "any wiſe repugnant to this *preſent* act, "or to *any other* law *hereafter* to be made "in this kingdom, ſo far as ſuch laws "ſhall *relate to* and *mention* the ſaid plan-

"tations, are *illegal*, *null*, and *void*, to all "intents and purpoſes whatſoever."

Thus far the ſtatute;—than which a fuller and more formal exemplification and aſſertion of the ſupremacy of parliament over the colonies, in all matters whatſoever, can hardly be imagined; and this a ſtatute, one of the expreſs purpoſes of which is the laying taxes for the purpoſe of a revenue.

The ſame act orders and limits the internal rights of the coloniſts; for it precludes the coloniſts from alienating their lands in favour of other than natural born ſubjects.

In the reign of queen Anne, an act* was paſſed laying *rice* and molaſſes under the ſame prohibition of exportation to any foreign market, as the other commodities enumerated in the 25 Car. II. c. 7.

Another act was paſſed in the ſame reign, granting bounties on tar, pitch, roſin, turpentine, hemp, &c. This act

* See 3 & 4 Anne, c. 5.

forbids

forbids all the inhabitants of New Hampſhire, Maſſachuſet's Bay, Rhode Iſland, &c. to cut down any pitch, pine, or tar trees, not actually incloſed, and under a certain diameter §.

This ſurely is not a bare regulation of trade: it is, if any thing can be, a limitation of an internal right of the colonies.

In the ſame reign an act was paſſed for aſcertaining the rates of foreign coins *within* the plantations in America *. This too is the limitation of an internal right.

The act † for the eſtabliſhment of a general poſt-office, is clearly an act impoſing duties for the purpoſe of raiſing a revenue. The ſubjects in America, are by this act, put under the ſame reſtraints as the ſubjects of England: they muſt ſend their letters by the meſſengers employed by *one* common poſt-maſter: muſt pay the

§ See 3 & 4 Anne, c. 10. 6 Anne, c. 30.
* 6 Anne, c. 30.
† 9 Anne, c. 10.

rates ordered, and apportioned by the ſame legiſlature.

By an act in the very beginning of the reign of George I. the duties created by the 25th of Car. II. are mentioned under the title of "Plantation Duties," and are ordered to be paid into the Exchequer, and *appropriated* to purpoſes preſcribed by this act *.

Another act paſſed in the ſame reign †, for the purpoſe of encouraging the importation of naval ſtores, is equally applicable to our purpoſe. Among the variety of regulations in it, ſome favouring the colonies, are others laying reſtrictions on them, and that in matters of internal œconomy.

It grants a bounty upon the importation of hemp: directs that the pre-emption of it be tendered to the commiſſioners of the navy: allows the importer to diſpoſe of it as he pleaſes, if they do not contract

* 1 Geo. I. ſtat. 2. c. 12. ſ. 4.
† 8 Geo. I. c. 12.

for

for it within twenty days: it grants a bounty on wood, plank, timber, and lumber. It regulates the conditions on which the bounty granted by an act of Queen Anne to the importation of pitch and tar, should be payable. It multiplies, and extends, the prohibitions concerning cutting down, or destroying white pine-trees. By the act of the ninth of Queen Anne, already mentioned, white pine-trees of a certain *dimension* only, were included in the prohibition: by this act it is forbid to cut them down *generally*. By the act of Queen Anne, trees being the property of any private person, were excluded from the prohibition; by this act, such trees only are excepted "as grow within any "*township*, or the bounds, lines, and li-"mits thereof."

By another act of the same reign *, it is ordered that all furrs, exported from the

* 8 Geo. I. c. 15.

 planta-

plantations, ſhall be imported directly to Great Britain and not elſewhere.

By another act, copper ore is ſubjected to the ſame regulation ‡.

In the reign of George the Second an act was paſſed †, by which the preſervation of pine-trees in the plantations, is ſtill farther provided for *.

By another act ‖ all rice in general is again declared to be among the enumerated commodities, which are to pay a tax on being tranſported from colony to colony, and which cannot be carried directly to any foreign market. The act then eſtabliſhes an exception to this *general* rule; and allows that "any of his majeſty's "ſubjects, in any ſhip or veſſel, *built* in "*Great Britain*, or belonging to any of

‡ 8 Geo. I. c. 18.

† 2 Geo. II. c. 35.

* On the other hand, that favour might go hand in hand with reſtriction, premiums are renewed or extended to the importation of maſts, yards, tar, pitch, &c. from the plantations.

‖ 3 Geo. II. c. 28.

"his

"his majesty's subjects *residing* in Great
"Britain, navigated according to law, and
"having cleared outward in any port of
"Great Britain for the province of Caro-
"lina, may ship rice in the said province,
"and carry the same directly to any part
"of Europe to the southward of Cape Fi-
"nisterre."

Another act * of the same reign permits the importation of all non-enumerated goods from the plantations to Ireland. Hops were among the non-enumerated goods. Clearly, therefore, by the terms of this act, a right was given to the Americans to import hops of their own growth into Ireland. But this was not the intention. In the next sessions, therefore, an act was passed, ranging hops among the enumerated goods †.

The

* 4 Geo. II. c. 15.

† 5 Geo. II. c. 29. The title is—"An *act* "to explain, and amend an *act*, intituled an *act* "for importing from his majesty's plantations in "America,

The ſame parliament, and in the ſame ſeſſions, exerciſes two of the higheſt acts of

" America, goods not enumerated in any *act*, ſo " far as the ſaid *act* relates to the importation of " foreign hops into Ireland."

I cite this only to ſhew what pains are taken to give awkward, and (what is worſe) *untrue* titles to our acts. For the act ſaid to be explained, is not at all explained. An exception only is made by the ſecond act to a general permiſſion granted in the firſt. The matter concerning which, the act is ſaid to be explained, is not once mentioned in the original act.

In the body of this explanatory act, it is ſaid, " that *doubts* had ariſen whether the liberty of im- " porting hops was not given in the former act." Now *no doubt* could ariſe. The liberty was as clearly given as words could give it. *All* goods, *not* enumerated, *might* be imported. Hops were *not* enumerated.

This is only one, out of many inſtances I could cite, of this inaccuracy in the compoſition of firſt laws; and of ſomething worſe than inaccuracy in the manner of ſupplying omiſſions, or rectifying miſtakes in them.

Had the ſecond act candidly declared that the legiſlature had not recollected that hops were *not* among the enumerated goods ;—had it allowed the importation

of internal legiflation. In one and the fame law it alters the *nature* of evidence in their courts of common law; and it alters the nature of their eftates, by treating real eftates as chattels.

The preamble of this act declares "that "his majefty's fubjects trading to the "plantations, lie under great difficulties, "for want of more eafy methods of prov-"ing, recovering, and levying of debts "due to them, than are now ufed in fome "of the faid plantations."—It declares the remedying of thefe inconveniencies necef-

importation of fuch of them to Ireland as fhould be fhipt before the fecond act could be duly notified: had it then claffed hops among the enumerated goods for the future, the legiflature would have fpoken a language becoming its own gravity, and dignity. But to call that an explanation, which was only the fupply of an omiffion; to fuppofe a doubt, where no doubt could arife; to infinuate a cenfure on the underftandings of thofe, to whom the command was addreffed; when *all* the cenfure, if any, was due to the carleffnefs of thofe who iffued the command; betrays a levity and puerility, that too often difgrace the legiflature.

fary to *retrieve* the credit formerly given by the inhabitants of Great Britain to the inhabitants of the plantations †.

From this preamble alone we might fairly have concluded, that the fubordinate legiflatures in America muft have been apprifed of thefe inconveniences, and had either refufed, or at leaft neglected to provide an adequate remedy.

But, indeed, we have more pofitive proof that this was really the cafe. The bill was brought in, in confequence of repeated petitions from the merchants of England. They fet forth, that by the *laws* then in force in the plantations, the Britifh fubjects had none, or at leaft but a precarious remedy for the recovery of their juft debts. They fet forth, that the fame laws had laid partial duties on the Britifh fubjects trading *there*; duties higher than thofe paid by the inhabitants of the colonies ‡.

† 5 Geo. II. c. 7.
‡ See Comm. Journ. vol. xxi. p. 794.

What

What the provincial legiſlatures would not, or at leaſt did not do, parliament did for them.

To facilitate the proof of debts, it enacted, that an affidavit taken before the mayor, or other chief magiſtrate of any town in England, and properly authenticated, ſhould be received as legal evidence in all the courts in the plantations, and have the ſame force, and effect, as the perſonal oath of the plaintiff made *there* in open court.

To facilitate the recovery, and levying of debts, it enacts, "that lands, houſes, "negroes, other hereditaments, and all "*real* eſtates whatever, ſhould be *liable* to, "*chargeable* with, all debts due either to "the king, or any of his ſubjects, and be "*aſſets* for the ſatisfaction thereof; in the "ſame manner, as, by the law of Eng-"land, real eſtates are liable to the ſatis-"faction of debts, due by bond, or other "ſpeciality."

In

In the ſame ſeſſions, parliament thought proper to prohibit abſolutely, and under heavy penalties of fine and confiſcation, the exportation of hats from the plantations: either from one plantation to another, or to any *other* place whatſoever †.

The ſame act fixes the number of apprentices that each manufacturer of hats may have; the time each manufacturer is to ſerve as apprentice, before he can make hats; and prohibits the employment of negroes in hat-making, under a penalty of five pounds a month for each negro ſo employed.

The ſame parliament, which thus precluded the plantations from one branch of trade, favoured them in another. An act was paſt the ſame ſeſſions, to encourage the growth of coffee in the plantations ‡. The inland duties on all coffee imported from the plantations, are diminiſhed by *one fourth*. And proviſion is made againſt

† 5 Geo. II. c. 22.
‡ 5 Geo. II. c. 24.

the

the importation of foreign coffee into the plantations.

In the next ſeſſions an act was paſt "for "the better ſecuring, and encouraging of "the trade of his majeſty's *ſugar* colonies "in America §."

This act impoſes certain *duties* on all foreign ſpirits, molaſſes, ſyrups, ſugar, and panels, imported into the plantations.

The duties are to be levied, and paid, for the uſe of his majeſty, his heirs, and ſucceſſors.

The act uſes the technical words of "*give*, and *grant*."

Here then at leaſt, one would think, was clearly a duty impoſed for the purpoſe of *raiſing* a revenue.

Other acts (we have ſeen) *have* impoſed duties for the ſame purpoſe. But (ſays a certain gentleman *) "the words which "diſtinguiſh revenue laws ſpecifically as "ſuch, had been, he thinks, *premeditately*

§ 6 Geo. II. c. 13.

* See Mr. Burke's Speech, p. 39.

"*avoided.*"

"*avoided.*"—If there be ſuch emphaſis in theſe words, that the avoiding them every where was matter of deſign; here then we cannot help concluding they were *premeditately uſed.*

No, ſays the ſame gentleman. For look at the title of the act. If the title of the act, indeed, had purported taxation, it would have been quite a different affair. But "the title of this act, notwithſtanding "the words of donation, conſiders it "merely as a regulation of trade."—So then parliament is at liberty to be as bountiful as it pleaſes in *acts* of donation, out of the goods of the Americans, provided it do not uſe *terms* of donation: or it may even uſe *terms* of donation in the preamble, or in the body of the act, provided the title of it, be a title of regulation.—So then the ſtamp act would have been good, and conſtitutional, provided Mr. Grenville had bethought himſelf to intitle it "an act "to regulate the transfer of property in "his

" his majesty's colonies and plantations in " America."

But farther—" This act" (we are told) " was made on a *compromise* of *all*; and " at the *express desire* of *some* of the colonies. It was therefore in some measure"— mark the consequence—" with *their con-* " *sent.*"—It was then with *their* consent, that the commons—did what?—*gave* and *granted*, one should suppose, a duty to be levied on the colonists.—No—says this gentleman, though there was an *act* of donation—though there were the *terms* of donation; still it was *no* donation. For " it " was an act of prohibition, not of reve- " nue."—Should we suspect the accuracy of this honourable writer, we are referred to " the second printed letter of Governor " Bernard, dated in 1763."

This care to mark the *date* of the letter, was "*I think premeditated.*"—It was meant to insinuate, that governor Bernard, *then*, in the year 1763, considered it as an act of

of prohibition: yet certainly the governor does not ſay ſo.—He gives it only as his *opinion*, that it was "*originally deſigned*" as an act of prohibition.

But another paſſage in the ſame letter of the governor, will give us to underſtand whether the act was intended to operate merely as an act of prohibition; or whether it was not intended to operate in ſome meaſure alſo as an act of revenue. Let us hear his words:—"at the time of making "the act, (ſays he) it was aſſerted by the "Weſt Indians, that as the Britiſh Weſt "Indian plantations were capable of tak- "ing off all the produce of North Ame- "rica, the ſending ſuch produce to foreign "plantations ought to be diſcouraged.— "To this the North Americans then anſwer- "ed, by denying (I believe with greater "truth) that the Britiſh Weſt Indian plan- "tations *were* capable of taking off all "the produce of North America, fit for "the Weſt Indian market."

This

This account sets the matter clear. The act was intended to operate as an act of *prohibition*, so far as to secure a pre-emption of North American productions to the British West Indian plantations. It was intended to operate as an act of revenue upon all imports taken in exchange for the rest of their produce sold to foreign West-Indian islands, after the British West-Indian markets were supplied.

Remark too how fully the *consent* of the colonies is implied in this *compromise* of all, and *express desire* of some. Those who "*compromise*," flatly deny the positions on which the act was past. Page after page in the Journals is filled with their objections to the principle of the act, and with their prayers against its passing. Those who "*desire*" the act, are those who are not to pay a shilling of the taxes it imposes.

Is this the compromise, this the desire, which constitutes consent?

 To

To the liſt of acts already referred to, I might add that * which reſtrains the Americans from creating banks; the acts † which give the rights of *natural-born* ſubjects in America, to foreign Proteſtants, to the United Brethren, and to Jews. The act which impoſes a *duty* of ſix pence a month on all the Britiſh American ſailors, towards the ſupport of Greenwich hoſpital ‡. The act which grants a premium on indico imported from the plantations §. The act allowing the free importation of raw ſilk from thence ‖. The acts allowing the free importation of pig and bar-iron, and for preventing the erection of any mill, or other engine for ſlitting or rolling iron; or plating forges worked with a tilt hammer; or furnaces for mak-

* 14 Geo. II. c. 37.

† 13 Geo. II. c. 7. & 20 Geo. II. c. 44. & 21 Geo. II. c. 30.

‡ 18 Geo. II. c. 31.

§ 21 Geo. II. c. 30.

‖ 23 Geo. II. c. 20.

ing

ing ſteel in the colonies *. The act which repeals all duties on the importation of pot and pearl aſhes from America †. The act reſtraining the governors and aſſemblies of the reſpective provinces, from making any act, order, reſolution, or vote, whereby paper bills, or bills of credit, ſhall be created or iſſued, under any pretence whatever; or for protracting, or poſtponing the times limited, or the proviſions made, for calling in ſuch as were then actually iſſued, and ſubſiſting ‡. The act which extends to the colonies certain proviſions of the ſtatute againſt frauds §. The act which diſſolves the indentures of ſervants enliſting in his majeſty's ſervice.

But why ſhould I multiply examples? Why accumulate proofs in a matter ſo clear? From the acts already cited it is

* 23 Geo. II. c. 29. & 30 Geo. II. c. 16.
† 24 Geo. II. c. 51.
‡ 24 Geo. II. c. 53.
§ 25 Geo. II. c. 6.

evident, beyond a doubt, that the original patentees did not confider themfelves as withdrawn from the power of parliament:—that parliament has at no time confidered itfelf as precluded from exercifing any act of it's fupreme authority over the colonies: that it has conftantly exercifed the *fame* authority over them as over the *other* fubjects of the realm: that, in eftablifhing its fyftem of monopoly, it has alternately exerted,—at one time it's foftering care, to fecure advantages to them:—at the fame time, or at another, it's reftrictive power, to fecure advantages to the mother-country: that where the acts of their fubordinate legiflatures have either omitted to fecure, or attempted to break the chain, which keeps them dependent on the mother-country, parliament has itfelf added, or replaced, the links; the want of which would have broken the connection and dependence, by prefcribing new arrangements, and by fetting new bounds to their *internal* rights, privileges, and properties:

ties:—that where encouragement was neceſſary to ſecure, or extend their trade, parliament has beſtowed it with a liberal hand:—that where the increaſe, and flouriſhing ſtate of their trade, enabled them to repay, in part at leaſt, what the mother-country had thus liberally advanced; the ſame parliament, acting as a faithful ſteward for the whole empire, has without heſitation, apportioned the quota they ſhould pay.

As, therefore, the exemptions, now claimed by the coloniſts, are neither ſpecifically named in their charters; nor neceſſary to the exerciſe and enjoyment of ſuch exemptions and powers as are named: ſo neither are they ſuch, as have been either conſtantly enjoyed and exerciſed by them, or ever allowed them by the parliament.

SECT. X.

Of the deference paid by the colonies to the authority of Parliament, and to the requifitions of the Crown, previous to the reign of his prefent Majefty.

SUCH of the acts of the laft parliament, as concern the prefent queftion, were acts paffed for enforcing fubmiffion to a claim afferted by the parliament preceding. The policy of the acts then muft, in a great meafure, depend upon the policy of the claim.

If that claim was unconftitutional, it unqueftionably, upon that account, was impolitic. In fuch cafe thefe laft acts muft be regarded as impolitic. But it might alfo, without being unconftitutional, be impolitic on other grounds: in this cafe too they ftill could not but be regarded as impolitic.

If

If the right of ſupremacy in general had never been *claimed* till the commencement of the preſent conteſt, the claim made at ſo late a period, might with reaſon be condemned as novel and unconſtitutional. If having long ago been exerciſed or claimed, it had all along been *conteſted*, it might at leaſt be looked upon as doubtful. If for a long continuance it had been claimed and exerciſed, and the colonies had *contentedly* ſubmitted to it, till manifeſted in the particular article of internal taxation; the exerciſe of it in ſuch particular article might be open to cenſure, though not as unconſtitutional, yet as impolitic. If not confining their reluctance to this particular *mode* of exerting it, or this particular *time* of its being exerted, they have gone on in a middle way, between open conteſtation, and contented obedience, the exerting of it in the particular mode, and at the particular time in queſtion, ſhould ſeem to have nothing in

it impolitic, any more than unconſtitutional.

It was with a view to the conſtitutionality of the acts we are about to review, that we cited ſo many acts of preceding parliaments, to ſhew that parliament had always exerciſed its ſupreme power over the colonies; putting forth more or leſs of that power, as ſeemed neceſſary to the ends of protecting them; of maintaining their dependence on the mother-country; of making them contribute, in proportion as they were able, to the common neceſſities of the whole empire.

It is with a view to the policy of theſe acts, that it becomes of importance to enter into the queſtion, how the colonies have conducted themſelves under the exertion of this power; whether they have *conteſted* the right of exerciſing it; or *contentedly* ſubmitted to it; or whether they have not rather taken a middle way; *eluding* the acts of authority, in which the

the right has been exercifed, without difputing the right itfelf.

By way of anfwer to this queftion we are told, that as to the navigation act (for to that alone the gentleman chufes to confine himfelf) "its authority *never* was "difputed; that it was no where difput-"ed for any length of time; and on the "whole, that it was *well* obferved. When-"ever the act preffed hard, many *indivi-"duals* indeed evaded it. But this (he "fays) is nothing *."

Hence I fuppofe we are to underftand that the oppofition made to it was made in no other way than that of unfyftematical evafion; and, that of whatever nature it was, it was carried on by none but individuals; that it never had the colour of authority. That the affemblies themfelves maintained a conftant deference to it, is not indeed exprefsly *faid*, but this I fuppofe it was defigned fhould be *inferred*

* Burke's Speech, p. 43.

from the emphatic mention of *individuals*.

What truth there is in this reprefentation the Journals of the Houfe of Commons will inform us. From them we learn * that fo early as the year 1701, impediments were thrown in the way of the king's officers; combinations were formed againft thofe who had the courage to execute the trufts repofed in them with fidelity; that the adminiftration of juftice was delayed, and the greateft unwillingnefs expreffed to fubmit to any exercife of the fupremacy of the mother-country, and in particular to the acts of *trade* and *navigation*.

At that early period a commiffion for enquiring into great irregularities and mifdemeanors in Rhode Ifland was rendered ineffectual. Lord Bellamont was fent out on this commiffion, " but found

* Vol. xiii. p. 502, 503, 504, 505. The particulars are minutely ftated; they were too long to infert here.

(fays

"(ſays the commiſſioners in their report
"to the houſe) ſuch an oppoſition to his
"majeſty's authority, and the acts of
"trade and navigation, that no good ef-
"fects could be obtained from that com-
"miſſion: they (the people of Rhode
"Iſland) pretending by their charter to be
"*independent on the* government of Eng-
"land."

The province of Connecticut was, in its corporate capacity, equally refractory. "The governor and ſuperior court pe-"remptorily and publicly declared they "would admit of no appeals from them "to his majeſty in council." This was neither more nor leſs than ſaying, that they would admit no appeals *at all* to England: for however unconſtitutional, as well as inefficacious this mode of appeal may be, compared to others that might be eſtabliſhed, to declare they would not admit this, at a time when no other was eſtabliſhed, was to declare that they would admit none. What chance in ſuch caſe

the inhabitants of the mother-country would have for juſtice in their diſputes with thoſe of the colonies, is eaſy to be imagined.

Even then the commiſſioners of trade repreſented to the houſe, "that ſpeedy and "effectual care ſhould be taken to render "the colonies more ſubſervient and uſeful "to this kingdom."—That this might be done "by the legiſlative power of this "kingdom," is what the commiſſioners ſeem to have had no doubt of; though they conceived it could not be effected by any other means.

In another report, delivered in the beginning of the next year *, it is again alledged againſt both Proprietary and Charter Governments, "that they had not "complied with what had been demanded of them in reference to *trade*, or with "what might be neceſſary for the common ſafety; that they had not con-

* See Commons Journals, vol. xiii. p. 729.

"formed

"formed themselves to the *acts* of parliament for regulating trade and navigation: that several of the Governors in the Proprietary Governments had not applied to his Majesty for his approbation, nor taken the oaths required by the acts of trade: that they had made *laws* contrary and repugnant to the laws of England." And the commissioners go so far as to recommend it to parliament to resume the charters.

It is however true, that till the æra of the Stamp Act the colonies did not directly, and in the *face* of parliament, deny the power of parliament to pass laws, which should bind them. The laws past by the colonial legislatures, though in some instances really repugnant to the laws of England, were not so much direct denials of that power, as modifications of the provisions made by it. They shewed a tendency which should have been carefully watched, and as carefully checked, to worm themselves out of obedience,

dience, but they did not formally diſclaim it.

Read the petition preſented by the agent of Maſſachuſet's Bay againſt the ſalutary acts for reſtraining the emiſſion of a paper currency, and the creation of banks *, and you would ſcarcely ſuppoſe but that ſo late as this the power of parliament to regulate the internal rights of the colony was not only not conteſted, but chearfully acquieſced in. On the other hand, if you believe the repreſentation given of the proceedings there by the committee that ſat upon theſe acts, you cannot but perceive that the colonial legiſlatures were as ready to embrace every contrivance for counteracting the effect of thoſe ſtatutes, as they were remote from any idea of conteſting the right to make them.

Read the petition of Richard Partridge, agent for Rhode Iſland and Providence

* 14 Geo. II. See Commons Journals, vol. xxiii. p. 527, 528, 645.

Plan-

Plantation, againſt paſſing another of the many acts which parliament has found it neceſſary to paſs for reſtraining paper bills of credit in North America. What ſaid this agent? Did he call in queſtion the right of parliament to make this regulation? Was it on any pretended exemption from parliamentary authority that he grounded his objections to the bill? No ſuch thing. All he ventured to do was to apply himſelf to the equity of parliament, by inſinuating that the proviſions of the bill were contrary to the privileges of the colony. Nor was he wanting in his endeavours to conciliate the favour of the houſe, by alledging, "the "punctual and ready obedience the co-"lony had ſhewn to the pleaſure of the "Crown, and of *the houſe* *." This was in the year 1751.

It was in the ſame year, and in reference to the ſame act, that Mr. Bollan,

* A. D. 1751. See Commons Journals, vol. xxvi. p. 159.

agent

agent for Maſſachuſet's Bay, preſented a petition to the Houſe. In this petition indeed Mr. Bollan ventures to give a gentle intimation of a certain ſomething, a certain natural and lawful right, derived, we are to conclude, from a certain law of nature, which is to be a controul on Parliament in the exerciſe of the acts of authority he complains of. He apprehends, "that the province has a *natural* "and *lawful* right to make uſe of its cre- "dit for its defence and preſervation *."

Though the language here holden by Mr. Bolan is in a ſtrain rather more lofty than the commons had been uſed to, yet as he ſpoke for his *own* province only; as no leagues, no aſſociations, no congreſs was formed; as no threats were thrown out, the ſtyle was overlooked.

Many more inſtances might have been mentioned, to ſhew that the obſtacles thrown in the way of the operation of the trade

* Commons Journals, p. 206, 207.

laws

I

laws in particular, and in ſhort that the ſymptoms of diſaffection to the ſupremacy of the mother-country in general, were not unconnected acts of private individuals, but were acts of the people at large; that inſtead of being puniſhed as often as found out, they were in many inſtances protected by their courts of juſtice, and ſanctified by their legiſlature. Many more inſtances to this purpoſe might, I ſay, have been mentioned: but as they are already mentioned by Dr. Tucker *, I may content myſelf with referring to his book. What I have here confined myſelf to, are ſuch as ſeem to have eſcaped the notice of that gentleman.

The other point to be enquired into, is the deference paid by the colonies to the requiſitions of the crown. Theſe requiſitions have for their object the contributions demanded of the colonies, either for extraordinary ſervices in time of war, or

* See the beginning of his Fourth Tract.

for

for the ordinary support of their own civil government in time of peace.

On this head we find it with great vehemence asserted, that till the fatal period of 1764, the colonies were ever ready to contribute as far as their abilities would permit.

On the first point, that of contributions for extraordinary services, we are referred to the most respectable authorities, to messages sent by their late and present majesties, and to resolutions taken in consequence of those messages by the British House of Commons.

In these messages the King sets forth the *zeal* of his subjects in America; and recommends it to the house to recompense that zeal. In compliance with this recommendation large sums were actually granted by the house.

Much stress is laid on this testimony; nor will I lessen it by remarking that in these *rare* acts of chearful contribution, the zeal exerted by the colonies had for its

its immediate object, their *own* immediate benefit, and advantage *. Yet thus much I may be allowed to ſay:—that one or two inſtances do not prove an habitual diſpoſition to contribute to the public burthens. I may be allowed to ſay, that the proof given of theſe one or two inſtances, concludes rather ſtronger in favour of parliament than in favour of the colonies. It proves, if you will, that the colonies did for once exert themſelves: it proves that *they ſaid* they had exerted themſelves beyond their ſtrength: but ſurely it proves too that the parliament was ready to aſſiſt them—it proves, not that the parliament *ſaid* that it aſſiſted them, but it proves that it actually *did aſſiſt* them liberally.

* For the proofs of this, and a full refutation of the diſingenuous aſſertions of Dr. Franklyn and Mr. Dickenſon—"That the Colonies had no "particular concern or intereſt in the laſt war"—"Nay that the acquiſitions made by it were a "hurt to the colonies,"—ſee Acts of their own Aſſemblies cited in the Controverſy reviewed, from p. 107 to p. 137.

berally. Whether they had exerted themselves beyond their strength, stands on record as a matter of *opinion*. That they were recompensed stands upon record as a matter of fact.

As to the second point, that of contributions for the ordinary support of their own civil government in time of peace, instead of proofs we have only assertions. If assertions are to weigh, those of Mr. Pownal will surely be allowed their weight. Let us then hear what he says on the matter; to his testimony no sober American can object.

He tells us, that the order of the crown to require a permanent support for the governor, "is generally, if not universally, "rejected by the colonial legislatures *." He tells us, "that the support of the go-"vernors, judges, and officers of the "crown, is with-held or reduced, when-"ever the assemblies *suppose* they have

* See Administration of the Colonies, vol. i. p. 80, 81.

"reason to disapprove the nomination, "the persons, or the conduct of these officers."—Is this the liberal support of their civil government we hear so much of? To support a government is to preserve it in a state of strength and activity: what strength, what activity can there be in that government where the executive and judicial powers are so crampt and fettered, and depend for a scanty subsistence on the arbitrary and annual grants of a popular assembly?

Mr. Pownal, in the words we have cited, was speaking of the general and ordinary mode of providing for the support of the civil government in the colonies. He thought it not necessary it should seem, to cite particular proofs of an assertion confirmed by daily experience. But we know of one remarkable instance which should not be passed over. Single acts of extraordinary exertion have, we have seen, been cited as triumphant proofs in favour of

the colonies. It will not then be too much to preſume, that ſingle acts of obſtinate refuſal, may militate with ſome little force againſt them.

