AN

ILLUSTRATION

OF THE

PRINCIPLES OF THE BILL,

PROPOSED TO BE SUBMITTED

TO THE

CONSIDERATION OF PARLIAMENT,

FOR

CORRECTING THE ABUSES AND SUPPLYING THE DEFECTS IN THE INTERNAL GOVERNMENT OF THE ROYAL BOROUGHS, AND IN THE MANNER OF ACCOUNTING FOR THE PROPERTY, ANNUAL REVENUES, AND EXPENDITURE OF THE SAME, IN THAT PART OF GREAT BRITAIN CALLED SCOTLAND.

BY THE

COMMITTEE OF DELEGATES.

EDINBURGH:
PRINTED BY NEILL AND COMPANY.

M,DCC,LXXXVII.

CONTENTS.

CHAPTER I.

General Observations relative to the Government of the Boroughs, the object of Reform, and the Objections which have been offered against it.

The corrupt and unconſtitutional nature of the preſent Government of Boroughs ſhortly deſcribed. Their long ſubjection to that Government. This no reaſon for its continuance. Pope's maxim of Government applicable to the Boroughs. The exact correſpondence between the nature and adminiſtration of their Government. The reaſons why the preſent ſyſtems are defended, muſt be ſought for, in their extreme corruption. The objection of innovation examined and expoſed. The objection that any alteration in Borough-governments is precluded by the Treaty of Union, conſidered. The fallacy of that opinion demonſtrated. The rights and privileges which the Treaty truly reſerved to the Boroughs, explained.

"THERE is not, perhaps, ſays Mr Fletcher of Saltoun, in human affairs, any "thing ſo unaccountable, as the indignity and cruelty with which the far "greater part of mankind ſuffer themſelves to be uſed, under the pretence of go- "vernment. Some men falſely perſuading themſelves, that *bad governments are ad- "vantageous to them, as moſt conducing to gratify their ambition, avarice and luxury, "ſet themſelves, with the utmoſt art and violence, to preſerve their eſtabliſhment* *."

These are the obſervations of a penetrating ſtateſman, a friend to humanity, and a paſſionate lover of Liberty. If, in relation to ſmall communities, one ſhould deſire to find an illuſtration of a doctrine, which is entirely general in its object, let him look at thoſe monuments which, in the Royal Boroughs of Scotland, the hand of Deſpotiſm has erected. Here are ſyſtems of government, which, by ſome egregious abuſe of language, have obtained the name of Conſtitutions: For they give to the people, whoſe affairs are naturally the objects of their eſtabliſhment, no voice in the adminiſtration; permit perſons, once in office, to perpetuate their domination over the citizens; afford no adequate redreſs againſt the enormities of this dangerous power, in relation to the property, revenues, and police of the communities.

* Fletcher of Saltoun's Political Works: Diſcourſe with relation to Militias.

To the tyranny and oppreſſion of theſe forms of government, however unconſtitutional and pernicious, the boroughs have long ſuffered themſelves to be ſubjected. This is now one of the chief circumſtances, on account of which their future preſervation is contended for; as if the antiquity of crimes and of ſlavery could render them beneficial to ſociety, or give them a title to a perpetual impunity and eſtabliſhment. But if the antiquity of inſtitutions were a ſufficient proof of their juſtice and expediency, the argument in favour of reform would be invincible: For it is certain, that, in the hiſtory of mankind, Liberty was prior to Slavery; and that, in the hiſtory of the boroughs, the energy and dignity of popular government had preceded the languor and depreſſion of tyranny. To what purpoſe, therefore, is it to tell us that the preſent ſlavery of the boroughs is of ancient date, ſince it is indiſputable that their freedom is greatly more ancient?

If, indeed, Pope's maxim, That whatever form of government is beſt adminiſtered, is beſt, were true, it might eaſily be proven, however paradoxical it may appear, that the governments of our royal boroughs are the beſt that could be contrived. That adminiſtration of any ſyſtem is certainly the beſt, which correſponds preciſely to the principle of the ſyſtem itſelf: For, to deviate from this principle, in execution, is not to adminiſter that ſyſtem, but to violate it, and adopt another. Let us then ſuppoſe a tyrannical, or even a diabolical government eſtabliſhed, and conducted on its proper principle, it is, according to Pope, the beſt ſpecies of government, becauſe it is beſt adminiſtered; that is, its functions are inviolably performed on its true principles. This concluſion, though clearly and infallibly deducible from Pope's maxim of government, is evidently abſurd. The maxim, therefore, is falſe. A government pernicious in its principle can never be well adminiſtered, that is, can never be adminiſtered to the happineſs of the people, without departing from its own principle. Hence reſults, in direct oppoſition to Mr Pope's opinion, the neceſſity of contending for forms of government that are beneficial in their nature and inſtitution.

But if it were poſſible to admit the juſtice of the doctrine advanced by Pope, no man could entertain a doubt, that the political arrangements of our boroughs are the beſt that could be adopted. On their genuine principles they have been uniformly conducted. It was, indeed, but natural to expect, that the execution ſhould ſtrongly participate of the inherent qualities of the ſyſtem. Accordingly, the adminiſtration of borough-governments has equalled, if it has not exceeded, in depravity, the nature of the inſtitutions. As the people poſſeſs no voice in the election of the governors of the towns, the citizens have been overlooked and deſpiſed, their conveniences totally diſregarded, and even their rights not unfrequently trampled under foot. As the governors, in the exerciſe of their offices, are ſubject to no control from the citizens, the public intereſt has ever been ſacrificed to private purpoſes; the police of the boroughs ſhamefully neglected; the property of the communities profuſely alienated to favourites, or men of influence, and the public revenues groſsly miſapplied. Theſe things have become notorious, and can no longer be diſguiſed or palliated. The expediency and neceſſity of a reform in the internal government of boroughs, are now

now univerſally admitted, unleſs by thoſe who are fettered by connections, or blinded by intereſt.

In taking this view of the nature and conſequences of our borough-governments, a perſon unacquainted with our manners, and the effects of political arrangements, would naturally enquire, for what reaſon ſuch inſtitutions are ſuffered to exiſt? on what principle they can be ſupported? and what man is ſo profligate, or ſo much an enemy to the Liberty of his country, as to avow himſelf their defender? To ſay that the very depravity, with which theſe ſyſtems of borough-government are affected, is their ſtrongeſt ſupport, might appear, at firſt ſight, to be an expreſſion of ſpleen, or of a party reſentment. It is, however, to be lamented, that the truth of the aſſertion cannot be denied. We might appeal for its authenticity to the diſintereſted voice of the nation. From that corruption which pervades the political eſtabliſhment of every borough, and which has rendered every thing ſubſervient to the ambition and emolument of men in perpetual office, have ſprung as many intereſted parties as there are town-councils, vigilant, active, and zealous, who are bound by filial duty to ſupport the parent that has made them, and who, in their turn, are honoured and ſupported by it. We can no longer be ſurpriſed that corruption and ſlavery, under the name of Conſtitutions, ſhould be ſtrenuouſly defended, or that Reform ſhould be odious to men, whoſe political importance it would annihilate, and whoſe private intereſt it would materially affect. But, in the reaſonings of thoſe who are not aſhamed to confeſs an attachment to inſtitutions that diſgrace their country, there are ſingularities which cannot fail to excite ſome degree of aſtoniſhment.

If ever the human character conſpicuouſly diſplayed that inconſiſtency, of which it is ſo often accuſed by philoſophers, it has been in the ſentiments and conduct of thoſe who have avowed their hoſtility to reform. Studiouſly avoiding any diſcuſſion of the neceſſity and expediency of the meaſure, they have only oppoſed to it the fear of innovation; a ſhield, which, without any additional aid, they appear to conſider as fully ſufficient to protect their ſyſtem. Is it not ſtrange, that a doctrine of this kind ſhould be propagated, and by ſome liſtened to, in the end of the eighteenth century, and in one of the moſt poliſhed nations of Europe? Is it the intention of the enemies of reform to reproach every improvement which ſucceſſive ages have produced, in the laws, manners, and inſtitutions of the nation? Do they mean to aſſert, that the ignorance, the ſuperſtition, and the deſpotiſm of former periods, are preferable to the knowledge, the humanity, and liberty of preſent times? Condemning the diſcoveries of ſcience, and the conveniencies introduced by art, do they wiſh to return to the original condition of ſociety? Theſe ſentiments, though naturally connected with their doctrine, the oppoſers of reform will utterly diſclaim. How abſurd, therefore, is the attempt, by an overcharged picture of the miſchiefs of innovation, to repreſs the growing ſpirit of liberty, in a country whoſe Hiſtory is diſtinguiſhed by a ſeries of the happieſt, as well as the boldeſt innovations?

In ſuch inconſiſtencies will they always be involved, who, aſſuming a veil that cannot cover them, endeavour to blind their fellow-citizens, by ſetting up their own

private

private advantages, in oppoſition to the moſt evident intereſts of the public. While the enemies of reform, under pretence of conſulting the public tranquillity, are buſy in ſcattering abroad the terrors of innovation, there is ſcarcely a man to be found who will not diſcover the reaſon of their conduct. Their concern in the preſervation of the preſent corrupt ſyſtems, is too deep and too manifeſt, to allow their real intentions to eſcape without detection.

In order to enable us to judge with propriety of the conſequences of innovation, it is neceſſary that we ſhould diſregard the little objects which influence the opinions, and form the buſineſs of town-councils; elevate our minds above the common cant of ignorance or intereſted deſign; look around us at a diſtance; extend our views beyond the narrow circle of our own experience; and ſurvey, with impartial eye, both in our own country, and in the world at large, the effects that have reſulted from an alteration in laws, manners, and government.

Between the period when our anceſtors roamed naked in the foreſt, and the high cultivation of modern times, there is an immenſe ſpace, which, however, is filled up with nothing but a thick and perpetual ſucceſſion of *innovations*. Shall we then ſay that innovation is to be reſiſted, as being fraught with miſchief to the ſtate, when, if the ſpirit of innovation had not been indulged, and the effects of it had not been every where felt, we had yet remained in a condition little ſuperior to that of the animals of the field? In fact, when we contemplate the hiſtory of our country, what is it but a relation of the changes which have happened, in the religion, the manners, the laws, and the government of the people, and of the cauſes which produced them?

The political liberty, as well as the commercial advantages we now enjoy, we owe to a ſeries of the greateſt, perhaps of the moſt unexpected innovations. From that ſource have originated the moſt brilliant and uſeful diſcoveries in ſcience, and the moſt ſalutary inſtitutions, both in religion and government. The preſent refinement and humanity of European manners have been greatly owing to the introduction of Chriſtianity, which deeply inculcated benevolence and equality among mankind. It was the Reformation that has drawn the line between Religion and Superſtition, and relieved us from the debaſing and intolerable domination of the Prieſthood. It was the Union of the two crowns of Scotland and of England, that ſtopped the torrents of blood which formerly made devaſtation in either country. It was the Union of the two kingdoms that opened wide the doors of commerce, and allowed us to participate in the extenſive commercial tranſactions of the firſt nation in the world. It was the abolition of the heritable juriſdictions, that redeemed our people from the oppreſſive hand of feudal deſpotiſm. It was the illuſtrious event of the Revolution that exterminated regal tyranny, taught the people the extent both of their power and their rights, and made them to experience a period of political happineſs and greatneſs, to which few other nations had ever attained.

The

The freedom and proſperity reſulting from this connected chain of alterations, are too notorious, and have made too deep an impreſſion to admit of being conteſted. It is, however, a ſingular circumſtance, that thoſe perſons who confeſs, and even boaſt of theſe beneficial innovations in the hiſtory of their country, profeſs yet, in the preſent inſtance, to be ſtruck with the terror, and are loud in exclaiming againſt the miſchiefs of *innovation!* But, in the extreme inconſiſtency of the concluſions they draw, it is not difficult to trace the motives which actuate their conduct. Concerning the effects, however, of a change in manners and government, the facts which have been mentioned afford information, and reflect a light, which no arts of deſigning men will be able either to contradict or obſcure. Shall we then ſacrifice our rights, as men and as citizens, to the viſionary fears of innovation? Shall we yield to the deluſions which intereſted policy has prepared? In other inſtances, innovations have produced the higheſt commercial advantages, and the moſt ſplendid national felicity, the natural offſprings of Liberty. Are we then afraid, that, to alter the illiberal and corrupt ſyſtems of our borough-governments, ſhould unhinge the conſtitution and ruin the ſtate? a concluſion which it is impoſſible to infer, if we allow the experience of the paſt to afford a juſt criterion of reaſoning with regard to the future. Indulging with a becoming manlineſs in the ſpirit of freedom, we have ventured, by the baniſhment of our ancient kings, to puniſh the enormities of regal Deſpotiſm. From that bold action, which by its novelty aſtoniſhed, and by its example excited the fears, as well as the reſentment of the princes of Europe, we have derived the moſt ſolid and laſting advantages. Muſt we then endure the indignity and oppreſſion of obſcure and contemptible tyrannies, leſt, by ſuppreſſing them, the nation ſhould be involved in the deepeſt calamities! To maintain ſuch a propoſition, when ſtated in its proper light, What is it but to excite the higheſt ridicule?

