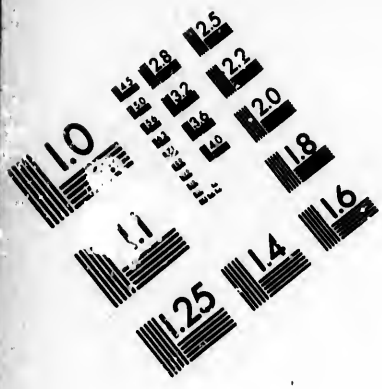

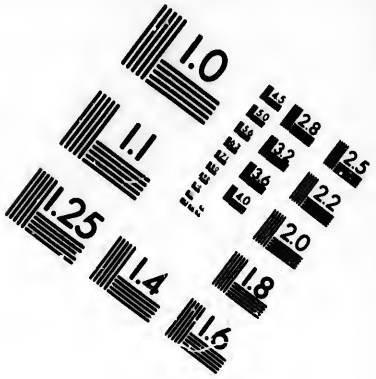

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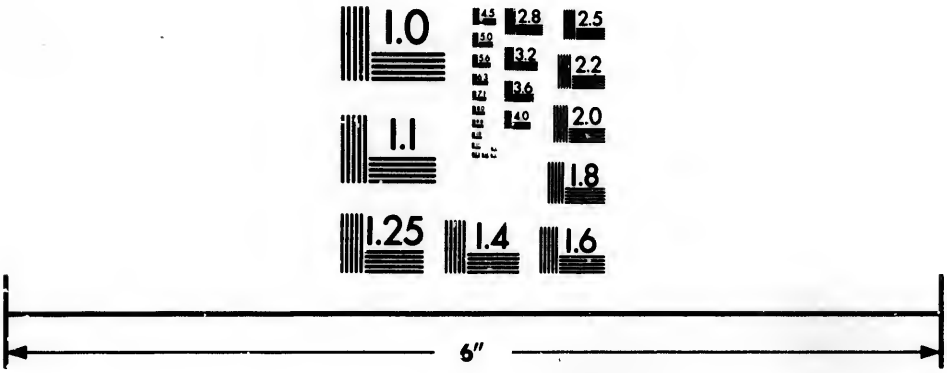

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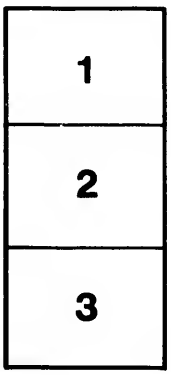

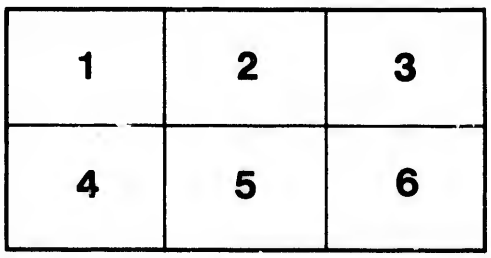

THE CONTROUL

OF THE

PRIVY COUNCIL

OVER THE

ADMINISTRATION OF AFFAIRS

At Home;

IN THE COLONIES; AND IN INDIA.

"An appeal lies, of common right, to the superior."—*Privy Council Case, A. D.* 1706, *from Lord King's MSS., Appendix below No.* 2.

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JAMES RIDGWAY, PICCADILLY;

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THE CONTROUL

OF THE

PRIVY COUNCIL,

&c. &c. &c.

The purpose of this Essay is to shew, that the constitution intends to guard our public administration against abuses, in all its departments, by a direct responsibility to the Crown, advised by the Privy Council; and it is conceived, that this ancient theory, although now almost lost sight of in practice, may be most advantageously worked out by a slight amendment of the existing law.

At all times, efforts have been made to get rid of this responsibility; but of late years, such efforts have been unusually successful, in more than ever rendering particular departments independent of all controul, so as practically to exclude the ultimate superintendence of Parliament, and especially the more immediate check of the Privy Council as a permanent board of appeal, through petitions to the Crown. The manner in which this has been effected, is to require the consent of the department complained of, as a condition precedent to the hearing of the appellant at the Council Board; the petition to the Crown for justice having become almost a mere form.

Hence it is laid down in a book of a semi-official character, that "the far greater portion of the duties performed in the office of a minister, are performed under no effective responsibility."*

To this statement of an indisputable fact, the author adds the opinion, that the absence of such responsibility is *unavoidable*, which assumes the whole case, and if it were true, would pervert the noblest objects of all good political constitutions.

It is, however, maintained, that there is no ground in our history for such assumption; as besides indictments before a jury, and parliamentary impeachments, to which public officers of every grade are liable, the Privy Council offers a jurisdiction to which appeals may be carried with the greatest advantage to the public service; so that all members of the public administration may be subjected to good superintendence, and in turn obtain suitable protection.

The chief object of this Essay is, to shew the means of redress provided by the constitution in all such cases; but since the neglect of those means has led to extreme abuses in the mode of APPOINTMENTS to OFFICE, and to a very great perversion of the DUTIES OF PUBLIC OFFICERS, the enquiry must be begun with these two heads, as preliminary to its chief object.

The right of *aliens* to justice from the Crown against its officers, comes under this enquiry equally with that of British subjects; so that the complaints of every prince and tribe injured by our numerous commanders and governors, in all quarters of the globe, will here find redress, and by obtaining it, they will be induced to lay aside their "wild justice of revenge." Thus the natives of New Zealand will

* *The Statesman*, by HENRY TAYLOR, Esq., "Author of "Philip Van Artevelde," London, 1836, p. 151.

appeal to England for their lands, instead of hewing down the police officers of government, and the agents of a private company, in the south, and instead of disregarding the interposition of a bishop, to the mutual slaughter of the tribes in the north. Thus by appeals to London, the princes of India will anticipate the intrigues of British governors, and the march of British troops. Thus the Caffre* of the Cape will make the like appeal to the Crown, instead of pouring his devastating hordes into a peaceful colony. And so every clime will send us its patient expectants of justice, instead of its news of fresh slaughter. The fact of such appeals having been already made by coloured men, when white governments would *hear*,† renders it probable that an open tribunal will be thronged by willing suitors of these classes.

Anything approaching to despotism is so odious in principle, as well as so mischievous in its consequences, that the enquiry would have been pursued with feelings of disappointment and repugnance, if it had led to the discovery of legal foundations for the amount of despotism actually introduced into certain parts of our administration. The task is more agreeable, and far easier to build up improvements upon an ancient basis of substantially good, and free laws, than to attack a system which, however abominable, might have gained a strong sanction from a venerable origin. Happily, the despotism of the public offices at home, and that of our Colonial and Indian administrations, which it is meant to combat, are both comparative novelties; and they have attained their present rankness by a concurrence of circumstances not likely to be lasting.

* Before the last invasion, which cost us half a million sterling, a Caffre chief wished to bring his land case to London on appeal. He would have sold cattle to pay his expenses, but the uncertainty of his obtaining a *hearing* caused his friends at the colony to dissuade the step.

† The last great case before the Privy Council was for the Mohicans. It was hung up 70 years,—proving, at least, the Indians' perseverance.

The attempt above noticed, to set up irresponsibility in the public offices as a necessity, must signally fail, as soon as the case is understood; and to be understood, it needs but be thought about. Hitherto, the subject has been so little reflected upon, that the author of the "Statesman" asserts,—"no writer has treated systematically of *administrative* government as it ought to be exercised in a free state." Our records, however, abound in good materials on the subject; and to effect a sober reform, we have but to lead public attention to the plain principles which the constitution has prescribed; 1st, as to the appointments to public offices; 2nd, as to the obligations of public officers; and 3rd, as to the settlement of all disputes respecting their conduct, and of all claims respecting the public business.

1st.—The Appointments to Public Offices.—This first step in the whole case, may be speedily disposed of. The law upon the subject is ancient, and clear, although the practice, in defiance of the law, is notorious. The present Governor of Canada has lately, in a colonial controversy, stated the law truly. It is character alone, i. e. suitableness for the post, that is to settle the choice of candidates for employment,—a rule expressly declared by the statute of 12th of Richard II., which was warmly eulogised by Sir Edward Coke, and vindicated in Parliament by a fine of £30,000, when infringed by Lord Chancellor Macclesfield. The words of the statute are remarkable; by it, the chancellor and others are directed "not to ordain any officers of the king for any gift or brocage, favour or affection; and none which pursueth by himself, or others, privily or openly, shall be put in the same office, or in any other; but all such officers are to be made of the best and most lawful men, and sufficient to their estimation and knowledge."

This is the statute of which Sir Edward Coke said, that it deserved to be printed in letters of gold, and the due execution of it would procure immortal honour to a minister. It was not passed without strong efforts in the reign of Richard II. Two years previously, a special commission had enquired into the abuse of officers, or ministers of the crown, made by *brocage*—the term of law applied to the practice meant to be suppressed by this statute. A year after it was passed, general rules were drawn up for the members of the Council, among which one provided, that they should see to the due observance of this good law.* In the next reign, the Commons very early requested that its execution should be guaranteed by fines and imprisonment of the offending parties.†

More recent statutes have been passed to enforce this principle, which, indeed, belongs to the old common law. But some new legislative sanctions are wanted for its due observance, such as regulations for the announcement of vacancies in office, and the more formal examination of the candidates to fill them.

Daily advertisements in the newspapers, offering money for places under government, and the success of "A Guide to Government Situations," explaining all the machinery by which they are habitually disposed of, prove that the illegal practice condemned by the statute of Richard II., is fast attaining a growth which demands rigorous suppression. The present practice and its results are traced in Mr. Taylor's "Statesman," chap. xxix., "as to the administration of PATRONAGE,"—a term in itself sufficiently designating the illegality of the practice. "The engrossing," says Mr. Taylor, "of a considerable quantity of patronage into one

* "Proceedings and Ordinances of the Privy Council," vol. i., p. 5, and p. 18 A.

† *Ibid.* vol. iii., p. 433.

disposing hand has this advantage; that after the administrator shall have satisfied any private ends which he may have at heart with a portion of the patronage, he will dispose of the rest with reference to public interests. Whereas, if the patronage be comminuted and placed in several hands, each of the patrons may have no more to dispose of than is required to serve his private purposes; or, at all events, after feeding the private purposes of so many patrons, a smaller proportion will be left to be bestowed according to the dictates of public spirit. For a like reason, the minister who has been long in office, will be the most likely to dispense his patronage properly; for the circle of his private friends is saturated."

* * * * *

"A minister should adopt it as a rule, subject to a few exceptions, that he is to make small account of testimonials and recommendations, unless subjected to severe scrutiny, and supported by proved facts. Men who are scrupulously conscientious in other things, will be often not at all so in their *kindnesses*. Such men, from motives of compassion, charity, good-will, have sometimes given birth to results which the slightest exercise of common sense might have taught them to foresee, and which, if foreseen, might have alarmed the conscience of a buccaneer. I have known acts of kindness done by excellent persons, in the way of recommendation, to which a tissue of evil passions, sufferings, cruelty, and bloodshed have been directly traceable; and these consequences were no other than might have been distinctly anticipated."—(p. 217—221.)

Nothing but the positive evidence of the unimpeachable witness, Mr. Taylor, of the Colonial Office, would make this state of things credible.