In the year 1710, the aſſembly of New York refuſed, on ſome pretext or other, to make the uſual grants for the ſupport of government. This was in a time of *war*, of the moſt expenſive war that England till then had ever waged. At that time the councils of this nation were guided by a whig miniſtry. What did the miniſtry do on this refuſal? They ordered a bill to be drawn up for raiſing the ſame taxes, and appropriating them to the ſame purpoſes by authority of parliament, as it appeared to them ought to have been raiſed and appropriated by the aſſembly of New York. The title of the bill was "An act for "granting a revenue to her majeſty, to "ariſe within the province of New York, "in America, for the ſupport of that go-"vernment." In the preamble of the bill it

it is ſaid the Commons " *give and grant* " unto her majeſty the rates, duties, ex- " ciſes, impoſitions," &c. therein after mentioned *.

This bill (which would have been brought in had the *whig* miniſtry continued) was deferred to another year by the *tory* miniſtry, who ſucceeded at that critical moment. It was deferred, as it ſeems, on the liberal promiſes which the colonies made of promoting the expedition then fitting out againſt Canada An expedition which failed, as the author of The Controverſy reviewed, informs us, on the authority of Swift, " partly by the acci- " dents of a ſtorm, and partly by the *ſtub-* " *bornneſs and treachery of ſome in that* " *colony, for whoſe relief and at whoſe in-*

* See a copy of this bill (which was ſigned and approved by Sir Edward Northey, and Sir Robert Raymond) in The Controverſy reviewed, p. 185.

"*treaty* it was in ſome meaſure de-
"ſigned."

But though the bill was deferred, there appears little reaſon to doubt, but that it would have been brought in, if the colony, grown wiſer, had not renewed the grant.

Yet this very colony can now tell us, "that it has *always* been the ſenſe of the "government at home, that ſuch grants "cannot be conſtitutionally made *." This certainly was not at that time the ſenſe of government.

Yet their agent can tell us, "that a par-"liamentary revenue was never *once* in "contemplation, till the unfortunate period of 1764†.

Had I the powers of his eloquence, or the privilege of *his* fame, I might—but I would not,—uſe his own harſh phraſe.—I might—but I would not—ſay, "Thus "have I diſpoſed of this *falſehood*;" and

* See reſolutions of the Aſſembly of New-York, in the year 1765.

† See his Speech, p. 39.

when

when I come to the unfortunate period of 1764, then too I might add—" but false-" hood has a perennial spring *."

Let us now turn to this unfortunate period.

* See his Speech, p. 55.

SECT. XI.

Of the conduct of parliament with reference to the colonies from the beginning of the present reign to the commencement of the last parliament.

"THE grand manœuvre in the bu-"finess of new regulating the co-"lonies (we are told) was the 15th act "of the fourth of George III. which "opened a *new* principle; and here (it is "added) properly began the *fecond* period "of the policy of this country with re-"gard to the colonies, by which the "fcheme of a regular parliamentary re-"venue, was adopted in theory, and fet-"tled in practice *."

There is, I think, a capital miftake in this reprefentation. Hurried on by the impetuofity of his genius, this writer did not ftop to mark out the feveral periods of

* See Burke's Speech, p. 50.

diftinct

diſtinct ſyſtems of policy, which had preceded, and which, by a natural progreſſion, led to and prepared the way for the ſyſtem eſtabliſhed by the act he cenſures. The object with him being to repreſent this act as a ſyſtem of as much innovation as poſſible; the number of periods he makes is but *two*. To me it ſeems, that with full as much reaſon *four* diſtinguiſhable periods may be marked out, at each of which the policy, on this behalf purſued, received a conſiderable degree of alteration.

The firſt period I would diſtinguiſh begins at the foundation of the colonies, and ends at the Commonwealth parliament. The ſole object of the ſyſtem adopted and adhered to during this whole period, ſeems to have been to ſecure to the colonies the monopoly of tobacco, and to prevent them from gaining that of the fiſhery.

The ſecond period began in the time of the long parliament; but was more fully developed after the Reſtoration. The ſole object

object of the policy, during this period, was to oblige the colonies to buy from Great Britain only, all the manufactures and European goods in general which she could supply them with; and to sell all the products they could sell to the British dominions.

On the other hand, during this second period, by way of compensation for these restraints, the monopoly given to the colonies, at first in the single article of tobacco, was extended, or at least advantages nearly equal to a monopoly were granted, in a multitude of other articles; among which we find those of rice, hemp, raw silk, pitch, tar, turpentine, indigo, and naval stores.

The third period began in the sixth of George the second, during which, in particular instances, taxation was substituted in the room of a monopoly.

This period then, which began in the reign of George III. and which the orator has chosen to style the second period, might,

might, with rather more propriety it ſhould ſeem, be ſtyled the fourth; and the change of ſyſtem then adopted, if indeed it muſt be called a change, ſeems to have been juſt as gradual as any of the former.

At the beginning of what I would wiſh to call the ſecond period, the legiſlature ſaw that the trade of the colonies was grown an object of importance; that it was of the utmoſt conſequence ſo to regulate that trade that the profits thereof might finally center in Great Britain, and be applied to the benefit of the whole empire *. Without aſking the *conſent* of the colonies, they therefore eſtabliſhed the ſyſtem of monopoly.

At the beginning of the third period, the legiſlature ſaw, that the colonies had increaſed and flouriſhed under the ſyſtem of monopoly; that the monopoly in ſome inſtances could not be entire, becauſe we had not markets to take off all their com-

* See Bernard's fifth letter.

modities,

modities, nor funds to ſupply all their wants; and that the colonies were now in a ſituation to contribute by a revenue for the liberty of relaxing the monopoly in theſe inſtances. In theſe inſtances, therefore, without aſking the conſent of the colonies, the legiſlature ſubſtituted taxation, manifeſt direct taxation, in place of a monopoly.

At the beginning of the fourth period, the legiſlature ſaw that the colonies ſtill increaſed and flouriſhed, that they were in a ſituation to contribute more largely to the ſhare of the public burthens, greatly increaſed on their account. The legiſlature therefore went on, by a natural and regular gradation, to aſſeſs the portion of the public burthens, which they now ſhould bear. In this change it is true, the legiſlature did not aſk the conſent of the colonies. As far was it from aſking their conſent in the preceding changes.

I am ſpeaking of a change, but the great change was not in the policy of the mother-

ther-country, but in the ſtrength and ſituation of the colonies; they were effectually and finally delivered from their enemies; the ſword, that from the firſt hour of their birth had hung over their heads, was broken; they now made a vow of independence, the moment that maintaining it ſeemed practicable, and that dependence was no longer neceſſary.

The technical terms of *give* and *grant* had been uſed before, in the act of George the ſecond. The ſame terms are uſed in this *; but there is this difference. —In that act the title was foreign, in this correſpondent, to the *purview*. This ſurely can be no objection to the latter. It declares it expedient, that " new proviſions and regulations ſhould be eſtabliſhed for improving the revenue of the kingdom, and ſecuring the navigation and commerce between Great Britain and America." It aſſigns the reaſon why *new* regulations were expedient; becauſe " the dominions in America had

* 4 Geo. III. c. 15.

" been

" been ſo happily enlarged:"—this ſurely is no objection to the act. It declares it to be juſt and neceſſary " that a revenue ſhould be raiſed in America:" it aſſigns the grounds of this poſition, and the uſe to be made of the revenue ſo raiſed; namely, " defraying the expences of defend-" ing, protecting, and ſecuring the domi-" nions ſo acquired and enlarged."—Is this any objection to the act? It declares, that the commons " were deſirous in the " then ſeſſions of parliament to make *ſome* " proviſion towards raiſing this revenue." —I ſhould have thought even *this* no great objection to the act. We are told, however, that " from theſe laſt words it ap-" peared to the colonies, that this act was " but a *beginning of ſorrows*; that *every* " ſeſſion was to produce ſomething of the " ſame kind; that we were to go on from " day to day in charging them with ſuch " duties as we pleaſed for ſuch a military " force as we ſhould think proper*."

* Mr. Burke's Speech, p. 51.

Thus

Thus appeared it to this orator; to me, to any one, who deigned to read the ftatute-book, and who chofe to fpeak of it, it muft appear at the utmoft but a *continuation* of forrows.

All thefe dreadful phantoms, however, appeared to the colonifts:—all were conjured up by thefe feemingly innocent, but magic words: — " fome provifion " — " prefent feffion"—Alas! who can anfwer for the wildnefs of an American imagination.

There was a time when every laundrefs, every poor negroe wench in New England ftarted up an enchantrefs; formidable as the evoker of Samuel at Endor; when old men outdid the wonders of the magicians of Pharoah; and dæmons ftalked about at noon day.—The paroxyfms of religious madnefs are now over: a political phrenzy has fucceeded. Inftead of witches and dæmons, their imagination is now terrified with the grim fpectres of

flaves,

ſlaves, "ſhaking their uncombed locks, and ſtamping their wooden ſhoes *.

In this, as in the former caſe, the phrenzy, "like ſome epidemical diſeaſe, "has run through the whole country:"— now, as well as then, "the magiſtrates "and miniſters, whoſe prudence ought to "have been employed in healing this di-"ſtemper, and aſſuaging its fury, throw "in new combuſtible matter †."

The truth, however is, that the commencement of the fears and alarms which the Americans are *now* ſuppoſed to have felt upon the paſſing of this act was ſubſequent ‡; for though they remon-ſtrated,

* See Farmer's Letters, p. 24.

† See Account of European Settlements in America, part vii. c. 4. Hutchinſon's Hiſtory of Maſſachuſet's Bay, vol. ii. p. 15, & ſeq.

‡ This act paſſed in April, 1764, the ſtamp act in March 1765. It is only from the time of the Americans receiving account of the paſſing of the ſtamp act, that a ſtrenuous American dates "the great "murmurings and diſcontents that aroſe among them."

ſtrated, and with reaſon, againſt ſome of the proviſions of this act, they at that time did not ſo much as argue againſt the principle *. They conceived, and endeavoured to ſhew, that the power of parliament had been impoliticly exerciſed; but they did not *yet* go ſo far as to ſay, that the power itſelf was unconſtitutional.

I do not mean to defend all the proviſions of this act.—I am ready to allow, on the authority of governor Bernard, that the duty it impoſed on foreign molaſſes was higher than it ought to have been †. I am diſpoſed to allow, on the ſame authority, that a diſtinction ought

them. See Proceedings of the Colonies in conſequence of the Stamp Act, prefixed to the Charters.

* They touched it, Mr. Burke acknowledges, very tenderly, Speech, p. 52.

† The act impoſed three pence per gallon on foreign molaſſes, governor Bernard thinks three half-pence or two pence at moſt ſhould be impoſed. See the Governor's fifth letter.

to have been eſtabliſhed, if indeed it be *practicable*, between the different ſorts of lumber; that if policy and a regard to our naval eſtabliſhment made it neceſſary to reſtrain the exportation of that ſort which is uſed in ſhip-building to our own dominions, we ſhould have allowed them to export the other ſort to foreigners, ſuch as ſtaves, or what was fit only for houſe-building*. I believe, on the ſame authority, that proper regulations were not made for fixing the place where the courts of admiralty were to be holden: that the mode of paying the judges of the admiralty was exceedingly wrong†: and tended to warp their judgment almoſt againſt the force of evidence. I believe on the

* This reſtraint is in part taken off by 5 Geo. III. c. 45.

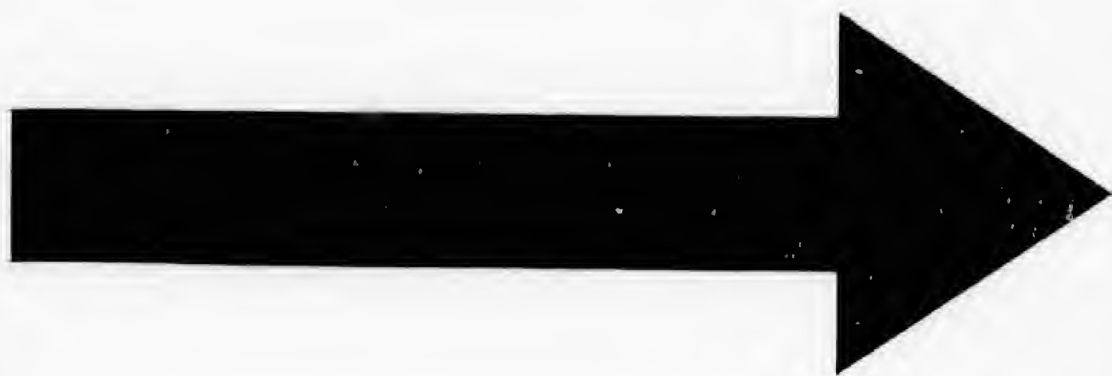
† They are paid by a poundage on of the condemnation money. Theſe two laſt named arrangements make no part of the act in queſtion: but that act, which began this new ſyſtem, ought to have corrected ſuch capital defects.

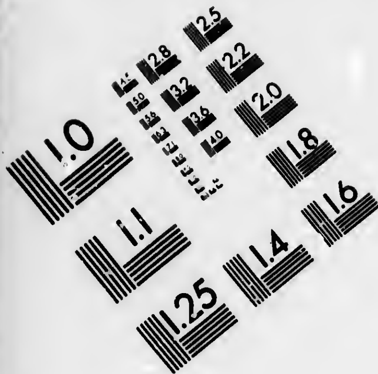
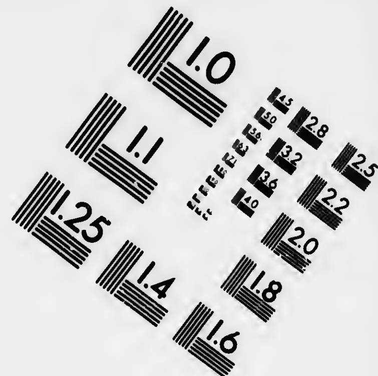
ſame

ſame authority, that the order to ſend *all* the money ariſing from theſe duties to his Majeſty's Exchequer in England, was a very imprudent one; that the charges of double remittance, and the ſtopping of the circulation of ſuch a ſum for ſo long a time in America, was an addition of near one-fourth to the burthen to be borne by the Coloniſts, and that without anſwering any one *good* purpoſe.

I am ready to allow that theſe capital miſtakes at the very firſt outſet in this new period, did not only juſtify the coloniſts in the petition they preſented to the Houſe of Commons on this occaſion, but would have entitled them to be heard with attention and favour, had they propoſed to raiſe by their own aſſemblies a permanent revenue, always to bear a certain adequate proportion with what the ſubjects in Great Britain ſhould pay. Or had they humbly petitioned to have the liberty of ſending to the British Parliament a certain number of knights and

 burgeſſes



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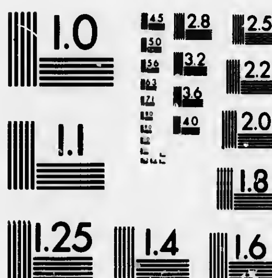
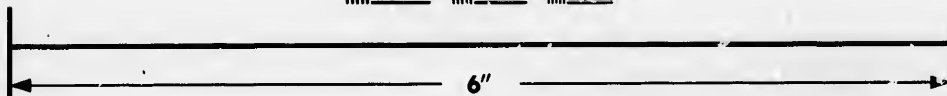

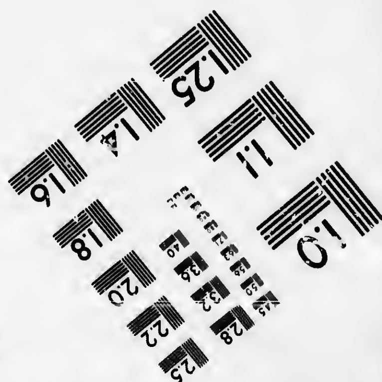

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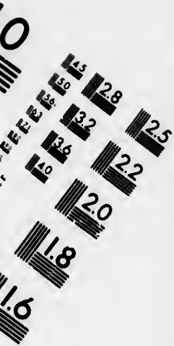

burgeſſes to repreſent the condition of the colonies *.

That the miniſtry were diſpoſed to liſten to either of theſe propoſitions is clear from the moſt indiſputable authority.— That the colonies were averſe to both, is clear from the ſame authority.

In a letter from Mr. Grenville to Mr. Pownal †, he expreſſes himſelf in the following ſtrong and pointed terms:

* As the great object here to be conſidered in the conduct of parliament toward the colonies ſince the acceſſion of his preſent majeſty, is the ſteps parliament has taken to aſſert its right of internal taxation in the colonies, I paſs over the acts made for encouraging the communication and trade with the mother-country, ſuch as 4 Geo. III. c. 26. granting a bounty on hemp and flax. 4 Geo. III. c. 27. granting a liberty of exporting rice from South Carolina and Georgia, to any part of America ſouthward of thoſe colonies; and to any part of Europe to the ſouthward of Cape Finiſterre. 4 Geo. III. c. 29. for the encouragement of the whale fiſhery. 5. Geo. III. c. 45. for encouraging the trade of the colonies, &c. &c.

† See Appendix to the Adminiſtration of the Colonies, No. I.

" As

"As to the great question of our par-
"liament's granting to America a com-
"petent number of representatives to sit
"in our House of Commons, *you* are no
"stranger to the declarations I *repeatedly*
"made in the House, at the time when
"the repeal of the Stamp Act was agitat-
"ed:—that if such an application should
"be properly made by the colonies to
"parliament, in the same manner as those
"which were made from Chester and
"Durham, and probably from Wales, it
"would in my opinion be intitled to the
"most serious and *favourable* considera-
"tion. But I am much afraid that nei-
"ther the people of Great Britain nor
"those of America are sufficiently ap-
"prised of the danger which threatens
"both from the present state of things,
"to adopt a measure to which both the
"one and the other seem indisposed. Some
"of the *colonies*, in their address to the
"crown against some late acts of parlia
"ment have, if I mistake not, *expresly dis-*

"*dained* it; and I do not *think* it has been "*kindly* received in Great Britain *."

This was a fact which could not have escaped the knowledge of a celebrated orator. Yet in his account of Mr. Grenville's administration he did not find it convenient to remember it. To speak the *whole* truth may sometimes hurt a cause.

But it was easier for a minister to insure success to the other proposal, "That "the Colonies should be allowed to tax "themselves on requisition."—This therefore Mr. Grenville not only proposed, but warmly recommended to the colonies.

The design of laying on a Stamp Duty was announced in parliament so early as the month of March 1764. The House came to a resolution on the *propriety* and *possible* expediency of such a tax. But the passing

* The reader will attend to the difference marked by Mr. Grenville as to the manner in which this notion was received in Great Britain and the colonies. By her he thinks it was *not kindly* received; by them it was *expressly distained.*

paſſing this reſolution into an act was deferred with the *expreſs purpoſe* of allowing the colonies time to propoſe any other mode of taxation equally productive. The agents of the colonies conferred with Mr. Grenville *ſeparately* on this ſubject. They conferred with him on it in a body. He told them, what one of them at leaſt declares he had heard Mr. Grenville ſay in the Houſe,—“ That the war had found “ us *ſeventy*, and left us more than a “ *hundred and forty millions* in debt:— “ that the American civil and military “ eſtabliſhment after the peace of Aix la “ Chapelle was only *ſeventy thouſand* “ *pounds* a year, but was now increaſed “ to *three hundred and fifty thouſand.*— “ That this was a great additional ex- “ pence incurred on the *American* ac- “ count.—That he did not expect the co- “ lonies to raiſe the *whole*; but ſome part “ of it he thought they ought to raiſe. “ That he judged this method of raiſing “ the money the eaſieſt and moſt equit-

"able:—that it was a tax which would "fall only on property, would be collect- "ed by the fewest officers, and would be "equally spread over North America and "the West Indies, so that *all* would bear "their share of the public burthen. That "he was not however *set* upon this tax; "if the Americans disliked it, and pre- "ferred *any other* method of raising the "money *themselves*, he should be content." He directed the agents "to write to their "several colonies, and if they chose *any* "*other mode* he should be satisfied, pro- "vided the money was raised." Nay he even went so far as "*warmly* to recom- "mend to them the making *grants* by "their *own assemblies*, as the most *expe-* "*dient* for themselves on several ac- "counts."

The colonies were accordingly written to.—But the proposal was by most of them rejected with scorn—The offer they said amounted to no more than this— "That if the colonies will not tax them-

"selves

" ſelves as they may be directed, parlia-
" ment will do it for them."—The very
propoſal, which, as we have ſeen before,
the whig miniſtry of Queen Anne not
only made, but effectually enforced.—
The colonies directed their agents to
" *remonſtrate* againſt theſe meaſures, and
" to *prevent* the impoſition of any farther
" duties or *taxes* in the colonies." Even
yet however they did not directly call in
queſtion the power of parliament to tax
them.

Theſe facts are advanced on the autho-
rity of three of the then agents of the
Colonies *.

Yet

* Mr. Mauduit, Mr. Montague, and the then
agent for Georgia, I think it was Mr. Knox.—
See a letter ſigned by Mr. Mauduit, in the Gazeteer
of February 22, 1775. See alſo Review of the
Controverſy between Great Britain and her Colo-
nies, p. 198. This pamphlet was publiſhed in
the year 1769. And Mr. Burke's ſpeech was
made in 1774. Dr. Franklyn, in his examina-
tion before the Houſe of Commons when the repeal
of the ſtamp act was in contemplation, ſaid, " that
" he

Yet it has been boldly asserted in the house "That this fact was neither *true* "nor *possible*:" "that Mr. Grenville "never could have proposed that the Co-"lonies should tax themselves on requi-"sition:" — "that the colony-agents "had no general powers to consent to "such a proposal:" "that they had no

"he had it in instruction from the assembly of the "colony he lived in, to assure the ministry, that "as they *always had done*, so they should always "think it their duty to grant such aids to the "crown as were *suitable* to *their circumstances and* "*abilities*, whenever called upon for the purpose "in the usual constitutional manner." And that he had communicated that "instruction to the "minister *before* the stamp act was *brought* in." So then there is another authority to prove that the colonies *were* apprised of the design of the ministry to obtain a larger revenue from America; that some proposal *had* been made them about raising that revenue in their own assemblies. And that those who called themselves well *affected* colonies past no vote, no resolution about it, offered no specific sum, proposed no medium of fixing the proportion they should bear of the public burthen, but kept only to general terms, which secured nothing to England, obliged themselves to nothing.

"time

"time to consult their assemblies for par-
"ticular powers *."

It is clear, however, that he *did* make the proposal; that the colonies had time to be consulted; that they *were* consulted; that some of them absolutely rejected the proposal: the others would give no precise answer to it.

I will not pay a worse compliment to a member of the House of Commons than he paid to his brother members. From any common writer these misrepresentations might have been supposed to be "circulated abroad with a *malignant intention*; but I *cannot* attribute a *malignant intention* to him who said the same "thing in the house †."

Upon this refusal of the colonies the Stamp Act was passed.

While it was depending, petitions were presented against it by four of the colonies. These petitions, for the first time,

* See Burke's Speech, p. 53.
† Ib. p. 53.

called

called directly in question the *power* of parliament to impose taxes on the colonies.

Nothing is more common than to reject motions * for receiving petitions against bills; more particularly when the principle

* I opened the Journals, and in a single session in the reign of William III. I find no less than seven motions for receiving petitions rejected:—petitions too from bodies, many of them, without disparagement to the colonies, as respectable as the colonies of Rhode Island, Connecticut, Virginia, and Carolina. One from merchants trading to New England, New York, and Pensylvania, touching the duties on whale-fins from the said colonies. Com. Journ. vol. xii. p. 336. One from the town of Altcar in Lancashire, ib. p. 146. One relating to a bill for granting certain duties on coal and culm, ib. 240. Another on the same subject, ib. p. 246. Another on the same subject, by people who set forth that they had advanced 564,700 l. on the credit of a former act, ib. p. 248. One from the county of Northumberland, relating to copper money, ib. p. 254. Another from merchants trading to Scotland, relating to duties laid on Scotch linen, ib. p. 336. There is scarce a sessions of parliament where motions for receiving petitions do not pass in the negative.

ciple of the bills has been already discuss-ed: still more when the objections against them are drawn from topics which the house will not allow to be brought in question. It could hardly be expected, I suppose, that the house would allow the supreme authority of parliament, or the extent of their power, to be canvassed by counsel at their bar.—Yet what cannot a great genius effect? By force of the single word "*scornfully*," this rejection of petitions has been branded as inequitable and unparliamentary *.

This act, it is true, was followed by great disturbances in America; disturbances which by the accounts we have of them seem to have been of a nature amply to justify the phrases made use of in the resolution of the house on the 17th of December 1765, which stigmatised them by the title of "outrageous tumults and "insurrections;" as "a resistance given

* Burke's Speech, p. 56.

"by

" by open and rebellious force:" disturbances the complexion of which seems not improperly summed up in the strong expressions used by general Gage, in his letter written on the 4th of November of the same year: " that all from the highest to the lowest were accessary to this " insurrection;" in the threats " to plunder and murther those who should take " the stamps *."

Some we are told have said, that " all " the disturbances in America were created by the repeal of the Stamp Act." But " the falsehood, baseness, and absurdity " of this assertion †" has raised such a tumult of indignation in the breast of the great orator, as would have torn a common man to pieces.—With submission however, the mistake is all his own. No man ever meant to attribute a precedent

* The reader may see an ample account of these disturbances prefixed to the Collection of Charters, printed for Almon.

† Mr. Burke's Speech, p. 67.

"disturbance to a subsequent measure:" no man ever thought that the disturbances previous to the repeal of the Stamp Act were caused by that repeal. But many have thought, and continue to think that the timid repeal of that act did cause all the disturbances that have succeeded. And however violent were the disturbances caused by the Stamp Act, they were not of a nature to be lasting; they might easily have been quelled.—And had they been quelled, the disturbances which have since happened, and which are of a much more alarming nature, had been effectually prevented.—Instead of which the appearance of weakness and timidity did, as it was foretold it would, bring on farther insults. For the first of these assertions there is as respectable authority as the bare word even of this orator. The protest of no fewer than two and thirty peers against the repeal. A protest which the noble lords entered, among other reasons, because "they were convinced from the unani-

"mous

"mous testimony of the governors and "other officers of the crown in America, "that though by a most unhappy delay "and neglect to provide for the due exe- "cution of the law, and arming the go- "vernment there with proper orders and "powers, these disturbances had been "continued and encreased, yet they might "have *been easily* quieted before they at- "tained to any *dangerous* height."

It appears farther from a letter to Mr. secretary Conway, laid before the house, and printed in the parliamentary debates*, "that when the Boston mob, raised first by "the instigation of the principal inhabi- "tants, allured by plunder, rose shortly "after of their own accord; people then "began to be terrified at the spirit they "had raised: that each individual feared "he might be the next victim to their "rapacity; that the same fears spread "through the other provinces; and that

* Vol. v. p. 91. 92.

"as

"as much pains were *then* taken to *pre-*
"*vent* the insurrections of the people as
"*before* to excite them."

Upon this authority surely one may be allowed to believe that the disturbances caused by the stamp act were not of so dangerous a nature as the disturbances which have happened since the repeal of the stamp act.

Nor can I—no, though I should have the misfortune to be ranked with Dr. Tucker, among "the vermin of court re-
"porters*" I cannot--help thinking "that
"the objections made *here*, both *in* and
"out of parliament, to the stamp act at
"the time of its passing," whatever effect they might be intended to have, had in the event that of "encouraging the
"Americans to their resistance."—I have not access to "all the papers which load-
"ed the table of the house." I did not hear "the vast crowd of verbal witnesses

* Mr. Burke's Speech, p. 71.

"that appeared at their bar *." But I have, I think, a tolerable proof that this idea is founded.

In the account of these disturbances, referred to above †, I see the Americans were diligent in informing themselves how their opposition was looked upon in the mother-country. I see that on the 18th of September, near two months before general Gage's letter was written, a committee was appointed at Boston, "to draw up, and transmit to Mr. Conway and colonel Barre, addresses of "thanks for their *patriotic* speeches in "parliament in favour of the rights and "privileges of the colonists; and to desire "correct copies thereof to be placed among "their most precious archives." I learn too from the same account "that they voted "the pictures of these gentlemen to be "placed in their town-hall." This seems

* Mr. Burke's Speech, p. 71.

† See the account prefixed to the Charters, p. 7.

a com-

a compliment rather extraordinary than otherwise, to be paid to speakers in "so "languid a debate," to orators "who "spoke with so great a reserve, and so "remarkable a temper *."

I do not know how this gentleman's "excellent and honourable friends" took the compliment paid to their languor. —A compliment himself appears seldom to have been ambitious of obtaining: though it has seemed at times as if a little more *reserve*, and a little more *temper*, might have done him no disservice.

Had he possessed this temper and reserve, he might have spared to his own delicacy the pain of uttering, and to the delicacy of his auditors the pain of hearing another *incartade*. "The agents "and distributors of falsehoods, says he, "have with their usual industry circulated "another *lie*, of the same nature with the "former. It is this, that the disturban-

* Mr. Burke's Speech, p. 71, 72.