At the ſame time, as there can be no general rule without exception, we are ready to admit, that, in the hiſtory of the boroughs, there was one innovation attended with the moſt pernicious conſequences to the character, the induſtry, the commerce, and the general proſperity of the country. It was that unequivocal teſtimony of an arbitrary reign, the act of Parliament 1469, which entirely altered the conſtitutions of the boroughs; erected the ſtandard of Deſpotiſm, where Liberty had ſo long reſided; and which covered the face of the country with the darkneſs and torpitude of ſlavery, in place of the light and ſpirit of freedom. But, on the other hand, the whole tenor of our hiſtory affords invincible proof, that every attempt we have made to eſtabliſh and ſecure our liberties was a wide ſtep towards the greateſt political happineſs and importance, and the moſt extended commercial intercourſe with the world.

It has been ſaid, that reform, by introducing diſſipation and tumult among the people, would relax the induſtry, and hurt the manufactures and commerce of the country. Inſtead of a diſſertation or argument on this ſubject, let us appeal to facts which are inconteſtable, and which afford the moſt irrefragable proof, that a diminution of induſtry, and injury to commerce, are not the conſequences of an exten-

ſive

ſive communication of freedom. Has the acquiſition of Liberty been fatal to the proſperity of Holland? Has it introduced diſſipation and deſtroyed induſtry among the Dutch? Or has it produced, from fens and barren ſands, a populous nation, who have aſtoniſhed the world by their induſtry, their commercial enterprize, their ſucceſs in trade, as well as their bravery in war? There is not, in Europe, a ſtate in which the rights of election are more widely diffuſed among the people, than England. Is there any nation that can claim a ſuperiority over England, in induſtry, in manufactures, in commerce, or in arms? This exalted and illuſtrious ſituation, ſhe owes, in a great meaſure, to that activity of genius, and that boldneſs of ſpirit, which are the ſpontaneous and luxuriant growth of the ſoil of Liberty.

The oppoſers of reform, whatever confidence they may in appearance aſſume, yet betray by their conduct, an evident conſciouſneſs of the weakneſs of their cauſe, and of the untenable nature of thoſe corrupt inſtitutions which they have undertaken to defend. If they were convinced, as they pretend, that the ſcheme of reform is the effect of idle and frivolous ſpeculation, or that it is pernicious and dangerous, they would not heſitate to allow its merits to be fairly diſcuſſed in Parliament. The diſapprobation of the Legiſlature would crown their oppoſition with triumph, and would confirm the ſtability of thoſe inſtitutions, of which they avow themſelves the ſupporters.

Instead of this, the enemies of reform have diſcovered the utmoſt anxiety to prevent the meaſure from receiving the deliberate and impartial determination of Parliament. For that purpoſe, they have reſorted to a plea, which, to uſe the language of the bar, reſolves merely into an objection in point of form. They have aſſerted, that Parliament is precluded, by the Treaty of Union, from exerciſing any power of altering the forms of government now exiſting in the royal boroughs of Scotland. It is the twenty-firſt article of the Treaty that has afforded a pretence for this opinion. The article is conceived in the following words: "That the rights and privileges of "the royal boroughs in Scotland, as they now are, do remain entire after the Union, "and notwithſtanding thereof."

It was not without aſtoniſhment, the friends of reform had firſt learned, from the publications of its enemies*, that the Treaty of Union was to be employed as a bar, even to the introduction of the meaſure of reform into Parliament. They had never conceived the Treaty to be capable of that interpretation. Since, however, the queſtion has been agitated, and will probably be reſumed in Parliament, it may be proper ſhortly to enquire, Whether that conſtruction which the oppoſers of reform have given to the Treaty of Union can be ſupported?

Had

* See the Circular Letter from Sir James Hunter Blair, as Preſes of the Convention of Royal Boroughs, to the individual Town-councils.

Had the hiſtorians of the Union publiſhed, at length, the parliamentary debates on that ſubject, this diſpute would have been determined. But it is certain, that neither in the minutes of the Commiſſioners of the Union at London, nor in the proceedings of the Scottiſh Parliament on the ſubject, as compiled by Defoe, is there the leaſt mention of the preciſe nature of thoſe rights and privileges which the Treaty had reſerved to the boroughs. Left, therefore, without aid from poſitive teſtimony, we are under the neceſſity of deciding from circumſtances, in relation to the meaning of that article in the Treaty of Union, if, which is not very obvious, the words of it are capable of the conſtruction aſcribed to them by the oppoſers of reform.

It may ſerve to throw light on this queſtion, to attend a little to the political ſtate of the country, at the time of the Union, and to the ideas which then prevailed on the ſubject of Liberty. It will be remembered, that the Revolution, by teaching the people that they poſſeſſed the fountain of power, had inſpired, and univerſally propagated, high ſentiments of freedom. Theſe lively feelings, far from being extinguiſhed, exiſted in full vigour at the period of the Union. It will be alſo recollected, that, by the claim of rights, the grievances of the boroughs were to be "con-"ſidered and redreſſed in Parliament." The nation, it is true, whoſe attention was engaged by concerns of ſtill higher magnitude, overlooked this important object; but it was impoſſible, that the grievances of 1689, could, in the 1707, without being removed, have been converted into bleſſings, the enjoyment of which was to be ſecured by unalterable laws.

These conſiderations, ariſing from the declaration in the claim of rights, and thoſe ſentiments of liberty which were deeply rivetted by the memorable tranſaction of the Revolution, render it evident that it could not have been the intention of the Treaty of Union, to maintain for ever in Scotland, ſyſtems of ſlavery, under the name of Rights and Privileges. To poſſeſs forms of internal policy, in boroughs, by which the burgeſſes were excluded from any ſhare in the adminiſtration of the common affairs, and by which a few men, ſelf-elected, were allowed to perpetuate themſelves in power; Were theſe things really *Rights* and *Privileges*, which it became the burgeſſes of Scotland to demand, and which they were deſirous to have ſecured to them by a national Treaty? Is it the *Right* or *Privilege* of any corporation, or of any individual, to be degraded under the laſh of ſlavery, or to be inſulted by the hand of oppreſſion? yet this muſt neceſſarily be the caſe, if it is a juſt conſtruction which the oppoſers of reform have aſcribed to the Treaty of Union. But can we conceive it poſſible, that two nations, whoſe conſtitutions were both free, could enter into a ſolemn concert to render unalterable, in either country, ſyſtems of internal government, which were founded in corruption and ſlavery? Was England, the parent of Liberty, a party-contractor in this infamous tranſaction!

That ſuch an intention as is now aſcribed to the Treaty of Union could have entered the mind of either party, in a national compact, appears utterly impoſſible. In this opinion we ſhall be the more confirmed, by taking a comprehenſive view of the nature and effects of thoſe forms of borough-government which then prevailed in Scotland,

Scotland, and ſtill continue. "Theſe little tyrannies, had, under the cover of legal names, committed the deepeſt offences againſt the rights and eſſential intereſts of the people. They had laviſhly alienated, or groſsly miſapplied the public property and revenues of boroughs: They had, in various inſtances, inſulted and injured the communities which they pretended to govern, treating them with neglect and contempt, and introducing venal and corrupt practices, not only in the ordinary adminiſtration, but alſo in the magiſtratical and parliamentary elections: They had, by with-holding from the citizens theſe important powers of election, glaringly violated their natural and conſtitutional liberties, reducing them to a mortifying condition of inſignificance and ſervitude: They had thus depreſſed the minds, and relaxed the induſtry of the people, deſtroying that lively ſpirit and love of enterprize, and that various activity and vigour of genius, which are the natural fruits of liberty; which are powerful ſprings of every art, elegant or uſeful; which are eſſential to the glory and proſperity of nations, in ſcience, in commerce, and in arms *."

To inſtitutions of this nature, and attended with conſequences ſo fatal, did two enlightened nations, both animated by a high ſenſe of Liberty, combine to give an eternity of duration! The belief of this ſuppoſition is beyond the reach, almoſt, of credulity itſelf. Was it for theſe illiberal and pernicious forms of government, that, at the time of the Union, *Belhaven* and *Fletcher* contended? It is an aſperſion to which no man will give credit. Could theſe illuſtrious patriots look up from their graves, the flames of their indignation would blaſt the man who ſhould dare to utter the calumny, or reproach them with intentions hoſtile to the liberty and dignity, or to the proſperity and felicity of their country.

To give entire ſatisfaction, with regard to the meaning of that article of the Treaty of Union which is now under conſideration, it is only farther neceſſary to enquire into, and point out to public view, the real nature of thoſe rights and privileges, which it was the object of the Treaty of Union to reſerve to the royal boroughs. The ſolution of this queſtion is eaſy, and the concluſion reſulting from it will, it is hoped, appear irreſiſtible.

The peculiar rights and privileges of the royal boroughs were of two kinds, *1ſt*, The excluſive grants of particular incorporations, by which they were entitled to prevent all unfreemen from exerciſing trade or traffic within the boroughs; and, *2dly*, The excluſive privileges of foreign trade. To the former of theſe, they had right by their charters of incorporation, and eſtabliſhed uſage; the latter were conferred on them by a variety of public laws. Beſides, many boroughs had right by their charters, to juriſdictions of ſheriffſhip, regality, or barony, which were not meant to be infringed by the Treaty of Union; and which, indeed, are ſtill reſerved to the royal boroughs, by the act of Parliament aboliſhing the heritable juriſdictions.

By a ſtatute of King William, who began to reign as early as the 1165, none were entitled to buy wool, ſkins, hides, or ſuch like merchandiſe, but merchants within borough.

* A Letter from a member of Convention, to the Boroughs who had not acceded to Reform.

borough *. None other, by the laws of the boroughs were entitled to ſell ſuch merchandiſes †. By another ſtatute of King William, it was enacted, that none deal in foreign trade but freemen burgeſſes, dwelling within borough ‡.

It would be altogether ſuperfluous to recite the terms of the various acts of Parliament, by which theſe rights and privileges, in favour of the royal boroughs, were, from time to time, inforced, confirmed, limited to the royal boroughs alone, or extended to boroughs of barony and regality, as ſuited the views of the Legiſlator, and the political circumſtances of the country. He who covets an intimate acquaintance with their nature and hiſtory, may conſult the following laws in the book of Scottiſh ſtatutes: 1457, *c.* 67;—1466, *c.* 11;—1487, *c.* 107;—1488, *c.* 3;—1581, *c.* 120;—1555, *c.* 59;—1503, *c.* 84.—1540, *c.* 107;—1579, *c.* 97;—1573, *c.* 60;—1579, *c.* 86;—1592, *c.* 154;—1607, *c.* 6;—1621. *c.* 12;—1672, *c.* 5;—1690, *c.* 12;—1698, *c.* 19.

In order, however, to preſent to the public, in one connected view, the rights and privileges competent to the royal boroughs, as they ſtood recently before the Union, it may not be improper to recite the terms of the ſtatutes of 1690 and 1698. The former of theſe ſtatutes ordains, "That the *importing* of all foreign commodities, "and other merchandiſe, either by ſea or land, doth and ſhall belong to the freemen "inhabitants of their Majeſties royal boroughs allenarly, excepting cattle, horſes, "ſheep, and other beſtial, and likewiſe excepting ſuch commodities as Noblemen "and Barons ſhall import for their own uſe, and whereof no part ſhall be imported "for ſale. And likewiſe, they ſtatute and ordain, That the *exporting* by ſea, of all "the native commodities of this kingdom, doth and ſhall belong to the freemen in-"habitants of the royal boroughs only, excepting corns, cattle, horſes, ſheep, me-"tals, minerals, coals, ſalt, lime, and ſtone, but prejudice to Noblemen and Barons "to export, *&c.*"

The act 1698 is conceived almoſt in the ſame terms. It enacts and declares, "That, in time coming, the *exporting* of the native goods of this kingdom, and the "*importing* of foreign goods into the kingdom, is the privilege of the freemen and "burgeſſes of burghs-royal, and of ſuch to whom the ſaid privilege ſhall be com-"municate, excluſive of all others, excepting the exportation of corns, cattle, horſe, "nolt, ſheep, coal, ſalt, metal and minerals, lime and ſtone, and but prejudice to "Noblemen and Barons, to export the native products growing or manufactured in "their lands, and to import foreign commodities for their own uſe, and not for ſale, "anſwering to the value of ſuch export; excepting alſo the privileges granted by "law to declared manufactories, and ſocieties for fiſhing, *&c.*"

These excluſive rights and privileges, competent to the royal boroughs, ſtood entire at the date of the Union; and, according to the commercial ideas which then univerſally prevailed, were fair and proper objects of a reſervation in favour of the royal boroughs.