2nd.—The Duties of Public Officers.—By whatever means public offices may be acquired, they all

impose certain duties, and bestow certain rights upon the holders. Non-feasance and mis-feasance of duty, are punishable; meritorious behaviour is a title to reward, and to continued employment. Even in offices held at the pleasure of the Crown, the law will not presume that this tenure is subject to caprice; and whatever contravenes these general principles is against law, whether it comes by intrigue, or by positive injustice, or by refusal to be just.

These remarks would have been mere truisms, if a very different code had not been formally set up of late as the true rule, and if daily practice, in conformity with this new system, did not prove, that the genuine principles of the constitution have been formally laid aside.

"The business of office," says the author of the book already quoted, 'The Statesman,' "may be reduced within a very manageable compass, without creating public scandal. By evading decisions wherever they can be evaded; by shifting them on other departments, or authorities, where, by any possibility, they can be shifted; by giving decisions upon superficial examinations—categorically, so as not to expose the superficiality in propounding the reasons; by deferring questions till, as Lord Bacon says, they resolve themselves; by undertaking nothing for the public good which the public voice does not call for; by conciliating loud and energetic individuals at the expense of such public interests as are dumb, or do not attract attention; by sacrificing everywhere what is feeble and obscure to what is influential and cognizable; by such means and shifts as these, the Secretary of State may reduce his business within his powers, and perhaps obtain for himself the most valuable of all reputations in this line of life, that of a *safe* man; and if his business, even thus reduced, strains his power and his industry therein, whatever may be said of the theory, the *man* may be without reproach—without

other reproach, at least, than that which belongs to men placing themselves in a way to have their *understandings abused and debased, their sense of justice corrupted, and their public spirit and appreciation of public objects undermined.*"—p. 151.

This picture of the position of the Stanleys, the Russells, the Grahams, and the Peels of our day, is drawn by a subaltern belonging to their body, who asserts that his facts have been got from "*experience, not meditative invention.*"—Preface, p. xii.

The same book furnishes equally unreserved views of what the author holds to be the duty of public officers of inferior rank, and these views might be cited on many heads, not for approval, but for a warning The direct contrary of that which Mr. Taylor thus proposes for the guidance of a public officer, is clearly the course fit to be followed by honest men, and the specimen of the official morality of our day, furnished by this gentleman's chapter "*On the Art of Rising,*" will probably be held sufficient to prove the necessity of an immediate return to better principles.

Such exhibitions of the conduct of our ministers, on the one hand, and of the habits of our subordinate official men, on the other, are surely most melancholy; but a more urgent abuse exists in the manner in which ministers now dispose of differences arising in the course of public service, on which the same author, in a chapter on the "*Reform of the Executive,*" page 153, calls loudly for a change.

"Turning, (I would almost say, revolting,)" he exclaims, "from this to another view of what these duties are, and of the manner in which they ought to be performed, I would, in the first place, earnestly insist upon this,—that in all cases concerning points of conduct and quarrels of subordinate officers, in all cases of individual claims upon the

public, and public claims upon individuals, in short, in all cases (and such commonly constitute the bulk of a minister's unpolitical business) wherein the minister is called upon to deliver a quasi-judicial decision, he should, on no consideration, permit himself to pronounce such decision unaccompanied by a detailed statement of all the material facts and reasons upon which his judgment proceeds. I know well the inconveniences of this course; I know that authority is most imposing without reason alleged; I know that the reasons will rarely satisfy, and will sometimes tend to irritate, the losing party, who would be better content to think himself overborne than convicted; I am aware that the minister may be sometimes, by this course, inevitably drawn into protracted argumentation with parties whose whole time and understanding is devoted to getting advantages over him: and with a full appreciation of these difficulties, I am still of opinion, that for the sake of justice, they ought to be encountered and dealt with. One who delivers awards from which there is no appeal, for which no one can call him to account, (and such, as has been said, is practically a minister's exemption,) if he do not subject himself to this discipline, if he do not render himself amenable to confutation, will inevitably contract careless and precipitate habits of judgment; and the case which is not to be openly expounded will seldom be searchingly investigated.—(p. 153-5.)

3rd. — SETTLEMENT OF OFFICIAL DISPUTES AND CLAIMS.—This exposure of the existing practice leads to the third topic for which chiefly this Essay is written, namely, the way of settling all disputes concerning public functionaries, and of all claims respecting the business of the Crown.

For these things, it is submitted, recourse ought to be had to the Privy Council, in which these islands possess a tribunal of which a few great statesmen only

have hitherto correctly estimated the value. Rich in historical recollections, and intimately connected with the traditions of the monarchy, its annals furnish inexhaustible illustrations of the progress of our government, and of the weightiest affairs of the state. The Privy Council has, moreover, this peculiarity, that whatever the form of the supreme governments, its special functions have always remained, and probably will ever continue essentially the same. Cromwell's council of state was occupied with public business quite as important as the Privy Councils of King Edward, King Charles, and King George; and the Deputies of Ireland, the Lords Marchers of Wales, and the Governors of Calais and Guienne of former days, were as strictly amenable to this high court of appeal as it is open *by law*, not practice, for the redress of official wrongs in Canada, in Africa, or in India; or of the equally frequent wrongs done by the authorities at home, for which the ordinary courts afford no remedy.

Various circumstances have contributed to bring this tribunal into undeserved neglect. At one period its excesses in the department which constituted the *Star Chamber*, rendered its general jurisdiction hateful. At a somewhat later period, jealousy on the part of the ordinary administration of the state, supported by party feuds, impeded Lord Keeper Somers in his earnest and masterly endeavours to mould it effectually to its true and good purposes. Later still, Mr. Burke, in preparing his great economical reform, was misled by a sally of wit, and, perhaps, by his own position as a colonial agent, to undervalue that portion of the Privy Council which formed the old Board of Plantations. He, therefore, destroyed what only required some slight amendment to become a most useful department. In our own time, subordinate official usurpations, tolerated and fostered by a long inattention of

the Secretaries of State to their duties, have almost completely ousted the Privy Council in practice, of its noblest prerogative—of sharing the glorious attribute of the poet's men of "strong authority"—*the looking into the blots and stains of right.*•

But during many years, the proceedings of the Privy Council have been subjected to rigorous and not unprofitable strictures. So long ago as in 1827, the House of Commons printed papers which showed the character of that tribunal in judicial appeals;† and Sir James Graham soon afterwards made a vehement exposition of its political character. Then came the Privy Council Act of 1833. But these and other attempts to improve this tribunal did little to remove its main defect—its inaccessibility. The treatises published upon the subject in the last twenty years, scarcely open this leading circumstance, and whilst they add nothing to the old books of Prynne, Hale, Hargrave, and others, respecting various branches of the Privy Council, they leave its extensive practice of the last century and a-half, almost untouched. The list of a few such treatises in the Note, will, however, be useful in assisting the enquiry.‡

The Act of 1833, indeed, made a great change as to one branch of this jurisdiction, namely, that which concerned appeals from the judgments of Colonial and Indian Courts of Law and Equity. The change consisted in giving to

• Shakspeare's King John, Act ii., Scene 2.

† Appeals from the Colonies, House of Commons' Papers, 1827, No. 428.

‡ Millar on the Unsettled State of the Law—Article in the Jurist, 1832, by Mr. Bannister—Mr. Burge's Work on Colonial Law—Clarke on Colonial Laws—Proceedings of the Privy Council, by Sir H. Nicolas, 7 vols.—Introductions to the Publications of the Record Commissioners—Sir F. Palgrave on the Aula Regis—Note in page 149 of Knapp's Report (2nd vol.) of the Case of the Deccan Prize Money—Macqueen's Treatise on the Practice of the House of Lords—Knapp and Moore's Reports of Cases before the Privy Council—Mr. Anstey's Papers on the Constitution, in the Portfolio.

petitioners for justice a parliamentary guarantee for the enjoyment of a *peremptory* right to be heard, in the place of the *precarious* right before allowed, in a manner altogether inconsistent with the first principles of justice. The Act of 1833, however, with its subsequent amendments, left the general jurisdiction of the Council upon so unsatisfactory a basis, that the occasion of Lord Brougham's Bill has been most properly taken for the purpose of a full examination of *all* the matters within the range of that jurisdiction. The subject has a far more extensive range than is obvious at first sight: involving, as it certainly does, extensively, the good administration of all our affairs at home and abroad, and especially including the affairs of India and the Colonies independently of their legal proceedings.

By the 4th section of the Act of 1833, provision was made for the reference of other matters, besides appeals from the Colonial and Indian Courts, to the Judicial Committee of the Privy Council, formed by this act. But the section rashly confirmed to the Crown the *discretion* of allowing such references, *or not*, as before practised, leaving the suitor only a sort of eleemosynary justice, which has not quite gained the character of pure charity, by blessing at once the bestower and its object.

By the 9th section of Lord Brougham's Bill, this error is sought to be corrected, in a way which, it is to be feared, must accumulate evil upon evil; and that, too, without introducing one really substantial guarantee for the administration of justice. This section is in these words:—

"And be it enacted, That, as often as either House of Parliament shall think fit to refer any Matter or Thing for Inquiry before the said Judicial Committee, it shall be lawful for such House of Parliament to present an Address to Her Majesty, setting forth the Subject Matter so directed to be referred, praying

Her Majesty to refer such Matter to the Judicial Committee, and being by Her Majesty referred to the said Judicial Committee shall be inquired of and tried according to the Course of the said Committee, and according to any Rules and Regulations made or under the Power hereafter contained to be made by such Committee, and its Reports on being made to Her Majesty shall be laid before the House of Parliament which had presented the Address aforesaid, and be then and there dealt with as to the said House shall seem to meet."

The address here contemplated is lawful now, and to bring back a judgment of the council for special confirmation, or correction in Parliament, seems to be a somewhat circuitous mode of settling claims upon the Crown, to say nothing of its being already competent to Parliament to re-examine any decision which sins against the fundamentals of justice. Surely the production of this section demonstrates the want of enquiry upon the whole jurisdiction of the Privy Council.

How this great court has happened to fail of attaining the completely deliberative character, which belongs by law to all our institutions, and how, on the contrary, in the place of that salutary control which the constitution has vested in it over our whole administration, the despotic tendency, which so much mars official proceedings, has also crept into the proceedings of the Privy Council itself, are most important questions. The solution of those questions will tend to stop an abuse now daily guaranteeing impunity to the grossest errors, and the most cruel oppressions; and the very discussion of the subject must tend to improve a tribunal which has no superior in antiquity, and few equals in dignity and in capacity for usefulness.

The progress of the Privy Council to its present condition of being a court of registry for ministerial errors, rather than a tribunal for the redress of wrongs, is very remarkable.

Our judicial institutions, with some exceptions, traceable to a popular original before the Conquest, recognise the Crown as their fountain. The Common Law and Chancery Courts do justice in the name of the Sovereign; and, beyond all doubt, the time was not very remote when the Sovereign actually presided in one or more of them. James the First, a better antiquary than lawyer, was disposed to revive the lost prerogative. Gradually, however, the judges administered the law exclusively of the Sovereign, and *they durst not refuse to* HEAR *any suitor upon any case within their jurisdiction.*

But all matters not within the jurisdiction of the Common Law and Equity Courts remained still in the immediate jurisdiction of the Sovereign. Between the two jurisdictions, however, of the judges, as carved out from the judicial character of the Sovereign, and that of the Crown, which remains undisposed of, there exists the important distinction, that the former *must* hear, the latter *may* not.