"ces arofe from the *account* which had "been *received* in America of the *change* "of the miniftry."—"But it does fo "happen that the falfity of this circula-"tion is (like the reft) demonftrated by "indifputable dates and records."—"So "little was the change *known* in America, "that the letters of the governors, giving "an account of thefe difturbances, long "after they had arrived at their higheft "pitch, were all directed to the old mi-"niftry.*"

It would be too much to expect that any one man fhould unite every excellence. It is wonderful enough that to fo impetuous a genius this great man fhould unite a degree of coolnefs fufficient to keep to chronological order; to fuperadd exactnefs in relation would be too much for mortal man to do. The fact is, no man ever fuppofed that the difturbances arofe from the account of a *change actually*

* Burke's Speech, p. 72, 73.

made:

made: no man could ſuppoſe the diſturbances committed in April and May, could originate from the certain knowledge of a change, which did not happen till July. Though Dr. Johnſon is willing to ſuppoſe the Highlanders *may* be gifted with a ſecond ſight, no man is inclined to think the Americans are ſo highly favoured. But a ſtrong *expectation* of a change, ſoon likely to happen, will ſometimes produce nearly the ſame effect as the account of a change already *happened*. Now the downfal of the then miniſtry was moſt certainly expected, ſtrongly expected, by many people in England, long before theſe diſturbances began; long before the act, which gave birth to them, was paſt. The addreſs of the letters from our governors, ſo much inſiſted on by our orator, do not, I ſuppoſe, diſprove the exiſtence of this opinion. And it ſeems very probable, that this opinion and expectation did augment and prolong the diſturbances.

Consider the situation of affairs both here and in America, at the time the stamp act was past, and there will appear no great reason to wonder at its meeting with resistance: the wonder would have been, had it met with acquiescence.

The disappointment given by the peace to those sanguine expectations that had been generated by the successes of the war: the encrease of taxes, consequent upon the encrease of debt: the unpopular nature of one tax in particular, which it had been thought necessary to hazard: the multiplied prosecutions of a popular champion: all these circumstances put together had accumulated such a pressing body of discontent, as could not but appear more than sufficient to bear down any ministry.

In this untoward conjuncture it was that Mr. Grenville proposed, and the legislature past, the first act for granting duties to be raised in the colonies of America.

rica. In this untoward conjuncture it was, that the resolution on which the stamp act was grounded past in the house of commons.

We have already noticed the change effected in the situation of the colonies. Of their reluctance to submit to the laws of trade and navigation; of their disposition to contest the authority that imposed them, we had seen many proofs: but this disposition, how early soever it had been kindled, and how often soever it had flashed out in occasional acts of disaffection, had been damped, and kept from running into acts or pretensions of steady opposition, by the sense of their weakness and their wants. Those wants ceasing, and that weakness being outgrown, it is not to be wondered at that they greedily laid hold of that opportunity, which presented itself, of strengthening their force by the accession of a body of malecontents in the mother-country.

The watch-word given by theſe malecontents, they eagerly caught and ſpread abroad: a general plan of deſpotiſm, as theſe malecontents believed, or wiſhed to have believed, had been formed, and was purſuing: and of this plan the ſuppoſed new and unheard-of project of taxing America was invieghed againſt as a part. That this had been the language, both within doors and without, no body can be ignorant: that the Americans were blind to the aſſiſtance they might derive from a body thus openly eſpouſing their intereſts, and leaguing themſelves on their ſide, is what no body can ſuppoſe: that they ſhould be diſpoſed to wiſh, and forward to expect, the downfal of a miniſtry who oppoſed their pretenſions; and the exaltation of one that ſtood engaged to favour them, is what no body can doubt: that they ſhould fail to perceive that acts of outrage, manifeſting their diſſaffection, muſt contribute to the event they wiſhed for, can hardly be

ſuppoſed.

ſuppoſed. The utmoſt ſtretch that political charity can make, is to hope that thoſe Engliſhmen who encouraged the oppoſition of the Americans, by the eſpouſal of their cauſe, did not wiſh to ſee any more miſchief done, any more outrages committed, than what might be neceſſary to bring about a revolution, according to their notions ſo deſirable: and that there might be ſome among them, who, deſireable as this revolution ſeemed to them, might not think it worth purchaſing at *any* price. Among theſe laſt, let us hope to find our orator.

Be this as it may, thus much is indiſputable, that the Americans expected a change of miniſtry; and that it was the hope of contributing to a change, promiſing to be ſo favourable to their pretenſions, that encouraged them, if not to begin, at leaſt to perſevere in their reſiſtance.

The expectation was fulfilled. A change of the miniſtry—from what cauſe is not material, did accordingly take place.

The

The short period of the succeeding administration deserves a particular attention, and happily no administration ever possessed a better historian, or a more able apologist, had an apologist been wanting to a minister "who sought no apology *".

This gentleman, "whose situation, he "tells us, enabled him to see as well as*," and whose discernment we cannot but believe, enabled him to perceive much better than "others, what was going on, "did see in the noble lord who then pre-"sided at the treasury, such sound princi-"ples, such an enlargement of mind, such "clear and sagacious sense, and such un-"shaken fortitude," as might well give room to hope, that if the empire could be saved, it must be by his hand. To the gods, and to the citizens of London, it seemed otherwise†.

The

* Mr. Burke's Speech, p. 64.

* Ib. p. 57.

† See their address presented to the king on the

The ſituation in which the noble lord ſtood at this moment was, no doubt, "a "trying one;"—but it was ſurely a more favourable one than that in which his predeceſſor had ſtood. A great part of the ill humour, ariſing from domeſtic cauſes, had ſubſided. The minds of the people at home were in a great meaſure quieted. The marquis, and his friends, ſtood clear of the odium of unpopular meaſures. The city of London only excepted, the reſt of the nation was prepoſſeſſed in their favor. The man, whoſe ſufferings had excited the ſtrongeſt popular diſcontent, and whoſe talents were nicely calculated to put him at the head of a faction, was ready to ſue for pardon; as he did afterwards ſue for pardon to a great man who was then an

the 25th of Auguſt 1765. In which they ſay, "that whenever a *happy eſtabliſhment* of public "meaſures ſhall preſent a *favourable* occaſion, they "will be ready to exert their utmoſt abilities in "ſupport of ſuch wiſe councils, as *apparently* tend "to render his majeſty's reign happy and glo-"rious."

aſſociate,

aſſociate, and afterwards ſucceſſor to the noble marquis.

This then was as favourable a moment as could well be hoped for; not merely to *declare* but to vindicate, and eſtabliſh on a permanent foundation, the rights of the Britiſh parliament.

There are three points on which the Americans pretended, that the miniſtry had groſly miſunderſtood, or wantonly ſacrificed the intereſts of the colonies: their commercial regulations, the ſuppreſſion of their paper money, and paſſing the ſtamp act. Theſe then were the objects which demanded the immediate attention of the marquis.

As to the firſt of them, a ſcrupulous attention to treaties with foreign ſtates, and a partial attachment to the letter of the navigation acts, had, it ſhould ſeem, miſled his predeceſſor. The noble marquis we are told, "ſaw his way clear before him: "though, on the one hand, treaties and "public law; on the other, the act of na- "vigation,

" vigation, and the whole corps of trade " laws, were drawn up in array againſt " him; he knew " in ſubſtance," that they were not directly againſt him. But he did not chooſe to " determine raſhly," he choſe to know as much " formally and " officially." By way of form then the attorney general's opinion was aſked; that once obtained, " the noble marquis immediately diſpatched orders for the redreſs of theſe grievances." Orders, it ſhould ſeem, which, among other good effects, prevented the total ruin which was threatened of the Spaniſh trade.

Here then, one would think, was a vaſt fund of popularity acquired in America: an acquiſition, one would have hoped, that might have done " knight's ſervice;" might have conciliated the opinions and affections of men *.

As to the ſecond of theſe objects, the regulation of the paper money of the colonies,

* Ib. p. 61.

lonies, this business was left by the noble marquis as he found it.

On the conclusion of the Spanish business, the noble marquis turned himself to the consideration of the third of these objects, the stamp act. And "after weigh-"ing the matter as its difficulties and im-"portance required," determined on the repeal of it. And here it is, that the panegyrist of this ministry puts forth the full strength of his amazing powers.—"A "partial repeal, a modification, might "have satisfied a timid, unsystematic, pro-"crastinating ministry:" but the noble lord, and his friends, were not actuated "by a weak and undecided mind:—by a "majority that will redeem all acts ever "done by majorities in parliament, in the "teeth of all the old mercenary Swiss, "in defiance of the whole embattled legion "of veteran pensioners;—steadily look-"ing in the face that glaring and daz-"zling influence, at which the eyes of "eagles oft blenched; looking in the "face

"face one of the ableſt, and not moſt "ſcrupulous oppoſitions:" and what is more than that, "even looking lord Chatham in the face: whilſt earth below "ſhook, heaven above menaced, and all "the elements of miniſterial ſafety were "diſſolved;"—they fought; they con"quered: they preſerved the authority "of Great Britain; they preſerved the "equity of Great Britain: they made the "declaratory act; they repealed the ſtamp "act *."

My boſom burned within me as I liſtened to the orator,—"involuntary burſt of "gratitude and tranſport," broke from me; I wondered only how the authority of Great Britain, having been thus miraculouſly *preſerved*, ſhould all at once be *loſt* again.

I turned to the ſtatute book: I found the repealing act as full as words could make it. I examined the declaratory act,

* See Speech from p. 60 to p. 66.

and

and it is indeed a *declaratory* act. It preserved the authority of Great Britain. How? By declaring it to be preserved. What else does it? Just nothing.—It exacts no recognition of that authority. It prescribes no means of enforcing it. What a victory! what dangers surmounted! what giants vanquished! I hope the orator will forgive me; but I could not help exclaiming with lord Grizzle to Dollallolla,

> I tell you, madam, it is all a trick,
> He made the giants first, and then he killed them *.

At best the noble lord mistook the object of his attack. He thought all was done when he had out-talked and out-voted "an unscrupulous opposition:" this was done, but was nothing that ought to have been done procrastinated? Was it "systematic" wholly to take away the

* Tragedy of Tragedies, or the History of Tom Thumb.

tax,

tax, and declare our right to lay it? to tear up a tree which if watered might have "yielded fruit," for no other purpoſe than to "plant what was called in "America a barren yew, caſting a noxious "ſhade over the colonies*?" Was it not timid to aſſert at home a right, of which he dared not exact a recognition on the other ſide the Atlantic? Is not leaving every thing to be decided hereafter, to procraſtinate? This vaunted act "of *ſpirit* "and *fortitude*:"—"of ſupreme magna-"nimity," what was it after all, more than the unmeaning rhodomantade of ambaſſadors, who ſtyle their maſters kings of France, or of Jeruſalem? theſe titles do not ſecure a foot of land; the declaratory act does not ſecure an atom of authority.

If the colonies had objected to the ſtamp act on principles of expediency, on mere commercial principles, it might have

* See Farmer's Letters, p. 77.

been altered; the oppreſſive proviſions, if any ſuch there were, or even the whole act, might have been ſafely repealed. But the colonies now objected to it on very different principles: they denied the rights of the parliament to tax them. To repeal the bill abſolutely, totally, and unconditionally, was therefore to give up that right. To ſay that ſuch a repeal was grounded on commercial principles, was it not nugatory? To aſſert the right in parliament, without inſiſting on a recognition of that right in the colonies; without inſiſting even on the poor ſatisfaction of a reſciſſion of the colonial reſolves againſt the right, was this the act "of ſpirit "and fortitude" ſo much boaſted of?

What was he to do then? Give up the right? This would be "cutting indeed "the Gordian knot:"—though hardly "with a ſword:" not much "in the he-"roic ſtyle *." To yield requires little

* See Mr. Burke's Speech, p. 60, 61.

he-

heroiſm. If the knot was to be cut by yielding, the ſciſſars of a trembling ſpinſter might have done the work as well.

Was he to enforce the act by fire and ſword? I cannot perſuade myſelf that fire and ſword would have been neceſſary. But I would ſuppoſe the noble marquis and his friends to have been actuated by greater views. I would ſuppoſe them to have been anxious to follow the dictates of that "equity, by which we are bound "as much as poſſible to extend the ſpirit "and benefit of the Britiſh conſtitution to "every part of the Britiſh dominions *." This indeed *would* have been an object worthy of ſuch a man as the noble lord's panegyriſt has deſcribed him. He had official information, that there was no fixed idea of the relation between Great Britain and America. This relation ſhould have been fixed. The ſupreme authority of the parliament had been openly *denied* by the

* See Burke's Speech, p. 60, 61.

Americans: this ſhould have been aſſerted, vindicated, and *recognized.*

The powers of the ſubordinate legiſlatures were vague, and indetermined: theſe ſhould have been preciſely marked out.

The mode of taxation was diſputed: this ſhould have been ſettled.

The want of knights and burgeſſes to repreſent the condition of the colonies in the Britiſh parliament, was the *only* ground on which the *equity* of a parliamentary taxation could be diſputed: this ſhould have been obviated.

Inſtead of obtaining any of theſe important points, what did he? "He repealed the ſtamp act; he made the declaratory act;" that is, he gave up the purſe at the firſt word; and when the ſpoiler had carried it off, and was out of ſight, and out of hearing, he vauntingly declared he had ſtill a right to the purſe if he choſe to claim it. Of this ſort is the

"supreme magnanimity" so magnificently displayed.

But though this act of *spirit*, *fortitude*, and *magnanimity*, should be found to have done nothing toward securing the dignity, or authority of Britain, the act of concession we are required to believe restored tranquility to the colonies—"They were "quiet." What are we to understand by their being "quiet?" Is it only, that having forced from us that which they demanded, they were quiet till another opportunity of resisting should present itself?—We allow the fact; make the most of it. Or are we to understand by it, that they were ready to submit to the principle of the declaratory act; to yield a ready obedience to the other laws enacted by Great Britain? so the orator seems to understand the phrase, and undertakes to prove, that they were "not only "quiet, but shewed many unequivocal "marks of acknowledgment and grati- "tude:" he gives us every advantage: he

 selects

ſelects "the obnoxious colony of Maſſa-"chuſet's Bay." He calls on us to hear "how theſe *rugged* people can expreſs "themſelves on a meaſure of conceſſion."

"If it is not in our power (ſay they in "their addreſs to governor Bernard) in ſo "full a manner as will be expected, to "ſhew our reſpectful gratitude to the mo-"ther-country, or to make a dutiful and "affectionate return to the indulgence of "the king and parliament, it ſhall be no "fault of ours: for this we intend, and "hope we ſhall be fully able to effect."

This is quoted as the genuine expreſſion of their real ſentiments, as originating from themſelves *.—What then will be the feelings of the reader, when he learns that theſe pretended expreſſions of the Boſtonians were no expreſſions of their own: that they are only re-echoed back from the ſpeech of the governor: that the aſſembly refuſed ſo much as to take into conſideration the very meaſures to

* Mr. Burke's Speech, p. 75.

which these words had been applied by him: that the whole tenor of the address is perhaps one of the sourest, most sullen, most surly, that ever was presented to a governor *.—Yet some men scruple not to complain of "an *unscrupulous* oppo-" position!"

Might a ministerial advocate indulge himself in like liberties, he might say with this orator, changing but a single word, "Thus are blown away the insect race of "*factious* falsehoods! thus perish the mi-" serable inventions of the wretched run-" ners for a wretched cause, which they " have fly blown into every weak and " rotten part of the country, in vain hopes " that when their maggots had taken " wing, their importunate buzzing might " sound something like the public voice †.

* See the governor's speech, and the address in answer to it, in the Appendix to the Annual Register, vol. ix. p. 176, 179.

† Mr. Burke's Speech, p. 74.

The noble marquis resigned his place to a noble duke, who had been a companion of his battles, and a partner in his victories. The noble duke was assisted by the chief, who had led "the phalanx" in the lower house, and "inspired even the "meanest of them with courage."—The people's lawyer, the great defender of British and American liberty, held the seals: and *he*, who was alone a host, not only deigned to put the ministry in array, but condescended to take his post among them. No doubt he did it on mature deliberation. *He* could not hastily give his confidence, "confidence he had "before asserted in the house—was a "plant of slow growth in an aged bosom." He was past the season of credulity.

Who could have imagined, that in his administration, any subject of contention could possibly have arisen between Great Britain, and her colonies.—Yet so it was. Very early in this administration, the demon of discord again stept forth:

forth: nor has any magician yet been found to lay him.

Very early in the year 1767, the colony of New York preſented a remarkable petition, in which they ſet forth, that notwithſtanding the tender regard for their happineſs, manifeſted in the laſt ſeſſions of parliament, "yet the commercial re-"gulations then enacted, inſtead of re-"medying, *had increaſed* the *heavy bur-"thens*, under which the colony already "laboured *." Theſe regulations were regulations made under the very adminiſtration of our panegyriſt's hero. So impoſſible was it for that noble perſon, with all his penetration, and all his patriotiſm, to perſuade this untoward people of his being able to diſcern their true intereſt, and willing to purſue them.

But if this colony could not bring itſelf to approve the wiſdom of parliament in its commercial regulations, much leſs

* See Commons Journals, vol. xxxi. p. 160.

could

could it bear any application of the principle of the declaratory act.

Two years before, an act had past among other purposes, for that of better quartering his majesty's troops in North America. The assembly of New York did not like the mode prescribed by that act: they therefore past an act of their own, directing another mode, inconsistent with the provisions made by parliament.

The parliament on this occasion determined to inforce the principle laid down in the declaratory act, and vindicate its power of making laws binding on the colonies. An act was accordingly past, suspending the assembly of New York, till the provisions of the former act should be complied with *.

What ideas the Americans entertained of this exertion of power; what a conquest the magnanimous assertion of the declaratory act had gained over them; how

* 7 Geo. III. c. 59.

fully

fully the authority of Britain was *preserved* by it, was now apparent. "An "act of parliament, say the colonists *, "commanding us to do *a certain* thing, "*if it has any validity,* is a tax upon us "for the expence that accrues in complying with it." Hence they argue— "The assembly of New York either had, "or had not, a *right* to *refuse* submission "to that act—If they had—and I imagine, continues this writer, no American will say they *had not*—then "the parliament had *no right* to compel "them to execute it."

The ideas of liberty are different on the other side the Atlantic from those we entertain on the borders of the Thames. Had "the crown by its prerogative restrained the governor from *calling the* "*assembly together,*" all it seems would have been well †: but that parliament

* See Farmer's Letters, p. 8, 9.
† See ib. p. 9, 10.

should

ſhould interfere, and puniſh an act "of "diſobedience to the authority of the "Britiſh legiſlature" carries with it, "con-"ſequences vaſtly more affecting §." And why ſo?—"Becauſe it is *a parliamen-"tary aſſertion* of the ſupreme authority "of the Britiſh legiſlature, over theſe co-"lonies in the part of *taxation*:"—and is intended "to compel New York into a ſubmiſſion to that authority." One would think then that a reſtriction from the king, under the ſame circumſtances, would have been a *royal aſſertion* of the ſupreme authority of the *king* over the colonies in the part of taxation; an aſſertion which to Engliſhmen would appear to have "con-"ſequences vaſtly *more* affecting."—One thing is unqueſtionable; that to "reſtrain "the governor from *calling the aſſembly*," till the aſſembly ſhould comply with the acts; to prevent their meeting till they ſhould have met, and done what was wanted of them; however practicable it might

§ See Farmer's Letters, p. 9, 10.

might appear in America, is what would appear totally impracticable in England.

The principle of the declaratory act was again called forth on another occasion. The parliament found that the colonies would not grant a permanent and adequate provision for the charges of the administration of justice, and the support of civil government: the house therefore gave it in charge to their committee to consider of proper methods of making such provision *.

The very next day an order was made to bring in a bill for enabling his majesty to put the customs, and other duties, in the British dominions in America, and the execution of laws relating to trade there, under the management of commissioners to be appointed for that purpose, and to be resident there †. In conformity to

* See Com. Journ. vol. xxxi. p. 392.

† See ib. p. 395.

these two resolutions two acts were passed *.

The act for granting duties declares in the preamble, "that it is expedient a re-"venue should be raised for making a "more certain and adequate provision for "defraying the charge of the administra-"tion of justice, and the support of civil "government." The commons then go on to *give* and *grant* certain duties on glass, red-lead, white-lead, colours, tea, and paper. By way of compensation, the same act gives a farther encouragement to the exportation of coffee and cocoa-nuts, of the growth of British America.

The monies arising from the duties imposed by this act are appropriated. So much is to be kept back, as shall be found necessary to the making of a certain and adequate provision for the administration of justice, and the support of the civil go-

* 7 Geo. III. c. 41, and c. 46.

vern-

vernment, in the colonies. The reſidue is to be paid into the king's exchequer.

Of theſe duties, that on tea was accompanied by an exoneration, quadruple the amount. The ſum impoſed by it is three pence in the pound weight. But by another act of the ſame ſeſſions, an inland duty of one ſhilling that had been paid before is taken off.

The act for appointing cuſtom-houſe officers, declares, that the officers who had been appointed in virtue of an act of Charles the ſecond, were obliged to apply to the commiſſioners in England for ſpecial inſtructions in particular caſes; that hence, all who were concerned in the commerce of the colonies, were delayed and obſtructed in their commercial tranſactions; as a relief therefore to merchants, and traders, his majeſty is empowered to appoint commiſſioners of cuſtoms, with the ſame powers as are exerciſed by the

commiſſioners of the cuſtoms in England.

Theſe acts, moderate and conciliatory as they appear, were received in America with the ſame abhorrence and indignation as the ſtamp act.—The reſiſtance of the colonies againſt the ſtamp act was recalled to memory: was propoſed as a pattern.—The *ſucceſs* of that reſiſtance is pointed out by the moſt popular of their leaders as an earneſt of like ſucceſs, to a perſeverance in a ſimilar conduct*. At the ſame time they are cautiouſly forewarned againſt that tumultuous ſpirit which had accompanied the laſt reſiſtance, and which, if ſuffered to run its own length, might have defeated its own purpoſes.

* See Farmer's Letter iii. p. 29. Do they (meaning the advocates for acquieſcence) ſays the author, "Do they condemn the conduct of theſe colonies, "concerning the ſtamp act? or have they forgot "its ſucceſsful iſſue? ought the colonies at that "time, *inſtead of acting as they did*, to have truſted "for relief to the fortuitous events of futurity?"

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The diſtinction between *internal* and *external* taxes, upon which the repeal of the ſtamp act had been contended for, was now abandoned. A new ground was taken. The power of parliament to lay *any* taxes *whatever* on the colonies, was flatly and totally denied. The authority, nay the very words of Mr. Pitt, though acting with the very miniſtry who paſſed this obnoxious act, were cited in ſupport of this denial *.

In conſequence of the ſpirit rather than the letter of theſe inſtructions, the commiſſioners of the cuſtoms appointed under the act were inſulted and beaten; their houſes rifled; their lives threatened. The magiſtrates looked on as unconcerned ſpectators, refuſing all aſſiſtance †. It now appeared, that the ſtamp act or the tea act were in themſelves matters of indifference: that the queſtion now was, whether

* See Farmer's Letter iv.

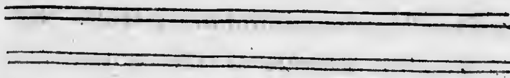
† See Letters from Hutchinſon and Oliver.

the Americans were at all ſubject to the ſupreme legiſlature of Great Britain *. "That lenient meaſures [illegible]t ſpeeches "would not do with this people †."— That parliament muſt either give up all power of compelling the Americans to contribute towards the ſupport of the public burthens of the empire: or elſe muſt fix a conſtitutional mode of compelling them to ſuch contribution; and having once fixed it, muſt inforce it by firm and unrelenting meaſures.

Such was the ſituation of the colonies at the diſſolution of the twelfth parliament of Great Britain.

* See Bernard's Letters, p. 42.
† See ib. p. 62.

PART



PART III.

EXAMINATION OF THE ACTS PAST BY THE THIRTEENTH PARLIAMENT OF GREAT BRITAIN RELATING TO THE COLONIES.

SECT. I.

Advantages of the periodical renewal of the legiſlative body. Uſe which this parliament might have made of them in the American affairs.

THE periodical renewal of the ſupreme legiſlature of Great Britain, is on all hands allowed to be a circumſtançe very favourable to the people. It puts into their hands the ſalutary power of excluding thoſe from one branch of the

ture, who ſhall have been found unequal to the taſk, or unfaithful to the truſt. By an attentive exerciſe of this power the people may root up ſuch evils as happen to reſult, not ſo much from any vice in the government, as from the bad intentions, or miſtaken views of individuals. They may correct, or fortify the principle of the government without endangering its eſſence.

But what is not commonly attended to, this circumſtance is ſcarcely more favourable to the people, than it is to government itſelf. By a movement thus regular and tranquil, the operations of government are facilitated, and its dignity preſerved. When the ſovereign authority reſts undivided in a permanent unchanging body, the difficulty of reformation is extreme. An erroneous ſyſtem once begun muſt be perſiſted in; ſince to recede from it would carry that confeſſion of fallibility which is ſo galling to the pride of power. That pride is an obſtacle rarely to be ſurmount-

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ed. Not but that a reaſon might be given to juſtify in ſome meaſure, as well as to account for its pertinacity. The reſpect and confidence of the people, are poſſeſſions which no government, however deſpotic, find it ſafe to ſquander, and caſt away. The objects of reſpect being rather the perſons of the men in power, than any principle diffuſed through the conſtitution, whatever tends to diminiſh that confidence and that reſpect cannot but have a dangerous effect.

Our happy conſtitution is free from this inconvenience. The ultimate dependence of the people is placed not in this or that body of men in office, but in itſelf. One parliament may depart from the principles of another parliament, and the reſpect to government continue the ſame. The political regeneration of the moſt active of the three bodies that compoſe the legiſlature, is a palliative at leaſt, amongſt other corruptions of arbitrary governments, for that of obſtinacy. The new body in-

ſtructed by, though uninvolved in the miſcarriages of that which periſhed, appears, at its firſt entrance into the world in the purity of youth, with the experience of old age. The principles the acts of a preceding parliament are not the principles or acts of a ſucceeding one, any farther than it thinks proper to adopt them. To recede from the former, or to repeal the latter, is no mark of levity or inconſiſtency. It is only profiting by the errors of another.

Theſe are ſome of the advantages which every new parliament might enjoy. And certainly the twelfth parliament of Great Britain had been guilty of *ſome* errors by which its ſucceſſor might have profited.

That parliament had laid down ſome principles which could not be maintained: had paſt ſome acts which could not be juſtified. This we may aſſert without heſitation: for it had laid down principles, and paſt acts, contradictory to each other.

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It laid it down as a principle, that it was expedient to raiſe a revenue in America: it paſt an act in conſequence of this principle, without having ſufficiently, or indeed at all, prepared the way for its reception. It then abandoned the principle, and repealed the act, without doing any thing effectual for the ſupport of its own dignity, or the recognition of its own authority. It then again recurred to its firſt principle, and paſt another act in conformity to it, without having taken a ſingle ſtep towards obviating the augmented difficulties that now ſtood in the way of its reception.—Hence a matter, not yet clearly underſtood, was involved in greater perplexity: and an enterprize which, at any time required great ſkill and addreſs to ſucceed in, was rendered tenfold leſs eaſy of execution.

But on the other hand, from the colliſion of theſe different plans, lights had been ſtruck out which might ſerve to

guide a new parliament through the labyrinth, which this very diverſity of plans had rendered ſo intricate. The very works which each party had thrown up in its own defence, were ſo many vantage grounds, from whence a new parliament taking a comprehenſive view of the country all around, might have directed its meaſures with a certainty of ſucceſs.

The great objects before the parliament, were to fix the relation between Britain and her colonies: to examine into the right of the Britiſh parliament to impoſe taxes on the colonies: to enquire whether it was grounded on the conſtitution: if it was not, to give it up: if it was, to aſſert it; and regulate and fix the mode in which it ſhould be exerted: to conſider whether the preſent were a ſeaſonable time: to poſtpone accordingly, or give preſent effect to ſuch regulations for that purpoſe as ſhould be concluded on: and then to do, what after the ſettling

tling of theſe moſt conteſted points would have followed as of courſe; to fix on proper regulations for vindicating the unlimited ſupremacy of the Britiſh parliament in all points whatever.

Whether this parliament attained all, or any of theſe important objects, will beſt appear from its own acts.

SECT.

SECT. II.

Proceedings of the second sessions of the thirteenth parliament.

THE first sessions of this parliament was very short, and, except the passing the corn act, and continuing the expiring laws, was wholly taken up in the choice of a speaker, administering the oaths to members, and taking such other arrangements as are taken of course by a new parliament, for the unfolding of its powers.

It was the second meeting that was the first of business; and that of America, as might be expected, took the lead.

The sessions was opened by a speech from the throne, in which his majesty expresses "his concern that the spirit of "faction had broken out afresh in some of "his colonies in North America; and in "one of them had proceeded even to acts of

" of violence, and resistance, to the execu-
" tion of the law."—The parliament is told, " that the capital town of this colo-
" ny had proceeded to measures subversive
" of the constitution; and attended with
" circumstances that manifested a disposi-
" tion to throw off their dependence on
" Great Britain."

The house in return answered his majesty, that they participated with him in the concern he felt at seeing " that the arts
" of wicked and designing men had re-kin-
" dled the flame of sedition in America;
" that they should ever be ready to *hear*
" *and redress any real grievance of his ma-*
" *jesty's subjects in America*, but would ne-
" ver betray the trust reposed in them;
" would always consider it as one of their
" most important duties to maintain in-
" tire and inviolable, the supreme autho-
" rity of Great Britain over every part of
" the British empire."

So far all was well. To assert the supreme authority of Great Britain over the colo-

colonies ſeemed due to their own dignity; to promiſe a redreſs of real grievances, if any ſuch ſhould be found, was due to their own juſtice.