* Stat. William, *c.* 36. † Leges Burg. *c.* 18. ‡ Stat. William, *c.* 37.

In fine, from the declaration in the claim of rights, relative to the grievances of the boroughs; from the illiberal nature of the forms of borough-government then exiſting; from the political opinions, and high ſentiments of Liberty, which at that time, as well as at the period of the Union, had univerſally pervaded, and deeply impreſſed the characters of both nations, it is forcibly to be preſumed, that to maintain the perpetual exiſtence of corrupt and unconſtitutional ſyſtems of internal policy in the royal boroughs of Scotland, could not poſſibly have been the intention of the Treaty of Union. This opinion receives the moſt complete confirmation, when we find that there is a diſtinct ſpecies of rights and privileges competent to the royal boroughs, which might juſtly claim the attention of the contracting parties, and with propriety form the ſubject of a reſervation to the boroughs of Scotland. Whether, therefore, it was the intention of the Treaty of Union, to preſerve, under the name of Rights and Privileges, thoſe oppreſſive and diſgraceful inſtitutions which governed the boroughs, or whether any alteration of them be for ever precluded by that Treaty, is now ſubmitted, with confidence, to the candour and penetration of the Legiſlature, and of the public. Is it conſiſtent with the wiſdom of the Treaty, any more than its juſtice, to have placed a great and reſpectable body of the people of Scotland, in a ſituation in which they muſt for ever ſubmit to the indignity and depreſſion, which are the concomitants of Slavery, or muſt wiſh, as the firſt object of their hearts, to redeem themſelves from the infamy of their condition, by a diſſolution of the Union?

These various conſiderations, and many others which might be offered, have inclined us to be decidedly of opinion, that the meaſure of Reform is not precluded by the Treaty of Union; that it would not be attended with any evil to the ſtate, or any injury to the conſtitution; but, on the contrary, would be productive of the higheſt and moſt eminent advantages to the induſtry and proſperity, as well as the Liberty and political importance of the country. It may not, however, be improper, in an illuſtration of the principles of the Bill of Reform, to preſent to the public, a ſhort hiſtorical deduction of the ancient freedom and ſubſequent ſlavery of the boroughs, from whence the expediency and neceſſity of Reform already generally allowed, will become ſtill more apparent.

CHAP.

CHAP. II.

Short Historical deduction of the Government of the Boroughs.

Their ancient condition of Freedom. The object of their eſtabliſhment. Conſequences expected from the ſpirit of Freedom in Boroughs. Reaſons which led to their ſubjection. The actual invaſion of their Liberties, firſt by the Nobles, and afterwards by the Crown. Their preſent condition of intolerable ſervitude. An appeal for redreſs to the Wiſdom and Juſtice of the Legiſlature.

THE origin of the royal boroughs it is here unneceſſary to trace; neither is it of any conſequence to enquire, at what period of time they came firſt to form a part of the Legiſlature. That their origin and legiſlative capacities are to be referred to very early periods, cannot be diſputed. This point has been illuſtrated and confirmed by a writer, diſtinguiſhed in the republic of letters, by the depth of his reſearch, the acuteneſs of his genius, and the uncommon energy of his language*. To that eminent and ingenious author, more than to any modern writer, the friends of Liberty are deeply indebted. He has refuted many of the tenets adopted by men of no contemptible name, who, either from error or ſyſtem, had contended for the ancient ſlavery of the boroughs. Dr Steuart, himſelf a paſſionate lover of Liberty, has traced its eſtabliſhments to a very remote antiquity, combating, with invincible force, the adorers of prerogative and the champions of tyranny.

One great object of the inſtitution of royal boroughs, was the introduction and extenſion of commerce and manufactures. To excite that ſpirit of activity and induſtry, ſo eſſential to the ends of their eſtabliſhment, the original frame of their internal government appears to have been admirably adapted. That the ancient conſtitutions of the royal boroughs of Scotland poſſeſſed a very high degree of freedom, is aſcertained by inconteſtable evidence. The whole Magiſtrates, ſuch as the Mayors, otherwiſe called Provoſts, and the Bailies, otherwiſe called Aldermen, and alſo the Town-

* Dr Gilbert Stuart. See his learned and acute obſervations concerning the public law and Conſtitutional Hiſtory of Scotland.

Town-councils were elected, annually, by the free ſuffrage of the burgeſſes, otherwiſe called the honeſt men of the borough *.

Had this natural and liberal form of government remained inviolate, its hiſtory, it cannot be doubted, would have been marked by the moſt ſalutary conſequences. Unfortunately, however, it was diſcovered, that communities originally deſtined for commercial purpoſes, might be converted into inſtruments of political power; a diſcovery which was fatal to the freedom of the boroughs. It very naturally occurred, that a numerous body of men, in full poſſeſſion of liberty, and of thoſe elevated ſentiments which liberty inſpires, would not, on every occaſion, implicitly obey the voice of a maſter. That extent of freedom, therefore, which the boroughs formerly enjoyed, muſt be limited within narrower bounds. A few men muſt be ſelected, and to them the whole authority in each borough muſt be entirely committed. This accompliſhed, an engine of political power was conſtructed, which, on every occaſion, might receive its component parts, as well as direction from the hand of the leading man in the neighbourhood.

Upon theſe principles, however illiberal and unjuſt, an act was paſſed in the Parliament of Scotland, in the year 1496, *cap.* 29, † touching the election of officers in boroughs, obtained in the minority of the reigning Prince, by the power of the Scottiſh Nobles. This ſtatute, long celebrated by the tyranny which it eſtabliſhed, deſtroyed at one blow, the ancient and free conſtitution of the royal boroughs. It there introduced a form of government, which is equally adverſe to liberty and the public good; for while it provides, that no officer or council ſhall be continued longer than one year, it alſo enacts that the old council ſhall chooſe the new; and that the new and the old council, together with the deacons of the crafts, ſhall annually chuſe all officers pertaining to the town. The inductive cauſe of this pernicious ſtatute is no novelty in the hiſtory of political government. The pretence of popular diſturbance has ever been employed to cut up the very principles of popular power. It is a curious maxim which Deſpotiſm has invented, and upon which that ſpecies of government

* Leges Burgorum, *c.* 77. Statuta Gildæ, *c.* 33, 34.

† "*Item*, touching the election of officiares in burrowes, as Aldermen, Baillies, and uther officiares; "becauſe of great contention zeirly for the chuſing of the ſamin, throw multitude and clamour "of commounes, ſimple perſones: It is thought expedient, that na officiares nor councel be con- "tinued after the Kingis laws of burrowes, further than ane zeir, and that the chuſing of new "officiares be in this wiſe: That is to ſay, the auld councel of the toune ſall chuſe the new coun- "cel, in ſik number as accordis to the towne; and the new councel and the auld, in the zeir "forefaid, ſall chuſe all officers perteining to the town, as Alderman, Baillies, Deane of Gild, and "uther officiares; and that ilk craft ſall chuſe a perſon of the ſamin craft, that ſall have voit in "the ſaide election of officiares, for the time in likewiſe zeir by zeir. And attour, it is thought "expedient that na Captaine, nor Conſtable of the Kingis Caſtelles, quhat towne that ever they "be in, ſall bear office within the ſaid towne, as to be Alderman, Baillie, Deane of Gild, Theſaurar, "nor nane uther officiar that may be choſen be the toun, fra the time of the nixt chuſing "foorth."

vernment is ſupported, that the voice and actions of the people are ever hoſtile to their own happineſs, and to their own important and fundamental rights. But there are periods of ſociety, in which deluſions the moſt fatal, and fictions the moſt incredible, acquire influence over the mind, and direct the conduct of men. Of this the ſtatute 1469, and many other monuments of Deſpotiſm, afford ample teſtimony.

It was the neceſſary operation of that arbitrary ſtatute, that the ancient conſtitution of the royal boroughs was fundamentally overturned; the freedom of the burgeſſes invaded, and ſyſtems of Government eſtabliſhed in the boroughs of Scotland, which enabled men once in poſſeſſion of power to retain it for ever, by repeated re-elections of themſelves, or their friends and dependants.

The deprivation of the liberties of the Scottiſh boroughs, introduced by this act of Parliament, was rendred ſtill more ſevere by another, paſſed in the year 1474, *cap.* 56; becauſe by the former act, the whole council was to be annually changed, whereas the latter ordained, that four perſons out of the old ſhould be choſen yearly to the new council, whereby a portion of the power of the council was perpetually entailed on the burgeſſes, without their conſent or approbation.

By another act of the Parliament of Scotland, in the year 1487, *cap.* 108. The act 1469, touching the election of officers in boroughs, by which the councils were appointed to be annually changed, was ratified and approved; and the election of officers was directed to be made "of the beſt and worthieſt indwellers of the town, and not "by partiality nor maſterſhip." But the power of the Nobles defeated in theſe reſpects the execution of the ſtatutes.

Experience, however, having demonſtrated the pernicious effects of perpetuating the power of officers in boroughs, and of conferring that power on ſtrangers; a ſtatute was paſſed in the Parliament of Scotland, in the year 1503, *cap.* 80, which enacted, that all officers having office of juriſdiction within boroughs, be changed yearly; and that none have juriſdiction within borough, unleſs they uſe merchandiſe within the ſame. Of this ſtatute, it was the evident intention to diminiſh the influence of the Nobles, now become equally oppreſſive to the Crown and the people, by procuring themſelves, their near relations and dependants, to be elected into the various offices in boroughs, whereby they engroſſed the whole power, and trampled on the freedom of the boroughs, which formed the third eſtate of Parliament.

The regulations of theſe ſtatutes being ſtill found ineffectual, another act was made by the Parliament of Scotland, in the year 1535, *cap.* 26, which, after narrating the evils ariſing through outlandiſh men being choſen office-bearers in boroughs, ordains, "That no man in time coming be choſen Provoſt, Bailies or Aldermen into burgh, "but they that are honeſt and ſubſtantial burgeſſes, merchants and indwellers of the "ſaid burgh," *&c.*

This ſtatute was not attended with better effects in reſtraining the power of the Nobles, than thoſe which had preceded it. A further attempt was, therefore, made by another act, paſſed in the Parliament of Scotland in the year 1609, *cap.* 8, which, after mentioning that the courſe intended for diſcharging noblemen and gentlemen to be elected Provoſts and Magiſtrates of boroughs, had not taken effect, provides, That in time coming, no perſon ſhould be capable of Provoſtrie, or other magiſtracy within any borough, but merchants and traffickers inhabiting within the ſaid boroughs allenarly, and no others.

Soon after James the Sixth of Scotland had mounted the Engliſh throne, by which he acquired an immenſe acceſſion of crown influence; and more particularly, after the reſtoration of Charles the Second, the ſame abſolute authority over the boroughs of Scotland, which had been formerly held by the Nobles, was ſeized on by the Crown, and was exerciſed in the moſt illegal and arbitrary manner.

Accordingly, one of the grievances ſpecially mentioned in the claim of rights, preſented by the Eſtates of the kingdom of Scotland to King William and Queen Mary, on the 11th of April 1689, was the ſubverting, by the abdicated family, "the right "of the royal boroughs, the third Eſtate of Parliament, impoſing upon them not only "Magiſtrates, but alſo the Town-council and clerks, contrary to their liberties and "expreſs charters."

In purſuance of this claim of rights, one of the ſpecial articles of grievances preſented by the Eſtates of the kingdom of Scotland to King William, on the 13th April 1689, is expreſſed in the following words, "That the grievances of the boroughs be "conſidered and redreſſed in the Parliament."

By the 22d act of the meeting of the Eſtates of the kingdom of Scotland, dated 18th April 1689, the Eſtates gave "order and warrant for new elections to be made of "ordinary Magiſtrates and Town-councils for the ſeveral royal boroughs to be choſen "by the poll; and appointed the Magiſtrates and Town-councils ſo elected, to con-"tinue until the ordinary time of their election at or near Michaelmas then next."

From this ſhort deduction relative to the hiſtory and government of the royal boroughs, it appears, that their conſtitutions anciently were entirely free; that their liberty was invaded and deſtroyed by an arbitrary ſtatute in the year 1469; that from this period to the acceſſion of James the Sixth to the Crown of England, the ariſtocracy of Scotland held the boroughs in bondage; that from the Acceſſion to the Revolution, and more particularly after the Reſtoration, the liberty of the boroughs was trampled under foot by the abſolute power of the Crown; and that it was one of the great objects of the claim of rights to redreſs the grievances, and reſtore the freedom of the boroughs.