The judges are bound to hear a suitor,—not under the penalty of any positive enactment, except in special cases, such as the Habeas Corpus Act,—but by virtue of their duty as representatives of the Crown, and under the ancient principle guaranteed by Magna Charta, and the Coronation Oath, that justice should be denied to no man; and since justice cannot be done without hearing, this foundation of a safe administration of the law is, after a long struggle, firmly established.

But a prodigious mass of cases, equally with the cases before the judges, susceptible of decision upon sound principles of law and equity, do not come within their jurisdiction. All the appeals from the courts of justice in the Colonies and in India; and all the cases of grievance by, or against, officers of the Crown of any rank, and all cases of complaint against the Crown itself, not cognizable by courts of law or equity, are of this class.

The remedy in these cases is by petition to the Sovereign; and the guarantees to justice being done on such petitions are the same injunctions of Magna Charta, and the same Coronation Oath, and the same ancient common law of the land, in which the duty of the judges to hear suitors, and not deny or delay justice, originated. But the struggles which secured our rights, in the one case, have not been equally successful in the other; and the crown habitually declines to hear its suitors.

Enough, however, is recorded concerning the efforts of eminent men to improve the jurisdiction of the Privy Council, and sufficient is, at this moment, doing for that end, to justify an expectation, that this Court also will soon acquire a character worthy of the immense interests under its protection; so that the tribute of honour paid to the similar court of the Roman Emperor, which was, perhaps, its original model, may be correctly applied to it.

In regard to the judgments of the Emperor, "Videmus," says Pliny, "ut provinciarum desideriis, ut singularum etiam civitatum precibus occurrat *nulla in audiendo difficultas,* nulla in respondendo mora. *Adeunt statim,* dimittuntur statim; *tandemque principis fores exclusa legationum turba non obsidet.*"—Pliny's Panegyric upon Trajan.

What a reproach do these simple words cast upon the present administration of the judicial functions still remaining in the British crown! Whilst in order to be heard in the Queen's Bench, or in the Common Pleas, it is enough to take out a writ; and whilst, even in the Court of Chancery, where the form of petitioning remains, a refusal to hear the suitor is out of the question, the most extensive judicial functions of the Crown in the Privy Council have become a mere delusion. If, for example, a crown officer from the Colonies should present a petition to the Queen,

urging gravely, that he has pecuniary claims upon the Government, and that he cannot get justice from the Secretary of State for the Colonies, such petition will not reach the Privy Council at all, unless the minister complained against assent to the hearing of the case.

With such a practice, and daily experience proves, that it does prevail to an extraordinary extent, it is clear that the justice of the Crown rests upon a foundation shown by Mr. Bentham's sagacious denouncement of the intrigues which perpetually mislead ministers, to be most unsatisfactory.

" Les plaintes les plus graves des colons, affoiblies en raison de la distance, sont livrées dans le cabinet du prince aux tournures les plus insidieuses. Les moyens abondent par deguiser au prince les procédés les plus violens sous une apparence de necessité; et les meilleures intentions ne peuvent pas presèrveés les ministres du danger de servir des intérêts particuliers aux depens des intérêts publics."—Bentham, Théorie des Peines et Recompenses.

How little this practice accords with the genuine theory of the constitution, will be readily inferred from a sketch of the old Privy Council as a board of advisers to the Sovereign, concerning cases remediless in the ordinary courts; in which cases, this jurisdiction constitutes the remnant of the once universal authority of the Crown.

" Curia Regis, or the King's Court," says Madox, " sometimes signified the King's Chief, or Sovereign Court of Ordinary Judicature. In ancient records and memorials, written in the times near after the Norman Conquest, frequent mention is made of this *Curia Regis*. At this time, as it seems, there was but one supreme ordinary court of judicature in this realm, properly styled *Curia Regis*, because it was holden in the king's palace, before himself, or his chief justiciers. * * We may con-

sider the king as sovereign, or chief lord of this realm, and the fountain of justice. * * When the king went beyond sea, he was wont to constitute some one, or more, great men to represent him in government, and administration of justice; * * and the king, whilst beyond sea, would sometimes, by his writs *De Ultra Mare*, direct what should be done. * * If the king, when he was present in the realm, and sat in judgment, did not determine all the causes, his justitier, or justiciers, determined the same. If the justitier did not do right, the party might, as I take it, afterwards resort to the king himself."—Madox's Exchequer, vol. i. p. 81—84.

It was to the person of the king that this duty belonged; wherefore, the litigants obtained the royal judgment, even out of the realm—(*ib.* p. 87); and in like manner, causes from beyond sea were habitually brought into England by the parties for adjudication by the crown—(*ib.* p. 92.)* But the sovereign was bound to exercise this branch of the supreme authority under the advice of one, or more, councils, the precise character of which is involved in much obscurity, although *there is no doubt at all upon the fact of this judicial power being vested in the crown.* It is this ancient judicial character of the crown, which is the true origin of the present jurisdiction of the sovereign in the Privy Council, over the Colonies and India,—not any peculiar appellant authority possessed by our kings, when Dukes of Normandy, as supposed by several late writers.† A new view lately‡ taken of this appellant jurisdiction, as

* And see also the petition of Alice de Chapelo for pardon, from a conviction of the Court of Guernsey, (T. 30 Edw. 1.,) for stealing corn to feed her starving children.—Ryley's Placita Parliament—p. 605; a case which offers a solution of a difficulty at this moment disturbing the course of good government in Guernsey.—See *Times*, April 29th.

† Mr. Clarke, Mr. Burge, Mr. Millar.

‡ Mr. Macqueen, in the Chapters on the Privy Council.

belonging to our ancient parliament, seems to be more objectionable, and the manner in which this new historical theory has been embodied in the above quoted section of Lord Brougham's Bill, is exceedingly dangerous, by mixing up judicial with *legislative* functions, when the wise course would be to sever these from each other, and both from the executive, leaving to Parliament its present authority of superintendence and correction.

No limit was set to the kind of business done in the high royal court, either in respect of the subject matter in dispute, or the locality in which that subject matter, or the parties, might be originally situated; and special cognizance was taken of all that concerned the officers of the crown.

Gradually, however, subordinate courts of justice were formed at home, and to them, at length, all causes between party and party were exclusively confined, so far as their jurisdictions extended. Thus the Courts of Law and Equity, and the Ecclesiastical Courts, with the House of Lords, became invested with judicial power over all civil and criminal matters at home, their authority being extended over such matters abroad, and in the colonies, only in particular cases, and by particular Acts of Parliament. In the course of time, the king's personal right to preside in these courts ceased, but his personal jurisdiction remained in all other causes not amenable to these courts, as, for instance, in appeals from Ireland, Jersey, and Guernsey, the Isle of Man, and the Plantations, and Colonies.

The precise origin of this change is uncertain; but in the reign of Edward I., a statute marks its existence by directing, that petitions, in which form the applications to the Crown were made, should be referred to the Chancellor, to the Exchequer, or to the Judges at Common Law,

according to the character of their contents. If the business was so great, or if it was matter of favour, so that the King's personal decision was required, then the petitions were to be brought before the King by the Chancellor, and the other chief ministers.*

The distribution of suits, according to the principles laid down in the statute of Edward I., was often confirmed in after times. For example, certain articles for the guidance of the Council, in 13 Richard II., followed the statute of Edward I. almost word for word;† and in the 1st of Henry the Fourth's reign, justice was secured by authorising an application to the Chamberlain and the Council, if the parties could not otherwise obtain answers.‡

In the reign of Henry VI., when probably such men as Chief Justice Fortescue, the author of the famous panegyric upon a Limited Monarchy, had great influence, this jurisdiction was carefully improved; and it is clear, from the tenor of the articles for the Council, preserved in the Rolls of Parliament, and in the Privy Council records; that to *hear* all petitioners whose cases were within its jurisdiction, was indispensable. So, upon a solemn summons to the Duke of Gloucester to appear before the King, the Commissioners sent to him are ordered to urge, that those in greatest authority, that is to say, *King and Sovereign Lord*, if he would pretend that any of his subjects, and especially a peer of his land, "had offended him, he must *hear* him of right in his explanation."§

So, in the 29 Articles set forth for the guidance of the King's Council, in the 5th year of Henry VI., it is ordered,

* 8, Edward I., cited in the Banker's Case, by Lord Somers. State Trials, 14, p. 84.

† Proceedings of the Council, vol. i., p. 18 A.

‡ Proceedings in the Privy Council, vol. iii., p. 444.

§ Proceedings of the Privy Council, vol. iii. p. 185.

"That none of the Council, in no suit made to them, shall shew no favour, neither in bills of right, of office, of benefice, nor of other thing that longeth unto the Council, but only to answer that the bills shall *be seen by all the Council, and the party suing so to have reasonable answers.*"—Rolls of Parliament, vol. v. p. 407.

Again: in the 16th year of this reign, a Privy Council was formed of 19 Bishops, Peers, and others, to *hear* and *determine such matters as should be moved among them;* and "pardons for crimes, appointments to offices," and other things standing upon the royal favour, were to be reserved to the King, along with the decision of cases upon which two-thirds, or one-half of the Council might be divided against the rest."—Proceedings of the Privy Council, vol. vi. p. 312.

In the 22d year of Henry VI. also, in 1444, the following articles were made for the Council; to prevent importunate suits, and the improper reception of petitions, of which the king cannot know the contents:—

1st.—The Lord of the Council, or person that shall labour with the king for the expedition of the petition for another, shall sign it; and if the suitor cannot write, some other person must sign the suitor's name to the petition.

2nd.—The king shall deliver the petition to such person as he pleases, which person shall examine its contents.

3rd.—The petitions upon matters cognizable at Common Law, are to be referred to the Court of Common Law.

4th.—If the matter of the petition be of grace, then the referee shall endorse it clearly and truly, so that the king may understand what is desired, and the grounds, and *either grant the prayer, or not, or send it to this Council for advice, as it shall please him*; and their referee shall write the king's pleasure on the bill, and then the king, if

he think fit, shall sign the petition, give it to the chamberlain to sign, and take it to the secretary for strict execution.*

In the next century, under Henry VII. and Henry VIII., and much later, the Committee of the Privy Council, called the Star Chamber, committed many abuses; and the distinction between causes proper to the regular courts, and those subject to the Crown, declared so clearly in the above cited statute of Edward I., was long disregarded. A reform was begun in the auspicious reign of Edward VI., when a Committee of the Privy Council was appointed to *hear* all suitors—strangers, as well as subjects, and to order them according to "THEIR SEVERAL NATURES."† The second article delivered by the king for the more orderly and speedy dispatch of causes by this Council, provides, "that such suits and petitions as pertain to any courts of law, be referred to those courts where properly they are triable, and others were to be determined with expedition.‡

Nevertheless, the abuses of the Star Chamber continued, until it was abolished by the 16 Charles I., c. 10., previously to which act, the king had gone the length of ordering, that the Privy Council should assume the power of hearing differences, even between the various courts of justice.§

Besides abolishing the Star Chamber, this statute of Charles I., *regulated* the other branches of the Privy Council, and expressly prohibited its interference in any suits between party and party; but that statute did not abolish other branches of its legitimate jurisdiction. Such were the appeals from Jersey and Guernsey, from Ireland, and from the Plantations, as well as original proceedings

* Proceedings of the Privy Council, vol. vi., page 316,

† The Commission is in the Egerton Papers, page 24.