The firſt ſtep towards aſcertaining the bounds, if any bounds there be, to the authority of parliament over the colonies, was to enquire into the powers and exemptions which had been originally granted them. Before the houſe could proceed to the redreſs of grievances, it was neceſſary, that it ſhould know, if any grievances did exiſt; and then from what ſource it was they proceeded.

It ſeemed, therefore, a very proper motion, that all letters patent and charters, that all commiſſions, orders, and inſtructions iſſued by the crown, that all official letters and affidavits, received from America ſince the firſt riſe of the diſturbances complained of, ſhould be laid before the houſe. And one cannot ſee without a mixture of vexation and ſurpriſe, that ſuch a motion, without any amendment or expla-

explanation being offered, passed absolutely in the negative *.

The documents thus moved for, stand distributed, we may observe, into three classes. The first contains such as were proper to be considered with a view to the question of the right: the second, such as were proper to be considered with a view to the policy, that had been hitherto observed in the enforcement of it: the third was to furnish such evidences of the temper of the people as seemed necessary, with a view to the policy that should be observed in future.

To with-hold the first was very consistent in those who, satisfied with the determination of the preceding parliament, wished not to enter into any fresh discussions. The misfortune here is, that the determination of that preceding parliament had been made without any regard to those seemingly necessary materials.

* See Com. Journ. vol. xxxii. p. 92, 93.

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With reſpect to thoſe of the third claſs, theſe again are diſtinguiſhable into ſuch informations, relations of matter of fact, or expreſſions of opinion, as had been communicated by the governors of the reſpective colonies, and ſuch as had been communicated by private perſons. With reſpect to the latter, it might be alledged, and it ſhould ſeem with juſtice, that to make them public would be to ſacrifice the informants to the fury of a people not very backward to take revenge, nor very delicate in the *mode* of taking it; that the conſequence, in regard to the informant, would be the deſtruction of a number of perſons, for what, with reſpect to this country at leaſt, could not but be deemed a merit; and in regard to the public that no information would ever be given in future *.

* An obvious expedient is to leave the names in blank; but this would not hold good in thoſe caſes where the nature of the intelligence is ſufficient to betray the perſon who has furniſhed it.

As to the governors, it could not, I think, be ſaid, that the duty of their ſtation would not excuſe them, in ſome degree at leaſt, even among the moſt violent malecontents; or that the reſpect habitually paid to that ſtation would not protect them from the fate of inferior informants; and as to odium, they ſhould not have accepted their truſts, under any other terms than that of being ready to bear ſo much of it as was incident to the diſcharge of their duty.

With reſpect to the ſecond claſs of documents, I wiſh it may be poſſible to produce any juſtifiable reaſons for withholding *that*. I am ſure I know of none; and it ſeemed no auſpicious omen of the character of the new parliament, that it ſhould be diſpoſed to acquieſce implicitly, and without examination in the meaſures of the miniſtry. Garbled and caſtrated documents, are no documents at all. The end of judicial examination is, if neceſſary, to cenſure; and what chance can there be of cenſure reſulting from informations, which thoſe who

would

would be the objects of it are at liberty to ſelect, need not be obſerved.

Some papers, however, ſuch as men in place thought proper to produce, were laid before the two Houſes. And upon the information contained in them, ſeveral reſolutions were formed. The purport of them was to reprobate as illegal, and unconſtitutional, the reſolves of the Houſe of Repreſentatives of Maſſachuſet's Bay, calling in queſtion the ſupreme authority of parliament: to cenſure, as tending to inflame the minds of the people, and to create unlawful combinations, the letters written by that aſſembly to the other aſſemblies on the continent, inviting them to join in petitions, which called the ſupreme authority of parliament in queſtion: to record that riots and tumults of a dangerous nature, had lately happened in the province of Maſſachuſet's Bay; to blame the council, and other civil magiſtrates for not properly exerting their authority for the ſuppreſſion of theſe riots: to aſſert the conſequent

consequent necessity of employing the military in support of the *civil magistrate* *, and the officers of the revenue: to reprobate the resolutions of the town-meetings at Boston, and their appointment of a convention, which last act is termed a *daring* insult on his majesty's authority, and an audacious usurpation of the powers of government †.

These resolutions were followed by an address to the king, in which the measures already taken by him to support the constitution, and to induce a due obedience to the authority of the legislature are approved: assurances of effectual support are given, and his majesty is requested to direct the

* There is something rather singular in the manner of drawing up these resolutions. If the case was as stated in the preceding resolution, that the civil magistrates did not exert themselves; it was not *support* they wanted, but *inclination*. If inclination, it was scarce expected, I presume, that the military should create it.

† See Com. Journ. vol. xxxii. p. 107, 108, 185, 186.

governor of Maſſachuſet's Bay to procure, and tranſmit, the fulleſt information touching all treaſons, or miſpriſions of treaſons, committed ſince the thirteenth of December 1767, in order that his majeſty might iſſue a ſpecial commiſſion for trying the ſaid offences *within this realm*, purſuant to the ſtatute of Henry VIII *.

This proceeding has been the ſubject of much cenſure; nor is it to be wondered at. The objections againſt it are plauſible: thus at leaſt I am bound to believe, who once was ſwayed by them. A more attentive conſideration has obliged me to alter my opinion.

The ſtatute, it has been ſaid, was made before any colonies exiſted; it could not therefore have the caſe of the colonies in contemplation. To reſort to it therefore as a warrant for trying men for treaſons, alledged to have been committed in the colonies, is a perverſion of the law; a per-

* 35 Henry VIII. c. 2. Com. Journ. vol. xxxii. p. 108. Anno 1768.

verſion

verſion the more wanton, becauſe committed by thoſe very perſons, to whom, if a law for the purpoſe had been adviſeable, it belonged to make one: "Durum eſt torquere leges, ad hoc ut torqueant homines *." Whatever is to be done to the men, let the laws at leaſt eſcape untortured.—Yet more:—Conſider the preamble of the act, and nothing will appear ſo monſtrous as this application of it. The treaſons ſpoken of in the preamble, the treaſons conſequently which, and which *alone* it was the deſign of the act to put in a courſe of trial, are "treaſons" committed "out of the king's dominions." To apply this to the caſe of treaſons committed in Maſſachuſet's Bay, what is it but to declare that Maſſachuſet's Bay is not within the king's dominions? This is going farther in favour of American pretenſions, than even the moſt ſanguine American ever

* Lord Bacon, De Augm. ſcient. lib. viii. c. 3. Aphor. xiii.

 dreamt

dreamt of going. The utmoſt that any American ever thought of maintaining, was, that America was out of the dominion of the Britiſh parliament. In all the paroxyſms of party-rage, no one ever thought of maintaining that America is out of the dominions of the king. Here then have you gone to work, and cut the ground from under you; and in the waywardneſs of your cunning, and the blindneſs of your zeal, blundered out a parliamentary recognition of your own injuſtice and uſurpation.—Nor is all the venom of this inſidious proceeding apparent on the face of it. The main purpoſe of it, which it was reſolved to *accompliſh*, though it dared not to *avow*, was to give ſanction to meaſures that were concerted by the miniſtry, for ſeizing obnoxious perſons in the colonies, and tranſporting them over to England: a meaſure too odious to be truſted to open debate; too unpopular to be warranted by a law, to be *now* made for it on purpoſe; too atrocious even to have entered into the breaſt

breaſt of the arbitrary monarch upon whom it is now attempted to be fathered. Even that deſpot, under all the anxiety which dictated the extenſion of the penalties of treaſon to acts done out of his dominions, thought not of puniſhing them any otherwiſe, than in the perſons of ſuch as ſhould *happen* to be found in this his kingdom; for as to bringing over by force perſons reſiding out of it, no ſuch power is given: that power is now, it ſeems, by ſome forced and unnatural conſtruction, for the firſt time to be aſſumed.

To theſe arguments, as being once my own, I hope I have done no injuſtice. The anſwer that might be, and was I ſuppoſe made to them, ſeems notwithſtanding ſatisfactory.

The preamble, without doubt, may be, and ſometimes is of uſe in directing us, when the words are ambiguous, to the meaning of a ſtatute, as men ought to give attention to all circumſtances that

promiſe to throw light upon the intentions of a legiſlator when they are obſcure. But it neither *is* * nor ought to be a rule of law, when the preamble ſpeaks of a particular caſe, and the enacting part eſtabliſhes a general proviſion, that the amplitude of the enacting part be limited by the narrowneſs of the preamble. It is in the *preamble* generally that we find an intimation of the *particular* miſchief that called forth the exertion of the legiſlator's will: it is the *body* of the law (that is, the only part of the diſcourſe to which with propriety belongs the name of law) that contains the proviſion made againſt miſchiefs of the like kind in *general.* The views of legiſlators, it is to be confeſſed, have been apt in general to be too contracted; they have been too apt to content themſelves with applying a particular and narrow remedy to the individual miſchief that happened to have ſtruck them.

* See Bacon's Abridgement, Title Statute, and half a dozen authorities there cited.

But

But if by good fortune they have done in one inſtance what they ought to do in all, and given to the expreſſion of their will that generality which is capable of extending the remedy to other ſituations of things than that particular one, in which the individual miſchief happened to ſpring up; it neither ought to be, nor has it been the rule, that the providence or felicity of preceding legiſlators ſhould be fruſtrated by ſucceeding interpreters. Too much, indeed, would it be to ſay, and very hard upon the unlettered ſubject, were he never to know what obedience he ſhould pay to a law, unleſs he knew the hiſtory of the times it paſſed in.

The ſtatute in queſtion ſeems to have been by no means inconſiderately penned: it points in the preamble to ſome individual caſe or caſes, as having been the occaſion of that general proviſion which it was prepared in the body to eſtabliſh. It ſpeaks of "doubts that had been moved "concerning *certain kinds* of treaſons, &c.

"and thoſe committed not only out of "the king's realm of England, but out "of other his grace's dominions, that "theſe could not be determined or en-"quired of within his ſaid realm of Eng-"land." Thus particular is the preamble: the enacting part is full and general, and meaning, as it ſhould ſeem, to do more than make an *ex poſt facto* regulation, meaning to eſtabliſh a permanent *proviſion*; it ſpeaks of offences, not only ſuch as were "already made and declared treaſons," and ſo forth, but ſuch as ſhould be *hereafter* made, and declared ſo, by any the laws of the realm (meaning the common law) or ſtatutes; and here the words, "*other his grace's dominions*," are dropped deſignedly, and conſiderately dropped (as I, ſeeing other marks of deſign and conſideration, cannot but ſuppoſe), in order to give that *amplitude* to the proviſion in reſpect of *territory*, which by the word *hereafter*, it was unqueſtionably meant to give it in point of *time*: and it is then

it

it goes on, and ſays, that all ſuch "trea-
"ſons, &c. ſhall be from henceforth en-
"quired of and determined *before* the
"juſtices of the King's Bench, *by* a jury
"of the ſhire where the ſaid bench ſhall
"ſit, or elſe *before* ſuch commiſſioners,
"and in ſuch ſhire of the realm as ſhall
"be aſſigned by the king's commiſſion,
"and *by* a jury of the ſame ſhire; and
"this, in like manner and form, and to
"all intents and purpoſes, as if ſuch trea-
"ſons, &c. had been committed within
"the ſame ſhire where they ſhall ſo be en-
"quired of and determined."

It is true, that at that time there were no Engliſh colonies in America; but it is alſo true, that America then, as now, was *out* of this realm of England, and conſequently by the letter of the act, treaſons thereafter committed *there*, might be tried as if committed *here*.

It is alſo true, that though there were no dominions of the king at that time in America, yet there were dominions of the king,

king, which as the American dominions are now, were dominions of the king, although out of "this his realm of England." There were the iſlands of Jerſey, Guernſey, Sark, and Alderney, parcels of the duchy of Normandy; there was the town of Calais, parcel of *his* realm (as it is called) of France. If America has courts of its own now, in which treaſons there committed may be tried, ſo had Calais, and the iſlands then; yet it is plain, that for treaſons committed in Calais, or in the iſlands, a man might, by virtue of that act, have been tried in England, becauſe the act provides for the trying in England of treaſons committed whereſoever elſe a treaſon can be committed, ſince there is no exception. For the ſame reaſon, therefore, it cannot but be underſtood to have provided for the trial of treaſons committed in America. Thus much as to the trial of the crimes in queſtion; the taking order for which was the avowed and

ſpecified

ſpecified object of this proceeding of the two houſes.

As to the meaſure of *bringing over* the offenders; this, though not ſpecifically recommended by the addreſs, is alledged to have been in contemplation of thoſe who framed it; and, it muſt be confeſſed, that nothing can be more natural than to ſuppoſe it was; but for what reaſon? becauſe it is apparent, that without this meaſure, the other could not in the nature of things, I will not ſay have any effect, but could not be ſo much as put in practice. To think of ſuppreſſing an inſurrection, or putting a ſtop to a courſe of treaſonable reſiſtance prevailing in America, or in the Norman iſles, by the puniſhment of ſuch of the perſons concerned in it, as ſhould from time to time come voluntarily and offer their heads to be cut off in England, is what no man in his ſenſes could propoſe to himſelf; yet ſurely, from any thing the act has ſaid, there is no good ground for preſuming the

penners

penners of it to have been otherwiſe than in their ſenſes. This one ſhould have thought might have led the objectors to ſuſpect, that the expreſs mention of the power of arreſting, and bringing over, was not ſo neceſſary to be made, either by thoſe who framed the act, or by thoſe who recommended it to be enforced. If the power of arreſting for treaſon is virtually and implicitly given by the proviſion that gives a power of trying for treaſon; given in this inſtance, as in any other, virtually, implicitly, and of courſe; to give it by expreſs words is at beſt unneceſſary: it is perhaps nugatory; to ſay nothing of its being impolitic, which is a matter of diſtinct conſideration. Now that this power was thus given is what ſeems to be the caſe.

A general and well known maxim of law is, that where a right or power is given, every thing is given that is neceſſary to the exerciſe of it. A more particular rule of law, applied to felony (and

all treaſon is felony) is, that every ſtatute making that ſort of act felony, which was not ſo before, eſtabliſhes, *ipſo facto*, all theſe acceſſary proviſions, which are incident to the main proviſions againſt felony eſtabliſhed by common law *. Without ſaying any thing of accomplices, it ſubjects the accomplice to the puniſhment to which accomplices in original common law felonies are ſubject: it ſubjects both principals and accomplices to the penalties of forfeiture and attainder, without ſaying any thing about forfeiture or attainder: *a fortiori*, it muſt be underſtood to eſtabliſh that mode of proſecution

* "As to the ſecond point, viz. what is immediately implied in every ſtatute making an offence felony, it ſeems clear (ſays Hawkins) that every ſuch ſtatute does by neceſſary conſequence ſubject the offender to the like attainder forfeiture, &c. and alſo does require the like conſtruction as to thoſe who ſhall be accounted acceſſaries before or after, and to *all other intents* and *purpoſes*, as are incident to a felony at common law." Hawkins, b. i. ch. iv. ſect. iv.

cution, which is in uſe for felony, although it ſays nothing of any mode of proſecution, *a fortiori*, ſtill muſt it be underſtood to eſtabliſh theſe firſt ſteps, which are purſuable in every proſecution for felony, where it authoriſes by expreſs appointment others that come after them. What inſtance, in ſhort, is there of a clauſe in any ſtatute to warrant the arreſting of a perſon for a felony committed againſt that or any other ſtatute? I verily believe none: certainly not many; yet was it ever thought that for ſuch felonies men were not arreſtable?

By the common law, therefore, perſons committing treaſons in America may be arreſted *there*. By the ſtatute law, viz. by the ſtatute we are ſpeaking of, they may be tried *here*. Was it neceſſary to ſay that being to be *tried here* they ſhall be *brought here?* I think hardly. There would be no end of legiſlative babbling, if men muſt be eternally ſpecifying what is neceſſarily implied. If this power then

of

of bringing offenders over, is a power that followed neceſſarily and of courſe, from that of putting them on their trial; if it was not neceſſary to be mentioned even in a law at large, to what purpoſe it ſhould have been ſpecified in a ſhort and general addreſs, is more than I can ſee. And if, however neceſſary, it was formidable and unpopular, I ſee not why that ſhould have been a reaſon for bringing it into view.

" But the application of the ſtatute; of " this power, and every thing elſe belong- " ing to it, if not illegal, it has been ſaid, " would be harſh and cruel: as a meaſure, " therefore that would not, and perhaps " ought not to be borne, the recommen- " dation of it was impolitic. Are there " not courts of criminal juriſdiction in " America?—Proſecute in them."—" Pro- " ſecute in America for the treaſons of " America!" This a man may bring himſelf to put on paper; becauſe the paper ſhews no bluſhes. But that any man ſhould be able to ſay this in a firm tone,

and with a ſteady countenance, is more than I can conceive.

The Golden Legend, or ſome other hiſtory equal authentic, ſpeaks of a time when this might have been done. It was a time brought into remembrance by an ingenious pleader *, at an æra when theſe authorities were in high repute for the purpoſe of proving what a man in thoſe days would not have thought of proving from any other than ſuch authorities; that a man may without inconvenience be judge in his own cauſe. A certain pope, infallible as all popes are, was by ſome ſtrange accident found to have done ſomething that he ought not to have done. This put men in a great perplexity. For who ſhould judge the judge of judges, God's lord lieutenant upon earth? the cardinals being the next perſons in the world, he wanted the cardinals to judge him.—No—

* See a paſſage of the Year Books, cited in III. Blackſt. Comm. c. 20, p. 299.

they

they begged to be excuſed. What is to be done then? ſaid the pope. To be done? replied the cardinals. Why you muſt e'en judge yourſelf. Agreed, ſaid the pope. I ſentence myſelf to be burnt; and burnt he was accordingly. For ſo generous a piece of complaiſance, the leaſt thing they could do was to make a ſaint of him; and a ſaint he was. But the Boſton ſaints are not of this ſtamp.

Thus much as to what was done in this ſeſſion towards maintaining the authority of Great Britain. But parliament had profeſſed, that it would be ready to redreſs the grievances of America.

To be ready at all times to hear complaints of grievances, is no more than one expects from a Houſe of Commons. They had been at the pains, we ſee, of expreſsly profeſſing ſuch a readineſs on this particular occaſion. After theſe profeſſions, when complaints were preferred, if couched in decent terms, it was natural to expect that a decent attention ſhould be paid them.

Yet a petition from the major part of the council of Maſſachuſet's Bay was near being rejected, becauſe it was not paſſed in a legal aſſembly of the council; though the diſſolution of the general court rendered it impoſſible to addreſs the houſe in their legiſlative capacity.—It was at laſt received as a petition from the individuals who ſigned it. But though couched in very moderate terms, and glancing only obliquely at the want of conſtitutional right in the parliament to lay internal taxes on the colonies, it was ordered to lie upon the table *.

A petition from the agent of Maſſachuſet's Bay, and a repreſentation from the general aſſembly of New York, were offered to the houſe. But as theſe addreſſes directly denied the right of taxing, they were with better reaſon rejected.

Towards the cloſe of the ſeſſions, a motion was made, that the houſe ſhould re-

* See Com. Journ. vol. xxxii. p. 136, 137.

ſolve

solve itself into a committee, in order to take the last American act into consideration. The design was, as it seemed, to pave the way to a repeal of the act. But the motion was over-ruled *; and in a manner rather slighting, by calling for the order of the day.

In the speech which closed the sessions, his majesty thus addresses himself to his parliament.—" The measures which I had " taken regarding the late unhappy dis- " turbances in North America, have been " already laid before you. They have " received your approbation, and you " have assured me of your firm support in " the prosecution of them †."

What approbation was due to the measures taken by his majesty, I pretend not to determine. But surely the measures taken by *parliament* during this sessions afford not much scope for panegyric.

* See Com. Journ. vol. xxxii. p. 421.
† See ib. p. 453.

Promiſes had been made of hearing and redreſſing grievances: when the time came they would ſcarcely hear complaints of grievances. Promiſes had been made of maintaining the ſupreme authority of Great Britain: the way theſe promiſes were fulfilled, was by inveſting his majeſty with a power, which, according to them, he was inveſted with before. What elſe did they do? juſt nothing. Things were left in the ſame ſtate of uncertainty and confuſion at the end as at the beginning of the ſeſſions.

If parliament was backward in ſpeaking out, the ſame could not be objected to the miniſtry. It was no longer than five days after the prorogation of parliament, that a circular letter was written by lord Hillſborough, then ſecretary of ſtate for the colonies. In this letter, after reciting the ſubſtance of the king's ſpeech, the ſecretary ſays:

" I can take upon me to aſſure you, " notwithſtanding inſinuations to the con-

"trary, from men with factious and se-
"ditious views, that his majesty's pre-
"sent administration have at no time
"entertained a design to propose to par-
"liament, to lay any *further* taxes upon
"America for the purpose of raising a
"revenue; and that it is at present their
"intention to propose, in the next sessions,
"to parliament to take off the duties upon
"glass, paper, and colours; upon con-
"sideration of such duties having been
"laid contrary to the true principles of
"commerce *."

I cannot assent to many of the severe strictures which have been made upon this letter.—It is unfair to call it, as it has been called † "the promise of a peer, re-"lative to the repeal of taxes."—The letter was written officially; by a secretary who indeed happened to be a peer. But whose was the promise? the promise not of the *peer*, but of the *secretary*. Nor is it a

* See Burke's Speech, p. 24, 25.
† Ib. p. 26.

promiſe to *repeal* a tax; but a promiſe only that the repeal ſhall be *propoſed* to the houſe. Nor does it imply, as it has been ſaid to imply *, "that the idea of "taxing America for the purpoſe of raiſ-"ing a revenue, is an abominable pro-"ject."—Nor does it *reject* the principle, or deny the right, of taxing for a revenue. It declares only, that it is not the inten-tention of the preſent miniſtry to propoſe the making of any further uſe of that right; to exert it by the impoſition of any new tax; it promiſes only, that the miniſtry will endeavour to obtain a repeal of part of the duties impoſed on that principle; not becauſe the principle was falſe, but becauſe the right had in this inſtance been ſo exerted as to violate another ſet of principles; the principles of commerce.—Theſe miſ-ſtatings however are not uncommon with "unſcrupulous oppoſi-"tions."

* Mr. Burke's Speech, p. 27.

But

But in vindicating the letter from *unjust* censures and *unfair* constructions, it is impossible not to confess that the writing of such a letter, at such a time, seemed on many accounts reprehensible. A strange slight seemed to be put upon parliament. Sentiments appear to be attributed to it, not only which it had *not* manifested, but directly opposite to those which it had manifested. If it was the opinion of parliament to repeal the duties, how came a motion made for that very purpose to be rejected?

By this letter, subjects were taught to await their destiny, not from the resolves of parliament, but from the good pleasure of the crown. With parliament every thing was to originate, which carried the face of severity; with the ministry, every thing of grace and favour.

That the resolutions made by parliament, and the plan announced in the letter of the secretary, were at least discordant, will, I think hardly be denied.

What conclufions would the colonifts draw from thence? either, they would fay, parliament in the next feffions will controul the minifter; and then no faith is to be given to the promifes held out in this letter: or the minifter will manage parliament, and then we may laugh at its thunders; in vain it points them: the minifter will not fuffer them to be hurled. Whether of the two conclufions was drawn, the effects of the letter could not but be hurtful. On the one hand the miniftry, on the other the parliament, was brought into difgrace.

S E C T. III.

Proceedings of the third sessions.

THE effects of the letter mentioned at the end of the last section, appear to have been precisely such as might have been expected. It seems to have been attributed, as well it might, to the fears of government. The authority of parliament was still more despised: the pretensions of the colonies rose still higher. Nothing less would now serve them, to judge from the discourse of one of their leaders in Boston, than the total repeal of all the revenue acts from the fifteenth of Charles II. This leader must, in comparison of the rest, have been a man of singular moderation, not to say a false brother: since if we may believe an officer of rank of that province, writing from New York*, it

* See Hutchinson and Oliver's Letters, p. 38, 39.

was

was by this time univerſally underſtood in the laſt mentioned place, that not theſe acts alone, but *all* acts of parliament whatſoever, made concerning the colonies, were *ipſo facto* void; all exerciſe of parliamentary authority over them, an uſurpation *ab initio*. "That they were bound "by none made ſince their emigration, "but ſuch as they choſe to ſubmit to for "their own convenience:" that is by none at all.

In this ſituation were the affairs of America when the third ſeſſion of this parliament was opened by a ſpeech from the throne, which muſt now be mentioned.

In this ſpeech his majeſty * begins with recommending to the ſerious attention of his parliament the ſtate of his government in America. He declares that he had endeavoured on his part, by every means, to bring back his ſubjects there to their duty,

* Jan. 9, 1770.

and

and to a due ſenſe of lawful authority; but he adds with concern, that his endeavours had not anſwered his expectations; that in ſome of his colonies many perſons had embarked in meaſures highly *unwarrantable*, and calculated to deſtroy the *commercial* connection between them and the mother-country.

This ſpeech, compared with that which had opened the preceding ſeſſion, cannot but appear extraordinary. In that we had been told of "a ſtate of diſobedience to all "law and government" prevailing in one "of the colonies; of "a ſpirit of faction" being prevalent in more; of circumſtances that "manifeſted a diſpoſition to throw "off their dependence;" and "of a ſteady "perſeverance that had been reſolved on in "conſequence, for the purpoſe of ſupporting the conſtitution, and inducing "a due obedience to the authority of the "legiſlature." This was the language *then*; —and *now*, without any thing having happened to indicate, that that ſtate had

changed

changed, unlefs it were for the worfe; or that that fpirit had been, as was vainly hoped, " extinguifhed," without any meafure having been taken to give that fupport, or to induce that obedience. Now that the colonies had voted the proceedings of the laft feffions of parliament, with refpect to them, to be illegal and unconftitutional; we hear of unwarrantable meafures to deftroy—what?—not the dependence on the mother-country, but a certain " commer-" cial connection."

When the anfwer to this fpeech came to be debated, a propofition was made, in the way of amendment, to intimate an intention of " enquiring into the *caufes* of the " unhappy difcontents which prevail (fays " the amendment) in every part of his ma-" jefty's dominions."

Of a propofition thus generally worded, the defign feemed to be full as much to promote the difcontents themfelves, as an enquiry into the caufes of them. If inftead of " every part of his majefty's do-" minions,"

" minions," the words had been " his ma-
" jesty's American dominions," the propo-
sition might have been more difficult to
combat. Howsoever it was in any other
part of his majesty's dominions, in Ame-
rica, and on account of America, discon-
tents most certainly did prevail; discon-
tents the most violent in their degree, and
the most universal in their extent; discon-
tents in comparison of which any others
that might happen to prevail in the metro-
polis, or a few counties, scarcely deserved
the name. Discontents, into the causes of
which, no enquiry, even in this late period,
had as yet been made: an enquiry which
has never been yet made, speaking even
of the present moment; but which must be
made, and that thoroughly, in order to
give any chance for quieting them.

A provident and determined minister,
one should have thought, might himself
have proposed the enquiry under such a
limitation; so, however, it happened, that
as the opposition was content to propose it
in

in the lump, ſo was the miniſtry to throw it out. The amendment was not amended, but over-ruled. And on this occaſion one can hardly help acknowledging of the miniſtry, in the words of their ſevere accuſer, that they had not hitherto given "any "proof of large, and liberal ideas" in the management "of this great concern; "that they had never looked at the whole "of our complicated intereſts in one con"nected view; never ſeemed in ſhort to "have any kind of ſyſtem right or "wrong*." I wiſh this had been as ill founded as many of his other charges. †

But though the houſe would not engage to enquire into the cauſes of the diſcontents in America, they acknowledged, that the ſtate of his majeſty's government there did "undoubtedly well deſerve the

* Mr. Burke's Speech, p. 17.

† In allowing the truth of this charge, it is but fair to remind the reader of its being equally true of the miniſtry *with* whom this gentleman acted, as of thoſe *againſt* whom he declaims.

" moſt ſerious attention of parliament." They repreſented the effects of thoſe diſcontents in a more ſerious light than they had been repreſented from the throne: the meaſures of the malcontents, they ſaid, " by attempting to ſubject the higheſt legal " authority to the controul of individuals, " tended to *ſubvert* the foundation of *all* " government." A matter of infinitely more import and danger than the bare breaking a " commercial connection." Againſt meaſures thus unwarrantable they promiſed, that " no endeavours ſhould be " wanting on their part to make effectual " proviſion." What ſteps were taken to fulfil theſe promiſes?

As ſoon as this buſineſs came to be taken up in the Houſe, two petitions were preſented; one from the agent of the council of Maſſachuſet's Bay, drawn up in a quaint, pert ſtyle, equally unbecoming the ſubject it treated, and the aſſembly to whom it was addreſſed. Of this no notice was taken—which was as much as it

appears

appears to have deserved: the rather as it did not even state that it was presented by order of his constituents*.

Another petition was presented from the British merchants trading to America, complaining of the great interruption of their trade, and attributing that interruption to the act passed in the seventh of his majesty's reign.