But

But, owing to the magnitude and importance of the other objects which then occupied the attention of the nation, or from other cauſes, the *radical* and *ſubſtantial grievances* of the boroughs were entirely overlooked; for, although, by the act of the meeting of the Eſtates of the kingdom of Scotland, on the 18th April 1689, a power was conferred on the burgeſſes, by one poll election, to remove thoſe Councils, Magiſtrates, and other officers, who had been illegally impoſed by the arbitrary authority of the Crown; yet the original invaſion of their rights and liberties, introduced by the act 1469, whereby the old Councils were entitled to elect their ſucceſſors *in perpetuum*, was unfortunately continued unaltered, and unrepealed.

By theſe means, after the Revolution, there ſucceeded to the unconſtitutional authority of the Nobles, and to the influence of the Crown, a new ſpecies of government in the royal boroughs of Scotland; which, though attended with leſs dignity, was not leſs injurious and degrading to the burgeſſes than either of the two former: This was the perpetual power of parties; or, as they are emphatically ſtyled, *Juntos* of men in Boroughs, who having once obtained poſſeſſion of the offices of truſt and authority therein, have been enabled to retain them, often during their lives, by virtue of the regulations of the act 1469, and to entail the ſame, like private eſtates, in their families; employing, as the inſtruments of their power, their relations, connections, and dependants: And this ſpecies of borough-government, though equally diſgraceful and pernicious, has prevailed in Scotland, from the Revolution down to the preſent day.

To the arbitrary and unconſtitutional enactments of the ſtatutes 1469 and 1474, the abuſes of time, and the arts and influence, firſt of the Nobles, and afterwards of the Crown and the *juntos*, have added other abſurdities, and other encroachments, on the rights and liberties of the burgeſſes: For although, by the former of theſe ſtatutes, the whole councils, and by the latter, certain parts of the councils were to be annually changed; and although, by the other laws which have been mentioned, frequent attempts were made to expel from boroughs, the power of ſtrangers, it is yet a lamentable truth, that while the deſpotiſm of theſe two acts has remained in full vigour, almoſt every thing ſalutary in them and the other ſtatutes has been totally diſregarded.

Local uſages, likewiſe deviating from the ſtatutes, and adverſe to the rights of the burgeſſes, have eſtabliſhed inſtitutions, whereby the whole, or almoſt the whole, councils are continued from year to year, re-electing themſelves, without any change; and whereby, not only perſons thus ſelf-elected, but alſo perſons without reſidence, without property, without trade, without intereſt of any kind, in boroughs, may, for any length of time, enjoy the offices of Magiſtrates and Counſellors; and to theſe local inſtitutions, created by uſage, in direct oppoſition to the inherent rights of the burgeſſes, the deciſions of the Courts of Juſtice, even in the laſt reſort, have given the force and authority of laws.

Evident

Evident violations, therefore, of the liberties of the boroughs, created by ſtatutes and local inſtitutions, conſiſting in nothing but abuſes and deviations from law and right, pervade throughout the government of boroughs. Thoſe direct infringements of Liberty, and theſe gradual corruptions of time and of uſage, now matured into ſyſtems, compoſe thoſe partial and abſurd eſtabliſhments in boroughs, which have become not only the ſubjects of the beſt founded complaints, but alſo the objects of the higheſt reproach. They are only veiled and protected by a popular name; for they are called the Conſtitutions of the Royal Boroughs of Scotland: But the burgeſſes derive confidence from the reflection, that they are now to preſent their appeal before a Tribunal, whoſe penetration, directed to the real nature and effects of the ſyſtems, will not ſuffer itſelf to be miſled by the gloſſes of names, or the partial and illuſive repreſentations of intereſted men.

The pernicious conſequences of theſe unjuſt and illiberal ſyſtems, have not only affected the liberty and political government of boroughs; their baneful influence has alſo extended to every branch of the adminiſtration, and has contributed to prevent or render fruitleſs the execution of ſtatutes, made for the very protection of the revenues of boroughs.

An act of the Parliament of Scotland, in the year 1535, *cap.* 26. ordained, "That "all Provoſts, Bailies, and Aldermen of boroughs, bring yearly to the Chequer, at "the day ſet for giving of their accounts, their account-books of their common "goods, to be ſeen and conſidered by the Lords auditors, if the ſame be ſpended for "the common weal of the borough, or not," *&c.* And this ſtatute is enforced with additional regulations, by another act of the Parliament of Scotland, paſſed in the year 1693, *c.* 28. But owing partly to the pernicious ſyſtems of borough-government that have been deſcribed, by which the power of perſons liable to account was rendered perpetual, the remedy provided by theſe well intended ſtatutes, has, after the experience of centuries, proved inadequate, and totally ineffectual; for the boroughs have been reduced to poverty and diſtreſs, by groſs miſapplications and dilapidations of their properties and revenues, and by enormous contractions of debt.

Impreſſed, as the burgeſſes are, with the warmeſt attachment to the conſtitution of their common country, and to the Perſon and Family of their Sovereign, it is with deep regret, but with a lively hope of obtaining redreſs of their grievances, that they find themſelves under the neceſſity of approaching the Legiſlature in the language of complaint. In conveying their ſentiments, on ſubjects ſo important, they have deemed it incumbent on them, and becoming the dignity and wiſdom of Parliament, to ſupport their aſſertions, by authorities derived from the indiſputable evidence of ſtatutes, the conſtitutions of their boroughs, or notorious uſage. From theſe authorities, they conceive themſelves entitled to affirm, and to repreſent to the world, and in Parliament, inveſted, as it is, with a conſtitutional power of affording redreſs, that, in the circumſtances which have been mentioned, the burgeſſes of the royal boroughs of Scotland labour under very great and intolerable grievances: For, to be deprived, as

as they are, of the exerciſe of their natural, ancient, and inherent right of electing the adminiſtrators of the common property, and other affairs of the boroughs, of which they form the moſt conſiderable and eſſential part, they declare to be an unconſtitutional and intolerable grievance, inconſiſtent with their juſt liberties, the intereſt of their incorporations, and the public good.

From this deſcription of the former and preſent condition of our royal boroughs, the propriety and utility of a reform in their internal government will be ſufficiently conſpicuous. That important attainment, which has now become the firſt object and wiſh of the burgeſſes of Scotland, it is natural for them to expect from the ſpirit and liberality of men, whom elevated and hereditary rank, or popular choice, has marked out as the framers of laws, and the protectors of Public Liberty. It only remains to conſider the method propoſed, for correcting the abuſes that have been deſcribed. This neceſſarily leads to an examination of the bill of reform, the principles of which it is the object of the preſent performance to illuſtrate.

It is only proper farther to obſerve, that between the Reform of the Scottiſh boroughs, now to be ſubmitted to Parliament, and the Reform propoſed for England, there is a material diſtinction. The latter touched directly the conſtitution of Parliament. It is the object of the former only to obtain a correction of abuſes in the internal government or adminiſtration of the boroughs, leaving the parliamentary elections entirely on the footing on which they formerly ſtood. In ſhort, the burgeſſes of Scotland demand no more than the right of electing and calling to account, for the application of the public revenues, the Magiſtrates of the towns in which they live, and in the proſperity of which they are ſo deeply intereſted, from trade, reſidence, and connections. This diſtinction, it is material to remark, as otherwiſe it might be ſuppoſed that the burgeſſes of Scotland were now demanding a reform which had been denied to the people of England.

CHAP. III.

Of the Qualifications of Electors and Elected.

Extreme difficulty of forming qualifications conſiſtent with the principles of entire freedom. The claims of Natural Liberty to the right of Government, contraſted with thoſe of property. The circumſtances which lead to knowledge and independence of mind, the proper baſis of qualifications. Limitations of the rights of election, therefore, neceſſary. The application of theſe principles to the preſent caſe. The nature of the qualifications in this bill, by which the bottom of elections is enlarged, deſcribed, and their propriety explained. Beneficial conſequences of thus extending the rights of election.

IN forming the inſtitutions of any community, whoſe chief concern is the extenſion and preſervation of Liberty, to determine that deſcription of perſons who ſhall be inveſted with the right of government, or of electing the public officers, is a taſk attended with extreme difficulty. This difficulty increaſes, the more we indulge a liberality of thought, and the more we reſpect the feelings and the rights of Natural Liberty.

THE matter would become ſimple, were property the only object of value in ſociety. On that ſuppoſition, the poſſeſſors of property, as having the only intereſt, might be permitted to enjoy, excluſively, the important offices, both of ſovereignty and adminiſtration. But Life, Reputation, perſonal Liberty, are rights, in their nature, ſuperior to thoſe of property; and, in the eſtimation of men not corrupted by luxury, degraded by avarice, or debaſed by ſlavery, they claim a ſuperior attention. To the intereſts of Natural Liberty, even the pretenſions of property muſt yield, unleſs it could be ſuppoſed, that a right of property is ſtronger and more valuable than that of Life, Reputation, and perſonal Liberty; which it were abſurd to maintain. But, in what manner ſhall this principle, confeſſedly inviolable, be carried into execution? Shall we extend indiſcriminately the benefit of ſuffrage to every individual, whoſe exiſtence gives him thus a natural intereſt in the adminiſtration of the community? In reviewing the conſequences of ſuch an eſtabliſhment, difficulties ſtill greater preſent themſelves to our imagination.

IN an early condition of ſociety, while men univerſally retain their original equality, as well as the independent ſpirit and ſentiment naturally reſulting from that condition, and while the objects of legiſlation and government remain ſimple, the power of deliberating

deliberating and deciding on the public affairs, and of electing the public officers, may, with propriety, be enjoyed by every free man in the community. But a regulation of this kind, however liberal and benevolent, would not ſuit an advanced period of ſociety. In the complicated arrangements of a refined age, a conſiderable ſhare of knowledge appears requiſite to the management and underſtanding of the public affairs. The introduction and ſubdiviſions of property have beſides eſtabliſhed diſtinctions of ranks, of poverty, and of riches. To the latter are attached, generally, though not always, knowledge, capacity, and independent ſpirit; to the former, extreme ignorance and meanneſs of character. If, therefore, the rights of election were conferred without diſtinction, it is evident that knowledge and independence muſt bend under the influence of ignorance and ſervility; for theſe, unfortunately, muſt always form the character of the loweſt order of the people, where diſtinctions of ranks and diviſions of property have been eſtabliſhed.

HENCE it follows, that an indiſcriminate communication of the rights of freedom to every the loweſt order of the people, would, by lodging the ſupreme power in the hands of ignorance and poverty, be attended with pernicious conſequences. In a ſtate where the buſineſs of legiſlation is performed by delegates, or in a ſmall community, where the character of every candidate for office is univerſally known, there is, indeed, little danger to be expected from the ignorance, even of the loweſt ranks of the people; ſince the mere ſelection of perſons who are to adminiſter the public affairs, is a matter of extreme ſimplicity. But from their poverty and ſervility, there is every thing to be dreaded. Preſſed with want, how can they reſiſt the temptations of corruption? addicted to ſervility, how can they deſpiſe the threats of power? At this rate, every individual, poſſeſſed of extenſive power, or immenſe wealth, might diſpoſe of our lives, liberty, and property. In that manner, a tyranny the moſt cruel might be introduced, and the moſt dangerous, as having, in appearance and reality, the broad baſis of popular force to ſupport it.

A LIMITATION, therefore, of the rights of election to certain deſcriptions of perſons, appears indiſpenſably neceſſary to the public happineſs and ſecurity. It is with regret, however, that the friends of Liberty find themſelves, on any occaſion, under the neceſſity of adopting ſuch limitation. They cannot but lament the exiſtence of political cauſes, which, rendering ſome of the people unfit for the enjoyment of power, may lead to exclude them from the exerciſe of thoſe rights which naturally belong to them, and the deprivation of which, nothing leſs than the moſt preſſing and evident utility of the public can juſtify. In forming, therefore, the rule of ſuch excluſion, it is our duty, as it muſt ever be our inclination, not to carry it beyond the point of indiſpenſable neceſſity. The ſecurity of property, and the tranquillity of ſociety, are objects of the higheſt magnitude; but the ſacred rights of Liberty are not leſs important; and, in introducing regulations for the protection of the one, we muſt take care that, without the moſt forcible reaſons, we encroach not on the other.