‡ Sir John Hayward's Life of Edward VI., 1552; Kennet's History of England, vol. ii., 328.

§ Hallam's Constitutional History, vol. ii. page 124.

concerning certain matters in all these places, and concerning officers of the crown, both at home and abroad.

Concerning appeals from Jersey and Guernsey it is said, that special rules for conducting them are to be found in the Privy Council Register of the date of the 13th May 1572.* Concerning Irish appeals, a manuscript in the Library of Doctors' Commons, probably of Charles I.'s time, page 77, contains the following interesting passage:— "where the complaint of injustice appears *formally* grounded, that is, where due application hath been made to the deputy, without any help or relief to the party, as may be pretended, let it be thoroughly examined, and severely punished, wherever the fault appear to be, especially if it be corrupt and malicious; for them shall His Majesty not only magnify his own justice, but either punish an unfaithful minister, or clamorous complainer, and so his service be bettered by either example." Concerning the Plantations, the foundation of the colony of Barbadoes affords a valuable illustration of the principles upon which conflicting titles to new lands were settled in the 17th century.

THE BARBADOES CASE.

About the year 1624, a ship of Sir William Courteen, a London merchant, returning from Brazil, found Barbadoes abandoned by all former discoverers, and inhabitants. The captain took possession in the name of the British crown. On his arrival in England, Sir William Courteen pursued the enterprise; but the Earl of Carlisle obtained a grant of the island, upon a suggestion that it had been first "discovered, possessed, and planted" at his charge.

* Macqueen's Practice of the House of Lords and Privy Council, page 686.

The Earl of Pembroke also obtained a grant of it for Sir William; and the Earl of Marlborough had some previous claim to it.

At the death of the Earl of Carlisle, he charged the island, by his will, with the payment of his debts, having been at the expense of an expedition of planters.

In and after the civil war, many more emigrants went to Barbadoes, *without asking leave, or being opposed by any claimants of the property*, and prospered exceedingly.

About the year 1647, the heir of the Earl of Carlisle leased the island to Lord Willoughby, and Charles II. confirmed that lease, giving the government to Lord Willoughby. This lease and appointment were acted upon; but Cromwell took the island, and sent Lord Willoughby away. After the restoration, when the plantations in Barbadoes had become very valuable by the increase of wealthy settlers, a controversy arose between Lord Willoughby, those settlers, and the creditors of the late Earl of Carlisle, respecting their various rights. This controversy came before the King, upon petitions which were heard at the Council Board, His Majesty being present three or four days himself. It was at length referred to a committee, of which Lord Clarendon was a member; and the parties interested were heard by their counsel before it on the whole case. According to the opinions of the Law Officers of the Crown, taken by the committee, the grants were void; but the King refused, by the advice of the Council, to resume the island, declaring "*that he would make no other use* of avoiding the grants, than to dispose of the profits of the plantations to those who, in justice, had any pretence, in law or equity, to receive the same; as it was not thought a seasonable time to discourage the planters, when this nation was so active and industrious in foreign plantations, and when they had so long recognised the patent."

So Lord Willoughby was appointed to the government, to be paid by the inhabitants in possession of the soil. The creditors were to receive a moiety of the profits. The inhabitants were to have titles in fee simple, and the heir of the grantee was to be provided for.

These particulars appearing reasonable to the Lords, all persons concerned were called, and the same being communicated to them, they appeared well contented. Thereupon the Lords resolved to present the same to His Majesty, who made a final order in the matter accordingly.*

Now-a-days, *civil war*, as at the Cape, and *massacre*, as in New Zealand, scarcely bring about a settlement of such colonial land titles!

Charles II., by the advice of Lord Clarendon and Sir William Temple, formed a *plantation* committee of the Privy Council; and out of this arose a regular practice of settling colonial cases of every kind at the Privy Council in the last resort. The instructions on founding this committee are important, although forgotten during many years, and they will be abstracted in the Appendix.

A lively account of its first sittings may be read in Evelyn's Memoirs, vol. iii.

Shortly afterwards, Charles II., when establishing the Privy Council, also, on a more liberal footing, declared, that to govern by the constant advice of such a Council, together with the Parliament, was the ancient constitution.

After the revolution of 1688, it was attempted to establish this system by an express statute, which the jealousy of the court defeated; but during several years, annual reports of all colonial affairs were regularly laid before Parliament.

The general system of bringing colonial cases, both on appeal and otherwise, before the Privy Council, continued

* Lord Clarendon's Tracts, p. 25, and Carribbeana.

unchanged until the American war; and during all this time, the hearing of those cases upon petitions to the Crown was regular, either with, or without, the interposition of Parliament.

In principle, they stood on the same grounds as the cases of parties who have claims upon the Crown for debts or other claims arising upon affairs at home. That principle is settled in the famous case of the Bankers begun in the time of Charles II., and ending by a compromise. This case produced an argument by Lord Keeper Somers, which seems to remove all doubt on the great point of the right of a hearing by the claimant of money from the Crown, recoverable only by petition to the person of the sovereign. The principle of that case is the stronger, in regard to places, and other benefits which depend upon the royal grace. To the objection, that such a remedy for justice was *precarious*, and, therefore, not good in law, Lord Somers replied,—"It is not to be said, that on the method, where the application is to be made to the person of the king, the condition of the subject is precarious; for this is to suppose, what is not to be supposed in law. It is a supposition contrary to the principles upon which the English constitution is framed, which depends upon the [illegible]our and justice of the Crown."*

Numerous cases heard at the Privy Council, from the earliest periods, prove, that Lord Somers' vindication of the constitution was well founded; and those cases shew, that an appeal lies from all departments of the State to the Crown, for the correction of error or malice.

Whenever appeals were not readily admitted by the authorities, parties habitually resorted to Parliament for

* State Trials, vol. xiv., p. 105.

aid; of which some cases will be found in the Appendix, with proofs that *aliens* continued to be heard, as well as British born subjects.

The proceedings were satisfactory on this head, although not on others, until the American war, when a new system of colonial government arose. The Board of Plantations was abolished, and gradually the office of Secretary of State for the Colonies took its present form. For many years, it followed the principles of its precursor—the Board of Plantations, and in particular, it was provided, like that Board, with a *law adviser*, who has, for some years past, been withdrawn, to the great injury of the public service, and of private interests.—(See Appendix, No. 12.)

This great evil has arisen from the prevalence of despotic principles of late in colonial government, which have aggravated the despotism long too much fostered in the administration of Indian affairs.

Hence, the Privy Council is habitually closed to Indian and Colonial complainants of official wrongs.

Recent Indian cases have raised all the difficulties of the subject by bringing fully forward the new pretensions of the respective departments of the executive government, to be entrusted with irresponsible authority, and by exhibiting, in a strong light, the extreme inconvenience of these new pretensions.

The case of the army of the Deccan, and that of Elphinstone *v.* Bedreechund, both arising out of the Pindaree and Mahratta wars of 1817 and 1818, shew, the first, how easy it is to overturn good old principles; and the second, how important it is to establish those old principles, by better sanctions, rather than to let them be thus unreasonably overturned.

In the case of the army of the Deccan, the Lords of the Treasury had, in 1823, solemnly settled certain claims to

prize money made in that war, and a warrant, under the sign-manual, was accordingly issued for its distribution by two trustees. The trustees discovered what they thought was a fundamental error, and a plain act of injustice in the decision of the Lords of the Treasury, who, in 1826, adopted that correction, and a fresh warrant was issued by the king for the distribution of the prize money, according to the opinions, thus approved, of the trustees.

After much correspondence, the parties to be benefitted, under the order of distribution of 1823, and injured, as they alleged, by the new distribution, petitioned the king for a hearing of the case in the Privy Council, to which the official reply, in 1828, was, that "His Majesty had been advised not to revoke his warrant, or to allow of an appeal to the Privy Council."—(2 Knapp, 118.)

Four years afterwards, the Privy Council took the case into consideration, under an order of reference from His Majesty to hear, but the Board declining to enter into the merits, advised the Crown to refer it again to the Lords of the Treasury to do so.

It was agreed, that the subject matter of the appeal was not cognizable by any court of law, or equity; the only point of difference being, as to the propriety of the Privy Council exercising a controuling judgment, in the nature of an appeal over decisions of the Lords of the Treasury, upon a petition to the Crown.

The petitioners shewed, that direct authorities supported their claim to the hearing asked for,* and that it was consistent with the established principle of the highest acts of the Crown being open to correction on the ground of error, as well as borne out by the ancient history of the constitution.

The advocates of the irresponsibility of the Lords of the

* The Case of Buenos Ayres, 1 Dodson's Reports 29—The Toulon Case, and the Seringapatam Case.

Treasury denied, that any precedent could be produced of a revision of their lordship's acts by the Privy Council, and extended their doctrine to a denial of its right "*to sit as a Court of Appeal from all the departments of the state.*"—(2 Knapp 155.) They forgot, that in the earliest stages of this very case, Lord Liverpool, when First Lord of the Treasury, readily acquiesced in the desire of one of the parties, that the judgment of the Privy Council should be taken on the subject—(*ib.* p. 113.); and to good authorities they opposed mere assertions, and rhetorical flourishes.

In the case of Elphinstone *v.* Bedreechund, the judges in Bombay had condemned an act of one of the authorities in the same war; but the Privy Council held on an appeal against that decision, that the Indian Court had no jurisdiction in the case. A strong feeling was excited for the injured party, and the failure of justice in a flagrant case, must have aggravated the natural discontent of the conquered. Lord Tenterden, who decided the case, stated, that application for redress *should have been to the Crown;* but his lordship did not add, that to the applicant in India to the British Crown for justice, it is an indispensable condition, that the complainant be sure of a *hearing*, and that, unless we take measures to ensure a hearing, as a matter of course, if revenge, not redress, does not become the object of our victims, they will die in despair and misery, under the denial of justice,

Thus, the Rajah of Sattara is now sinking into a premature grave, from which a *hearing* would save him.—(Appendix, No. 11.)

When bringing forward the cases of the Ameers of Scinde, Lord Ashley stated, that petitions from them had not come as expected. His lordship could not account for the disappointment. A cause may be suggested: there is no

habit in India of looking for redress of grievances, through petitions to England, and so the almost utter inaccessibility of the court, as effectually destroys the sufferer of wrong, as the positive denial of justice within the court could do.

It is forgotten, that the practice of great injustice accompanies, and leads to great national calamities. Our colonial empire stands upon the ruins of three which have fallen, and most remarkable it is, that in all three—those of Portugal, Holland, and France—signal injustice of this especial kind marked and preceded their decay.

Camoens says of Portuguese India, that it had become "the step-mother of honest men, but nursing parent to villains," and even then its decay had begun.