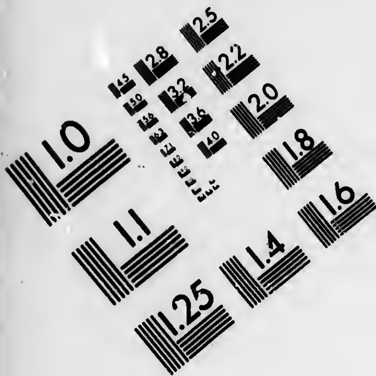
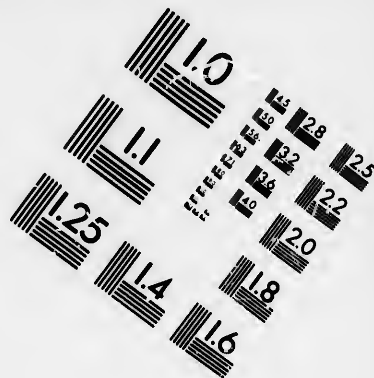
This petition was read; and in compliance with it, a bill was ordered to be brought in for the repeal of so much of the act as laid duties upon glass, red lead,

* This curious petition may be seen at length, Com. Jour. vol. xxxii. p. 726. The following lines may serve as a specimen: "The errors and "improvidence of ministers (he has all along been talking of the ministers of the present reign, and it seems it was their errors and improvidence that) "with the hostile designs and proceedings of "France." Did what? "Brought on the late "expensive and dangerous war: and British America is now, in consequence of the errors and "improvidence of his majesty's ministers, brought "into"—what?—guess reader—"a state of *in-"vitation of foreign war.*"

white

white lead, painters colours, paper, paste-boards, mill-boards, and scale-boards. The taking off the duty upon tea was by this means all that was wanting to a full and effectual compliance with the petition. A motion for that purpose was accordingly made, but it passed in the negative.

This partial repeal of the act complained of, could not be considered as an *obligation* conferred on the Americans. Nay a total repeal of it at this moment would not perhaps have been considered in that light. Lord Hillsborough's letter was still before them. The motive for the repeal would have been sought in the fears of the ministry, not in the justice of parliament. They did not vouchsafe so much as to ask for the repeal; no petition was presented in their *name*; at least none by their express authority. The partial repeal was granted as a favour to British merchants. A total repeal would have been a greater favour, but still the favour would have been to *them*, and not to the colonists.

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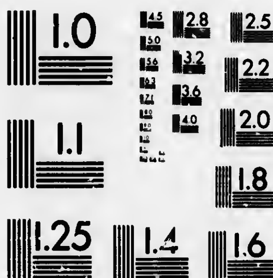
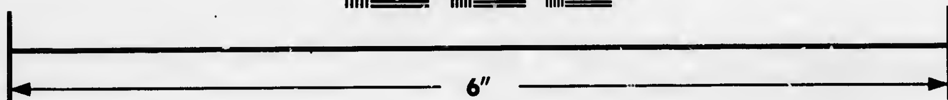

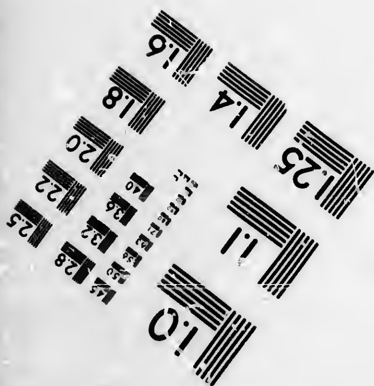
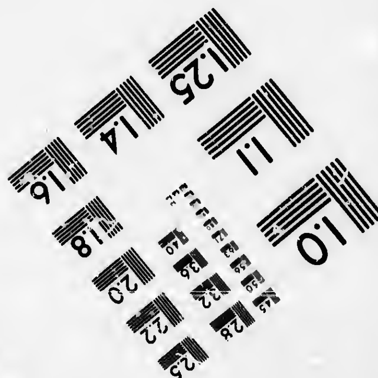

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Had this meaſure, however originated in parliament itſelf, had not the merit of it been foreſtalled by its being announced beforehand in a miniſterial letter, it might perhaps have done ſomething, though but little, towards conciliating the minds of the coloniſts. But thus announced it ſeemed rather to proceed from complaiſance to the miniſter, than from a deſire of giving ſatisfaction to the colonies. For preciſely ſo much of the obnoxious act was repealed as the ſecretary had promiſed ſhould be repealed, and no more.

Mean time the idea that the parliament was only ſubſervient to the miniſter; that it was not even a legal parliament, was openly maintained by the malecontents at home. In a remonſtrance to the throne it was declared, that "repreſentatives of the people "were eſſential to the making of laws: "that there is a time when it is morally "demonſtrable that men ceaſe to be re-"preſentatives: *that* time (add the remon-"ſtrants) is now arrived; the preſent

"houſe

" house of commons does not represent
" the people *."

The same idea was carefully communicated to the colonies by a self-created society, which called itself " the Society of " the Bill of Rights." Sums were collected for the support of the council and assemblies, who resisted the execution of the acts of parliament: with these sums were transmitted letters from a committee of this society, signed by members of the British parliament †, exhorting these assemblies to persevere in their resistance to the laws of that very parliament; which they declared to be no parliament, though the writers sate and voted in it.

" Property (say these able senators and " acute lawyers) is the *natural* right of " mankind. The connection between

* See Commons Journals, vol. xxxii. p. 804.

† See Annual Register, vol. xiii. p. 224, 225. The names are John Glynn, Richard Oliver, John Trevanian, Robert Bernard, Joseoh Mawbey, James Townsend, and John Sawbridge.

"taxation and representation is its *necef-*
"*fary* confequence. This connection is
"now broken, and taxes are attempted to
"be levied both in England and America,
"by men who are not their refpective re-
"prefentatives. Our caufe is one. Our
"enemies are the fame. We truft our
"conftancy and conduct will not differ.
"Demands which are made without *au-*
"*thority* fhould be heard without *obedi-*
"*ence.*"

Thus encouraged to refift and defpife parliament, was it likely that the colonifts fhould be contented with a partial repeal of the obnoxious act? A repeal which retained the principle, and left a duty to be levied which had been impofed on that principle.

During the courfe of the feffions a fecond attempt was made to obtain an abfolute repeal of the obnoxious act. But that too failed *. And toward the clofe of the fame

* See Comm. Journ. vol. xxxii. p. 876.

ſame ſeſſions another attempt was made to induce the parliament to conform to the directions of the king, and to fulfill its own engagements, by entering into a full and ſerious conſideration of the ſtate of the government in America.

The commiſſions of the governor of Maſſachuſet's bay, and of the commanders in chief of the forces in North America, ſome meſſages from the aſſembly to the governor, and the governor's anſwers were laid before the houſe. As ſoon as they had been read it was moved to preſent an addreſs to his majeſty, to thank him for the communication of theſe papers, and for having thus referred to his parliament the ſtate of his government in America; to aſſure him that the houſe had entered into a ſerious conſideration of the matter thus referred to them; to repreſent to him, that miſunderſtandings and diſputes had ariſen in almoſt every part of his dominions in America, between the civil government and military command-

ers, ſince the appointment of a command-er in chief; that the repreſentatives of the people in general court had complained, that according to the arrangement of commands in America, there was a military power without any check by the power of the civil government, and uncontrollable by the ſupreme executive power of the province; to ſtate their opinion, that this unhappy ſtate of doubts and diſputes had long called for a clear and explicit definition of the powers and authorities granted to the governors and commanders in chief of the provinces and colonies, and to the commanders in chief of the military forces in North America:—and did require ſome expreſs directions and inſtructions as to the exerciſe of the ſaid powers.—And therefore to beſeech his Majeſty to give directions that the powers and authorities granted in the reſpective commiſſions, orders, and inſtructions might be amended in ſuch caſes where they claſh with each other, or contained powers

powers not warranted by law and the conſtitution *.

Never ſurely was a leſs exceptionable motion made in parliament. Had thoſe who took the lead been really inclined to do what they had ſolemnly engaged to do; had they meant to take the ſtate of America into ſerious conſideration, what one ſhould have expected is, that inſtead of ſtifling the motion, they would have promoted a full enquiry. If the momentary eſtabliſhment of a commander in chief, independent of the civil magiſtrate, was at all to be juſtified, it muſt be becauſe, under the preſent conſtitution of the provincial government, the power of the civil magiſtrate had been found too weak for the ſupport of the civil government. If this was not the caſe the eſtabliſhment of ſuch a commander ſhould be revoked: if it was the caſe, it was the duty of thoſe who adviſed this eſtabliſhment to point out this

* See Com. Journ. vol. xxxii. p. 967.

conſtitutional weakneſs, to call on parliament to apply a conſtitutional remedy. Here then was offered as good an opportunity as could be offered, to have the whole ſyſtem of American government fairly canvaſſed, and to prepare the way for a general conſtitutional reform.

Parliament could have grounded that reform on a popular idea; in ſtrengthening the hands of the civil magiſtrate, they would not ſo much have ſeemed to have been laying new reſtraints on the colonies, as ſhielding them from the danger of ſeeing the military erected into executors of the law.

But ſo it was, parliament choſe rather to ſit ſtill and ſee every act of its power abhorred, every act of its lenity treated with contempt; it choſe rather to neglect the recommendation from the throne, and to forfeit its own engagements, than boldly enter on a ſubject, which, ſooner or later, muſt be entered on more fully: the hue of reſolution, which it had borrowed at the

the beginning, was now ſickened over, and the ſeſſions cloſed without having done any thing effectual, either to relieve the complaints or check the tumults of the colonies. All that it did was to adopt a wretched pallative.

" That did but ſkin and film the ulcerous part,
" While foul corruption running all beneath,
" Unſeen, infected"—

SECT.

SECT. IV.

Proceedings of the ſeventh ſeſſions.

HOW little attention, during the ſecond and third ſeſſions, was paid to the affairs of America, ſtrong as were the terms in which they had been recommended from the throne, we have already ſeen. The three ſucceeding ſeſſions paſſed away, as if they had been equally forgotten both by the crown and by the two houſes.

Early however in the concluding ſeſſions an incident happened which rouſed the ruling powers from their lethargy. A meſſage accordingly was ſent from his majeſty to the two houſes, together with certain papers. The meſſage contained two requiſitions; the one of a more particular purport, that he might be enabled to put an end to the diſturbances then ſubſiſting; the other in general

6 terms,

terms, that he might be enabled to secure the dependence of the colonies. The papers contained a history of the disturbances.

The duty, payable in America, that had been imposed on the article of tea by the last parliament, this duty, we may remember, continued unrepealed. An alteration indeed had been made respecting that article in the sessions preceding this, tho' of a nature very different from taxation. The duties paid here in England under the name of custom, upon its original importation, was by a drawback remitted upon all teas exported to America; whether exported by the company directly, or by such private adventurers as should have purchased it at their sales*. Nothing was added on this account to the duties payable in America. By this operation the charge upon the only article that continued the object of a tax payable

* 13 Geo. III. c. 44.

in

in America, was reduced to a pitch below that at which it fubfifted here in England.

The degree of prefent eafe thus given to the Americans, it was hoped, would completely calm their anxieties for the future. The policy however was not fo refined, as to pafs upon a people, in whofe minds fufpicion had been rivetted by a ten years ftruggle. This operation would have made it plain to them beyond a doubt, though it had not been fo before, that the profits of that fpecific tax were not the reafon of impofing it, and that the only purpofe of its being kept alive was to let in an indefinite train of others that were to follow. Indeed it was now rendered impoffible for the moft credulous to believe what had been fo folemnly averred, that "his majefty's minifters," allowing that they *once* might have been, were then without any defign to lay any farther taxes upon "America for the purpofe of

 "raifing

"raiſing a revenue*." The moſt natural concluſion to men in their temper of mind was, that his majeſty's miniſters were *never* to be depended upon; the moſt charitable concluſion, that they were not *now*. Any definite ſyſtem of taxes, to ſuch an amount as could appear to contain in itſelf a ſufficient reaſon for eſtabliſhing it, and could ſerve to mark *out* the limits of the preſent exigencies; any definite ſyſtem of taxes, however heavy, would have affected them leſs ſenſibly, than that indefinite and endleſs train which their imagination painted to them as about to be grounded on this inſidious manoeuvre.

The effects of this perſuaſion ſoon manifeſted themſelves in action. The Eaſt India Company, who had not that ſtrong intereſt which the Americans had to quicken their apprehenſions with reſpect

* See Lord Hillſborough's Letter, as quoted in Mr. Burke's Speech, p. 25.

to

to the consequences of this manoeuvre, had been allured by the prospect of a copious sale, and against the opinion of a great many of its members, shipped for the colonies large quantities of the obnoxious drug.

The first cargo that came to Boston found the inhabitants determined at all events not to suffer it to be landed. The resolution was communicated to the consignees. A committee of inhabitants associated to see to the observance of it: and the necessity of returning without landing any part of the cargo was signified to the persons who had the charge of it, in the strongest terms. The alacrity of those to whom this singular mandate was addressed, not corresponding with the impatience of those who issued it, the negociation was terminated by a company of persons in disguise; who after making themselves masters of the vessels on board of which the commodity had been stowed, emptied the lading into the sea.

Of

Of this nature were the diſturbances, of which the papers communicated by his majeſty contained the hiſtory.

In conſequence of theſe advices, and the meſſage that accompanied them, four ſeveral acts were paſt.

One to diſcontinue, for a certain time, the landing or lading any goods at the town, or within the harbour of Boſton *.

A ſecond, for the impartial adminiſtration of juſtice, in the caſes of perſons queſtioned for any acts done by them in the execution of the law, or for the ſuppreſſion of riots and tumults in the province of Maſſachuſet's Bay †.

A third for the better providing ſuitable quarters for the officers and ſoldiers in North America ‡.

And

* 14 Geo. III. c. 19.

† 14 Geo. III. c. 39.

‡ 14 Geo. III. c. 54.—As this act only provides that the troops ſhall be quartered there, where their preſence may be required; as the Americans, in honouring it with a place among their liſt of grievances,

And a fourth for the better regulating of the government of the province of Maſſachuſet's Bay in New England *.

To theſe we may add a fifth act, for regulating the government of the new acquired province of Quebec †. Not that the laſt act had any avowed connection with his majeſty's meſſage, or with the diſturbances on which that meſſage was founded; or with any of the griefs, real, or pretended, of which the old colonies had complained. I add it here, becauſe it makes a part of the colonial ſyſtem of government: and becauſe the General Congreſs, as it calls itſelf, has thought proper to rank it *now* in the number of their grievances.

grievances, have not ſtated any ſpecific objection to it, it will be ſufficient juſt to have named it. In fact the troops might as well be recalled, as ſtationed in barracks, where they cannot be ready to do the duty for which they are ſent.

* 14 Geo. III. c. 45.

† 14 Geo. III. c. 83.

Of

Of theſe five acts, the firſt three are only temporary remedies applied to temporary evils. The two laſt ſeem intended as parts of a general and permanent plan.

SECT. V.

Act for ſhutting up the port of Boſton.

THE preamble of this act ſets forth that commotions and inſurrections, ſubverſive of his majeſty's government, and deſtructive of the public peace, had been raiſed and fomented in Boſton: that during the courſe of theſe inſurrections, ſome valuable cargoes of tea belonging to the Eaſt India company had been deſtroyed: that while things continue in this ſituation, commerce cannot be ſafely carried on; nor the cuſtoms, payable to his majeſty, be collected; and that it is therefore become expedient that the officers of his majeſty's cuſtoms ſhould be removed from thence.

It is then enacted, that from the twenty-firſt of June then next enſuing, no goods whatever ſhall be exported from, or im-

 ported

ported to, the port or harbour of Boston, under penalties therein specified.

In order the more surely to provide for the efficacy of this prohibition, a kind of introductory offence, is, by another clause superadded to the main offences created by the foregoing. Vessels are forbidden to lie at anchor, or to hover within a league of the said port or harbour; and to enforce this prohibition, power is given to any officer of the navy, or of the customs, to seize and confiscate any vessel not departing after a proper warning, therein specified "to such station as the said officers "shall appoint," or to some other port.

From this general prohibition are excepted stores for his majesty's use; fuel and victuals brought coast-wise from any part of the continent of America, for the necessary use and sustenance of the inhabitants; and also all ships which were actually within the said harbour, on the said first day of June, either laden, or with in-

 ten-

tention to lade or land any goods; and which ſhould depart within fourteen days.

Power is given to his majeſty in his privy council, whenever it ſhall there be made to appear to him, that peace and obedience to the laws are *ſo far* reſtored, as that trade may be ſafely carried on, and the cuſtoms duly collected, to fix the extent and bounds of the harbour, and ſuch quays and wharfs therein for landing or lading goods; and to appoint ſuch a number of officers of the cuſtoms as he ſees fit; which quays and wharfs, and no other, ſhall be open for the landing or lading of goods.

This power however is not to be exerciſed till his majeſty ſhall be duly informed in council, that full ſatisfaction has been made to the Eaſt India company for the tea deſtroyed; as well as to the cuſtom-houſe officers, and others, for the damage they may have ſuſtained by the inſurrections in the preceding months of December and January.

This

This is a temporary act of coercion: and I cannot ſee that any reaſonable objection lies againſt it. Two objections were however made to it.—That it condemned the town unheard; and that it involved the innocent with the guilty.

As to the firſt of theſe objections, what occaſion was there to *hear* the town of Boſton? were not the facts ſufficiently notorious? that from the beginning of November to the ſeventeenth of December, aſſociations had been formed at Boſton, denying the power or efficacy of acts of parliament: that at public meetings, conſiſting of many of the principal inhabitants of Boſton, nightly watches had been appointed to prevent the landing of the tea: that from theſe meetings, orders had been ſent to the conſignees not to receive it; to the maſters of the ſhips not to unlade it, but to return back to England with it: that at laſt, when the tea had lain ſo long in the harbour without clearance, that it would the next day have

been liable to be ſeized, and ſo landed by the officers of the cuſtoms, it was publicly and openly deſtroyed; deſtroyed by perſons in diſguiſe indeed, but acting to all appearance under the guidance of theſe public meetings:—All theſe were circumſtances that appeared from accounts publiſhed by order of their meetings; in papers under their own direction.

Theſe accounts indeed ſpeak of thoſe who deſtroyed the tea, as of perſons who by a diſguiſe they had aſſumed had rendered themſelves undiſtinguiſhable: but this was a veil too thin to conceal, nay we may venture to ſay, was never meant to conceal the real authors. The outrage committed, if ſo they will have it, by unknown individuals, was adopted by the public: and the deſtruction of the odious weed was openly juſtified, as the only means which now remained to prevent its landing.

In truth, if the act impoſing the duty on this commodity, was in their opinion ſuch an infringement on their liberties as

juſtified

juſtified reſiſtance, they could not well have done leſs than what they did. But the queſtion before us is not concerning the propriety of what was done, but concerning the ground there was for being perſuaded that it was done; whether the violences alledged were ſufficiently authenticated for parliament to proceed either to acts of indemnification, if it was thought proper to give up its authority; or to acts of vindication, if it was thought proper to maintain it.

Let us put the caſe of a foreign prince: ſuppoſe the king of Spain. He thinks fit to interpret an article of treaty, as if it excluded Britiſh ſhips from trading to any given port, or in any given commodity: to which port, and in which commodity, the treaty, according to our interpretation, gave us a full right of trading:—a ſecretary of ſtate receives intelligence that the Spaniards had acted preciſely in the ſame manner, as the Boſtonians have done: this account comes to him from the

owners of the ſhips, from the conſignees at the factory, and is moreover confirmed to him by the papers regularly publiſhed under the authority and inſpection of the Spaniards. Will any man ſay this is not ſufficient evidence, ſufficient notoriety, to proceed upon? Upon one half of that evidence, Mr. Pitt's advice would have been to fit out a fleet, and demand ſatisfaction at the cannon's mouth.

What farther evidence therefore could reaſonably be required, is more than I can perceive; and unleſs parliament meant to give up its rights entirely, I ſee not how it could have proceeded in a milder ſtrain.

The officers of the cuſtoms had been forcibly debarred from the exerciſe of their duty. What could the act do leſs than recal thoſe officers from a ſtation, in which the violence of the people had rendered their preſence uſeleſs? Having done thus much, how could it do otherwiſe than put a total ſtop to the commerce of the place, unleſs by giving to it a total exemption

tion from the burthen of those imposts, of which the officers had the charge, it rewarded where it meant to punish? His majesty's British subjects (to say nothing of the destruction of the subject matter of their trade) had been debarred, by the Americans, the common liberty of trading. What could be more consonant to all the ordinary notions of justice current among mankind, than to punish the authors of this oppression, by giving the oppressors themselves a taste of it?

Care is taken, in the mean time, to prevent the punishment from running into excess, and beyond what seemed necessary, for the purpose of prevention, as to the *measure*, the object, or the *continuance* of it. The means are also given of selecting from amongst the croud of delinquents those whom a pre-eminence in delinquency might render fit objects for a pre-eminence in punishment, whose stronger bias required a stronger balance to correct it.

Care

Care, for example, is taken to leave the port open for proviſions; to prevent ſhips already there from ſuffering by a regulation they could not be appriſed of. The duration of the act depends on the Boſtonians themſelves; and the power left in the hands of the crown of appointing the wharfs and quays, where excluſively goods are thereafter to be laden or unladen, is only a power of directing the greateſt weight of puniſhment againſt the greateſt body of delinquency. This power indeed may be abuſed; and ſo may any power, in the exerciſe of which the king, or any other magiſtrate, may uſe his diſcretion. In whatever hands it had been lodged, it was liable to abuſe; yet the ſame power has been given to the crown here in England, by different acts of the legiſlature, where the ſame reaſons did not ſubſiſt *.

* See 1 Eliz. c. 11. 13 & 14 Car. II. c. 11. Blackſtone's Commentaries, Book I. c. 7.

But

But againſt this act there is yet another objection: in one common puniſhment it involves both guilty and innocent; and it is therefore, we are told, unjuſt.

He who urges this topic of accuſation,—and none has been urged more univerſally, or with greater vehemence—does not rightly conſider the end of puniſhment.

It may ſeem ſtrange at firſt ſight, yet it is moſt certainly true, that this plea, levelled as it is againſt *ſeverity*, and urged on behalf of *lenity*, is built on the ſavage principle of *vengeance*.

If vengeance be the end of puniſhment, that puniſhment which acts upon him who did *not* do the obnoxious act, as well as upon thoſe who *did* it, is certainly improper. If it is with A I am angry; the ſufferings of A may give me ſatisfaction, but the ſuffering of B, with whom I am *not* angry, will give me none. Were I to beat A, who had angered me, my behaviour might perhaps, according to the circumſtances of the quarrel, be approved; were

were I to beat B, or any other perſon who had not angered me, I ſhould certainly be condemned: every mouth would exclaim, and with reaſon, that my behaviour was unjuſt.

Individuals obeying the impulſe of paſſion, acting on the ſelfiſh principle, puniſh becauſe they are angry, and within certain bounds, upon certain occaſions; the ſuffrage of mankind in general allows them to do ſo.

But ſurely governments, magiſtrates, as ſuch, *do not* puniſh, becauſe they are angry,—at leaſt they *ought* not. Thus much at leaſt will, I ſuppoſe, be acknowledged on all hands, that were it certain, that in any inſtance, the legiſlature puniſhed a man, or ſet of men, becauſe the members who compoſed the legiſlature were angry with them, and for no other reaſon, every man would certainly cry ſhame on ſuch a legiſlature.

The *end*, the *only* defenſible end, of puniſhment inflicted by public hands, is the ſup-

ſuppreſſion of miſchief; of that particular miſchief, the ſenſe of which was the cauſe of puniſhment being thought of. Now whether this end, the ſuppreſſion of miſchief, be obtained by the puniſhment of A, who was the author of it, or of B, who was not the author of it, does not make ſo material a difference, as at firſt ſight, we are apt to think: provided always, that the ſum of evil introduced by the puniſhment, be in neither caſe greater than what is neceſſary for the ſuppreſſion of the miſchief.

True it is, that the ſuffering of B, who is not guilty, is a thing by no means to be wiſhed; but neither is the ſuffering of A, who *is* guilty, a thing at all to be wiſhed, unleſs upon the principle of vengeance, which we have reprobated above. That the miſchief could be ſuppreſſed without the ſuffering either of the innocent, or the guilty, were a thing devoutly to be wiſhed.

It

It is alſo true, that were a man to *chuſe*, it is againſt A, who *is* guilty, that he would level the puniſhment, much rather than againſt B, who is not guilty. He would do this for the eaſe of his own moral feelings. He would do it to ſave that diſſatisfaction, which reaſonable or unreaſonable, is ſure to ariſe in the breaſts of the multitude, from the principles above ſet forth. A diſſatisfaction, which increaſes the ſum of evil, introduced by the puniſhment, and which therefore is to be deducted from the total account of the utility of the meaſure.

But if, after all, the evil of the puniſhment in this mode can be leſs than the evil of the miſchief, and there be no other way in which the miſchief can be ſuppreſſed, at a leſs, or equal, expence of puniſhment ; the magiſtrate has but one mode of conduct to purſue, if he would do his duty. He muſt puniſh the innocent, or betray his duty.

One

One conſideration may help to reconcile him to this irkſome neceſſity. Taking the whole ſum of innocence into the account, that is, the whole number of innocent perſons affected, either by the infliction of the puniſhment, or the continuance of the miſchief, it will appear, that leſs detriment accrues to, leſs ſuffering is laid on, innocence by this compliance, than would be laid on, or accrue to it, in refuſing to comply. Innocence ſuffers, it is true, by the infliction of puniſhment; but innocence would alſo ſuffer, and that by a ſuppoſition to a degree ſtill greater, by a continuance of the miſchief; for if the evil of the miſchief be not greater than the evil of the puniſhment, no puniſhment, no act of power, ought to be exerted. The benefit of the meaſure calculated for relief, will not bear the expence of it *.

* Every act of authority of one man over another, for which there is not an abſolute neceſſity, is tyrannical. Beccaria.

He who ſhould extend, or think I meant to extend, this idea ſo far as to confound innocence and guilt, or to mete out to both alike, in any caſe where a diſtinction can poſſibly be drawn, the ſame meaſure of favour or diſcountenance, would either argue very ill himſelf, or make a very unfair uſe of my principles. It is only the impracticability of ſevering the innocent from the guilty, nor even that ſingly, that can juſtify the involving of them in one common puniſhment. Not to make a diſtinction, where it is practicable to make a diſtinction, between guilt and innocence, is to deſtroy the efficacy of puniſhment as a ſpur to action. To puniſh the innocent, where the continuance of the miſchief to be prevented by puniſhment, would not be a greater evil to the innocent, than the evil they ſuffer by the puniſhment, we have already ſaid, and muſt again repeat, would be an arbitrary and cruel exertion of power.

Under

Under theſe reſtrictions let us apply this maxim to the act before us.

There are but two ways of puniſhing:—individually, or collectively. To puniſh individually, you muſt puniſh judicially; and to puniſh judicially, there muſt be a trial. But it is vain to try, where you are ſure before-hand there can be conviction. There can be no aſſurance of conviction, be the guilt ever ſo indiſputable, where the probability is, that the jury are accomplices with the culprits. Accomplices will not convict one another, when they can avoid it. Juries will not convict, as for an act of guilt, for an act in which they are perſuaded in their conſcience, there is *no* guilt, much leſs for an act, which they are perſuaded is meritorious. Could it be expected, that a jury of Jacobites would convict a man of high treaſon for adhering to the Pretender? Conceive the Pretender, by a miracle of an avenging deity, placed on the throne of theſe kingdoms, would a free jury of

 whig

whigs convict a man of high treason for adhering to king George? Just as soon would a jury of Bostonians have convicted the Mohawks of guilt for destroying the tea.

In disproof of this last assertion, indeed, a precedent is cited: the acquittal of captain Preston was urged in an address to the house against this very bill, as a proof that the due course of law held out redress for any injury sustained in America: but however it may seem, on a superficial view, a little attention will convince us, that the cases are not parallel. There is surely a wide difference between absolving a man, who being charged with an act of *enmity*, appears after all not to have committed it; and the destruction of a friend for the very act, whereby he proved himself a friend.

In such a case it can hardly be conceived, that those who contend against collective punishment can really mean any thing but universal impunity:—thinking

the Americans in the right to reſiſt, *quocunque modo*, they of courſe are againſt their being puniſhed at all.

But when it was already decided, that they ſhould be puniſhed,—and ſuch was the opinion of the whole houſe:—when the only queſtion was *how* they ſhould be puniſhed, it is but *actum agere* to contend againſt this, or that mode of puniſhment, without attempting to point out a better. Suppoſing it even erroneous, or criminal, to have adopted compulſive meaſures; yet to urge that as a new crime, which was the neceſſary conſequence of ſuch a reſolution once adopted, is but a piece of party diſingenuity, eaſier to be excuſed than juſtified.

A diſcriminating puniſhment we have already ſeen could not be exerciſed, becauſe all conviction of the guilty appeared impoſſible. A collective puniſhment became therefore neceſſary; that is, a puniſhment which involves, to a certain degree at leaſt, the innocent with the guilty.

Nor is this mode of puniſhment, however it may have been exclaimed againſt on the preſent occaſion, unknown to or infrequent in our law.

By the inſtitution of *frank pledge*, attributed, I think, to Alfred, every man was made reſponſible, that is, was to a certain degree puniſhable, for the delinquency of every other man in the ſame decennary.*

The whole ſyſtem of the law on forfeitures for high treaſon is built upon this principle of collective, or vicarious, puniſhment. And the only objection to this application of the principle in this particular caſe is, that here it is eaſy to ſever the father from the children, the guilty from the innocent.