THAT

That the bottom of borough-elections ſhould be extended, by admitting a greater number of electors, is a fundamental object of reform. Without it, the beneficial conſequences of reform could not be rendered extenſive and permanent. It was our intention only to exclude thoſe perſons, to whom, from their ſituation and circumſtances, it might be inexpedient and dangerous to commit the important powers of election. This is all that the public utility requires. It is therefore all that the laws of freedom can permit. In drawing, however, the line of diſtinction between thoſe who ſhall, and thoſe who ſhall not be entitled to enjoy the rights of ſuffrage, there muſt, unavoidably, be ſomething arbitrary. In human inſtitutions, abſolute rectitude is not to be expected; and it is a ſubject of the deepeſt regret, that even a ſyſtem of Liberty muſt carry in its boſom and aſpect, ſomething of the alloy of diſcretionary power. This, among many bleſſings, is one of the misfortunes of poliſhed ſociety. But if we cannot attain to abſolute perfection and freedom in political arrangements, it is our indiſpenſable duty, on every occaſion, to approach to thoſe points which are neareſt to theſe ineſtimable advantages.

Studiously attentive to theſe principles, which embrace alike the intereſts of Liberty and the public utility, we have formed thoſe qualifications of electors, which are to conſtitute the baſis of the ſyſtem of Reform. Accordingly, there are three deſcriptions of perſons, whom we have thought entitled, with propriety, to the exerciſe of the rights of election within borough, and to the honour of being elected.

1ſt, All perſons carrying on, or occupied in ſome trade, manufacture, art, or profeſſion within borough, paying ſtent for their trade, manufacture, art, or profeſſion, or being houſeholders, paying public burdens within the borough, where perſons of their deſcription are, by law or practice, liable to any ſuch; and where perſons not paying ſtent, are not, by law or practice, liable to pay public burdens, it is provided, that their being houſeholders, with the other qualifications ſpecified in the bill, ſhall entitle them to be inrolled, and to vote in the elections of common councils.

2d, All perſons, who, though they may have retired from buſineſs, ſhall have, at ſome time, for the ſpace of five years together, carried on or been occupied in trade, manufacture, art, or profeſſion, within the borough.

3d, All heritors, or the huſbands of heritrixes, holding property within borough, to the extent of L. 10 Sterling of real rent, yearly, in the boroughs of Edinburgh, Glaſgow, and Aberdeen; of L. 5 Sterling of real rent, yearly, in the boroughs of Perth, Dundee, Inverneſs, Ayr, Dumfries, Stirling, Elgin, and Arbroath; and of L. 2 Sterling, yearly, in all the other Royal Boroughs in Scotland.

To all theſe three deſcriptions of perſons, the following ſuperadded qualifications are common and indiſpenſable. *1ſt*, Their being actual burgeſſes, entitled to the privileges of burgeſſhip, according to the uſage of the reſpective boroughs, for, to give the

the right of ſuffrage to perſons not burgeſſes, would be totally adverſe to the original conſtitution of boroughs, and the genius of borough-elections: *2d*, Actual reſidence within the boroughs where they reſpectively claim a right of voting; with the ſingle exception of the members of incorporations, who, on account of the nature of their manufacture, are obliged to carry on the ſame without borough.

From the very nature of theſe qualifications, it is evident that a conſiderable ſhare of reſpectability of character, and independence of mind, will naturally accompany the perſons who enjoy them. To be an actual burgeſs, which in moſt boroughs requires a conſiderable ſum of money; to poſſeſs that degree of induſtry or ſkill, capacity, knowledge, or wealth, which enables a perſon to live by trade, manufacture, art, or profeſſion; to have acquired, in that manner, the means of ſubſiſtence, without ſubmitting longer to the toils of buſineſs; to hold heritable property within borough, to the extent ſpecified in the bill; theſe are all circumſtances which denote a condition ſuperior to the ſervility of indigence, or the errors of ignorance. Perſons, therefore, who have attained to theſe reſpectable ſituations, are juſtly entitled to exerciſe the rights of ſuffrage which they may enjoy, not only without danger, but with eminent advantages to the community.

When the adminiſtrators of the common affairs ſhall thus ceaſe to elect themſelves; when their powers ſhall be derived from the diſintereſted voice of the great and reſpectable body of their fellow-citizens, it will be their conſtant ſtudy, by an anxious and unremitting attention to the public affairs, to cultivate the attachment and reſpect of thoſe, to whoſe good opinion they entirely owe their honours and diſtinctions. Beſides, although in the propoſed ſyſtem of Reform, the powers of election are not extended to the loweſt extremity of the line of popular rank, yet the number of electors will be ſo conſiderably increaſed, as to render bribery or corruption extremely difficult; and, unleſs to men of the higheſt opulence, altogether impracticable. To ſhare of the ſpoils of the community, will no longer be an object of ambition to the candidates for office. The electors being ſo numerous, the private paſſions of all cannot be gratified, even ſuppoſing they were capable of being actuated by private motives. It is, therefore, a matter of neceſſity, ariſing not leſs from the nature of the inſtitution, than the virtue of the people, that both the electors and the elected, ſince their private ends cannot be attained, muſt fix their attention on objects which ſhall unite the ſentiments of all. Theſe objects can be no other than the general intereſt of the community, the comfortable accommodation of the citizens, the arrangements of police, the uncorrupted adminiſtration of the public property and revenues.

Other evident advantages will naturally reſult from the qualifications of electors, which are propoſed to be introduced. The actual reſidence of the electors, and their neceſſary connections by trade or property with the boroughs where they are ſeverally to exerciſe the rights of election, will at once inſpire them with an attachment to the intereſt of theſe communities. This conſideration will naturally ſecure a lively attention to the common affairs; while, at the ſame time, the neceſſity of reſidence

will prevent an importation of foreign voters, to ſerve the purpoſes of political jobbing, or to cruſh and overpower the natural and internal intereſts of the ſeveral incorporations.

This laſt circumſtance is an evil, which we underſtand is loudly complained of in our neighbouring country, whoſe inſtitutions are otherwiſe ſo admirably adapted to the protection of liberty. There, the reſidence of electors is no neceſſary qualification, ſo that immenſe numbers of electors are tranſported from a great diſtance, to ſerve the purpoſes of party; a practice which, by the corruption it is attended with, and the expence which it occaſions, cannot but produce ſome pernicious conſequences; at the ſame time, this practice, in relation to parliamentary elections, is not altogether deſtitute either of principle or public utility.

It is the object of parliamentary elections, to eſtabliſh laws whoſe operation ſhall be univerſal over the kingdom. It ſeems, therefore, to be a matter of indifference, in what particular ſpot of the country the electors of members of Parliament ſhall reſide, ſince the intereſts to be affected by theſe elections are entirely general; and it is of the laſt importance to the ſpirit and preſervation of liberty, that the power of the people, in the government of the country, ſhould in one ſhape or another be felt with energy. Accordingly, in our county-elections of members of Parliament, reſidence is not eſtabliſhed as a neceſſary qualification; but that principle cannot with propriety be extended to the caſe of ſmall communities or incorporations, whoſe elections are to have no influence beyond the little circle of the corporation affairs. In theſe laſt, therefore, reſidence is a qualification highly expedient, in order that their internal government may run no riſk of falling into the hands of men who have no intereſt in the common affairs, and no attachment to the communities.

Heritors whoſe property is a ſource of connection, attachment and intereſt, in the boroughs, may at firſt ſight appear entitled to the right of election, independent of reſidence; but a little reflection will diſcloſe the fallacy of this opinion. Were non-reſident heritors admitted to the right of ſuffrage in elections, thoſe gentlemen whoſe property ſurround, would become the abſolute maſters of the boroughs. They could on every occaſion pour in armies of foreign electors. By purchaſing a few houſes or areas in the boroughs, and by dividing and ſubdividing this property, they might give freehold qualifications to their ſervants, tenants, and numerous dependants, reſiding in the vicinity of the boroughs; and theſe, in every election, would overpower the natural intereſt, as well as inclinations of the real inhabitants. Nay more, if non-reſident heritors were admitted to the right of election, perſons reſiding in the counties of Roſs, Inverneſs and Argyle, or even in Orkney and Zetland, might regulate the internal policy, and command the political influence of all the royal boroughs in Scotland.

These are conſequences of allowing non reſident heritors to vote, which, it muſt be admitted, would prove ruinous to the affairs of boroughs: Yet it would not be poſſible,

ſible, effectually to guard againſt them, by any oaths or regulations for excluding fictitious votes. Experience has already demonſtrated, with what facility the ſpirit of party, and of intereſt, can torture into a compliance with its wiſhes, the moſt upright and inflexible laws. Nor can there be a doubt, that the ſame devices which have been ſucceſsful in counties, would, if poſſible, be reſorted to in borough elections.

In framing the oath of truſt and poſſeſſion in the preſent bill, we have beſtowed the utmoſt attention. Obſerving ſome defects in the oath of that kind, relative to county-elections, we have endeavoured to ſupply them, and to render it ſtill more difficult to elude the fair and honeſt intention of the oath. We have formed new bars to faſten the doors of legal evaſion; but ſtill we apprehend not that any oath which can be framed, or any law which can be enacted, will afford a ſufficient ſecurity againſt that infinite ingenuity, and that extreme ſubtilty of invention, which have always characteriſed the ſpirit of intereſt, eſpecially when inflamed by the paſſions of party, and the ambition of power.

Againſt an importation of foreign voters at every election, to inſult the rights, and injure the intereſts of the real inhabitants of boroughs, the only ſecurity is an entire excluſion of non-reſident heritors. Nor is even this ſecurity abſolute. Abuſes will ſtill be committed. Some fictitious electors will be created; but they will be greatly out-numbered by the ſubſtantial burgeſſes compoſed of merchants, manufacturers, and the poſſeſſors of real property.

After having ſubmitted theſe obſervations, relative to the nature of the qualifications which conſtitute a right of election, it is needleſs to enlarge on the condition and circumſtances of thoſe whom we have reluctantly excluded from the exerciſe of that right. It is almoſt ſufficient to recite the terms of the excluſion in the bill, which will ſpeak for itſelf. It is in the following words: "Excluding hereby, from all "right of voting at ſuch elections of common councils, all honorary burgeſſes, towns "or trades ſervants; all domeſtic or menial ſervants; all perſons receiving charity "from the funds of any incorporation, or any other charitable eſtabliſhment; and "likewiſe all deſcriptions of perſons diſqualified from voting for members of Parliament in Scotland, by any act of Parliament now in force, and particularly by the "act of the 16th year of his preſent Majeſty."

The propriety of this excluſion, it is hoped, will not be diſputed. To admit honorary burgeſſes to the right of election, would be to bring the adminiſtration of borough affairs entirely under an external influence; a meaſure utterly inexpedient and ruinous. To communicate the privileges of election to the ſervants of the ſeveral towns or incorporations, or to perſons ſupported by the hand of charity, what is it but to afford materials for the trade or manufacture of corruption? To allow domeſtic or menial ſervants to vote, what is it but to furniſh their maſters with inſtruments of improper influence? And if the wiſdom of the Legiſlature has already excluded revenue-officers, and others, from voting in the elections of members of Parliament, it would

would ſeem to follow, as a neceſſary conſequence, that they ought alſo to be excluded from every exerciſe of power in borough-elections.

It may be obſerved by ſome admirers of ancient governments, and lovers of Liberty, that every perſon in this country is free, and that at Rome and at Athens, every free citizen was allowed to participate in the rights of election. They will therefore aſk why we have ventured to exclude free men from the exerciſe of the rights which belong to their character? This queſtion is in a manner already anſwered, in what has been ſubmitted on the qualifications of electors: But we may be allowed farther to obſerve, that, to reaſon from the ſituation of Athens and of Rome to our country, in matters of election, is to proceed on an imperfect view of the manners and inſtitutions of theſe different ſtates.

At both Rome and Athens, the inſtitutions of civil ſlavery prevailed. All the ſervile offices and occupations of the ſtate, and of individuals, were performed by the intervention of ſlaves. To free men were aſſigned only the noble and manly duties of government and of war, with the exerciſe of the judicative power; offices which all tended to inform and elevate the mind. Hence, in theſe ſtates, at leaſt in their virtuous times, every free citizen neceſſarily poſſeſſed a dignity of ſentiment, and a ſpirit of independence, which might be ſafely entruſted with the rights of election. The condition of all the modern European ſtates, and particularly of ours, is entirely different. All the ſubjects of our kingdom are unqueſtionably free; from which reſults a high degree of political happineſs, and, among many of the people, a conſiderable portion of independent ſpirit. But although we have fortunately rejected the inſtitutions of civil ſlavery; yet, we muſt allow that many of our people are employed in thoſe offices, which, at Athens and Rome, were peculiar to ſlaves. Nor can it be denied, that the characters of men are formed by their occupations and conditions in life. Of courſe, the characters of perſons who perform theſe mean and ſervile offices, without any advantage ſufficient to counteract their natural effects, muſt, in ſpite of the influence of Freedom, participate of that corruption and ſervility which are incident to ſlavery. This is no conſtitutional vice in the loweſt order of the people. It is only a political effect of their condition: But its influence is indiſputable. To philoſophers and lovers of mankind, this may be a ſubject of regret; but it ſeems not to admit of a remedy, without altering entirely the conſtitution and arrangements of ſociety.