Tavernier says of Dutch India, that once the Dutch government most scrupulously heard appeals against their distant governors; but in his time only the protection of great men could secure a hearing to the best cause. And another French writer has drawn a picture of the practice of that government, whose hideous features have to the minutest *line* been reproduced in our days in England.

"The Dutch establishments in India," says Raynal, "were now in the extremest bad order; but their reform was the more difficult, since things were as bad at home as abroad. The ministers for the Dutch colonies, instead of being men of business and colonial experience, were usually taken from powerful families, which monopolised the great offices. These families were busy—some with their political and party intrigues—some with the more general concerns of the state; and they looked to colonial affairs, either to advance the power of their party, or to get places for their connections; or from worse motives of pecuniary interest. The real business of the Colonies, its details, discussions on all points, and with all the men actually engaged in them, and the greatest enterprizes, were turned over to a secretary, who, under the title of counsel to the office, got everything into his own hands. The ministers came only occasionally to their post, especially during the intervals of the more pressing calls of public business; so that they lost sight of its connecting links. Consequently, they were compelled to trust implicitly to the counsel. It was his business to read all the despatches from the Colonies, and to frame all the replies to them. He was generally acute—often corrupt—always dangerous as a guide. Sometimes, he was known to lead his superiors into terrible difficulties of his contriving,

and at other times to leave them in scrapes created by their own errors."—Raynal, Histoire Philosophique, &c., &c., p. 466.

This extremely striking passage furnishes a warning to us. This system of administration is ours, almost to a letter. Lord Shelburne said, sixty years ago, "In these matters, Parliament only obeys the dictates of a ministry, who, in nine cases out of ten, are governed by their under-secretaries."—(Sparkes's Life of Franklin, vol. x. p. 437.) The Dutch would not abandon corruptions, which hastened their fall. It remains to be seen, whether some attempt cannot be made to add to the stability, by our timely reform.

In France, it took twenty years before Lally Tollendal could obtain the acknowledgment of the innocence of his murdered father; and the fall of French India was attended by the abomination of the notorious injustice which enfeebles integrity, and invigorates every mischievous passion. We are now pursuing this bad career, of habitually refusing to be just, and petitioners for right at present have nothing left but to persevere in their demand of justice, until, like the Coventry Friar, when appealing to Rome,* they may, perhaps, after surviving their enemies, find indulgence in the fears, or the shame, of their reluctant judges.

* The monks of a suppressed monastery at Coventry appealed to the Pope for restoration. They lingered long in Rome in disappointment and distress. Some then quitted the Apostolic Court, and some died; till at length only one remained, Brother Thomas, who, from extreme want, was often forced to beg his bread. About this time, the great enemy of the monastery, an English bishop, died also. The removal of this powerful opponent gave courage to Brother Thomas, and when Pope Innocent, then lately enthroned, was sitting in full consistory, he came before the Pontiff, and preferred his prayer for the restoration of the monastery. "Know ye not, brother," replied the Pope, with great wrath, "that my predecessors, Clement and Celestine, oft and oft rejected the same petition,—aye, and I saw and heard them. Get along with you—get along with you, you wait in vain."

"Holy Father," rejoined the Monk, "I wait not in vain. My petition is just, and right; and I wait for your death, even as I waited for the death of your predecessors. One may succeed you, who will effectually grant my prayer."

By this address the Pope was scared, and after expressing his surprise to the Cardinals in somewhat unseemly language, he turned to the Monk, and said, "Brother, by St. Peter, you shall not wait my death, your petition is granted."

And before Pope Innocent again tasted food, he issued the Bull by which Archbishop Hubert was authorised to restore the monastery.—Rotulæ Curiæ Regis, vol. i. p. 112.

THE CASE OF THE ATTORNEY-GENERAL OF NEW SOUTH WALES.

There is at present a case pending before the Crown to which a hearing is refused, under circumstances of great injustice; strongly proving the necessity of a new law, to enforce a hearing of appeals at the Privy Council. This is the case of Mr. Bannister, formerly Attorney-General of New South Wales, who claims indemnity from the Crown for services never paid for, although part payment was officially promised by the Government, through its agent, an Under-Secretary of State, entrusted with the matter; and he also claims indemnity for the unfounded condemnation of his conduct in office, which has deprived him of public employment, and blighted his prospects in life.

There is not a *shadow of ground* for this condemnation of Mr. Bannister's conduct, as a considerate enquiry shews, and the proof of the debt due to him by the Crown, would carry a verdict in any cause between party and party.

The Secretary of State, who was misled, in this case, through an intrigue originating in Sydney, and fostered in Downing Street, went out of office before Mr. Bannister's appeal could be entertained; and all the Secretaries of State since, have refused to hear the case, either on the ground that it was settled by their predecessor, or for still more unfounded reasons. So little, indeed, did their predecessor's settlement of the case imply its final disposal, that he expressed his desire in writing, that explanation should be received upon it. His letter has been in the Colonial Office fourteen years;—the appeal being immediate upon knowledge of the wrong.

It is beyond doubt, that the Secretaries of State themselves have been little acquainted with the facts, having

refused to hear Mr. Bannister, and having left the case mainly to one or more subordinate members of the Colonial Office, the principal of whom, Mr. Stephen, had connections in New South Wales involved in the case, who probably influenced him.

At the time, the most eminent members of Mr. Bannister's profession, without his solicitation, urged, that he should be appointed to a judicial post abroad; but the Secretary of State objected—that his misconduct in New South Wales rendered his employment impossible.

It was once alleged against his claims, that Mr. Bannister had so acted as to deserve *removal.* When notorious facts disproved that charge, it was alleged that *if* Mr. Bannister had been removed, it would have been for causing INCONVENIENCE to the Government.* At one time it was said, that the case was of too old a date to be examined at all; and when circumstances, last year, gave the strongest possible colour to the pecuniary claim, it was declared to be inadmissible, and the Secretary of State still refuses to hear the case himself, or to let the Privy Council hear it.

* Safety from deprivation on such grounds is, however, expressly declared to be the rule of the Government, in *Lord J. Russell's Dispatches, 16th October,* 1839, *on the Permanent Tenure of Colonial Offices.*—"The commissions of all public officers throughout British Colonies (except of governors) are very rarely, indeed, recalled, except for positive misconduct. I cannot learn, that, during the present, or two last reigns, a single instance has occurred of a change in the subordinate colonial officers, except in cases of death, or resignation, incapacity, or misconduct. This system of converting a tenure at pleasure into a tenure for life, originated, *probably,* in the practice which formerly prevailed of selecting all the higher colonial functionaries, from persons resident in this country when appointed. Among other *motives which afforded such persons a virtual security for the continued possession of their places, it was not the least considerable that, except on these terms, they were unwilling to incur the risk and expense of transferring their residences to remote, or unhealthy climates.*"—(Life of Lord Sydenham, p. 144, 1843.)

Throughout Mr. Bannister's case, there has been a succession of those evasions and violations of right which Mr. Taylor, the clerk in the Colonial Office, reprobates, whilst he positively declares them to have fallen within his own experience.

Two examples, in this case, of the length to which a public officer will go to crush an individual, may be selected, to demonstrate the absolute necessity of a superintending power to correct such iniquity.

1st. The Under-Secretary, Sir R. W. Horton, who engaged that a certain sum of money should be paid to Mr. Bannister for services performed, offered to give his testimony to the facts in writing. In order to do this correctly, it became necessary for that gentleman to consult some papers in the Colonial Office, when he was told that his testimony, being on official matters, must be deposited there, and that Mr. Bannister could so obtain a copy. Accordingly, this written testimony was deposited in the Colonial Office, but to Mr. Bannister's application for a copy, it was replied, that the communication being official, a copy could not be allowed him.

2nd. Again, some years ago, the case was actually sent to the Privy Council; but admission to that board was refused to Mr. Bannister pending the discussion.

The circumstances, however, of an alleged decision in the Privy Council, are remarkable, as set forth in a petition to the House of Commons against it, printed in the Appendix to the 44th Report on Public Petitions, 1834, p. 1693.

In July, 1832, the King referred to the Privy Council a petition from Mr. Bannister.

In August, 1832, the Secretary of State answered it from documents in the Colonial Office.

In August, also, Mr. Bannister applied at the Council Office to see the said documents, in order to be prepared

with his proofs in the case, and in order to go to a hearing of it with knowledge of what had been alleged against him.

He was informed at the Council Office, that a memorial must be presented to the Lords of the Council for leave to inspect the documents, and he presented such memorial accordingly.

He went, day after day, to the Council Office on the matter, and on the last day of August, 1832, he was informed there, that the lords and proper officer were out of town, that much time would be required for examining the said documents, and that nothing could be done in the case for several months.

Mr. Bannister waited several months, expecting leave to see the documents to be granted, and at length he presented another memorial to the Lords of the Council, stating, that he had evidence to produce in the case.

In 1833, his agent was told, that so early as the 15th day of September, 1832, a letter was written to inform him, that there was nothing in the petition to induce the lords to recommend His Majesty to revoke his former decisions; and the agent was also told, that with the minute of this report, on the council books, access could not be allowed to the documents.

Mr. Bannister then presented a memorial to the Lords of the Council, stating, that he had not received such letter of the 15th day of September, 1832, and that their lordships could not justly report upon the said petition, without hearing him, and that he could not go to a hearing safely, without evidence, nor without seeing the documents produced against him, and praying that the error made by their lordships on the 15th day of September, 1832, should be corrected.

But he was unable to get attention paid to the said memorial; on the contrary, his agent was told at the Council Office, that the case was considered to be settled.

In vain has Mr. Bannister endeavoured to get the injustice done on this occasion rectified, and he has reason to believe, that the Council was as much abused on this occasion as he was himself wronged.

The President of the Council, in 1832, the Marquis of Lansdowne, has stated to Mr. Bannister, and expressly authorised him, "to make any use he might think proper of the communication," that he was not heard at the Privy Council on this occasion; which, to the best of his lordship's recollection, "arose from this case not having been considered as one of those which the Privy Council was justified, in conformity to its usual practice, *to come to any decision upon*, not being in the nature of a judicial appeal, without its being recommended to their consideration by the Colonial Department."

And yet a judgment is asserted to have been delivered against Mr. Bannister in September, 1832, although he had been told at the office that nothing *could* be done in the case for many months. The probability clearly is, that the Marquis of Lansdowne's recollection is not in fault.*

* If it be probable that the Privy Council was abused in this case, it is quite certain, that the House of Commons was equally abused, and the present Lord Monteagle most unworthily made an instrument in the misrepresentation of the facts. The petition, in 1834, stated the case somewhat as set forth in the text, and prayed, "that the House would intervene with the King, in order that the Privy Council might be directed to examine the case, and hear petitioner, as justice required." But Lord Monteagle stated the matter thus:—Mr. Secretary Rice, "The case of this gentleman may be stated in two words. He voluntarily resigned his office; another gentleman was appointed to it, and then, Mr. B. repenting of the step he had taken, applied by petition to the Privy Council, to be restored. *This case was fully enquired into*, and it 'being found that Mr. B. had voluntarily resigned his situation, *the Privy Council was of opinion that he had no claim to be restored.* Failing in his petition to the Privy Council, Mr. B. now seeks for the interference of the House. I think the House will agree with me that the case is one in which it can take no steps.—(Mirror of Parliament, June 30, 1834—p. 3106.