Corporations, where this ſeveration cannot be made, are often puniſhed for the miſdemeanors of their members. And no man thinks it unjuſt.

* See Blackſtone's Commentaries, vol. i. p. 113.

Hun-

Hundreds are charged for damage sustained in the maiming of cattle*, &c. and for robberies committed between sun and sun†.

Husbands, in the opinion of Hawkins‡, are answerable for their wives in the pecuniary penalty inflicted by a penal statute.

A master is indictable for a nuisance done by his servants §; he is responsible for his servant in publishing a libel ||.

Though a sheriff cannot be punished as for a felony, for a voluntary escape of a felon permitted by the goaler; yet, "whe-"ther the escape be voluntary, or negli-"gent, the sheriff may be indicted for it "so as to subject him to a great fine and

* 9 Geo. I. c. 22. s. 7.

† 27 Eliz. c. 13. 29 Geo. II. c. 36. s. 9.

‡ See 1. p. 3.

§ Lord Raymond, 264. Burn on Servants, xxiii. 146. Bacon's Abridgment, tit. Master and Servant.

|| See three strong cases, in 2 Sess. Cases, 33.

 "impri-

"imprisonment, for the offence of his "goaler, though not to make him guilty "of felony *." And this it should be observed, is a much stronger case than that of a master being criminally responsible for the act of his servant, especially if a menial servant, over whom he is supposed to have a much greater and more constant influence, than what a sheriff has over his goaler.

By the conventicle act †, in case of the poverty of one person present at a conventicle, and therefore subject to a fine of five shillings for the first, and ten shillings for the second, offence, the penalty is directed to be levied on *any other* person present, so that no one bear more than ten pounds.

By the Mutiny Act ‡, if a soldier destroys game, the commanding officer forfeits twenty shillings; and if, after con-

* 1 Holt. C. P. 597. Dalton, c. 106. Doctor and Student, 42.

† 21 Car. II. c. 1. s. 2, 3.

‡ See Dialogue on Game Laws, 34. 14.

"viction,

viction, he does not pay the forfeiture, within two days of the demand being made by the constable or overseer, he loses his commission.

It appears then, that the principle adopted by this act, the principle of applying collective and vicarious punishments, of involving the innocent with the guilty, whenever such involution is necessary to the suppression of mischief, is warranted by the general spirit and practice of our law, as well as is this case justified by necessity †.

In farther defence of the act in question, let it be added, that the primary intent of it was not that either the innocent should suffer, or the guilty; but that the innocent should stand up and join in measures for compelling the guilty to repair the mischief they had done, and to return to

† See many other cases cited in Yorke's Consideration on the Law of Forfeitures for High Treason.

obedience to the laws. If the parties ſuppoſed innocent did this, no puniſhment at all would enſue; if they did not, if they tamely ſate ſtill, and gave way to the enterprizes of the guilty, they ceaſed to be innocent: they became accomplices with the guilty.

SECT.

S E C T. VI.

Act for the impartial adminiſtration of juſtice in the caſe of perſons queſtioned for any act done in the execution of the law in Maſſachuſet's Bay.

THE preamble of this act ſets forth, that an attempt had lately been made in Maſſachuſet's Bay to throw off the authority of parliament, by reſiſting avowedly, and by open force, the execution of certain of its acts: that it is of the utmoſt importance to the general well-fare of the province, and the re-eſtabliſhment of lawful authority, that neither the magiſtrates acting in ſupport of the laws, nor ſubjects aſſiſting them therein, ſhould be diſcouraged from the proper diſcharge of their duty by an apprehenſion of their being tried before perſons who do not acknowledge the validity of the laws, in the execution of which, nor the authority of the

the magiſtrates in ſupport of whom, ſuch acts had been done.

It is then enacted, that if any inquiſition, or indictment ſhall be found or any appeal ſued againſt any perſon for murther, or other capital offence in Maſſachuſet's bay; and it ſhall appear by information given upon *oath* to the governor, that the fact was committed by the perſon accuſed, either in the execution of his duty as a magiſtrate, for the ſuppreſſion of riots, or in ſupport of the laws of the revenue; or in the diſcharge of his duty as an officer of revenue—or under the direction, or order of a magiſtrate: and if it ſhall alſo appear by the ſatisfaction of the governor, that an indifferent trial cannot be had within the province, then the governor, with the advice of *his council*, may ſend the party accuſed to be tried either in ſome other colony, or in Great Britain.

The witneſſes, whoſe evidence ſhall be deſired, either by the proſecutor, or the culprit,

culprit, are to be bound over to give evidence at the time, and place of trial. And the governor is to aſſeſs a reaſonable allowance to the witneſſes ſo bound over: to be paid by the officers of the cuſtoms.

The witneſſes are to be free from all arreſts, and reſtraints, in any action or ſuit, during the time of their going to, ſtaying at, and returning from the place of trial.

The perſons accuſed are to be admitted to bail. Judges are to poſtpone the trial of ſuch perſons, and admit them to bail for a reaſonable time, if they ſignify their deſire of applying to the governor for the benefit of this act.

Care is taken to obviate the failure of juſtice from indictments quaſhed, or adjudged bad upon demurrer.

The act is to continue for three years.

A more ſtrictly neceſſary act than this can ſcarcely be imagined. Yet the terms in which it has been ſpoken of are perfectly aſtoniſhing: thoſe who employed them,

them, one ſhould think, had together with all temper put away all ſhame. In their petition to the king the American Congreſs expreſs themſelves perfectly ſatisfied that the effects of it will be "that offenders "will eſcape legal puniſhment." In their addreſs to the "good people of England" they go ſo far as to call it, "an act to "protect, indemnify, and ſcreen from "puniſhment, ſuch as might be guilty "even of murther, in endeavouring to "carry the oppreſſive edicts of parliament "into execution *."—In their addreſs to the inhabitants of the colonies they riſe if poſſible ſtill higher in their extravagance, and ſtyle it "an act for indemnifying the "murderers of the inhabitants of Maſſa-"chuſet's Bay †."

In the act we have ſeen, what can there be to deſerve theſe frantic appellations?—What is it that it does, more than con-

* See Votes and Proceedings of the American Continental Congreſs, p. 37.

† See ib. p. 59.

vey

vey a general security to the officers of the executive power?

It does not alter the mode of trial; the trial is still to be by a jury. In this case indeed, the jury cannot be of the vicinage. But that circumstance is, or is not an advantage, as it may happen. It may, or may not, be right that they be "next "neighbours." It is, and must always be right that they be such, as to use the words of an antient statute, shall be "most "sufficient, and least suspicious *."—Were an officer of the revenue to be accused of murder in the discharge of his duty here in England—would it be right to have a jury from a town inhabited *only* by smuglers, merely on account of their being of the vicinage?

In disputes between individual and individual, though the subject matter be of no higher importance than some trifling claim of property, or a demand of satis-

* 28 Ed. I. c. 9.

faction

faction for ſome petty perſonal injury; if it appear, that "a cry is raiſed; that the "paſſions of the multitude are inflamed; "that one party is popular, and the other "a ſtranger, and obnoxious *:" it is the conſtant practice under our law, by means of ſome expedient or other, by the authority of ſome court or other, to change the ſcene of trial, and the perſons of the triers. Can there be leſs reaſon for ſuch a practice in a caſe of blood, where the cauſe of one man is the cauſe of the very people, who, were it not for ſuch proviſion, would be to try it?

Nor even in capital cauſes is a proviſion of this nature without example in our ſtatute book. Murders and felonies, committed in any part of Wales, may be tried in the next Engliſh county †. By a ſtatute of George the Second, offences of high treaſon committed in certain counties in Scotland might be tried in any

* Blackſtone's Comm. III. 384.

† 1 Strange 553.

other

other county in Scotland*. And if the whole kingdom of Scotland had been as warmly attached to the intereſts of the Pretender, or as reſolute to deny all obedience to the lawful ſovereign as thoſe counties were, who can doubt but that the legiſlature would have gone further, and ſhifted even into England the ſcene of trial? Nor let it be forgotten, that in the caſe of Scotland, the legiſlature exerted its power for the ſtern purpoſe of inflicting puniſhment on the guilty: whereas in the act before us, the ſame power is exerted for the benign end of ſaving the innocent from undeſerved, or the guilty from exceſſive puniſhment.

It may be ſaid indeed that America is removed at ſuch a diſtance from England, that the caſes are not parallel. But this local difference was neither created by parliament, nor is it changeable by it. Parliament can neither ſwallow the wa-

* 21 Geo. II. c. 19.

ters of the Atlantic, nor build a bridge over them. Nay farther,—if any one colony can be found, where an indifferent trial can [illegible]l, it is not required that either the culprit or the witnesses should be made to cross the seas.

It has been urged, that the acquittal of captain Preston is here at least a case in point, to prove the needlessness of the precautions taken by this act against partiality in the local judicature. But it is not so by any means.—At *that* time the judges assumed as the ground work of their charge—that Preston was in the king's peace:—was doing a legal act, in discharge of a legal duty:—they from thence deduced, that he was illegally assaulted; illegally put in fear of his life; and therefore acted only *se defendendo.* They must now assume another principle: the stationing of soldiers in the colonies is now declared illegal and unconstitutional: the appointment of a board of customs is

now declared illegal and unconſtitutional: the tax to be levied by the officers of that board is now declared illegal and unconſtitutional: the order, by which the governor and council may require the aid of the military, muſt now be illegal and unconſtitutional, ſince the appointment of the council itſelf is declared to be ſo.

If it be aſſumed as law (and in the preſent temper and diſpoſition of things, if the judges do not lay it down as law, it is manifeſt the jury will aſſume it) that the King has no right to ſend troops to Boſton; on that ſuppoſition, neither can the officer of thoſe troops have any right to place centinels; nor can a centinel ſo placed be ſaid to be in the King's peace. Nor can any act he does in defending his poſt be a legal act. If it be laid down as law, that the board of cuſtoms is an illegal tribunal, and the tax they are to levy an illegal impoſition, then the officers of the cuſtoms

are neither more nor lefs than robbers; the exaction of the tax is an act of robbery: and no act done in defence of the officers, or in the exaction of the tax can be legal. If it be laid down as law, that the council is an illegal body, then an order of council to enforce the laws, or requiring the fupport of the military, is an illegal act, and every man who fhould come to his death in confequence of that order, would indeed be murthered: every man who obeyed that order would be a murtherer.

It follows, that the fame judge and jury, who affuming one principle, acquitted captain Prefton, being now obliged to affume a contrary principle, muft convict every man who, in fimilar circumftances, is brought before them.

I fee not therefore how it is poffible to help concluding, that parliament was under an abfolute neceffity, either of repealing all its other laws, and of recall-

ing the bodies, whether civil or military, it had commiſſioned to enforce them: or elſe of ſupporting thoſe bodies, and enforcing the proviſions of thoſe former laws by the further proviſions of the preſent.

SECT. VII.

The act for the better regulating the government of Maſſachuſet's Bay.

THAT, at the time of paſſing this act, the property, or the perſons of individuals were ſafe in the province of Maſſachuſet's Bay, will, I think, hardly be pretended: that no ſubordination to *the* laws of England could be maintained, no compliance with them enforced; that the penalties by which they were guarded might be ſafely defied, and therefore the execution of the commands contained in them openly obſtructed, was the *boaſt* of every New Englander who aimed at popularity. It muſt then have happened that thoſe whoſe duty it was to preſerve good order in the provinces, and to ſee a due obedience paid to the laws of parliament, either did not make a proper uſe of the powers with which they were entruſt-

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ed for that purpose, or really had not powers sufficient to maintain "the inter-"nal welfare, peace, and good govern-"ment" of the province, or what parliament at least chose to call "the just sub-"ordination to, and conformity with the "laws of Great Britain." This impotence of those who were to execute the laws, was a thing neither new nor momentary, it had been daily increasing for years. It was therefore natural to look for the cause of this weakness, not so much in the good or ill conduct of this or that governor, as in the original constitution and frame of the government itself. That there were many and leading defects in it had been confessed, and complained of by those, whose station enabled, and whose duty obliged them to examine it most attentively *. Here then it was that parliament sought the cause of the present

* Mr. Pownal, Sir Francis Bernard, Messrs. Hutchinson and Oliver.

disaffection which prevailed in New England: and it therefore determined to preserve the authority of Great Britain, from that time forward, by new-modelling the government of the province.

Let us examine the defects complained of in the government as it stood previous to the passing of this act, and the remedies this act has applied.

King William, we may remember, when he granted a new charter to the province of Massachuset's Bay, put the nomination of the governor, lieutenant-governor, and secretary into the hands of the crown. This was a severe blow to that spirit of democracy for which this province had been distinguished from its first foundation. But he left the court of assistants, or council, as he found them, eligible, and in case of a misdemeanor, amoveable by the general assemblies.

At the same time he attributed to this council, thus eligible and amoveable, functions which it should seem ought not

to be exercifed by one and the fame body. This council is firft a council of ftate, that is, in fome cafes it is a *branch* of the executive power; for its *confent* is neceffary to the performance of certain acts by the governor; in many more it is an *affiftant* of the executive power, for its *advice* is to be afked at leaft, if not followed, previous to many other acts to be done by the governor. And this fame council is befides a conftituent branch of the legiflature.

Many inconveniences had it feems arifen from this union of functions fo diftinct in *one* and the *fame* body of men *. To thefe inconveniences, whatever they be, the government is ftill left open; no remedy is provided by this act.

Yet it was not perhaps unnatural to expect, that in new regulating the government of this province, one object would have been to have brought it as near as

* See Adminiftration of the Colonies, vol. i. p. 118.

might be to the model of the conſtitution which obtains in the mother-country. Had this object been in view, it is probable, that what ſo many governors had recommended would have been complied with. Two councils would then have been appointed: one a conſtituent branch of the legiſlature, equally independent of the governor and the people*. The other a council of ſtate, to be appointed, and removeable either directly by the king, or by the governor in the name of the king. And that this laſt council might be able to ſupply inſtruction relative to every department of adminiſtration, we might have expected to have ſeen it compoſed promiſcuouſly of men taken from every department; of ſome in military, of others in judicial ſtations; of others again in each of the two branches of legiſlative,

* "A true middle legiſlative power, appointed by the king for *life*, and *ſeparate* from the "*privy* council." Bernard's Letters, p. 36.

giſlative. But as we have before ſaid to this eſſential defect in the conſtitution of this government, the act before us has applied no remedy whatever.

The election of this council by the houſe of repreſentatives had been frequently complained of by different governors *. They had found it highly inconvenient, that what ought to be the middle ſhould be ſubordinate to the lower branch of the legiſlature. And ſtill more ſo, that thoſe who were to adviſe and aſſiſt the governor in the execution of the laws, and in the maintenance of the authority of Great Britain, were dependent on that very aſſembly, which was ever ready to counteract thoſe laws, and call that authority

* "In this province (which though royal in "the appointment of a governor, is democratical "in all its other parts, eſpecially in what is *fre-* "*quently regretted*, the appointment of the *council*) "the ſprings of government are ſo relaxed, that "they can never recover their force again by any "power of their own." Bernard's Letters, p. 43.

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in queſtion. Theſe inconveniences had been particularly felt ſince the heats ſtruck up by the ſtamp act. From that moment, to be known, or believed, or even to be ſuſpected of being inclined to ſupport the ſupreme authority of parliament, or the conſtitutional rights of the king in the provincial government, was ſufficient reaſon for excluſion from the provincial council *. Officers who, by their particular functions and their official knowledge of public buſineſs, were almoſt neceſſary to that body, conſidered as a council of ſtate, were excluded: though the charter ſuppoſed them entitled to a ſeat there, in virtue of their offices. So much did theſe popular elections weaken the authority of the counſellors; ſo thoroughly dependent did it render them on the houſe of repreſentatives, "that nothing was

* See proofs of this in Bernard's Letters, p. 98, 99, 100, 101, and in Hutchinſon's and Oliver's Letters, p. 20, 21.

"more

"more common, it ſeems, than for the "repreſentatives, when they found the "council a little untractable at the cloſe "of the year, to remind them that May "was at hand *."

At firſt ſight it ſhould ſeem evident, that this dependence of one branch of the legiſlature upon another, tended to defeat all the advantages which ſhould be derived from the diviſion of the legiſlative power: that it tended to defeat that very ſtability of conſtitution which the Americans talk ſo much of, and praiſe ſo highly, without ſeeming to know by what means it is to be effected; becauſe it tended to deprive the intermediate branch of the legiſlature of that power of reſiſtance which it ſhould employ alternately againſt the preponderance of either of the other two:—by depriving it of that free agency, without which that power cannot exiſt; and

* See Hutchinſon's and Oliver's Letters, p. 32.

of

of that dignity and respect, without which it cannot operate.

The act before us applied a remedy, such as it is, to this evil. Or rather it created another evil to substitute in the room of it.

Henceforward the members of the council are not only to be named by his majesty, but are to hold their offices no longer than during *his pleasure*. This indeed was taking away their dependence on the democratical part of government, but it was neither rendering them independent, nor securing them that respect which alone could make them useful. If they were liable to contempt whilst they were considered only the instruments of the *house* of *representatives*, they must expect to meet, as indeed they have met with abhorrence, as well as contempt, appearing to be the instruments of the *crown*. No doubt the outrages countenanced, or at least connived at, under the former democratic government, did require for the present,

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that the intermediate branch of the legislature should throw its weight into the scale of the crown. But then that weight should have been thrown in voluntarily, in which case the momentum of it would have been something in point of influence as well as power. Such resistance as it might in that case give to the extravagances of the democratic party, might then have been considered as the effect of internal conviction. The belief of that conviction might then have operated on others.

Had they been appointed for life, or at least had proofs and conviction of malpractice necessarily preceded their removal or suspension, they would at once have acquired a degree of dignity, which they could never acquire whilst they were elected by the representatives; and a degree of confidence which they never can hope to acquire whilst they are removeable at the pleasure of the crown. And they would, besides, have had something worth contending

tending for themselves; they would have had a real and a permanent interest, sufficient to incite them to labour earnestly and effectually, to check the encroachments either of the crown or people *.

This second defect in the law before us was perhaps a consequence of the original error, of confounding together the

* Mr. Oliver observes, the honour of being a legislative counsellor could not be hereditary in Massachuset's Bay, because estates are partable after the death of the proprietor: but recommends it warmly that they be appointed *quam diu se bene gesserint*. Or as a farther check upon the exorbitance of the democratic power he proposes an order of noblesse, who should elect counsellors out of their own body, as the Scotch peers elect out of their body lords of parliament, reserving only a negative to the crown. See Letters, p. 31, 32. Such a scheme, coming from a man so well acquainted with the country, surely deserved attention.—It should seem besides to be of such a nature, as either to meet with little, or overcome all resistance. Especially if the crown had given up—as I think it might safely have done—the right of putting a negative upon all vacancies to be supplied, after the first nomination.

legislative

legislative council, and the council of state.

From the same source perhaps sprung another defect. Among the *qualifications* of the counsellors, they are required to be *proprietors* of land, *or* inhabitants within the province. A member of the council of state stands in a responsible office:—many officers of the crown, who are mere inhabitants, may with propriety, nay ought perhaps to be called to this board: but surely the members of the legislative council ought to have a *natural*, as well as a *political* relation to the country. Territorial possessions seem an indispensible qualification to a member of the legislature.

Hitherto the act seems to have considered this council merely as a council of state. And neither requires such qualifications as should have been required of, nor gives such a degree of independence as should have been given to, members who were to form a distinct

a distinct constituent branch of the legislature.

In the next provision it seems to consider it merely as a legislative council, and takes from it the functions which had before been allotted, and for ought appears, should have been continued to the council, considered as a council of state. Their concurrence is no longer necessary to the nomination or removal of the judges of the inferior courts of common pleas, commissioners of oyer and terminer, attorney-general, provost, marshals or justices of the peace: nor to the nomination, though it be to the removal of a sheriff. The appointment of a certain number of persons, a certain body, without whose advice at least, if not their consent, the governor should do no act of government, seems to have been generally considered as a useful guide in the exercise, as well as a salutary check upon the abuse of power. At least it increases the number of persons immediately

immediately responsible. And who is the governor that would not rather trust to the official information and advice of a body of men acting in a responsible character, than to the private advice which may be whispered in his ear, by the very same persons, acting only in their private and individual capacity? Whatever advantages the governor might derive from the information or advice of such a responsible body; whatever check he might be under from the necessity of obtaining the concurrence of such a body in the nomination of those who are to exercise the judicial power, are taken away by this act. The consent of the council is not necessary: nor is the governor bound to ask, nor they to give their advice.

Indeed it appears, that the intention of the legislature was to render the officers of justice, as well as the council, entirely dependent on the crown. Under the former government the judges were dependent on the deputies of the people for a

temporary, wretched, and arbitrary ſupport *. Was it reaſonable to expect that judges, under ſuch circumſtances, ſhould firmly maintain the rights of the crown, or enforce the laws of trade, or in any caſe faithfully diſcharge their duty, in oppoſition to the overbearing ſpirit of a democracy, or even to the paſſions and prejudices of the multitude? Whilſt the judges were kept in ſuch a ſtate of dependence, could it even be expected that the rights of individuals would be better protected than the rights of government? Muſt not all redreſs of wrongs done by a more to a leſs powerful ſubject be deſperate and unattainable? It might well be expected to happen, and accordingly we learn from the beſt authority, that it actually did happen, as formerly in the county courts in England—" That " all buſineſs of any moment was car-

* See Adminiſtration of the Colonies, vol. i. p. 111.

" ried

"ried by parties and factions; and that "those of great power and intereſt in "the country did eaſily overbear others "in their own cauſes, or in ſuch where-"in they were intereſted, either by rela-"tion of kindred, tenure, ſervice, de-"pendence, or application *."

What remedy has the act provided for an evil of ſo dangerous a nature? None at all. Or, at beſt, miſtaking the reverſe of wrong for right, it has only ſubſtituted one evil in the place of another. Not a ſyllable is ſaid about the ſalaries of the judges. They are left, as to this point, ſo far as this act extends, in the ſame ſtate of dependence as before. The crown indeed does now iſſue ſalaries for them. But it is a voluntary, arbitrary act of the crown. It is no legal eſtabliſhment. And it ſeems to the full as dangerous, that the judges ſhould depend

* Quoted from lord chief juſtice Hale, in the Adminiſtration of the Colonies, vol. i. p. 110.

on the crown, as on the people, for an arbitrary ſupport.

To leſſen their dependence on the people, it is enacted, that the judges ſhall not only be appointed by the deputy of the king, but ſhall hold their office, the inferior ones, during the pleaſure of the ſame deputy, the ſuperior during the pleaſure of the king. This indeed is ſtrengthening the power of the crown, but it is weakening the ſecurity of the people. The impartial adminiſtration of juſtice will no longer be impeded by the cabals of faction, but will it not be liable to be impeded by the intrigues of miniſters? What then has the community gained by this change?

Thoſe who had ſo ſtrongly repreſented to government the neceſſity of making the judges independent of the people, did not adviſe their being made as dependent on the crown. They adviſed, that adequate and fixed appointments ſhould be aſſigned them; that they ſhould hold their places, not during the pleaſure either of

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the king or of the governor, or of the aſſemblies, but as the judges hold their places in England, *quam diu ſe bene geſſerint*. Their advice was, that the king ſhould appoint them, but the law *alone* ſhould diſplace them.

But what check would there then have been on the provincial courts, if the judges were appointed for life? That check which the conſtitution points out. Appeals ſhould have lain from the deciſions of the provincial courts, but not to a court, which exerciſes an *uſurped* juriſdiction, to which it is in every light incompetent; not to the king in council, but to the court of king's bench in England.

The next thing neceſſary towards inſuring the impartial adminiſtration of juſtice was to regulate the mode of appointing juries. Under the former government, we are told, the mode of electing the grand juries was liable to many objections. They were choſen and returned by the freemen, on notice ſent them by

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the clerk of the court; and out of the perquiſites of the court they had a ſalary of three or four ſhillings a day *.

"This method lay open to management;" ſo at leaſt we learn from a great law officer of the province: "whoever pleaſes (ſays he) nominates them "at our town-meetings." As a proof how very open they lay to management, he adds, "that by this means one "who was ſuppoſed to be a principal in "the riots of the 10th of June (preceding "his letter) was upon that jury, whoſe buſineſs it was to enquire into them †.

That an inſtitution, which was not only ſo liable to *abuſe*, but had actually been thus *abuſed*, called for reformation, will, I ſuppoſe, be readily allowed. To eſtabliſh that reformation is a buſineſs of a large part of this act. Particular directions

* See Appendix to Neale's Hiſtory of New England, vol. ii. No. 4. Article Juries.

† See Hutchinſon and Oliver's letters, p. 31.

are

are given about making out the lifts of perſons *qualified* to ſerve on juries; but as to the qualification itſelf, the act is totally ſilent. About the time of iſſuing the ſummons for jurors; about the manner of ſupplying the want of jurors, where a ſufficient number do not appear, or having appeared, are reduced to an inſufficient number, by challenges, or otherwiſe; about the mode of aſcertaining the number, and of drawing the names of jurors, the act is full and particular: and appears to be liable to no objection.—

Not ſo with reſpect to the *officer* who is to ſummon the jurors. They are to be ſummoned by the *ſheriffs*.—Names are powerful things.—Nine tenths of the world are governed by them. Had the act provided for the ſufficiency and independence of the officer, who is to ſummon juries, it would have been a matter of prudence, and allowable policy, to call him a *ſheriff*; but was it allowable to give this name to a needy dependent, liable to

be dismissed at any time, for no assignable reason, by the servant of the crown, and a council which itself is only an instrument of the crown? A sheriff in England must have lands in the county where he serves*. For ought that appears by this act, a governor may name his own footman to be sheriff. A sheriff in England is appointed for a year †; for ought that appears by this act, one man may be sheriff for life. A sheriff in England is to take an oath of office ‡; no oath, no engagement whatever, is prescribed by this act. A sheriff in England is punishable by fine, or otherwise, if proof be given of negligence or partiality, in the return of juries§;

* 9 Ed. II. st. 2. Ed. III. c. 4. 4 Ed. III. c. 9. 5 Ed. III. c. 4.

† 9 Ed. II. st. 2. 14 Ed. III. c. 7. 23 Hen. VI. c. 8.

‡ 3 Geo. I. c. 15. s. 18.

§ 28 Ed. I. c. 9. 7 & 8 Will. III. c. 32. 3 Anne, c. 18. 4 & 5 Will. and Mary, c. 24. 3 Geo. II. c. 25.

no

no fine, no punishment whatever, is denounced by this act against the negligence, or partiality of a sheriff. Yet it is remarkable, that the same act imposes a fine on the constable, if he give in false lists of persons qualified to serve as jurors: he is also punishable if he *neglects* to give in true lists.—But suppose the sheriff to *falsify* these lists: suppose him to impanel, or return persons to serve in juries, who are not named in these lists, to what punishment is he liable?—To be displaced by the governor and council. He would meet this punishment, no doubt of it, if such falsification, or untrue return, be disadvantageous to government, or hurtful to the governor or his friends *.

This

* In speaking of the council—this act provides, that the members shall take the same *oaths*, &c. as heretofore.—In speaking of the sheriff, no such provision is made.—None of the provincial laws, if any such there be, which fix the qualification for a sheriff, or his oath of office, are confirmed by this

This act then, so far as it relates to the nomination, and functions of the sheriffs, seems to be at once unjust and impolitic:— unjust, because it does not secure the rights of the people; impolitic, because it defeats one at least of its own ends.

For the ends which the legislature had, or ought to have had, in view, were first to secure to the colonists, and to convince them, that it was intended to secure to them, an impartial administration of justice, by providing effectually for the return of a sufficient and indifferent jury.— And in the next place to convince them, that the legislature, in the changes effected in their constitution, meant only to bring it nearer to what themselves boast to be its original model, the constitution of the mother-country.—Now will the people ever believe, that a jury summoned by such an officer as this, who gives no pledge, no

this act, or even so much as noticed.—Nor is the governor required to take notice of them.

security

security whatever to the public for his good conduct, who *may* be, for ought that appears, without a foot of land in the province, who takes no oath, enters into no recognizance for the impartial discharge of his duty, and who holds his place at the will of the governor, will be a sufficient and indifferent jury? Will not any jury he can summon in any cause, where the rights of the crown, or the interests of its officers, are concerned, be at least suspected? Will they hereafter trust to your professions of wishing to communicate to the colonies, the blessings of the British constitution? Will they not resent as a mockery, this affixing the name of an officer respectable in England, to a creature so totally dissimilar in America? There is no more resemblance between an English sheriff, and the sheriff appointed by this act, than between a *consul* commanding the troops of the most powerful state in the world, and a *consul* settling disputes about figs and raisins, at Smyrna.

Another

Another object of this act is, to regulate the annual and occasional meetings of the freemen. These meetings, it seems, had been perverted from the original purpose for which they were instituted, and, instead of confining themselves to their own municipal business, "had been misled" says the act, "to treat upon matters of "the most general concern, and to pass "many dangerous and unwarrantable re-"solves."

To remedy this abuse, two provisions are made; both of which appear impolitic, and one of them impracticable.