Hence follows, with us, the propriety and neceſſity of excluding from the rights of election, thoſe perſons who, with the name and rights of free men, are yet employed in the offices of ſlavery, which muſt neceſſarily form their characters; although no free citizen was ſubject to ſuch excluſion, either at Athens or at Rome.

CHAP.

CHAP. IV.

Of the manner of voting in Elections.

The manner of voting is relative to the number of electors, and to the ſpecific form of delivering the votes. The ſubject of enquiry as to the former, is, Whether the electors ſhould vote in one collected maſs, or in ſeparate bodies? This queſtion diſcuſſed. In reſpect of the latter, it is queſtioned, whether the votes ſhould be delivered viva voce, *or by ballot. The preference given to the* viva voce *form of election. The reaſons of this preference explained at conſiderable length.*

THE qualifications of electors being eſtabliſhed, it is next a proper ſubject of enquiry, in what manner the votes are to be given. The manner of voting is relative to the number of electors who may be brought together at one place; and, to the ſpecific form in which the votes are preſented or delivered, whether *viva voce*, or by ballot.

With regard to the *firſt* of theſe, the queſtion is, Whether the election ſhould be made by the whole electors of a borough, in one undivided body or maſs; or whether they ſhould vote in their ſeparate diviſions or incorporations.

In favour of the undivided election, two conſiderations chiefly were urged: 1*ſt*, As by this mode of election the whole council would derive their power indiſcriminately from the whole electors, ſo the attention and attachment of the council would be equally directed towards the whole body of the burgeſſes, without diſtinction. This muſt have a natural tendency to prevent factions, or a colliſion of ſeparate intereſts in the councils, and to produce harmony and unanimity in their proceedings. 2*dly*, As it was one of the objects of Reform, to inſpire the ideas and preſerve the impreſſions of Liberty among the people, ſo that end is beſt attained by an undivided election. To the exiſtence and preſervation of Liberty, there is nothing more favourable than thoſe elevated ſentiments, and that high tone of paſſion, which are acquired, as it were, by contagion, in large aſſemblies of the people, met together to exerciſe their rights. It is here, and not in ſmall or private meetings, that men perceive moſt ſenſibly the weight of popular power; and therefore, it is here that the impreſſions of Liberty are moſt ſtrongly felt and communicated.

On the other hand, the mode of conducting the elections, by receiving the votes in ſeparate bodies or diviſions, was defended on ſeveral grounds.

In the *firſt* place, It was ſaid, that an undivided election, by the whole collective body of voters, afforded to the enemies of Reform a pretence of objection againſt the meaſure. It would be ſaid, it was obſerved, that this plan of election, by aſſembling a great multitude, might give occaſion to popular tumults or diſturbances, and that it would be highly expedient to avoid even the appearance of ſuch objection, however groundleſs, by receiving the votes of the electors, in their ſeveral incorporations or diviſions, wherever it could be done.

In the *ſecond* place, It was remarked, that, throughout the greateſt part of the boroughs of Scotland, the burgeſſes were divided into two claſſes: Guild-brethren, or merchants; and Tradeſmen, or members of incorporations; and that, in time paſt, the elections, ſuch as they were, had been conducted ſeparately, in their ſeveral bodies or diviſions. By this means, the people had acquired habits of diſtinct elections, which they could not eaſily depart from, and which, perhaps, it would not be proper to diſturb; eſpecially ſince this divided form of election was, in a great meaſure, conſiſtent with the eſſential object of Reform, which was to veſt the government of the boroughs in the hands of thoſe who were moſt deeply intereſted in their welfare. It was farther advanced, that the leſs former uſages, in any degree conſiſtent with that object, were departed from, the Reform would be the more univerſally embraced, and would the more readily receive the approbation of Parliament.

This laſt reaſoning prevailed, and the divided or ſeparate ſcheme of election was adopted. There are a few of the ſmaller boroughs, in which the diſtinction of tradeſmen and guild-brethren is unknown. In theſe boroughs, it was agreed, that the election muſt of neceſſity be made by the collective body of the burgeſſes, poſſeſſed of the qualifications ſpecified in the bill.

These principles being ſettled, the different ſituations of the boroughs naturally ſuggeſted the diviſions in which the elections ſhould be made; and accordingly the following rules, applicable to theſe different ſituations, were adopted.

1ſt, In the boroughs where the diſtinction of incorporated trades and guildries obtains, the members of incorporations are to give their votes in the ſame manner that is uſed and practiſed at preſent in the election of deacons, with the ſingle addition of their being obliged, at the ſame time that they give their votes, to produce certificates of their inrolment as electors.

2d, In theſe boroughs alſo, in which exiſts the diſtinction of incorporated trades and guildries, the burgeſſes of guild are to make the election of their counſellors, in their ſeparate and diſtinct body.

3*d*,

3d, In thoſe boroughs where the diſtinction of trades and guildries is unknown, which is the caſe only in a few of the ſmaller boroughs, the elections are to be made by the qualified burgeſſes, in a collective body.

By theſe regulations, whereby the elections are in general to be made by the electors in their ſeveral diſtinct bodies, the burgeſſes are indulged in the forms of election to which they are familiar; and at the ſame time, every appearance of objection ariſing from the idea of popular diſturbances or alarm, is entirely removed. It muſt therefore be admitted, even by the oppoſers of Reform, that, in this inſtance, the framers of the bill have reconciled the intereſts of tranquillity and Liberty.

In relation to the *ſecond* particular which is included in the form of the elections, Whether the votes ſhould be delivered *viva voce*, or by ballot, ſome difference of ſentiment prevailed. The general opinion, however, was in favour of the *viva voce* form of election, which, accordingly, has been adopted; but ſome reſpectable individuals contended for the ballot.

By the one of theſe modes, the vote of every elector is known. By the other, it remains concealed. The public utility is unqueſtionably the rule of deciſion. It is, therefore, proper to enquire, whether, in that view, it is more eligible that the object and tendency of every vote ſhould be the ſubject of public notoriety, or that they ſhould lie hid under the veil of obſcurity and myſtery.

In free governments, eſpecially, every law that is enacted, will in ſome meaſure participate of the national character. In ſuch governments, indeed, the laws muſt neceſſarily receive their impreſſions from the temper of the people. It is, on the other hand, a maxim univerſally admitted in politics, that the manners of the people are formed by the nature of their inſtitutions of government. Hence, in enacting laws, or introducing political regulations of any kind, it is a matter of no trivial moment to conſider their natural or neceſſary effects on the ſpirit and character of the people.

When, from the nature of their inſtitutions, it becomes neceſſary for the people, in the exerciſe of their rights, to avow their ſentiments openly, with regard to public meaſures, as well as the men who ſhall be entitled to their confidence, a bold, manly, candid diſpoſition, is the natural reſult of theſe inſtitutions. This is the character that ſuits the dignity of Liberty. This is the ſpirit that is adapted both to animate and to perpetuate a free government. In every eſtabliſhment, therefore, of which Liberty is the object, every thing ſhould conſpire to produce a character of openneſs and independence among the people; ſhould teach them to fear no power but that of the laws; to entertain no principle of action, but that of candour and integrity; to ſubmit to no influence but that of juſtice and humanity. To attain theſe ends, it appears proper, if not eſſentially requiſite, that the people, in every exerciſe of their public rights, ſhould be habituated to the moſt open and undiſguiſed expreſſion of the motives of their conduct.

conduct. In this view, the election *viva voce* is infinitely preferable to that by ballot.

If, on the other hand, the people in the exercise of their rights of election have contracted habits of concealing their sentiments; if they are allowed to make promises to those who solicit them, and, in the shade of darkness, without possibility of detection, to violate those promises; if they are accustomed to take shelter under cover, either from the threats of power, or the effects of resentment, these things tend naturally, and indeed necessarily, to introduce among them a character of meanness, servility and duplicity. This temper of the people, so intimately connected with the habit of concealing their sentiments, or equivocating in their opinions, seems inconsistent with the preservation of liberty. That timid spirit is naturally formed even to court the fetters of despotism, and will readily bend under its influence. In that view, the election by ballot, which gives indulgence to fear, equivocation and servility, appears, in a free government, to be highly inexpedient.

Upon these principles, the election by ballot has, in the present bill, been totally rejected, and the election *viva voce* introduced; nor can we perceive that the ballot would be attended with any advantages which could compensate the pernicious effects of its institution. The consequences of both are, by a man of the first distinction, delineated in a manner which does honour to his character. We beg leave to quote his words, because we entirely assent to his opinions, not from respect either to his high rank or abilities, but from the most perfect conviction of their propriety. "The "idea of a ballot," says this Nobleman *," can have arisen but to avoid the effect of "some improper influence; and I conceive it much more noble directly to check "that influence, than indirectly to evade it by concealment and deceit. I am con-"vinced that trivial circumstances, in things like this, tend greatly to form the national "character; and that it is most consistent with that of a British or Irish freeman, that "all his actions should be open and avowed, and that he should not be ashamed of "declaring, in the face of his country, whom he wishes to entrust with its interests. "Upon the same idea that ballots may be a cover for independence, they must also be "a cloak for bribery, and school for lying and deceit."

We are not ignorant, that Major Cartwright, who has suggested a plan of reform for England, recommends the ballot as the most eligible mode of election. His acute observations on the constitutional rights of the people, his animated reasoning in their support and above all, his glowing and genuine passion for liberty, we highly respect. We are sorry, however, that, in relation to the ballot, we cannot coincide with him in sentiment. If we examine a little into the grounds on which he supports the election by ballot, it is not from the love of controversy, but from a respect to his character and opinions, as well as a desire to explain more fully, and to justify the principle on which the ballot has in the present bill been entirely rejected.

His

* The Duke of Richmond's letter to the Committee of Volunteer Corps at Lisburne.

His first position is, that, under a ballot, a man cannot give a dishoneſt vote, without voting againſt himſelf; for which he can have no other temptation, than the pleaſure of voting for a candidate whom he thinks the leaſt deſerving, in order to prejudice a man of whom he had a better opinion.

If, in giving a dishoneſt vote, a man violates his opinion and his conſcience, he may be ſaid to vote againſt himſelf; but this is not more applicable to a ballot than to an election *viva voce*. If, in preferring an improper to a proper candidate, one acts againſt his own intereſt, as connected with that of the public, it is the ſame in a ballot as in a *viva voce* election. Theſe, ſo far as appears to us, are the only ſenſes in which a dishoneſt vote can ſtrike againſt the perſon who gives it; but it is evident, that, in theſe views, it is not, under a ballot, more againſt the perſon who delivers it, than it is when given *viva voce*. Whether an elector votes in the one way or the other, it is equally his intereſt to entruſt proper perſons with the direction of the public affairs. In a ballot, therefore, no more than in a *viva voce* election, a man's own intereſt affords no ſecurity againſt a dishoneſt exerciſe of the right of voting.

To ſay, that, in a ballot, a man can have no temptation to give an improper vote, other than the pleaſure of preferring the leaſt to the moſt deſerving candidate, is, with deference to ſo reſpectable an opinion, aſſuming a propoſition without authority. Will the ballot extinguiſh the ambition or the intereſted paſſions of candidates? Will it cure or eradicate the venality of electors? It muſt be allowed, that theſe vices, if they prevailed before, will exiſt after the eſtabliſhment of a ballot. The only queſtion is, Whether they can be indulged in the one caſe as well as the other.

Major Cartwright ſeems indeed to ſuppoſe, that the ballot would entirely prevent corruption; but how can that happen, ſince the characters of candidates and electors remain the ſame after a ballot as before? Will not venality accept the boon which ambition offers? This, it is impoſſible to diſpute; but it is ſaid, that, under a ballot, the wages of corruption will never be offered; and why? Becauſe a candidate can have no ſecurity for the performance of the corrupt contract. This is, indeed, ſuppoſing mankind to have reached the ultimate point of depravity. It is to deny them the virtues which prevail among Robbers; for even they are allowed to be equitable in relation to each other, and in the diſtribution of the fruits of violence. Is there not, therefore, reaſon to preſume, that an elector who receives money, will return the value contracted for? Will not even the feelings of gratitude influence him? Will not candidates, proceeding on theſe principles, continue to carry on the trade of corruption as formerly? What motive can induce an elector who accepts money, to vote againſt the perſon who gave it? His ideas of propriety, and his regard for the public intereſt? This is to preſume, that a venal elector is a man of integrity, and a Patriot; a ſuppoſition which muſt be allowed to be at leaſt improbable. In ſhort, there is no ſolid reaſon to conclude, that the influence of corruption would be leſs in a ballot, than in a *viva voce* election.