This single case presents an accumulation of injustice. Under one Secretary of State, Sir G. Murray, it was declared that "Mr. Bannister had conducted himself with so much *indiscretion* in his office, as would have rendered his removal necessary;" and the imputation was repeated again and again, in 1828, to support the refusal of the money *promised to be paid.*

Under another Secretary the imputation was thus expressed:—"Lord Goderich can well understand," said Lord Howick, in 1831, "that you should feel acutely what you conceive to be an undeserved censure on your conduct; and he would consider it to be his duty to *decline* no investigation, even though it should be attended with much labour and inconvenience to himself, having for its object to relieve an individual from an unmerited reproach incurred in the course of his public service.

"With respect to yourself, however, Lord Goderich conceives that *this necessity for an investigation* does not exist, as not the slightest imputation has been cast upon your honour and integrity, nor any complaint preferred from any quarter, of want of zeal in the discharge of your duties.

"Your *recall, had it taken place,* would only have been decided upon in order to relieve the colonial government from the inconvenience which seems to have resulted from the erroneous view which you took of your duties."

Accordingly, Lord Goderich did *not* investigate the case, and when, in 1832, his lordship assented to its reference to the Privy Council, the matter went off as above stated.

Thus, such a degree of *indiscretion,* and such an *erroneous* view of the duties of his office, have been imputed upon Mr. Bannister, as to justify his removal from a law-office in New South Wales,—in other words, not only to justify

"stealing the trash, his purse, but to make him poor indeed, by robbing him of his good name."

Was he not then entitled to be *heard*, when he insisted that *the facts of the case* were not known in the Colonial Office?

It is no light thing to impute *indiscretion* to a public officer, as Lord Campbell shewed admirably in the case of the Directors of the East India Company, with a special military illustration for the Commander-in-Chief of the Army, His Grace the Duke of Wellington.

"Suppose," said Lord Campbell, "an officer in the army was accused, in general orders, of an act of the *grossest indiscretion*, would he not immediately demand enquiry? It would be a strong reflection upon his character as an officer, and he would not rest satisfied until he was cleared from the imputation."—(House of Lords, 7th May, 1844.

Impressed with such sentiments, and confident that in a most laborious office he discharged all his duties well, Mr. Bannister rightly demands the money due to him, and wisely insists upon having the credit restored which ought never to have been impeached. In leaving England for a *remote* colony, he gained a title, which Lord John Russell, as above stated, expressly declared, in 1839, to have been, for half a century, *permanent*, on good behaviour, and the spirit of the constitution carries that permanent title many centuries beyond.

In this case, the only hope of justice being done, arises from the prospect, that the time is coming when reason shall prevail, and lead the ministers who refused to hear this case, viz. Sir G. Murray, the Earl of Ripon, Lord Monteagle, Lord Glenelg, the Marquis of Normanby, Lord John Russell, and Lord Stanley, and their colleagues and successors, to wiser and more just conclusions on the subject of their duty as to hearing complainants.

Besides the money due to Mr. Bannister, he claims the fair recognition of his past good public services, and employment by the Crown; on both which points, knowledge of the truth would prompt the government to act justly.

It so happens, that his experience long rendered him more familiar than most individuals with an important branch of colonial affairs—*the relations of our colonists and traders with the aborigines*. On this subject, which is full of urgent daily interest, Mr. Bannister has suggested some proceedings to the government, which are approved by *all parties, and which Lord Stanley was disposed to think well of.*

The adoption of these suggestions would probably save thousands of lives, and millions of money. But the same sinister influence which has prevented justice being done to Mr. Bannister's claims for his past services, prevents, as is believed, his employment in carrying out what must be so beneficial, the Colonial Office being shut against him by the following letter, which is, perhaps, without a precedent in the correspondence of Downing Street.

Downing Street. 25th January, 1844.

Sir,—I am directed by Lord Stanley to acknowledge the receipt of your letter of the 14th instant, addressed to Mr. Hope, and to acquaint you in reply, that his lordship does not contemplate acting on the suggestions to which you refer, or availing himself of the offer of your services under this department.

I have, &c.,

To S. Bannister, Esq. JAS. STEPHEN.

The individual thus shewn the door of the Colonial Office by Mr. Stephen, came to the public service with no recommendation but his own labours, and his conduct in his post was, it is repeated, without the shadow of just reproach.

Before filling that post, he had been selected, in 1823, as a commissioner to carry out a reform he had himself suggested in the *Indian* department of Canada. The same individual has, during seventeen years, urged his claim to some employment by the Crown, on the ground of his proved fitness, and of his past good services. That these past services ought to be paid for, there is no doubt, and few will be disposed to deny, that the Secretaries of State for the Colonies ought to learn from a superior authority, such as the Privy Council, that his pretensions are consistent with the law of England, which enjoins exclusive respect to character in appointments for the service of the Crown.*

The evil of habitually refusing to hear complaints, will

* In order to set forth some of the proofs Mr. Bannister has given of useful industry, a list of some of his labours is subjoined:—

1819—Papers on the Reform of Free Grammar Schools.
1820—Plan for Encouraging Industry in the Indians of North America (executed with some success.)
1822—Defence of the Indians.
1823—Plan for the Reform of the Indian Department of Canada.
" Sir Orlando Bridgeman's Judgments in the Common Pleas.
1827—Papers respecting the Discharge of the Duties of Attorney-General of New South Wales, in 1824-5-6.
1830—Humane Policy, or the Means to Civilize Uncivilized Tribes; with a Plan to settle Natal in South Africa.
1833—Appel en faveur d'Alger. (Paris.)
" Essay on the Civilization of the Hottentots. (Paris and Treves.)
" Biography of Dr. Vanderkemp, and of the Indian Chief Brant. (Paris)
1836—Evidence before the Aborigines Committee of the House of Commons, on a system to civilize uncivilizd Tribes.
" Letter to Lord John Russell on Abolishing Transportation, and on Reforming the Colonial Office.
1838—British Colonization and Barbarous Tribes, or an Historical Development of a System to Civilize Uncivilized Tribes.
" Memoir for the Settlement of Natal, presented to the Secretary of State for the Colonies, by the Cape of Good Hope Trade Society.
1840—Reports and Papers for the Aborigines Protection Society, on the Canadian Indians, the Australasians, &c.; for the British Association of Science, on New Zealand; and for the Colonial Society, on the Cape of Good Hope—*all enforcing the principle, that the destruction of barbarous tribes by colonization may be prevented*, and their civilization promoted by a wise and humane system; which system was explained in detail by measures proposed in these papers, and works.

appear in its real grossness, if we reflect upon the benefits which a just administration of affairs in that respect must confer upon all within its influence.

ABROAD, every public officer would act under the conviction that his conduct was known and appreciated at home: and that no malevolence, or even error, could harm him, so long as he acted well. Instead of being distracted by his

1830 } Articles in the *Oriental Quarterly Review*, on Eastern Africa;
1843 } *New Monthly Magazine*, on Algiers; *Jurist*, on Law Reports, and Privy Council Jurisdiction; *Westminster Review*, on Portuguese Africa, the Caffres, Official Morals, Algiers, History of Man; *Foreign Quarterly Review*, Herder, the Protector of Aborigines, the Influence of Germans upon the Civilization of Uncivilized People, the Flight of Schiller, Liberia, Coins in Affghanistan. *Eclectic Review*, Sparks' Edition of Franklin's Works, Animals Protection Society, Antiquitates Americanæ ante Columbianæ, Transportation of Juvenile Offenders; and *Colonial Magazine*, on South Africa; and on the Right to be heard in the Privy Council.

1840 } The African Colonizer, a London newspaper, in which, before
1842 } the sailing of the Niger Expedition, the unhealthiness of the climate was demonstrated, and the ruin of the expedition shown to be probable from its plan. This newspaper described the resources of the Cape of Good Hope, and of the interior of South Africa, recording the proceedings and documents of the Cape Emigrants, and the progress of the Cape frontier system. It urged warmly the extreme importance of settling Natal, in order to save the lives of whites and blacks. It shewed the means of improving Madagascar in connection with Mauritius, Bourbon, &c. It also advocated a good plan of government for the British settlements in West Africa, and pressed for *precautionary* measures in the emigration from West Africa to the West Indies, and it contained papers upon the condition and prospects of other parts of Africa, with African biographies, and critical notices of books on Africa.

1843—Plan of the Cabot Library, to lay in the knowledge of the past career of Britain—proper foundations for a more humane, and more prosperous future upon and beyond sea.

1844—Hints of a plan for educating the people connected with the Sea, so as best to qualify them to discharge the peculiar duties of a great maritime population at home and abroad,—drawn up in reference to the recommendations of the Shipwreck Committees. Part of the Cabot Library.—(Liverpool and Plymouth.)

1843 } Papers on a System of Peaceful and Civilizing Intercourse with
1844 } the Natives of India, New Zealand, Africa, and Oregon.—(Published and Read at Plymouth, Liverpool, and Windsor.)

1844—The classical sources of the History of the British Isles, being an introduction to the Cabot Library (preparing for early publication,) in one volume.

own intrigues, or in counteracting the intrigues of others, the duties of his post would obtain his exclusive attention; and the colonial public would confide with satisfaction in the local authorities when watched with vigilance, and treated with undeviating justice at home.

AT HOME, an administration which should watch and treat public officers in this way, would no longer betray the surprising ignorance now the occasion of great misfortunes in all quarters of the globe. Trained in the career of honour, and willing to contribute the invaluable resources of their experience, towards arming the government against error and abuse of every kind, some of these officers should be appointed to the Privy Council themselves, on their return,* after all have had its protection abroad.

But the grand means of realizing the theory of the constitution, that character shall be the sole recommendation to public employment, and of securing fitting rewards to good conduct as public officers, will be found to be, to open the Privy Council, OF RIGHT, to the hearing of their claims and complaints.

That hearing would either obtain redress for the complainants, or it would cause the grounds of their failure to be canvassed by their friends and by bystanders—the impartial public. In the latter case, their quiet reception of adverse decisions would be certain.

This would also indirectly cure the corruption which Mr. Taylor has so plainly proved to be at this moment the canker of our administration, and give substance to what, without a reform, must be looked upon as only the brilliant dream of

* Of late years retired civil and judicial officers from India have been appointed members of the Privy Council, but with the honourable exception of Sir Alexander Johnstone, from Ceylon, no colonial officer seems to have been named to that body these thirty years, although in that period such excellent men as, for example, Commissioner Bigge, Sir F. Dwarris, Sir Lionel Smith, might have been selected with great advantage to the public, —not to mention numerous individuals still living.

Sir Edward Bulwer Lytton, that a public functionary's true qualities are not the SUPPLENESS, and IDLENESS, and HABITUAL DISREGARD OF RIGHT, which Mr. Taylor denounces, but "INDOMITABLE WILL, the POWER OF EARNEST APPLICATION, INFLEXIBLE HONOUR, and a STRONG SENSE OF JUSTICE." — (The Life of Schiller, by Sir Edward Bulwer Lytton, Bart., vol. i.p 71, 1844.)