It is enacted, that no occasional meeting, that is, no meeting, except the annual ones for the election of officers, and tthose for the election of representatives, shall be summoned without the consent of the governor. This, no doubt, is practicable, but is it just or politic? Thus much is, I believe, certain, that here in England, the frequent meetings of the gentry and freeholders, have always been considered

dered as one of the greatest supports of our liberties.—Our petit and grand sessions, our assizes, are upon this account, as well as others, of real and salutary importance; nay, if the Restoration is to be ranked among the national blessings, even cock-matches and horse-races may claim some share of the praise of utility: there it was the royalists held their consultations*. Nor was the prohibition of these diversions the least galling act of Cromwell's tyranny. Nor is there perhaps a measure that would be more likely to rouse the jealousy, or inflame the passions of Englishmen, than an attempt to put the power of meeting, or the exclusive prescription of the matters to be canvassed when met, in the arbitrary disposition of the servants of the crown.

No doubt it was true, as the act asserts, —"that great abuses had been made of "the power of calling such meetings:"—

* Dalrymple's Memoirs, vol. i. p. 74.

No

No doubt "the inhabitants had paſſed "many unwarrantable reſolves;" but does it therefore follow, that free meetings ſhould be diſallowed, becauſe free meetings had been abuſed?—What is it that may not be abuſed?—Convivial meetings may be abuſed; they often are ſo: would you therefore paſs a law, that no man ſhould give or receive a dinner, without the permiſſion of government? Bring the caſe nearer home: however dangerous and unwarrantable the reſolves of the town-meetings may have been in Maſſachuſet's Bay, they were certainly neither more dangerous, nor more unwarrantable, than many reſolves paſſed in the town-meetings at London. Why did not government apply the ſame remedy to the ſame evil, exiſting and operating under its own eye?

He would ſurely be miſtaken who ſuppoſed, that the town-meetings *raiſed* the ſpirit of diſcontent: they did not raiſe, they found it. Men were not called together to

meet,

meet, and pass resolves, in order that they might grow discontented with government; but they met and passed these resolves because they were already discontented.

Where the measures of government are directly contrary to the interests, and destructive of the happiness, of the whole community, no doubt public meetings are dangerous to government; and for that very reason they are beneficial to the community, grievances are mutually communicated; plans of redress are concerted; support is mutually promised.— This plea, I suppose, will not be set up in defence of the provisions of this act; yet upon no other plea can I conceive them to be defensible. For where the measures of government are levelled not against the interest of the community in general, but against the views and interests of a *faction* only, it is there at most an equal chance, whether public meetings will, or will not be attended with inconvenience. But suppose the worst: suppose the prevailing faction

faction for a time to take the lead, what then? Why opinions will be propagated; resolutions will be passed, which are unwarrantable; and which, if carried into execution, would be dangerous. This has been the case in New England; this has been the case in *London*. But to opine or resolve is one thing; to act in consequence of those resolutions, or opinions, is another.

The citizens of London, for instance, resolved in some of their public meetings, that the last parliament was *no* parliament: —nay, they went a step farther, they declared as much in an address to the throne. What effect did this declaration produce? The parliament sat as usual, passed its acts as usual, and was obeyed as usual. One gentleman went farther;—he refused to pay a tax imposed by that parliament. What was the consequence? The officers appointed to collect the tax, seized his goods for non-payment, as they would have seized mine, or any other persons, who from any other cause or motive had

refused,

refused, or neglected, to pay the tax. The gentleman applied to a court of justice for redress against the officers. The court justified the officers, and the gentleman paid the expences of the suit. What shock did government receive from thence?

The people of Massachuset's have declared the counsellors, or assistants, appointed in conformity to the act before us, to be no council.—They have assembled, and forced the new counsellors, as many of them as they could get at, to engage themselves by oath to throw up, what the insurgents called an illegal office.—"See here," it may be said, "the "dangerous effects of public meetings." But the public meetings were prohibited by this very act, previously to the election of these very counsellors. "True," it will be answered, "but the act was not "enforced; the public meetings assem- "bled notwithstanding." And why was it not enforced?—"Because government was too weak to enforce it." Here then

was the defect, in the weakneſs of government; and here only the remedy ſhould have been applied. The ſame ſtrength which would have ſufficed to ſuppreſs the public meetings, would have ſufficed to give activity to the new council; and had the new council been able to act, there would have been nothing to fear from the public meetings.

In general, that government muſt be very weak, or very arbitrary, which has any thing to fear from public meetings; or which makes a point of ſuppreſſing them.

It is farther enacted, that at the annual meetings for elections, no other buſineſs ſhall be done than that of the elections; and that at occaſional meetings, no other buſineſs ſhall be done, except the buſineſs expreſſed in the leave given by the governor to convoke ſuch aſſemblies. This proviſion appears to me to be as little conſonant to juſtice, or to policy, as the former; and withal impracticable.

Had

Had it indeed been confined to the metropolis, it might have been ſaid, that the governor * was always at hand, always acceſſible; that it would be eaſy to explain to him the buſinſs intended to be done at the meeting, and if that buſineſs were conſtitutional, he would certainly conſent to it; but the fact is, that the proviſions extend to *all* the towns and diſtricts in the province. Now theſe towns are ſome of them at one, two, or even three hundred miles diſtance from the capital. Almoſt all the municipal buſineſs is regularly done at theſe town-meetings. Is it not peculiarly hard, that all the municipal buſineſs of theſe towns ſhould be at a ſtand, 'till diſpatches can be ſent to his excellency the governor, explaining the circumſtances of each particular buſineſs to be canvaſſed;

* Wherever the word *governor* is uſed in the remarks on this act, it is uſed to mean, the perſon who *preſides* in the province for the time being; whether governor, or lieutenant-governor. The proviſions of the act being ſo extended.

till his excellency ſhall have read theſe diſpatches; ſhall have ſent back perhaps for explanations; ſhall at laſt, having made himſelf maſter of the buſineſs, ſent back other diſpatches, granting licence to meet? What muſt be the authority of a government reduced to ſuch precautions as theſe? Would it be thought to add greatly to the ſecurity of the throne, if not a veſtry could be ſummoned in England without licence from the king?

The policy of this proviſion ſeems to ſtand upon no better footing, than the juſtice of it. A town-meeting aſſembles with leave of the governor; its buſineſs is preciſely marked out. In the courſe of the buſineſs the friends of government obſerve a turn in the tide of the popular opinions; they wiſh to take advantage of it; to propoſe reſolutions, to form aſſociations for counteracting the manœuvres of the factious, and ill diſpoſed; for ſupporting government, and for giving force, and efficacy, to the laws.—"No," ſays this

this act, "you ſhall not do it: this is not "the buſineſs of the meeting; it is not "expreſſed in the licence to meet; your "reſolutions are null; your aſſociations "illegal."

The beſt defence of this proviſion, perhaps, is, that it is impracticable.—When the aſſembly is met, either for elections, or for any municipal purpoſe, who ſhall with-hold them from proceeding to ſuch buſineſs as they ſee fit? In all aſſemblies the will of the majority, controuls the will of the whole. If the majority of theſe aſſemblies be *not* diſaffected to government, there would be no danger in leaving them free to vote and reſolve as they pleaſed. If the majority be diſaffected, there will be no means of preventing them from voting and reſolving as they pleaſe, unleſs by preventing their coming together at all.

SECT. VIII.

The Quebec Act.

THE firſt object propoſed by this act is to deſcribe the boundaries of what is hereafter to be called the province of Quebec. For it ſeems all that had been hitherto done towards ſettling either the limits or the government of this colony, ſince its firſt acquiſition, was by a proclamation iſſued by the king in the third year of his reign. And ſo wiſely and carefully was this proclamation drawn up, that (as the act ſets forth) "a large "extent of country, within which were "ſeveral colonies and ſettlements of the "ſubjects of France, who claimed to re- "main there under the faith of the treaty "of Paris, was left without any provi- "viſion being made for the adminiſtra- "tion of civil government therein; and "certain parts of the territory of Canada, "where

" where sedentary fisheries had been esta-
" blished, and carried on by the subjects
" of France, inhabitants of the province
" of Canada, under grants and conces-
" sions of the government thereof, were
" annexed to the government of New-
" foundland, and thereby subjected to re-
" gulations inconsistent with the nature
" of such fisheries." — These certainly were great inconveniences: and it is wonderful that during a space of eleven years no remedy had been applied to them.

At the end of this period, the act before us provides a remedy. It extends and describes the boundaries of the provinces, including within those boundaries the colonies, and back settlements, for which no civil government had been provided by the proclamation; and the Labradore coast, which by that proclamation had been affected to the government of Newfoundland; providing at the same time, by a clause, which seems to contradict the description itself, that nothing

herein contained "shall in *any wise* affect "the boundaries of any other colony."—Saving likewise all rights derived from preceding grants and conveyances.

Having thus fixed, if indeed the act can be said to have fixed, what are the territories and people, whom the legislature has in contemplation, the act goes on to appoint the civil government of the province. For this purpose it first repeals all the provisions made by the proclamation cited above, so far as it relates to the province of Quebec, or to the commission, under the authority of which the government of the province had been hitherto administered; it repeals all the ordinances hitherto made by the governor and council, relative to the civil government, and all commissions granted to judges and other officers.

All these provisions are repealed, because as it is declared, "they are inapplicable "to the state and circumstances of the "province." Two grounds are assigned for

for this severe censure on the king's proclamation. The one "that the inhabitants "of this province did, at the time of its "being conquered, amount to above sixty-five thousand persons professing the "religion of the church of Rome:"—the other, "that they did then enjoy an established form of constitution, and system "of laws, by which their persons and "property had been protected, governed, "and ordered for a long series of years."

Combining the censure on the royal proclamation, and the grounds assigned for it together, we must conclude, that the proclamation was looked upon as faulty, in not having sufficiently provided for the security of the inhabitants who professed the Roman catholic religion; and in having wantonly, and without reason, broken in upon the ancient system of laws. And these are the faults which the act endeavours to rectify.

It provides that his majesty's subjects, professing the religion "of the church of "Rome,

" Rome, of, and in the ſaid province of
" Quebec *, may have, hold, and enjoy,
" the free exerciſe of the religion of the
" church of Rome, ſubject to the king's
" *ſupremacy*, declared, and eſtabliſhed, by
" an act made in the firſt year of the
" reign of queen Elizabeth over all the
" countries which then did, or hereafter
" ſhould belong † to the imperial crown of
" this realm." The clergy of the church of Rome are confirmed in the enjoyment of their accuſtomed dues and rights, with reſpect to ſuch *perſons only*, as ſhall profeſs the ſaid religion. Out of the reſt of ſuch accuſtomed dues and rights, his majeſty is empowered to make ſuch proviſion as he ſhall think expedient for the encou-

* Such is the uncouth phraſeology of the act; ſo that one might be tempted to imagine the religion of the church of Rome was one thing at Quebec, and a different thing elſewhere.

† The words " *hereafter ſhall be*," occur in the xvi. ſect. of the act of Elizabeth; the intent of which is to " extinguiſh " all foreign power in countries within the dominion of England; but are dropt in the xix. ſect. which impoſes the oath of ſupremacy.

ragement

ragement of the proteſtant religion, and the maintenance of a proteſtant clergy. Such of the inhabitants as adhere to the Romiſh church, are neither to take the oath preſcribed by the ſtatute of Elizabeth, nor any oath hitherto ſubſtituted for it; but another oath is preſcribed in this act. Thoſe who refuſe or neglect to take this oath, are made liable to the ſame penalties as by the act of Elizabeth would have been incurred for refuſing to take the oath preſcribed in that act.

The act then goes on to ſecure his majeſty's Canadian ſubjects in Quebec ("the "religious orders and communities only "excepted) in all their properties and poſ-"ſeſſions, together with all the cuſtoms "and uſages relative thereto, and all other "their civil rights, in as large, ample, "and beneficial a manner, as if the ſaid "proclamation, commiſſions, ordinances, "and other acts and inſtruments had not "been made, and as may conſiſt with "with their allegiance to his majeſty, and

"ſubjection

" ſubjection to the king and *parliament* of
" Great Britain."

It ordains that all controverſies relative to property and civil right, ſhall be decided by the laws and cuſtoms of Canada, till altered by any ordinance of the governor, with the advice and conſent of the legiſlative council.

To this clauſe two proviſoes are annexed. The one, that it ſhall not extend to any lands which already are, or hereafter may be granted by the king in free and common ſoccage. The other, that it ſhall not preclude any perſon who has a right to alienate his lands, goods, or credits, in his life time, by deed of ſale or gift, or otherwiſe, from deviſing, or bequeathing them at his death by his laſt will or teſtament.

The act then remarks, that the certainty and lenity of the *criminal* law of England, and the benefits and advantages reſulting from the uſe of it, had been ſenſibly felt by the inhabitants from an experience

perience of more than nine years, during which it had been uniformly adminiſtered; and therefore enacts, that the ſame law ſhall continue to be adminiſtered, and obſerved, as well in the deſcription and quality of the offence, as in the method of proſecution and trial; and the puniſhments and forfeitures thereby inflicted to the excluſion of every other rule of criminal law, ſubject nevertheleſs to ſuch *alterations* and *amendments* as the governor, with the advice and conſent of the legiſlative council, ſhall from time to time cauſe to be made therein.

So much power is left to this legiſlative council, that great part of the merit, or demerit of this act, will depend on the conſtitution given by it to this body.

The act acknowledges, that the power of making many regulations for the future welfare and good government of the province, muſt of neceſſity be intruſted for a *certain* time—(and it might have been ſaid at *all* times) and under proper reſtrictions,

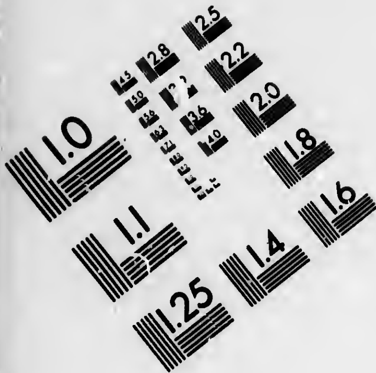
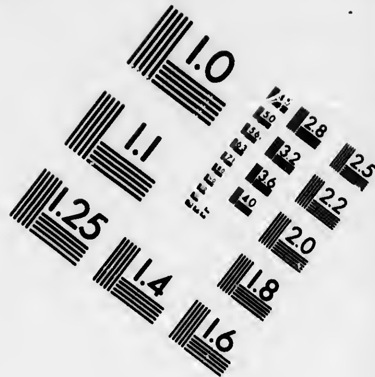
to perſons reſi lent there: it declares it to be at *preſent* (though it does not ſay why, nor therefore give any *datum*, by which it may be conjectured *when* it will be leſs) inexpedient to call an aſſembly;—and it therefore empowers his majeſty, by warrant under his ſign manual, with the advice of his privy council, to conſtitute the council in queſtion under the deſcription of—a council for the affairs of the province;—to conſiſt of ſuch perſons *reſident* there, not more than twenty-three, nor fewer than ſeventeen, as his majeſty ſhall appoint; which council thus appointed, or the major part thereof, with the conſent of the governor, are to make laws "for the "peace, welfare, and good government of "the province."

From the general power of legiſlation thus given, that of taxation, however, ſtands excepted, unleſs it be with reſpect to ſuch rates and taxes as the inhabitants of any town or diſtrict, may be authoriſed by the council to levy, and apply within

the said town or district for *making roads*, erecting, or repairing, public buildings, or for any other purpose respecting the local convenience and œconomy of such town or district.

All ordinances to be made by this council are to be transmitted to his majesty, within six months, for the royal assent. Nor is any ordinance touching religion, or any ordinance inflicting a greater punishment than fine, or imprisonment for three months, to be of any validity, till such consent is obtained. No ordinance can be passed at any meeting of the council, where less than a majority of the whole council is present; nor at any time, except between the first of January, and the first of May, unless on *urgent* occasions: on which occasions the governor is to summon every member resident at Quebec, or within fifty miles of it.

There is one circumstance which must strike every man who reads this act. It is acknowledged over and over again in it, that

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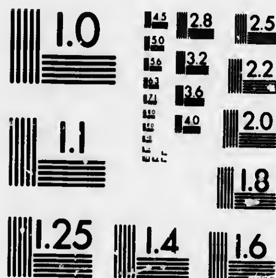
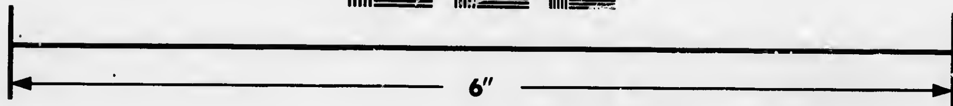

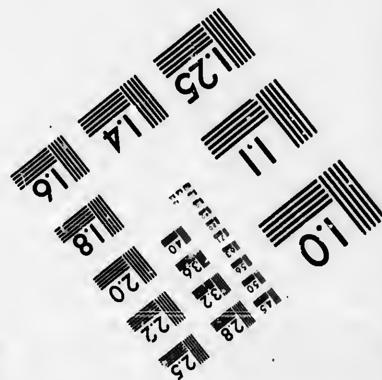

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that the proclamation publiſhed in the third year of his majeſty's reign, was inapplicable to the ſtate of the province. Is it poſſible that parliament ſhould have ſate ſix long years before it made this diſcovery? The confuſion which prevailed in the reſt of the American continent was attributed by thoſe who were beſt informed, to the want of a parliamentary ſettlement. Why was the ſettlement of Quebec ſo long delayed? The laws and cuſtoms, the temper and manners, of the people, muſt ſurely have been learned by the miniſtry in the courſe of five years, which preceded the exiſtence of the laſt parliament. It cannot then but appear ſingular, that an act of this nature ſhould have been deferred to the very latter end of the laſt ſeſſions of the parliament before us. It was ſurely an act of wanton cruelty to ſuffer the province to groan for ſix whole years under a form of government, "inconſiſtent with their "commercial intereſts, and inapplicable to "the

" the state and circumstances of the coun-
" try."

To atone for this, I must call it culpable negligence, we may with reason expect, that the regulation which so much time was taken to digest, was well adapted to the state and circumstances, and conducive to *all* the interests of the province. We have the more reason to expect this, as here at least parliament had it's hands at liberty. No contending and opposite claims had it to adjust, no grants to steer clear of, or revoke.

All the peculiar privileges which the inhabitants of Quebec could claim, were comprised in a short capitulation, and a single article of a treaty of peace.

Let us see now if the justice and policy of the act are such, as to atone for the astonishing tardiness in passing it.

With regard to the extension of the boundaries of the province, I think all the objections against it, have been fully and ably answered by an author, who seems to

have written upon full information, and a thorough knowledge of the ſubject *.

But the loudeſt clamours have been raiſed againſt other parts of this act. Religious prejudices are, of all, the ſtrongeſt and moſt likely to work upon the minds of the people. This topic was, therefore, greedily ſeized by oppoſition. The horrid crime, and the dreadful danger of eſtabliſhing popery in ſo large a part of his majeſty's dominions, has been thundered in the ears of the king, lords, and commons in remonſtrances from very *religious* magiſtrates, and echoed back again to the public with all the clamour and turbulence of an enraged and miſguided populace. Meantime the defenders of the bill ſeemed afraid of ſpeaking out. They were willing to allow any thing, to have re-

* See this part of the bill ably defended by the author of "the Appeal to the Public, ſtating and conſidering the Objections to the Quebec bill," printed for Payne, 1774, from page 36 to the end.

courſe

course to any subterfuge, rather than confess that the Romish religion was *established* by this act.—It is tolerated they said, but not *established*.—Nay one writer found out, that the church of *England* was established by it. " For the Canadians (says " he) are to acknowledge the king to be " supreme head of the church in Quebec, " by the authority of the act of Elizabeth: " of whatever *church*, then the first of E- " lizabeth declares the king to be supreme " head, *that* must be the church established " in Quebec by this act *."

If this gentleman had turned to the act of Elizabeth, he would have found that it does not declare the queen to be the head of any particular church. He might have recollected too, that what is now called the church of England, did not then exist.

The act of uniformity was not passed; the queen is simply declared " su-

* See Justice and Policy of this Act asserted and proved, p. 50.

" preme governor of these realms, as well in matters ecclesiasiastical as civil." A very different thing from being head of this or that particular church. By virtue of this act, I suppose, the king is head of the churches of the anabaptists and presbyterians, and of our sober honest friends, the Quakers, as well as of the church of England. This author indeed does allow—" that the point might have been made more clear". Ask him why it was not,—and he gravely tells you; " then there would " have been danger of *undoing* what the " clause sets out with the professed purpose " of doing,—the giving *ease* and *security* " to the minds of the Canadians *" How the Canadians would start and shrink at such a plea as this!—" You set out (they would " say) with professing to establish *our* " church; and lo! by an ungenerous sub-

* See Justice and Policy of this Act asserted and proved, p. 51.

" terfuge

" terfuge, it is the church of England you " mean all the time to establish."—

If the acts of the legislature are to be defended, let it not by arguments like these. —To utter *dark* sayings; to speak unintelligibly, would be disgraceful enough to a legislature; but to speak deceitful words, to use words which have two meanings, with the professed purpose of deceiving;—for that I cannot find a name. No! let us speak out, let us boldly acknowledge the truth:—the act *has established* the religion of Rome at Quebec. Why torture ourselves to explain away a truth that is so clear? or why hesitate to acknowledge a fact, that needs no apology? If there be any force in treaties; if any faith is due to them; if they can convey a right; the Canadians had a *right* to this establishment.

By the 27th article of the capitulation between general Amherst and the marquis de Vaudreuil, it is stipulated, that " the

" free exercise of the Roman religion shall " subsist intire, in such manner, that all " the states and people, of the towns and " countries, places, and distant posts, shall " continue to assemble in the churches, " and to frequent the sacraments as here- " tofore, without being molested in any " manner, directly or indirectly." In the second article of the definitive treaty of Paris, " his Britannic majesty agrees to " grant to the inhabitants of Canada the " liberty of the Catholic religion;" and engages " to give the most exact and most " effectual orders, that his new Roman " Catholic subjects may profess the wor- " ship of their religion, according to the " rites of the Romish church, as far as the " laws of Great Britain permit."—Now surely the laws of Great Britain permit him, with the advice and consent of his parliament, to secure to his Canadian subjects every thing that the capitulation had granted them. To interpret the last un-

necessary

neceſſary clauſe, ſo as to annul the tenor and purport of the whole, might be received as a legitimate mode of interpretation in the ſchools of Berlin or Vienna; but I hope it is a mode that will never be adopted in England. By the terms of capitulation, by the plain meaning of the treaty, the Canadians had a right to an eſtabliſhment.—The Roman Catholics in Quebec are, as to this point, in the ſame ſituation as the Proteſtant diſſenters in England. The capitulation, and the treaty, operate with reſpect to the one, juſt as the toleration act operates with reſpect to the other. In truth, it was *they* that rendered that which "in Britiſh ſubjects would have "been illegal without them, thenceforth le-"gal; by them this way of worſhip was "permitted and allowed: it was not only "exempted from puniſhment, but rendered "innocent and lawful." In a word, as lord Mansfield nobly declared of the way of worſhip of the diſſenters,—"It was

 "eſta-

"eſtabliſhed *." And what has the act done more, than barely confirm what the capitulation and treaty had ſolemnly granted before?

But it is ſaid the Roman religion is not only *eſtabliſhed*, it is even endowed, by this act. True, it is ſo. And to ſome endowment too the Canadians had a right by the ſame capitulation. In the article already cited, it was "demanded, that the people ſhould be obliged by the Engliſh government to pay "to the prieſts the tythes, and all the taxes "they were uſed to pay under the government of the moſt chriſtian king." The general's anſwer was, "That the obligation of "paying the tythes to the prieſts, muſt depend on the king's pleaſure." After the place had ſurrendered, the king's pleaſure

* See lord Mansfield's ſpeech in the Houſe of Lords, in the caſe of the chamberlain of London, againſt Allen Evans, Eſq. printed at the end of Dr. Furneaux's Letters to Mr. Juſtice Blackſtone. a ſpeech which is more worth than whole volumes of Commentaries.

could

could be declared only in parliament; and this act is that parliamentary declaration of his pleaſure. The moment the exerciſe of their religion was granted to the Canadians, the maintenance of their prieſts in ſome way or other, became neceſſary; the king, that is, the king in parliament, was to exerciſe his judgment as to the mode and meaſure of maintenance to be aſſigned: he has exerciſed it, and the reſult is, that he has fixed upon that meaſure and that mode, to which they, who are to furniſh the maintenance, had for ages been accuſtomed, with which they were contented; which they themſelves entreated to be continued.

What ſounder principles of juſtice or policy could have been adopted? Had the other proviſions in the act been as unexceptionable as this, I know of few acts that would lie open to leſs objection;—but thoſe who are beſt acquainted with the nature and genius of the Romiſh religion, will allow, that the act has not ſufficiently provided

provided againſt the dangers with which that ſect is always threatening the peace of the community. It is not the dogmas of the church of Rome which ſhould alarm the legiſlator. What is it to him whether men believe in the abſurd doctrine of tranſubſtantiation, or the no leſs abſurd doctrine of conſubſtantiation, which we all of us learn in our catechiſm? But there are other matters of a quite other importance. It is a matter of a quite other importance whether or no ſubjects acknowledge a dependence on a foreign power, inconſiſtent with the obedience to their natural ſovereign; whether or no the prieſts enter into vows, or form ſocieties incompatible with the welfare of the ſtate. Againſt theſe inconveniencies, which affect the ſociety in its civil capacity, the act has provided either none or inadequate checks.

It is indeed enacted, that the Canadians ſhall be ſubject to the king's ſupremacy as eſtabliſhed by the firſt of Elizabeth, and an oath is preſcribed to enforce

this provision. It has been said, that the bill as it came from the House of Lords, enjoined the Canadians to take the oath prescribed in the statute of Elizabeth. The lay lords perhaps did not know, that no true catholic could voluntarily swear "to renounce all foreign jurisdiction, "power, and authority in matters eccle-"siastical." The spiritual lords one would think could not but know it; and yet it would seem rather uncharitable to suppose, that they thought so ill of the Canadians, as to suspect them capable of giving their "unfeigned assent and consent," to an article which they disbelieved: be that as it may, the oath was changed in the lower house. As it now stands, it is a general oath of allegiance, without any particular reference to matters ecclesiastical; and so far it is right *. But the fact is, that

oaths

* I say *so far*, because I think the last clause injudicious, "renouncing all pardons and dis-"pensations from any power or person whomso-

"ever

oaths are of no uſe, no validity in this caſe. The religious principle can never have force ſufficient to bind a firm believer in the plenitude of power in the *infallible* to any act, by which that plenitude of power is acknowledged to be circumſcribable.

Here then the act ſhould have been more explicit; it ſhould plainly have defined what was meant by the king's ſupremacy. It ſhould have prohibited all appeals to the court of Rome in any cauſe or on any pretence whatever: it ſhould have eſtabliſhed courts for the deciſion of

"ever to the contrary." The member who brought in this oath muſt, one ſhould think, have known, that whoever was ſtaunch papiſt enough to believe the pope has the power of diſpenſing with obedience to the *oath*, muſt believe too, that he had power enough to diſpenſe with the *renunciation*. And it ſeems, therefore, injudicious in the legiſlature, to let the Canadians ſee, that it even ſuppoſed it poſſible they ſhould be capable of holding a tenet which would deſtroy the ſanction of all oaths. If, indeed, the ſanction of an oath be of that uſe it is generally ſuppoſed to be.

all

all eccleſiaſtical cauſes, which, like all our other courts, ſhould have ſat and acted in the name, and by the authority of the king. It ſhould have guarded theſe proviſions by pains and penalties clearly expreſſed, and eaſy to be inflicted. As the act now ſtands, how is the Canadian to know what is the ſupremacy to which he is ſubject, or what are the penalties under which he is to ſubmit to it? He is to find it out, if he can, in the firſt of Elizabeth, a ſtatute which is a repeal, or a revivor of no leſs than ſixteen other ſtatutes, which itſelf has been altered, and in part repealed by eight or ten later ſtatutes. A ſtatute, therefore, which we may venture to ſay, not one Engliſhman in a thouſand underſtands, which, therefore, it cannot be reaſonable to expect the Canadians ſhould ever underſtand.

The celibacy of the Roman clergy is another point, in which the welfare of the civil ſociety is more deeply intereſted than many may at firſt ſight imagine.

Men

Men who are debarred from being husbands or fathers, have not the same motives to be good citizens as the rest of mankind; they cannot give the same pledges to society for their good conduct in it. The spirit of the citizen is absorbed, "*dans l'esprit du corps.*" "But what, we "shall be asked, would you have the "clergy constrained to marry?" No, surely. Nay, it was better perhaps not to give them permission to marry in express and direct terms. But something might have been done; the courts might have been prohibited from holding, and the parties from prosecuting any plea against priests who should marry. If the act had removed all legal restraints, the rest might have been left to nature.

In the capitulation * it is stipulated, that "the communities of nuns shall be "preserved in their constitution and pri-"vileges; that they shall continue to ob-

* Art. XXXII.

"serve

"serve their rules,' and to be exempted "from lodging any military: that it shall "be forbid to trouble them in their reli- "gious exercise, or to enter their monas- "teries."

The same privileges were demanded*, but refused, "with regard to the com- "munities of Jesuits and Recolets, and "of the house of the priests of St. Sul- "pice†. Yet the communities and all the "priests are to preserve their moveables, "and the property and revenues of the "signories, and other estates which they "possess in the colony; and the same "estates are to be preserved in their pri- "vileges, rights, honours, and exemp- "tions." In the definitive treaty of peace not a syllable is said about these articles.