Let it, however, be ſuppoſed, that the ballot would prevent the direct corruption of giving money, ſtill will not ambition, ſupported by power and wealth, ſolicit as formerly the votes of electors? Have not power and wealth a natural influence which it is impoſſible to eradicate? Will they not, therefore, under a ballot, as without it, exact ſolemn vows and promiſes? Will not the ballot even ſuggeſt the new expedient of taking the voters bound to performance by an oath? Theſe things are ſo natural, that they cannot be diſputed, for they muſt neceſſarily happen. But, ſay the friends of the ballot, the electors may ſtill give honeſt votes according to their real opinions, without being expoſed to the avarice of the rich, or the reſentment of the powerful. This is to ſay, that, in order to give *honeſt votes*, the electors ought to violate the faith of promiſes, and even the ſolemnities of oaths! The power of the ballot is ſingular. Men, under its influence, are to preſerve their integrity, by meansof perfidy! In order to be honeſt, they are firſt to become villains! Is it expedient to give countenance to a ſyſtem which tends to diffuſe ſo widely theſe ſentiments among the people; to give them habits of meanneſs and duplicity, and of ſporting with the moſt ſacred engagements of honour and of truth?

It has been ſaid, that the ballot is practiſed in the Republic of Venice; but does that ſerve to recommend it? A man of genius and extenſive information *, has made us acquainted with the effects which the ballot has there produced, or with which it has been attended. Speaking of the Venetians, he ſays, "Since the decay "of their commerce hath leſſened their activity abroad, and their vigour within, the "Republic of Venice has fallen into a ſtate of puſillanimous circumſpection. They "have aſſumed and improved upon that jealouſy and miſtruſt, which is the natural "character of all Italy. With one-half of the treaſures and care they have be-"ſtowed ſince the neutrality they have obſerved for two centuries, they would have "freed themſelves from the dangers to which their *very precautions* had expoſed them. "Their chief confidence is in an inquiſitor, who is continually prying among indivi-"duals, with the ax raiſed againſt any one who ſhall dare to ſpeak *good* or *evil* of ad-"miniſtration. The great crime is either the cenſure or approbation of government. "The Senator of Venice, concealed behind a grate, ſays to the ſubject, *Who art thou "that dares to approve our conduct?* A curtain riſes, and the poor trembling Vene-"tian beholds a carcaſe tied to a gallows, and hears a terrible voice that calls out to "him from behind the grate: *It is thus we treat thoſe who preſume to apologize for us; "go home and be ſilent.* The Republic of Venice ſtill ſupports itſelf *by its cunning*."

Is it poſſible to conceive a government more adverſe than this, to the happineſs, the liberty, and the dignity of mankind? It is in vain to tell us that the ſtate of Venice is a Republic. Since the 1173, it has been an ariſtocracy of the worſt kind. The conſtitution of Venice, with the name of a Republic, poſſeſſes all the qualities of the moſt odious and terrible Deſpotiſm. Of a government where the minds of the people are fettered, and their tongues in a manner cut ſhort or mutilated, in order they

* Abbe Raynal. See his Philoſophical and Political Hiſtory of the Settlements in the Eaſt and Weſt Indies, *book* 19.

they may not reveal the oppreſſions of the magiſtrate, it is impoſſible to think, without horror. Yet the ſubmitting to ſuch a government, appears to be the natural effect of that feebleneſs and puſillanimity of character which the ballot is calculated to inſpire.

The ballot, however, while the people retained a ſhare in the government, is ſaid to have regulated the elections of Sweden. Raynal has likewiſe deſcribed the effects with which it was there attended. After mentioning the circumſtances which preceded the late revolution of Sweden, he ſpeaks as follows: "What then is the ſtate "of the nation? The neighbouring powers have now, by their influence, thrown "every thing into confuſion; they have overturned the ſtate, or ſeduced all the "members of it, by *bribery* or *intrigues*. There is now but one party in the king-"dom, and that is the party of the ſtranger. The members of the factions are all "pretenders. Attachment to the King is *an hypocriſy*, and averſion for monarchy "*another*. They are two different marks of ambition and avarice. The whole na-"tion is now a collection of infamous and venal men.

"It is not difficult to conceive what muſt happen after this. The foreign powers "that had corrupted the nation muſt be deceived in their expectations. They did "not perceive that they carried matters too far; that, perhaps, they might even "have been acting in a manner very different from that which a deeper policy "would have ſuggeſted; that they were deſtroying the power of the nation, while "their efforts only kept that of the Sovereign in ſubjection; that this power of the "Monarch, which might one day exert itſelf with all its force, would meet with no "reſiſtance capable of checking it; and that this unexpected effect might be brought "about in an inſtant, and by one man.

"That inſtant is come; that man has appeared; and all theſe baſe creatures of "adverſe powers proſtrated themſelves before him. He told theſe men who thought "themſelves all-powerful, that they were nothing. He told them, I am your *maſter*; "and they declared unanimouſly *that he was*. He told them, *theſe are the conditions* "to which I would have you to ſubmit; and they anſwered, *We agree to them*. "Scarce one diſſenting voice was heard amongſt them."

This is a ſtriking picture of the natural effects of the ballot; corruption, venality, hypocriſy, ſervility. We venture not to aſſert that all theſe effects have been produced by the ballot alone; it was, perhaps, but a circumſtance which, combined with others, contributed to form the character of the Swedes. But this, of itſelf, is a ſtrong cauſe of diſapprobation of the ballot.

In the India-houſe, the ballot is ſaid to prevail; but how can that be adduced in proof of its utility? Has not experience demonſtrated, that the power of individuals is there able to ſtifle the complaints, and trample on the rights of juſtice? Is it not univerſally known, that miniſterial influence triumphs, almoſt in every inſtance, in the battles

battles of Leadenhall-ſtreet, and that miniſterial mandates dictate the votes of the Eaſt-India Houſe? What then is the uſe of the ballot? only to implant the ſeeds of deception, and to cover from the ſhame of public reproach, thoſe perſons whoſe votes are purchaſed by the wealth and power of individuals, or who ſubmit to be the ſervile inſtruments of miniſterial power.

It is a mortifying reflection with which Major Cartwright enforces his obſervations on the ballot. He ſays, "It is now generally thought, in this country, that we can-"not have free elections without it." If this obſervation be juſt, the nation is rapidly approaching to ruin. The conſtitution may be ſaid to be on deathbed, and all the ſkill of medicine will not reſtore it to health. Shall we haſten its diſſolution, by adding to the diſeaſe under which it already labours, the infallible poiſon of the ballot? If the people of Britain have acquired that puſillanimous character, that timid and dependent ſpirit, which will not ſuffer them, in matters of election, to make an open declaration of their intentions, how can they retain the elevated ſentiments of Liberty? They muſt be totally unfit for its enjoyment. They are already ſhaped in the moulds of ſlavery. If men will not dare even to utter their real opinions, in exerciſing the rights of Freedom, how can it be expected that they ſhould ſhed their blood in its defence? Yet, a people who, on this ſubject, could allow themſelves even to heſitate, can never long preſerve their Liberties.

We are convinced, however, that, were it neceſſary, the citizens of Britain are at this moment prepared to make a ſacrifice of their lives rather than their Liberties. It follows, that they are in a condition which enables them to maintain the freedom of election, without taking ſhelter under the cover of a ballot. But, were it otherwiſe, and were the Britiſh character affected by a univerſal degeneracy, are we to form inſtitutions which, by encouraging meanneſs and ſervility, would accelerate the fall of Liberty, and the ruin of the ſtate; or which, by inſpiring boldneſs and independence of mind, would at leaſt have a tendency to reſtore the ſpirit of the conſtitution?

When mariners wiſh to preſerve their courſe, they look to the polar ſtar. When enlightened politicians would ſearch for thoſe inſtitutions which are beſt adapted to the preſervation of Liberty, they direct their eyes towards Athens or ancient Rome. In the former of theſe, the people, excepting in a few particular caſes, always voted in the moſt open manner, by a ſhow of hands.

In the purer ages of the Roman republic, the people univerſally gave their ſuffrages *viva voce*. They had not then conceived the idea or the neceſſity of a ballot. They did not ſcruple openly to avow their ſentiments, in relation to the rights and pretenſions, or the demerits and crimes of the higheſt and moſt powerful individuals in the ſtate. The forms of their elections, as well as their other inſtitutions, correſponded entirely to that elevated ſentiment and manly ſpirit, which naturally reſult from freedom.

It

It is indeed true, that, towards the end of the Republic, and the decline of Liberty, the timidity and depravity of character with which it was accompanied, appear to have ſuggeſted the idea of a ballot. It was no earlier than the 614th year of the city, that Gabinius introduced the firſt law on this ſubject, ordaining, that, in the aſſemblies for the elections of Magiſtrates, the people ſhould not give their ſuffrages *viva voce*, but by tablets. Two years after, L. Caſſius obtained a law, commanding that, in the Courts of Juſtice, and in the aſſemblies by tribes, the votes ſhould be given by tablets. In the year of the city 621, Caius Papirius Carbo propoſed and carried a regulation, enacting that, in the aſſemblies about the paſſing or rejecting of laws, the ſuffrages ſhould be given not *viva voce*, but by tablets.

It was probably the object of theſe laws to maintain the integrity and freedom of elections, when the people were greatly corrupted, were addicted to venality, and when they no longer retained the manly ſpirit or ſentiments of Liberty. The very expedient of a ballot could only have been ſuggeſted by the prevalence of ſervility and corruption, but the remedy applied, was the preſcription of egregious error. It was calculated to encreaſe the evil which it was intended to correct; to debaſe the character of the people, inſtead of raiſing it; to accelerate, inſtead of retarding or preventing the deſtruction of the ſtate, in the downfal of Liberty.

In this opinion we are ſupported by the authority of Cicero *. "De C. Gracchi "autem tribunatu, quid exſpectem, non libet augurari: ſerpit enim deinde res, quæ "proclivius ad perniciem, cum ſemel cæpit, labitur. Videtis in tabella, jam ante, "quanta ſit facta labes; primo, Gabinia lege, biennio autem poſt, Caſſia. Videre "jam videor populum a ſenatu disjunctum, multitudiniſque arbitrio res maximas agi." Cicero here deplores the inſtitution of the ballot. The penetration of that celebrated orator had foreſeen and foretold the ruin of the ſtate, in the introduction of the Gabinian and Caſſian laws.

In his book De Legibus †, he delivers his opinion at more length, and ſtill greater clearneſs. "Dicam, Attice, et verſabor in re difficili, ac multum, et ſæpe queſita: "Suffragia in magiſtratu mandando, aut de reo judicando, quin in lege, aut rogatione "clam, an palam ferre, melius eſſet. Q. An etiam id dubium eſt? vereor, ne a te "rurſus diſſentiam. M. *Non facies, Quincte. Nam ego in iſta ſum ſententia, qua te "fuiſſe ſemper ſcio, nihil ut fuerit, in ſuffragiis, voce melius.* Sed obtineri an poſſit vi-"dendum eſt. Q. Bona tua venia dixerim, iſta ſententia maxime et fallit imperitos "et obeſt ſæpiſſime reipublicæ cum aliquid verum et rectum eſſe dicitur, ſed obtineri, "id eſt, obſiſti poſſe populo, negatur. Primum enim obſiſtitur, cum agitur ſevere: "deinde vi opprimi in bona cauſa, eſt melius quam male cedere. Quis autem non "ſentit, auctoritatem omnem optimatium tabellariam legem abſtuliſſe? quam popu-"lus liber nunquam deſideravit: idem oppreſſus dominatu, ac potentia principum, "flagitavit. Itaque graviora judicia de potentiſſimis hominibus exſtant vocis, quam

 tabellæ.

* Cicero de Amicitia. † Cicero de Legibus, lib. 3.

" tabellæ. Quamobrem ſuffragandi nimia libido in non bonis Cauſis eripienda fuit
" potentibus, non latebra danda populo, in qua, bonis ignorantibus, quid quiſque ſen-
" tiret, tabella vitioſum occultaret ſuffragium. Itaque iſti rationi neque lator quiſ-
" quam eſt inventus neque auctor unquam bonus. Sunt enim quatuor leges tabel-
" lariæ; quarum prima de magiſtratibus mandandis; ea eſt Gabinia lata ab homine
" ignoto, et ſordido. Secuta biennio poſt Caſſia eſt de populi judicio, ea a nobili ho-
" mine lata eſt, L. Caſſio, Sed pace familiæ dixerim, diſſidente a bonis, atque omnes
" rumuſculos populari ratione, aucupante. Carbonis eſt tertia de Jubendis legibus,
" ac vetandis, ſeditioſi atque improbi civis."