Upon noble foundations like these all our public administrations should stand; and above all the administration of our colonies and India, far removed, as they are, from the check of public opinion at home. A great reform is wanted to carry out our mission upon earth; and the opening of this high court, the Privy Council, will be a great step towards that reform. The whole board must be made accessible to those numerous mixed cases, involving official character, and public policy, for the settlement of which a larger equity, as Chief Justice Holt once called it, is dispensed by the crown, than courts of law ever admit.

Such would be the object of a short statute to settle the right of *hearing*, and make that certain which Lord Somers says, at present the law *presumes* is done.

But in reference to the remodelling of the business of the Privy Council, it deserves grave consideration, whether the appeals from courts of law and equity abroad, ought not to be carried to the corresponding courts at home. This, it is submitted, would best secure justice throughout the Colonies and India, and it would be altogether in harmony with the ancient course of our judicial improvements. The Courts of Westminster now entertain points of *foreign* law, and could equally well settle questions of Hindoo, or Mahommedan, or other peculiar colonial laws.

Then the Privy Council being relieved from judicial appeals would be free to attend to its more proper work— the cases of *administration*, which the right of *hearing*

would bring forward most beneficially to the public service, and by this arrangement, the judges being confined to their courts would no longer be in the false position to which Lord Clarendon attributed many of the evils which arose out of the Star Chamber excesses. The judges of his day felt the influence of those evils, and his account is far from being inapplicable to some judicial proceedings in our time.

"The abuse of jurisdiction," says his lordship, in effect, "spread rapidly, until the judges who presided entirely lost public confidence by urging reasons of state as elements of law, and after becoming as sharpsighted as Secretaries of State, and entering into the mysteries of state, *grounded their judgment upon facts, of which there was neither enquiry, nor proof.*"—(The History of the Rebellion, vol. i., p. 122—126, Ed. 1826.)

THE APPENDIX.

No. 1.—*The Constitution of the Board of Plantations, from* 1670 *to* 1782.—The foundation of the Committee of Plantations, although not dated until 1670, when the Earl of Clarendon had been driven from public affairs, is justly attributable to him. He was always remarkable for enlightened views upon colonial and commercial questions, and so early as in 1660, he announced to Parliament the intention of Charles the 2d. to provide a board of commissioners for the government of the Plantations. The documents shew how fully this great statesman appreciated the necessity of a good administration *at home*, to ensure the welfare of the colonies,—as his proceedings at the Council, in the Barbadoes case, (Sup. p. 24,) prove how prudently he could advise the king upon delicate colonial questions.

The Lord Chancellor, in stating the case, anticipated that "the nation would soon flourish, as the land of Canaan did, when *Esau* found it necessary to part from his brother, *for their riches were more than they might dwell together, and the land wherein they were, could not bear them*, because of their cattle." "We have been ourselves," said Lord Clarendon, "very near this principle of happiness, and the hope and contemplation that we may be so again, disposes the king to be very solicitous for the improvement and prosperity of the Plantations abroad, where there is such large room for the industry and reception of such who shall desire to go thither; and, therefore, His Majesty likewise intends to establish a council for these Plantations, in which persons well qualified shall be wholly intent upon their good and advancement.—(House of Lords Journal, xi. p. 175.)

The commission and instructions were as follows:—The Earl of Sandwich and nine others, were to inform themselves, by the best means, of the state of the Plantations, together with the increase and decay of trade, and the causes and reasons of such increase or decay, *and to use all industry and diligence for gaining the knowledge of all things transacted within any part thereof*, and from time to time to give the King a true, faithful, and certain account, together with their best advice and opinions thereupon.

To this end, the Earl of Sandwich, and the rest, were to be a standing council for all the affairs of the foreign plantations, colonies, and dominions, the town and garrison of Tangier only excepted.

The Chancellor or Keeper of the Great Seal, the Lord High Treasurer, or the Commissioner of the Treasury, the Chancellor of the Exchequer, and the Principal Secretaries of State, as often as they pleased, were to be present at the debates of the said Council, and to give such vote and opinion as they should think fit.

And the Board had authority to receive all such propositions and overtures as should be offered concerning the said Plantations.

They were not to promote any matter in the Council for any reward, favor, affection, or displeasure.

The Board was to inform itself how the colonies were inhabited, viz. what number of parishes there are in each, and what number of planters, what number of servants, and whether the servants were Christians or slaves; and if any of the same were found so thinly inhabited that it might endanger the loss of them, the Board was to consider how they might be most conveniently supplied.

And forasmuch as most colonies border upon the Indians of several countries, or lie near the plantations of the French, Spanish, and Dutch, and that *peace is not to be expected, either with the said Indians, or with our neighbours, without due observance of justice to each of them*, the Board was, therefore, strictly to enjoin all the governors, that they, at no time, give any just pro-

vocation to any of the said Indians or neighbours at peace with us, or their subjects, but by all just ways endeavour to preserve the amity between them, and a good correspondence with them.

And forasmuch as some of the said natives might be of great use to give intelligence to the Plantations, or to discover the trade of other countries, or to be guides to places more remote, or to inform our governors of several advantages that may be within or near the Plantations, not otherwise capable to be known, and may be many other ways serviceable to defend, or to succour, and assist the Plantations; the Board was to give strict orders to governors, *that if any of the said natives shall, at any time, desire to put themselves under the protection of our government, that they do receive them;* and that they, by all ways, seek firmly to oblige them; and that they would *direct or employ some persons purposely to learn the languages respectively of them,* and that they do not only carefully protect them from other Indians, but more *especially take care that no British subject do, at any time, any way harm them;* and if any shall dare to offer any violence to them in their persons, goods, or possessions, the said governors were severely to punish the said injuries, agreeable to justice and right.

They were also to provide that no British subjects be either forced or enticed away into the said Plantations; but that all such as are willing to be transported thither to seek a better condition than what they have at home, might, by all means, be encouraged.

They were not to permit any British subjects to be oppressed by any governors contrary to the laws in force.

No. 2.—*The Inherent Right of Appeal. Appeal from the Isle of Man. S.C. Christian* v. *Corren*, 2 P. Wm. 101.—The report of this case in Peere Williams does not express so clearly as is done here by the counsel for the successful party, that *common right* gives an appeal from a subordinate to the superior.

Lord King's MSS. in Lincoln's Inn Library, folio, p. 66.—

Appeal from a decree of James, Earl of Derby, dated 6th July, 1706, whereby he decreed the appellant to be put out of possession of certain lands called Rainsoldsway, and Corn Mills in the Isle of Man; and the respondent to be put into possession thereof; which appeal came to be heard the 13th day of July before the Lords Committee, who being all of opinion that it was a mistaken judgment, yet deferred giving judgment till they had considered whether an appeal doth properly lie from the Isle of Man to this Board. Which question was now debated. And it was alleged by the Counsel for the appellant, that this question was properly before the Committee, because on reading the Petition of appeal before the King and Counsel the 23rd of February, 1714, it was referred by the Council to Sir Edward Northey, Attorney-General, and Nicholas Lechmere, Solicitor-General, to report how far any appeal doth lie from the Isle of Man, together with their opinion upon the whole matter; who on the 17th of June, 1715, reported to the King in Council that they had communicated this matter to the Earl of Derby, who submitted the matter of appeal to the King's determination; and that it appeared to them, that King Henry the Fourth granted the Isle of Man to the ancestor of the Earl of Derby and his heirs, to hold by liege homage (see Dugdale Bar. 2 vol. p. 250, and Peck's Desid. 2 vol. lib. ii, p. 20, n.); and that they were of opinion that though there was no reservation in such grant of any appeal to the King, yet an *appeal lay as a right inherent to the Crown.* Which report was then approved and confirmed; and it was also ordered that the said William Christian should be admitted to his appeal from the said judgment, giving security to answer costs in case the appeal should be determined against him, or he did not prosecute with effect: which security he had accordingly given.

And the Counsel for the appellant also alleged, that though this matter has

not received such previous determination, yet it was supportable by principles of law and reason: *an appeal of common right lies to the superior.* And seeing that no writ of error lay, because the proceedings there were not according to the common law, therefore, of necessity, an appeal must lie to the King in a summary way. In fact, such applications have been from the Isle of Man to the King, as it appear from the Council register. On the 18th August, 1669, a petition of James Christian was read, setting forth a prosecution of Robert Calcot; and that he had dispossessed him of his estate, praying relief, with an affidavit annexed thereto. Thereupon, it was ordered by the King in Council, that a copy of the said petition and affidavit should be transmitted to the Earl of Derby, who was thereby directed to hear and end the case; and if he could not end it, to represent a state of the case to the Council Board, that his Majesty according to justice, might finally determine the same. Afterwards, the 15th of April, 1760, a state of the case reported by the Officers of the Isle of Man, was laid before the Council Board; and ordered to be transmitted to the Bishop of St. Asaph, who had been Bishop of Man; who, together with the Attorney and Solicitor-General were to consider this matter, and report the same, that so such further and final determination might be taken therein as was agreeable to justice. On the 6th May, 1670, the Attorney and Solicitor-General reported that Christian's claim was under a prior lease, which they conceived to be void; and that Calcot's claim was by a subsequent good lease; whereupon Christian's petition was dismissed. There was said to be also another petition by one Curry in 1670, which was received; and afterwards on the merits dismissed.

For these and other reasons the Lords Committee determined to go on with the appeal; and ordered it to be determined on the merits the 12th December following; when the Committee reversed the decree of the Earl of Derby, and ordered the appellant to be put into possession of the lands out of which he had been ejected by the execution of the said judgment, and that the respondent should account to him for the profits since his having possession of the premises.

No. 3.—*John Skelton's Case*, 1*st Henry* 4*th*, 1399.—*Payment of Allowances to a Crown Officer.*—The petition of John Skelton, stating, that he had discharged a commission from the late King to Scotland, prays, an account to be taken on his oath concerning what is due for the journey and the commission, at the rate paid to others before for the same service; and for payment, according to the report of the King's Treasurer, and Chamberlain of the Exchequer.

This petition was agreed to at the Council Board.

No. 4.—*Confirmation of Officers*, 1 *Henry* 6*th*, 1423.—It was ordered, that all those who held their offices under patents of the late King, during their good behaviour, should be confirmed in the same as if they held them for life, unless they have been found undeserving, or notoriously inefficient.—(Proceedings of the P. C., vol. iii. p. 23.—So Lord J. Russell above, p. 34, Note.)

No. 5.—*William Mill's Case.—Vindication of an Injured Public Officer.*—William Mill held an office in the Star Chamber, of which the reversion was granted to Lord Bacon. In 1594, he was punished by imprisonment for alleged corruption. Several years afterwards, other charges were made against him; but he obtained a hearing, with the result, expressed in the following commission from the Queen to the Archbishop of Canterbury, the Lord Keeper, and four others, concerning the case:—"Whereas, our servant, William Mill, Clerk of our Council, hath for two years been charged with sundry supposed offences, the examination whereof are committed to you; and finding from precedents of the Court of Star Chamber, and breviats of the cause, that the pretended offences are neither in their own nature, nor

upon proofs such as deserve the correction sought for; we, therefore, intending to proceed graciously with our said servant, and to take great resolution of all such controversies, in regard that the said office is of our proper disposition, and the said William Mill, duly invested by our letters patent with it, as likewise upon other gracious motives, do command the said charges to be clearly dismissed; and the commissioners were also to enquire into the duties and fees of the office held by Mr. Mill, "by *usage*, or authentic precedents."—(Egerton Papers, p, 316.)