Here then a question may arise, whether the grants made in a capitulation are to be considered as *perpetually* binding, or

* Art. XXXII. † Art. XXXIV.

only

only in force *till* the definitive treaty be ſigned, and to loſe all farther validity unleſs confirmed there, either by expreſs or general terms?

This latter ſeems to have been the idea adopted by parliament; for, notwithſtanding the XXXIVth article of the capitulation, recited above, the religious orders and communities, are excepted from the number of thoſe, who are to hold their property and poſſeſſions, with all the cuſtoms and uſages relative thereto. Now if grants conveyed by a capitulation of themſelves, and without any ſubſequent confirmation by the definitive treaty, be of permanent validity, then it ſhould ſeem that parliament did an act of injuſtice to the religious orders in not confirming them in all their poſſeſſions and rights. If, on the other hand, the grants made by a capitulation be only temporary grants, and loſe all ſubſequent validity, unleſs confirmed by the definitive treaty, then it will be difficult to vindicate the prudence

of

of parliament for ſtopping ſhort where it did, and neglecting to pave the way for a certain and total diſſolution of theſe orders.

We have ſeen princes of the Romiſh ſect, the moſt *faithful* king, the catholic king, with even the eldeſt ſon of the church, unite in *forcing* their ſpiritual parent to ſuppreſs one religious order: other catholic princes have, by their own authority, ſuppreſſed other orders in their own dominions. Why a proteſtant ſovereign ſhould be more ſcrupulous on this head, I own does not readily appear.

Heaven forbid we ſhould imitate the circumſtances of cruelty and injuſtice which attended the ſuppreſſion of the Jeſuits. But ſurely parliament might have prohibited theſe orders from receiving any more novices; have obliged them to give in an exact account of their eſtates, have divided theſe eſtates into certain portions, have aſſigned a competent portion to each of the preſent members; and as

 they

they died off, it might have appropriated their refpective fhares to the building and endowing of fchools, to the making of roads, to the maintenance of a proteftant clergy, and to other works of public utility.

It may be urged perhaps, that fuch an arrangement would have fhocked or revolted the Canadians; but is there any thing more fhocking, or revolting, than the cruel ftate of dependence in which the act has now left them? they are mere tenants at will: was that then the intentions of parliament? Did it mean that thefe communities, men who have fuch an influence over the minds of the people fhould be kept dependent on the will of the crown for their lands and poffeffions?

The gradual fuppreffion of convents would have furnifhed a fufficient provifion for a proteftant clergy. The proteftant laity might then have been finally exempted from the payments accuftomed to

to be made to the Romiſh clergy; and thus without any new expence to the ſtate, might have been held forth a powerful and ever operating inducement to abandon the church of Rome. As the act now ſtands, this inducement is withdrawn; catholics are to pay the accuſtomed dues and rights to the catholic prieſts; but proteſtants too are to pay them to ſome collector or other, and out of them his majeſty may, if he pleaſes, make a proviſion for a proteſtant clergy. If his majeſty is to *apply*, he is then to receive theſe rights and dues from his proteſtant ſubjects.

Did the framers of this act conſider, that a part of theſe rights and dues ariſes from ſums paid in commutation for penance, for maſſes ſaid for the delivery of ſouls from purgatory, for diſpenſations for breaches of the canon law? Commutations and diſpenſations are indeed perſonal affairs, and when a man withdraws from the ſociety where only they are current, I ſuppoſe he may do without them. But

the ſums to be paid for the releaſe of our anceſtors from purgatory are debts of another ſort; the whole of a man's eſtate is chargeable with them. Theſe then are to be carried to his majeſty's account. Tythes too are to be carried to his account. Are the ſums ariſing from them to go with the other unappropriated ſums and ſwell the civil liſt? or are they to be brought into the exchequer and accounted for to parliament? It would be an amuſing item to read in ſome treaſury account, "Caſh "from a noble Canadian for one thouſand "maſſes which ſhould have been ſaid for "his grandfather's ſoul. Ditto for the "ſoul of his grandmother, &c."

Thus much for the tenderneſs ſhewn by this act to the religious rights of the Canadians. With regard to their civil rights it is enacted, "that in all matters of "controverſy relative to property and ci-"vil rights, reſort ſhall be had to the "laws of Canada."

No man can judge of the propriety or impropriety of this clauſe, who is not thoroughly maſter of the ſtate of the country, and the temper and diſpoſition of the inhabitants. It is always difficult, and often dangerous, to tranſplant in an inſtant a ſyſtem of laws eſtabliſhed in one country by the progreſſive experience of ages, and to impoſe it on another country, where neither the cuſtoms nor prejudices, nor habits of thinking have paved the way for its reception.

Whether, during the many years we had been in poſſeſſion of Canada, the minds of the people had been prepared for the reception of the Engliſh law, is a point on which parliament could reaſon but imperfectly for want of ſufficient data to go upon. Reports from the board of trade on the ſtate of the province, repreſentations from men in the higheſt offices in it, with plans for the form of government which was beſt adapted to it,

opinions on theſe plans from th law officers at home, and many other important papers had been laid before the council board; they were called for by one at leaſt of the two houſes, but not produced, becauſe it ſhould ſeem there was not time to *copy* them; a reaſon which muſt appear ſingular at the end of ſo many years. Nor is this all, many competent witneſſes were with-held from examination for no apparent reaſon at all; and one witneſs, high in office, was ſuffered to inſult the houſe by anſwers, that would not, under the ſame circumſtance, have been endured at the bar of an inferior court *.

Thus

* I do not by this mean any reflection on Dr. Marriot; it was not he who inſulted the houſe; the inſult comes properly ſpeaking, from another quarter, he was only the conveyance by which it was offered. The reaſons alledged why the papers demanded could not be laid before the houſe, were theſe: that the papers were not copied; that the copying of them would be a work of time, and create long delays, and that the *ſame* information might

Thus much however may be gathered even from the imperfect account we have of the debates, that the defenders of this clause seem to have confounded two things perfectly distinct and independent; the laws relating to succession, and the transfer of the laws relating to judicial proceedings. It might have been very cruel. and very impolitic to have changed the one, and yet, at the same time, very benevolent, and very politic to have changed the other. The establishment of a trial by jury in civil causes would surely have made no change in the laws of succession; a jury may try a right to lands in common soccage, or to lands in gavel kind; a jury is as competent to the trial in one case as in the other; a jury does not create, it only find a title.

might be had from living witnesses. In consequence of this idea, Dr. Marriot was summoned, and, under these circumstances, it was certainly to insult the house, to bring him to the bar without a full permission to lay his opinion before the house.

We may obſerve too, that of the arguments urged againſt the trial by jury in civil caſes, ſome went directly in favour of that mode; others proved, not that the Canadians diſliked a jury, but that they wiſhed to make a real improvement in it. For it was ſaid by one witneſs, that the reaſon why the Canadians diſliked a jury in civil cauſes was, that they did not think their property ſo ſafe in the determination of taylors and ſhoemakers, mixed with people in trade, as in that of the judges. Now this objection was evidently dictated by the pride of *nobleſſe*; a French gentleman finds himſelf humbled by ſeeing a *roturier* put on a par with his dignity. If the inſtitution of juries would tend to check this pride, ſo inconſiſtent with the ſpirit of freedom, that very circumſtance is the ſtrongeſt argument why juries ſhould be permitted in civil cauſes. If the gentleman thinks his property ſafer in the hands of the judges, becauſe they are nearer his rank, the plebeian will think

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his property ſecurer in the determination of a jury, for they are nearer *his* rank. Now the law which beſt ſecures the property of the greateſt number, is ſurely the beſt law. The law which gives the greateſt acceſſion of ſecurity, where there is naturally the greateſt weakneſs, is ſurely the beſt law.

It was urged too, that the Canadians did not wiſh for an Engliſh jury; for they neither doated on the number twelve, nor expected a jury to be what many think in their conſcience they ſeldom are, though they muſt pretend to be, unanimous. They therefore wiſhed their juries to conſiſt of uneven numbers, and the deciſions to be collected from a plurality of voices. This ſurely did not prove their diſlike to juries; it proved only, that they had ſeen a defect in the conſtitution of our juries, to which habit and cuſtom has blinded us, and that they wiſhed to have a remedy for that defect. Inſtead of refuſing them a jury on this account, ſome have thought

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it would have been wiſer, and better to have modelled our own juries in the plan they held out to us.

Another very ſtrong objection was urged againſt this general extenſion of the laws and cuſtoms of Canada in all matters relative to property and civil *rights* *. By the laws and cuſtoms of Canada, the governor was intruſted with blank lettres de cachet, which he might fill up at his diſcretion, and commit the party, whoſe name he inſerted, to priſon during pleaſure. By this clauſe of the act then a king of England may give blank lettres de cachet to his governor, and his governor may make the ſame uſe of them; for if his majeſty's Canadian ſubjects are to be governed by the ancient laws and cuſtoms

* See the examination of Mr. Maſeres in the Parliamentary Debates, Vol. IX. p. 317, &c.—Though this book is of no authority, and in many places faulty, yet the accounts of this, and ſome other examinations, ſeemed to be pretty accurately taken.

of

of Canada: if this mode of iſſuing lettres de cachet be among thoſe ancient laws and cuſtoms, how can it be proved illegal in the king to iſſue them, or in the governor to apply them? Or what puniſhment can you inflict on the miniſter who ſhould adviſe the king to exerciſe, or on the governor who ſhould actually exerciſe, a power which parliament thus declares to be legal? Or what remedy could a ſubject, injured by a wanton exerciſe of that power, obtain in the courts of Canada? Perſonal liberty is a *civil* right.—The laws of Canada are to provide the remedy againſt a civil wrong. If they give no remedy, no remedy is to be had. And it is, I ſuppoſe, out of doubt, that the laws of Canada provided no remedy againſt this abuſe of power in a governor.

It was therefore inſinuated by the very reſpectable witneſs, who during the courſe of his examination urged theſe arguments, that a clauſe ſhould be inſerted granting the benefit of the Habeas Corpus Act to

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his majeſty's ſubjects in Canada. The clauſe however was *not* inſerted, becauſe it was ſaid, that it was not probable that lettres de cachet ſhould ever be made uſe of. A reaſon, which if it has any weight, would operate to the tearing up all the fences ſet about our liberty *.

The introduction, or rather confirmation of the criminal law of England, is certainly one of the moſt laudable parts of the act; the reaſons aſſigned for it are ſuch as do honour to the legiſlature; but there is an inaccuracy, ſhall I call it, or a fallacy, which perhaps eſcaped the legiſla-

* In criminal proſecutions, I take it for granted the Canadians are entitled to the benefit of this act: but this does not juſtify the author of the Appeal in calling "arguments iſſuing from the idea of the "non-extenſion of the writ of Habeas Corpus, mere "moonſhine," p. 34. He is wonderfully miſtaken when he ſuppoſes, that "the liberty of the ſub-"ject" is not concerned in civil actions. Or that in civil actions "the crown may not gain an oppor-"tunity of interfering to the oppreſſion of the ſub-"ject." Ibid. p. 33.

ture itſelf. What are excluſively the objects of the criminal law in England? —This queſtion perhaps did not occur to the framers of the act; if it had, I perſuade myſelf the benefits intended by this proviſion would have been better ſecured than they are. All crimes are objects of the criminal law. So it may be ſaid,—but what are crimes in the eye of the law? —Many actions may be conſidered, at the option of the plaintiff, as public or as private wrongs, as crimes or as civil injuries. The ſame actions therefore may be proceeded againſt in different courts, be tried by different laws, juſt as he pleaſes; ſo that the proviſion ſhrinks to this. If you proſecute another criminally, you ſhall do it in the method preſcribed by the criminal law of England. As "to the deſcrip-"tion and quality of the offence," the Engliſh law is no farther a rule than as it may be alledged to prevent a greater degree of criminality being attributed to any act, for which a man is proceeded againſt

criminally,

criminally, than the criminal law of England attributes to it. Manflaughter, for inftance, fhall not be called murther, nor fhall mifprifion of treafon fwell into treafon.

But to have made this claufe as beneficial to the fubject as it feems probable the legiflature intended to make it, the act fhould have defined what actions were to be confidered as *private*, what as *public* wrongs; but no fuch definition is there. See, therefore, how the cafe ftands now: a Canadian noble takes it into his head to attempt to feduce the wife, or the daughter of a peafant, the peafant comes in, hears the perfuafive tongue urging his wife or daughter to difhonour; fired with refentment, he beftows on the culprit the chaftifement he deferves. What is the noble to do? If he indicts him for an affault, fuch is the lenity of the Englifh law, fuch are the prejudices of a jury, that the man will be let off without any punifhment, or at moft for a trifling fine, or a fhort imprifonment.

prisonment. The noble feels that his dignity will be safer in the hands of a Canadian judge, than of a plebeian jury; he, therefore, rejects the mode of indictment as for a public wrong, and brings an action as for a civil injury. An Englishman takes it in his head to write against one of the legislative council that undefinable thing called a *libel*. If the Englishman be indicted for a crime, a jury may perhaps find the supposed libel to be no libel; or at worst will send him for a short time to prison. No, says the counsellor, this Canaille of a jury have not the fine feelings of honour.—I will sue the man for damages: that way I can throw him into prison for life.

But the most exceptionable part of the act, that which I conceive it impossible to defend, that which destroys, or at least may be used to destroy, all the beneficial provisions which precede it, is the constitution of the legislative council.

The majority of ſeventeen men, in whom no earthly qualification is required, but that they be reſident in the province of Quebec; who, for ought appears by this act, may be men of no property, no principles, no knowledge; to be named by the crown, removeable by the crown, are intruſted with the important buſineſs "of "making ordinances for the peace, wel- "fare, and good government of the pro- "vince."—

The reſtrictions, under which they are to exerciſe this extenſive authority, and which the act calls "proper reſtrictions," are only theſe: they cannot impoſe taxes, except for local œconomical purpoſes: they muſt tranſmit their ordinances for the approbation of the king in council: they cannot indeed during the interval between the time of tranſmitting them, and that of their receiving the royal aſſent, enforce any ordinance which inflicts a higher penalty than a *fine*, or impriſonment for three months: but the fine is unlimited;

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ſo that they may paſs ordinances which may effectually ruin every man who is obnoxious to them.

And to every other purpoſe this very reſpectable council has an abſolute power. It has the power of altering, under pretence of amending, the civil law: it has the power of altering, under the pretence of amending, the criminal law. The amendment of the civil law was an undertaking beyond the reach of the wiſdom of a Britiſh parliament; but is only a competent object of theſe heaven-born legiſlators. The communication of the criminal law of England was from experience, found to be very beneficial and advantageous: why then ſhould the power of *amending* it be intruſted to ſuch a body as this? A reaſon has been ſuggeſted, which I would not ſuppoſe to be the true one, though I may venture to repeat it: ſhould a man (it is ſaid) be obnoxious to his excellency the governor, he has only to ſummon his devoted council of nine (for a majority of this

majority is a competent number); a new mode of procedure, a new form of trial will be appointed, by way of "alteration "and amendment;" and the culprit will hear no more of the certainty, and lenity, of the criminal law of England.

Such then is the tenure by which the Canadians hold the blessing conveyed to them by this act. If the whole province does but furnish nine men of bad principles—and where is the province that will not?—the governor has only to recommend them to the crown as fit persons to be of the legislative council, and the Canadians may be legally stript of every right, every blessing they enjoy. Ten men would have saved the city with the odious name: nine only are enough to damn Quebec.

PLAN

PLAN OF RECONCILIATION.

GREAT outcries have been raiſed againſt the tyranny and violence with which the laſt parliament is alledged to have proceeded againſt the Americans. The very reverſe appears to have been the caſe; for ſix whole ſeſſions they ſlept over the buſineſs; it was not till the laſt ſeſſions that they awoke. If, when rouſed at laſt from that long lethargy, they did leſs, or acquitted themſelves worſe than they might have done, no ſmall ſhare of blame perhaps is due to that party which exerted all its force in obſtructing what was propoſed, without offering any thing of its own.

The truth ſeems to be, that parliament is more to be blamed for what it left *undone*, than for what it did; for having left things at the end of near ſeven years

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in the very ſame unſettled ſtate in which it found them, rather than for having done what is ſcarce poſſible, put them into a worſe.

A propoſition once avowed by a quondam houſe of commons is, "that it is a "very unſafe thing, in any ſettled govern-"ment, to argue the reaſons of the funda-"mental conſtitutions, for that can tend "to nothing that is profitable to the "whole *."

A maxim of the very ſtamp of thoſe, behind which all bigots either in religion or politics intrench themſelves; as if a government could be ſaid to be ſettled, or at leaſt well ſettled, that could not bear to have the reaſons of its eſtabliſhments enquired into. One cannot but be ſorry at obſerving a parliament in this more enlightened age actuated by the ſame fear of

* See Com. Journ. vol. ix. p. 243.

weaken-

weakening the fundamentals, if they endeavoured to explain them.

It appeared by all the proceedings of the Americans, by the votes of their assemblies, by the books in greateſt repute among them, that the Americans had no preciſe ideas of the relation in which they ſtand to the mother country. Theſe accounts were confirmed by repeated advices from the ſervants of the crown; yet till that relation was fixed, nothing permanent could be done. Inſtead of ſetting about this buſineſs, what was the parliament employed about for ſix long years? They were at the pains of giving their ſanction to a power, which by their own ſhewing needed no ſuch thing, and which after it had that ſanction, it was thought, and that without any change of circumſtances, not ſafe, or not prudent to exert. To threaten a puniſhment, and that of the firſt magnitude, which you dare not inflict, is wanting only to graſp all the

odium of ſeverity, without one of its advantages.

At the time theſe impracticable threats were thrown out, aſſurances of conceſſions in ſome points were given in a manner, that even a leſs haughty people might have attributed to fear. Conceſſions were actually made, by which the greater part of the profits of the obnoxious meaſures were abandoned, at the ſame time that all the odium of them was retained. A redreſs of grievances was promiſed, which, when the time came, they could not bear to look into: parliament ſeeming all along as much afraid of entering into the queſtion of American grievances, or of its own rights, as a zealous catholic is afraid of examining the foundation of the power of the church. What was the conſequence? Whilſt parliament was ſo cautious of reaſoning about fundamental conſtitutions, the Americans reaſoned ſo long, and ſo wildly, that at length they found out,

there

there were no common fundamentals between us at all; and as parliament had crudely asserted its own supreme power over the colonies in all cases, they came at last as fully and flatly to deny it *.

Then it was indeed that parliament awoke, and for a time put on the appearance at least of vigour. But from the review we have taken of the acts of this last session of it, two only appear to have been intended as parts of a regular plan, or permanent system; the other two are mere temporary expedients, set on foot upon the spur of necessity, to check rather than remedy sudden and unexpected evils.

In neither of these temporary laws however, does it appear that parliament has exerted any unconstitutional powers. The laws indeed have been branded with every ignominious title, but surely they are fully justified by the mischiefs that called

* See Tucker's Fifth Tract, p. 47.

for them; miſchiefs, if not created, yet moſt certainly precipitated by the very men who clamoured againſt the remedies.

As to the two permanent laws, we may upon the whole perhaps, in ſome meaſure excuſe, but we cannot praiſe them: they might be, we muſt ſuppoſe they were well meant; but that is their chief merit. To the deep policy, to the comprehenſive wiſdom of an enlightened legiſlature, their pretences ſurely are but ſlender.

"*C'eſt une choſe bien facile* (ſays ſome "one) *que d'être ſâge apres coup.*" And no doubt when a plan has been tried, and has miſcarried, it is eaſy to deceive ourſelves, and to imagine we ſhould have *foreſeen* the inconveniencies which the experiment only has diſcovered; yet in this caſe it does appear, that the ſcheme of parliament was defective. To repeal a part of an uncommercial regulation, upon motives profeſſedly commercial, and yet to retain the obnoxious principle, without any qualification whatever, could

never

never lay the foundation of a regular permanent ſyſtem.

The foundation of ſuch a ſyſtem could be laid only in a bill of American rights.

This bill ſhould have aſſerted the ſupremacy of the Britiſh parliament, and its power to make laws binding over the colonies—not in the ſtyle of the Rockingham act, " in all caſes whatever."—This the colonies derided at the time as a mere *brutum fulmen*, and have ſince declared to be unconſtitutional. But in all caſes, except taxation, abſolutely and unconditionally.

With reſpect to taxation, it had been urged in the laſt parliament on behalf of the Americans, " that parliament had no " right to lay *internal* taxes on them, be- " cauſe they have no repreſentatives in " parliament; but that it had a right to " impoſe port duties, or *external* taxes, " becauſe ſuch duties are for the regula- " tion of trade." The difference between taxes external and internal was, at the

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ſame time declared to be this, that the direct object of the former claſs was to regulate trade, and that any revenue ariſing therefrom was incidental; that the profeſſed object of the other was to raiſe a revenue, and the regulation of trade ſerved only as the mode of getting at the revenue.

The Americans admitted the diſtinction, and hence concluded, that *port* duties impoſed for the raiſing of a revenue were *internal* taxes: that port duties, the produce of which was to be paid into the exchequer, were impoſed for the purpoſe of raiſing a revenue. The produce of all port duties in America, they added, was ordered to be paid into the exchequer, therefore all port duties were internal taxes *.

Nay, they went farther; if inſtead of impoſing port duties, another mode of taxation had been adopted; if the duties

* See Bernard's Letters, p. 55, 56.

had

had been made payable on the exportation of the commodities from England, and not on their importation into America, they declared it would be all one: this mode they declared would be equally burthenſome on their purſes, and equally deſtructive of their rights *.

In theſe arguments, allowing them their utmoſt force, there was nothing from whence it could fairly be inferred that the Americans ought not to be taxed at all, nor even that parliament ought not to have taxed them. All that could be inferred was, that, previouſly to their being taxed, they ought to be put on an equal footing in this reſpect with the other ſubjects of the empire, either by being permitted to ſend repreſentatives, or if that be not practicable, by ſome other mode.

Here then the propoſed bill of rights ſhould have reſpected their opinions, and

* See Farmer's Letters, p. 19.

ſhould

ſhould have put them on the ſame footing as the other ſubjects of the empire.

There were two modes of doing this; the moſt obvious and natural, and which to a man deeply learned in American affairs *, ſeems to have appeared preferable to any other that can be propoſed, is that juſt mentioned. An objection indeed has been made to it on account of the number which the houſe muſt then conſiſt of, in order for that of the new members to bear a due proportion to that of the old. But that proportion need not have been large, if the idea of a repreſentative were taken from the deſcription of his function, given in an ancient ſtatute, the Durham act, in which he is deſcribed as a " man ſent to " repreſent the condition of the country." This function, a number comparatively ſmall would have been ſufficient to diſcharge, nor need it mount by any means to Dr. Tucker's " goodly number of

* See Governor Bernard's Letters, paſſim.

" two

"two thouſand ſeven hundred and nine-
"ty;" an aſſembly whereof "the decency,
"order, wiſdom, and gravity," appear-
ed ſo tempting an object of ridicule to the
worthy dean *.

If this plan, from local circumſtances, or from mutual diſinclination had been found inadmiſſible, there ſeemed yet another, which ſubſtituted in the room of the former, or combined with it, might have compaſſed the end in view.

If the Americans could not, or would not ſend repreſentatives to the Britiſh parliament, and yet if the good of the whole empire required that parliament ſhould aſſeſs the portion they were to pay of the public expence, ſuch a mode might have been preſcribed to the exerciſe of this right, as would have ſecured in the article of taxes, *all* the beneficial purpoſes of repreſentation. Parliament, though it ſhould be thought not to have

* See his Four Tracts, p. 107.

found,

found, might, however, have created the ſame relation between itſelf and the colonies, as between itſelf and the inhabitants of Great Britain.

To communicate, and for ever to ſecure to the Americans all the bleſſings of the Britiſh conſtitution, ſo far as their local circumſtances would permit, the bill might have laid down certain fundamental rules, which ſhould for ever be obſerved in the laying of impoſts or duties.

Theſe duties are laid either upon goods imported from America into Great Britain, or on goods exported from Great Britain to America, or on goods tranſported from one colony to another, or on goods exported or imported to or from places out of the king's dominions.

As to the firſt claſs of goods, thoſe imported from America into Great Britain, parliament might have left itſelf at full liberty to impoſe what duties it pleaſed on the importation of them here in England. Whatever duties were thus impoſ-

ed, would not have been impoſed on the Americans who exported, but on the Britiſh ſubjects who conſumed them.

As to the ſecond claſs, namely, goods exported from Great Britain to America, the bill might have provided, that no other duty ſhould be laid on goods of this claſs, than on the ſame goods conſumed in Great Britain.

As to the third and fourth claſs, goods tranſported from one colony to another, and goods exported or imported to or from places out of the king's dominions; parliament muſt have reſerved the full rights of impoſing ſuch duties as it ſaw fit, becauſe that right is eſſential to the regulation of trade.

That theſe impoſts however might not be called internal taxes, the bill might have provided, that the monies ariſing from theſe duties ſhould not be paid into the exchequer *here*, but to treaſurers to be appointed by the crown, and accountable to the provincial legiſ-

latures there; the ſums to be by the ſame legiſlatures appropriated to the reſpective ſervices of American government.

Out of theſe ſums, and ſuch *taxes* as the provincial legiſlatures ſhould impoſe, an adequate proviſion ſhould have been made for the adminiſtration of juſtice, and the ſupport of civil government. Adequate and permanent ſalaries ſhould have been fixed on the governors and judges, and ſuch other officers appointed by the crown as have permanent ſalaries in England. The quantum of the ſalaries to have borne a certain proportion to the ſalaries paid to ſimilar officers in England. Neither theſe, nor any other offices, to be given to non-reſidents.

Theſe expences regard only their own internal government; but the colonies are to be conſidered yet in another light; as members of the empire.

Conſidering them in this light, they are benefited by the miſſion, and reception of foreign miniſters; by the troops kept

up for the general defence, by the general fund of warlike ſtores, and, above all, by the navy. If they receive their ſhare of the benefit ariſing from theſe eſtabliſhments, it is but juſt they ſhould pay their ſhare of the expences that are to ſupport them. Parliament therefore has the ſame right of demanding that the Americans ſhould contribute their proportion, as that *we* ſhould contribute ours.

The only difficulty here would have been, to prevent the parliament from *exceeding* that proportion. And ſurely this difficulty is not of ſuch a nature but that it might have been ſurmounted. Any given tax or ſum to be raiſed in England might have been taken as the ſtandard. The land-tax would have been the propereſt ſtandard, becauſe that is a tax, in which of all others it is the moſt difficult for a miniſter to ſtretch beyond a certain point.

A certain proportion ſhould have been fixed, ſo that when Great Britain raiſed

any given ſum by a land-tax, the colonies ſhould raiſe each a proportionate ſum: the mode of levying this tax to be left entirely to the provincial legiſlatures; the appropriation of it to be left to parliament.

By this mode the ſame relation would have been created between the houſe of commons, and the colonies, as between the houſe of commons and the inhabitants of Great Britain. The houſe of commons could not tax *them* any more than they can *us*, without at the ſame time taxing themſelves.

The houſe of commons might with the ſame propriety have *given and granted* their money as they now do ours. Every man of landed eſtates in England would have been as ſtrenuous a guardian of their properties as of his own. Both muſt have ſtood, or fallen together.

If at the beginning of the laſt parliament the matter of taxation had been fixed upon this footing—and ſurely this would have

have been a conſtitutional footing to have fixed it on—the recognition of the ſupreme authority of parliament in all other points, would have met with little difficulty.

The neceſſary alterations in their internal conſtitution, and in their commercial ſyſtem, might then have been ſubmitted to with leſs difficulty. At the ſame time, to put an end to that patch-work, which ſo diſgraces our law in general: a total repeal of all the laws relating to the colonies might have been effected; and the thirteenth parliament might have had the glory of forming one comprehenſive connected code, ſuited to the ſituation of things ſubſiſting.

That we muſt either give up the colonies, or ſtrike out ſome method of reconciling Britiſh ſuperiority with American "liberty," ſeems to be allowed on all hands. In the mean time thoſe who tell us, that "both may yet be preſerved;" who promiſe to make this "the great

"object

"object of their care*," have yet offered nothing consistent, nothing practicable: nothing beyond the plan which the colonies have already rejected as unconstitutional. In such a moment a man of far less abilities may be excused if he throws in his mite. The plan, of which a rude outline is here sketched out, appears to me at least to have been an eligible plan: indeed, for aught I can see, the only eligible one which the case admits of. I think it was not then, I hope it is not now impossible.

* See Mr. Burke's Speech at Bristol after his Election.

END OF THE FIRST VOLUME.

ERRATA.

Page [illegible], l. 4, *for* Charles I. *read* James [illegible].—P. 117, l. 16, *for* this tax, *read* there.—P. 156, l. 14, *for* independent, *read* dependent.—P. 176, l. 16, *for* the word, *read* by the word.—P. 299, l. 17, *for* considering, *read* consider.—P. 313, l. 5, *for* all points, *read* all other points.—P. 336, l. 4, *for* equal, *read* equally.—P. 385, l. 9, *for* be conviction, *read* be no conviction.—P. 394, l. 14, *for* by, *read* to.—P. 471, l. 7, *for* transfer of the laws, *read* transfer of property with the laws.—P. 485, line last, *for* wanting only, *read* wantonly.

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