No. 6.—*Serjeant Hele's Case.—Promotion and Employment Claimed.*—Serjeant Hele had pretensions to the office of Master of the Rolls, in the reign of Queen Elizabeth and James the 1st, and accused the Lord Keeper Ellesmere of opposing his pretensions from private enmity. It appears from the Egerton Papers, published by the Camden Society, that many details of this case are preserved at Bridgewater House; but the Society has printed only a petition from the Serjeant to the King, with two letters.

In the petition are the following passages, praying employment:—"I have served our late Queen and your Majesty, as a public magistrate, thirty years, and more; and in that time, never touched with any crime. I protest to God and your Majesty, I am innocent of any undue course. Since the last hearing of my cause before your Majesty's Privy Council, it is bruited underhand that I have dealt indirectly, that I am deeply fined, my profession and practice clean taken from me, with imprisonment.

"If your Majesty shall think me fit to do you any service, the scandal would be taken from me.—JOHN HELE."—(The Egerton Papers, p. 393.)

No. 7.—*Thomas Hodges' Case*, 1722.—*Appeal to Parliament.*—Thomas. Hodges, Esq., petitioned against the Governor of Barbadoes, Lord Grey, charging him with mal-administration of justice. The Board of Trade reported that the charge was not substantiated. "And for any private injury the said Hodges might think he had sustained from the said Lord Grey during his government, he had his remedy at law, by virtue of an Act of Parliament lately passed, to punish governors of plantations in this kingdom, for crimes committed by them in the plantations."

Against this report Mr. Hodges petitioned the House of Commons, alleging that he had proved the truth of his complaint, but that the Board had covered the truths from his Majesty, and had affectually hindered him from any relief, prayed the consideration of the case by the House. A Committee was appointed, before which the Board of Trade made its defence; and the House of Commons resolved that Mr. Hodges had failed to make good his petition, which they voted vexatious and scandalous.—(Commons Journal, 1702, p. 764 and 884.)

No. 8.—*The Carolina Case.—Appeal to Parliament approved by the Crown.*—J. Boone petitioned the House of Lords concerning grievances in Carolina, and prayed that the deplorable state of the said colony might be taken into consideration, and such relief provided as should be proper. The Lords entertained the petition, and addressed the Crown, that her Majesty would graciously be pleased to find out, and prosecute, the most effectual means for the relief of the province, to which the Queen answered—"I thank the House for laying these matters so plainly before me; and I will do all in my power to relieve my subjects in Carolina, and protect their just rights."—(Lords Journal, 1705, p. 130, 151, and 153.)

No. 9.—*Appeal to Parliament.*—Thomas Stevens petitioned the House of Commons, charging the Trustees of Georgia with oppressing the colony, by using abuses—and praying redress. The House granted a Committee, by which his charge was reputed to be false, scandalous, and malicious; and the petitioner was reprimanded on his knees.—(Commons Journal.)

No. 10.—*The New Hampshire Case of Plantation Boundaries in* 1764, *is in* 3 *Belknap's History of N. Hampsh.* 296, *App.* 10, *No. xi.*—In 1685 an appeal of Willam Vaughan from a judgment in New Hampshire, at the seat of Robert Mason for lands, was heard by Counsel before the Committee for trade and plantations of the Privy Council, who reported that the judgment should be affirmed; and it was affirmed accordingly by the King in Council.—Belknap's History of New Hampshire, vol. 1, p. 345, app. xli.

Address that the King will direct the Commissioners of Trade and Plantations to prepare a scheme for better securing and extending the trade to Africa, and to lay the same before Parliament at the beginning of the next Session.—(Journals of the House of Lords, v. xxvii. p. 364, 1749.)

No. 11.—*The Appeal of the Rajah of Sattara.*—In 1839 the Rajah of Sattara was dethroned by Sir James Carnac, the Governor of Bombay. Besides being dethroned, he was banished to a distance of 700 miles from his principality. His Highness was stripped of all his private property, and has ever since been living in exile, as a state prisoner, upon an allowance wholly inadequate to his wants. Three charges have been brought against him by the East India Company and their servants. Of the tenor of the first charge, the Rajah was made aware in 1836, but on asking for copies of the evidence, they were denied, on the ground, that the inquiry had been SECRET, AND THE EVIDENCE ALSO. With regard to the other two, which were brought forward in 1838, the Rajah to this hour has never been officially informed of their existence, still less made acquainted with the evidence by which they are supported. Voluminous papers have been printed by the India House and the House of Commons, extending to about three thousand folio pages, and frequent discussions have taken place in the Court of Proprietors, in the course of which the friends of the Rajah, *including three of the residents at his Court*, have unveiled a series of the most iniquitous plots against his Highness, and clearly demonstrated that he has been the victim of a foul conspiracy. But, the Court of Directors have resolutely refused to review their decision, or to grant a hearing to the accused. Under such circumstances, how obvious is the necessity of an appeal to a tribunal, before which the cause might be tried in the presence of competent and unbiassed judges! THE SUM TOTAL OF THE RAJAH'S PRAYER, IS FOR A HEARING. He has, throughout, declared his perfect innocence of any charge by any means brought to his knowledge; and his friends feel confident that they have it in their power to establish his entire innocence, out of the printed papers published by authority. Were the Lords of her Majesty's Privy Council ACCESSIBLE, they would at once carry their case to that, as the fittest and highest tribunal; and a decision there, would relieve all parties from suspense: and end at once a protracted and vexatious controversy. Whether those who take an interest in the welfare of this Prince will make an effort to obtain such a HEARING, we have not the means of knowing; but we have reason to believe they have hitherto considered that such an attempt would be a hopeless one.

No. 12.—*Suspension of the Office of Counsel to the Colonial Office.*—The importance of the change introduced in the person of Mr. Stephen, as to a law adviser in the Colonial Office, will be appreciated by considering, that by the constitution, *law*, and not *arbitrary discretion*, is the rule of all our institutions. The Crown has its Chancellor and law officers. Even the Houses of Parliament have their judges, the Masters in Chancery, and the *gentlemen of the long robe* for advice. Every corporation has its recorder, or its clerk, and whilst ignorance of the law does not excuse the meanest criminal, neglect of it by the highest, is equally without excuse. If they do not know the law, said Chief Justice Holt, they must seek advice. Even military and naval commanders have judge-advocates to help them on law. The Old Board of Plantations had its own legal advisers, *besides* the Attorney-General, and Solicitor-General,

and Advocate-General; and Mr. G. Chalmers, the last of them, shewed in his valuable collection of Opinions, how useful those advisers were. When the Act of 22 Geo. III. c. 82, abolished the Board of Plantations, and transferred its power, to the Privy Council; and the Secretary of State for the Home Department, was specially entrusted with colonial affairs; he was furnished with a law adviser. Upon the Secretary of State for the Colonies being appointed in about 1794, the same legal office was not made immediately. At length, however, Mr. Stephen obtained the post, and held it as a substantive office, until he became Under-Secretary of State. But at his promotion no successor was appointed to him, as an adviser to the Secretary of State for the Colonies. Thus not only was the strength of the Department diminished, when new colonies were forming every day; but a violation of principle was permitted, for which there is no conceivable excuse, either in economy, or convenience. Work done by too few hands, is badly done, and a political department without its law adviser, is sure to be more and more arbitrary.

This progress in the career of mal administration will be clearly seen in the following table:—

Date.	Secretary of State for the Colonies.	Under-Secretary of State.	Law Adviser to the Colonial Office.
1826.	Earl Bathurst.	MrR.W.Horton,M.P.	Mr. James Stephen.
1827, May.	Viscount Goderich.	Ditto.	Ditto.
Aug.	Mr. Huskisson.	Ditto.	Ditto.
1828. Jan.	Sir G. Murray.	Mr. Twiss, M.P. Mr. Hay.	Ditto.
1830. Nov.	Viscount Goderich.	Lord Howick, M.P. Mr. Hay.	Ditto.
1832.	Mr. Stanley.	Mr. Lefevre.	Ditto.
1833.	Mr. T. S. Rice.	Mr. Hay.	
1835.	Lord Glenelg.	Sir G. Grey, M.P. or	Ditto..
1837.	Marq. of Normanby	Mr. LabouchereM.P Mr. Hay.	
1839.	Lord John Russell.	Mr. V. Smith. M.P. Mr. Stephen.	None.
1841. 1844.	Lord Stanley.	Mr. Hope, M.P. Mr. Stephen.	

Thus the law having long ceased to be respected in important cases in the Colonial Office, there is at last an end of all pretence to respect to it, by the permanent suppression of the separate office of law adviser to the Secretary of State

No. 11.—*Barbadoes.—Money due to a Colonial Crown Officer ordered to be paid, the 15th day of May*, 1728.—(Present—The King's most excellent Majesty, &c.) Whereas, his Majesty was pleased to refer unto the consideration of the Lords Commissioners of Trade and Plantations, a petition of Francis Whitworth, Esq.; with an account annexed, setting forth that the Government of Bardadoes is indebted to him as Secretary of the said Island, in the sum of £1333 12s. 6d. for making capias and duplicates of the minutes of Council, and of acts of assembly for his Majesty's Secretary of State, and for the Lords Commissioners of Trade, as likewise for other public services, from the 2nd of April, 1719, to the 1st of March, 1726—and praying that his Majesty would be

graciously pleased to recommend the payment of the said debt, as likewise such further sums as shall from time to time become due to him from the said Island. And whereas, the said Lords Commissioners for Trade and Plantations, have this day reported to his Majesty at this Board, that having discoursed with the petitioner thereupon, he informed them that he had no salary for executing the said office of Secretary; and that the profits accruing to him from his said office, do only arise from such reasonable fees, as have for many years past been usually taken in the said office; and that, therefore, they are of opinion, the petitioners request is very reasonable. His Majesty taking the same into his royal consideration, is thereupon pleased with the advice of his Privy Council, to order, as is hereby ordered, that the Governor or Commander-in-Chief of his Majesty's Island of Barbadoes, for the time being, do, with the Council of the said Island, examine and settle the Secretary's account, which is hereunto annexed. And that his Majesty's Government do earnestly recommend to the assembly of the said Island the immediate payment of what shall be found due to him upon proper vouchers, according to the usual and accustomed fees given upon the like occasions; and also the taking care to pay, for the future, whatever shall become due to the Secretary, for such services as shall be performed by him or his deputies for the public.—Charles Vernon.

These few examples of business transacted at the Council Board, are offered as mere suggestions of what might be produced by a proper selection of cases from the Register of the Council, and from the Journals of Parliament. For many years, it has been attempted to have such selections published, but hitherto without success, although it would furnish an invaluable guide to every branch of our administration. The government should publish a selection of Privy Council cases decided in the last two hundred years. When application was made, in 1830, by the writer of this pamphlet to the Secretary of State for the Home Department, for leave to see the Register of the Council, in order to prepare such a collection, the reply was encouraging. But a negociation then making with a bookseller on the subject, failed.

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