CICERO here formally ſtates the queſtion, reſpecting the propriety of the ballot, and decides againſt it. He even ſpeaks of it with the utmoſt acrimony. His indignation againſt the ballot laws led him to indulge in perſonal invective againſt their authors. He maintains, that no honeſt man could ever be found in Rome to propoſe their eſtabliſhment. He points to the obſcurity and contemptible depravity of Gabinius. He ſpares not the illuſtrious birth of Caſſius, ſince it was ſullied by profligate manners, and inſidious arts. The accumulated villanies of Papirius Carbo, he treats with the utmoſt ſeverity.

IT was to men of ſuch characters, that the ballot-laws at Rome owed their origin. The opinion of Cicero has informed us in what light thoſe laws and their authors were conſidered by the moſt enlightened of the Roman people. But the facts and the reaſoning of Cicero are of more importance than his invective. It was, in his opinion, the effect of the ballot to ſet the populace looſe from the ſalutary authority of the beſt and wiſeſt of the citizens. It afforded to the people a lurking place, in which, after having given the moſt infamous vote, they might lie concealed, while all good men remained ignorant of the perſons from whom determinations the moſt fatal to the ſtate might have proceeded.

THESE conſequences of the ballot were not leſs pernicious than they were natural. In every nation, and in every community where the ballot is permitted, ſuch conſequences muſt neceſſarily happen. At the ſame time, a fact mentioned by Cicero, is ſufficient to demonſtrate, that the inſtitution of the ballot is by no means neceſſary; for he tells us, that the moſt powerful men had experienced from the open voice of the people, more ſevere determinations than had ever been produced by the intervention of the ballot.

IN every view, therefore, whether we reaſon from the nature of the thing, or from experience, whether we contemplate the condition of modern governments, or look back into the examples of antiquity, we every where find cauſe to reject the ballot, and to deem it altogether ineligible in every country, whoſe object it is to preſerve its Liberties, and to inſpire the people with ideas correſponding to that object.

To

To that end, the ſentiments of the citizens, both as to public affairs, and public characters ſhould be univerſally known. The people ſhould be invited, and, by the nature of their inſtitutions, induced, in the moſt unequivocal manner, to declare the motives of their public conduct. Every part of the legiſlative and judicative powers, by which the rights, either of individuals, or of the nation, are affected, and every branch of the elections, ſhould be conducted and exerciſed in the way moſt free from concealment or diſguiſe. To that liberal and open manner the minds of the ſubjects of a free government ſhould ever be habituated. It is then that we may expect to find, in the manners and character of the people, the uſeful and manly virtues of candour and integrity, of independence and ſpirit, which will neither ſuffer the touch of corruption, nor ſubmit to the dictates of unjuſt power.

CHAP. V.

OF THE DURATION OF THE POLL IN THE ELECTIONS OF COMMON COUNCILS.

The reaſons for fixing on the period in the bill, and the inexpediency of a very ſhort duration of the poll. Precautions uſed to prevent any bad effect from the length of time, adopted. Reaſons for making the duration the ſame throughout all the boroughs, and difficulty of eſtabliſhing different periods, adapted to the circumſtances of the different boroughs. Objections to the duration of the poll ſtated and anſwered.

TO eſtabliſh inſtitutions, in their nature favourable to liberty, is of little moment, unleſs their due execution be alſo provided for by regulations, which ſhall be fully adequate to the purpoſe. For what end ſhould the numbers of electors in boroughs be increaſed, if the time limited for the continuance of the election ſhould not permit the one-half of the electors to vote? How inconſiſtent would it be to profeſs the introduction of a ſyſtem, that ſhall deſtroy the preſent partial influence which governs

the

the boroughs, and yet to make the duration of the poll ſo ſhort, as to render a partial election probable, and almoſt unavoidable? How improper would it be, by ſuch a regulation, to excite the activity, and tempt the ingenuity of party ſpirit to the invention of means, by which, in order to accompliſh its object, ſome electors might be with-held for a little time from the poll, and others haſtily or violently brought forward; miſchiefs, which, though equally adverſe to the object of reform, and the tranquillity of the poll, would be the inevitable conſequences of limiting a very ſhort period for the duration of the elections?

These are ideas, to the propriety of which every one will readily aſſent. Theſe are the principles by which the period of the poll has been dictated. The preciſe time actually neceſſary for accompliſhing the elections, is a point with regard to which different opinions may, no doubt, be entertained; but, for the reaſons which have been mentioned, we have fixed on a period which, in all human probability, ſhall be fully ſufficient to terminate fairly and impartially the elections in every borough.

From the nature of the thing, indeed, the time requiſite in different boroughs, differing in circumſtances and extent, cannot be the ſame. Accordingly, the bill provides, that thoſe who ſhall preſide at the poll, may declare the elections concluded, when all the electors ſhall have voted; and, in order that the elections may not unneceſſarily be retarded, either from inattention or deſign, the bill likewiſe provides, that, after the firſt day of the poll, if one elector, at leaſt, ſhall not appear to vote, within the ſpace of one hour after the elector whoſe vote is laſt received, then the poll-books ſhall be ſhut, and the election concluded.

These precautions, it is conceived, are fully adequate to prevent a long continuation of the poll, in thoſe boroughs in which it is not indiſpenſably neceſſary to the fair execution and intention of the election; while, at the ſame time, the period limited appears alſo ſufficient to accompliſh the elections, even in the largeſt boroughs in Scotland. A different period for the poll, might, no doubt, be appointed in different boroughs; but a diſcrimination of this kind, requiring a very accurate knowledge of the extent, and other circumſtances of every town, would be extremely difficult, and would alſo be improper, as the population and wealth of the boroughs are continually fluctuating; nor can we deſpair, that, from the ſucceſs of reform, a degree of animation, and a ſpirit of enterprize, will pervade the burgeſſes of Scotland, which will greatly add to the trade and importance of boroughs already conſiderable, and will raiſe others, from poverty and obſcurity, to a high degree of population, opulence and ſplendour. For this reaſon, it would be inexpedient to fix in the ſmaller boroughs, a period for the duration of the elections, ſuited only to their preſent conditions of indigence and depopulation.

It has been ſaid, that the length of the poll is a national evil, by the loſs of induſtry which it produces, and the diſſipation which it is calculated to promote. It is pleaſant

ſant to remark, in paſſing, from whom theſe objections proceed. It will excite ſurpriſe, to learn that their authors are the very men who have diſſipated the property, and miſemployed the revenue of the boroughs, over which they have preſided; and who for time immemorial, have perſevered in defending ſyſtems of government, which have degraded the character, relaxed the induſtry, and ſuppreſſed the interpriſing and commercial ſpirit of the nation. Theſe evils, however flagrant, they appear to conſider as no misfortune ſince they have not had the effect of overturning their power, nor been brought about by means of a ſyſtem of freedom, in oppoſition to that of monopoly and ſlavery.

It is aſtoniſhing to obſerve, how extravagant are the claims which the ſpirit of monopoly, wherever it has been indulged and obtained a footing, will dare to offer. The maſters of the governments of boroughs, after having long ſacrificed to their private intereſt the liberties of the people; after having appropriated to themſelves, all the honours of office, and all the emoluments annexed to power, ſeem now deſirous to make a monopoly of even the vices and pleaſures of diſſipation. While every tavern ſmokes in preparing their feaſts, and every cellar is drained to afford them drink, they appear to grudge the people the ſmalleſt portion of thoſe bleſſings which they themſelves enjoy with ſo much delight, and which they deem ſo valuable, that rather than part with them, they would ſacrifice all the accomodations of a good police, all the advantages of a lively and extenſive commerce, and all the intereſts of Liberty.

Let it be ſuppoſed, that during a few days, while the ſpirits of the people are elevated by the exerciſe of their natural and inherent rights, they ſhould indulge in ſome degree of diſſipation. What then? Is there any thing more notorious, than that at preſent, the elections in boroughs ſpread diſſipation; and what is worſe, corruption through every corner of the ſtreets. The queſtion, therefore, is not whether Reform ſhall produce what already in a high degree exiſts; but whether at every return of an election, the magiſtracy ſhall excluſively enjoy the happineſs of being the chief promoters, and greateſt ſharers of diſſipation; and whether this vice is a greater evil, when indulged under a ſyſtem of ſlavery, than under that of liberty? Slavery poſſeſſes no virtues to compenſate the evils with which it is attended. But Liberty has attractions, reſources, and advantages, which, in ſpite of its inconveniences, are ſure foundations of public proſperity and happineſs. Suppoſing, therefore, that to both ſyſtems, of freedom and ſlavery, the ſame evils are common; to which of theſe inſtitutions ſhall we give the preference? The concluſion is too obvious to be mentioned.

The framers of the bill have mentioned the reaſons which have induced them to think the number of days there mentioned, as neceſſary for the completion of the elections; but if it were otherwiſe, the queſtion might be eaſily terminated. The friends of Liberty would readily yield the point, and ſhorten the duration of the poll. Their fundamental principle, and chief object, is to enliven, not to depreſs the in-

duſtry of the people; to blaſt the plants, not to encourage the growth of diſſipation, indolence, or corruption.

Hitherto, however, the argument has proceeded on the ſuppoſition that ſome degree of temporary diſſipation might be the conſequence of a popular election, and the duration of the poll. But this was an admiſſion, which the nature of the ſyſtem did not neceſſarily give riſe to. If, by the tenor of the bill, the elections could not proceed, without aſſembling together, at one place, a great multitude of perſons, ſome occaſional riot and diſſipation might naturally be expected; but to aſcribe theſe effects to the Bill of Reform, muſt proceed from a total miſconception of its contents. The objection ſeems to ſuppoſe that it is the neceſſary operation of the Bill, to make every elector attend the poll, at once, and during every one of the ſix days. Nothing can be more erroneous. The people are not to aſſemble in a great body, in order, by a ſhow of hands, either to nominate candidates for office, or to determine the elections. The votes are not to be called for in the order of any roll; ſo that a multitude need never attend the poll, as no elector, by a momentary abſence, can forfeit his vote. Every elector is entiled, at any hour of the ſix days, whenever it ſuits his convenience, to go cooly and deliberately to the poll; and, without loſing above a few minutes of time, may exerciſe an important right, and return with the utmoſt ſobriety to his ordinary occupation. What is there in the nature of this regulation, though the poll is open for ſix days, that can neceſſarily give occaſion to riot, idleneſs, or diſſipation?

If ſuch conſequences follow, the fault is to be imputed not to the nature of the inſtitution, which renders them totally unneceſſary, but to the contentions and ſolicitations of candidates for office. If theſe are the natural effects of human infirmities, What then? Is there any ſyſtem, except that of *ſlavery*, which can eradicate the natural feelings of men, and implant the inſenſibility of brutes? Is that a condition of ſociety to be envied, and to be purchaſed at the expence of our independence? It is, indeed, always convenient for magiſtrates, and therefore always aimed at by them. It ſaves them the trouble of reaſoning and perſuading. They need then only to command. They would rob us of the right of controlling their power, enquiring into their conduct, or puniſhing their oppreſſions; and to that ſtate of humiliation and miſery, they would give the name of *good order and of peace!* But what men are they who will ſubmit to the indignity of ſuch a ſituation? If, in popular elections, the paſſions of candidates are ſometimes heated; if the weakneſſes of the people are ſometimes abuſed, ſhall we therefore abandon all the advantages and enjoyments of Liberty? This is an opinion which can be dictated by nothing but the rage of Deſpotiſm, or the timidity and depreſſion of Slavery. No free or manly people ever conceived the idea of ſacrificing the eſſential rights and dignity of Liberty to the trivial inconveniencies attending its preſervation.

Under the preſent ſyſtems, theſe contentions for office are often violent, becauſe the object in view is to gratify the private ambition or emolument of a few leading men

men in the magiſtracy; but when the rights of election are extended to the great body of the citizens, the bone of contention will, in ſome meaſure, be taken away. Different objects will then engage the paſſions, both of the electors and the candidates for office. Their attention will be directed towards the common intereſt; and of courſe, the cauſes of riot and diſſipation, inſtead of being increaſed, will be greatly weakened and diminiſhed.

But the oppoſers of Reform, proceeding ſtill on an erroneous ſuppoſition, have attempted to reduce to figures, the amount of the national evil which might be occaſioned by the introduction of popular elections. The loſs of a ſingle day's labour, throughout the iſland, has been eſtimated at millions. Let this be multiplied by ſix, and the evil is enormous. What a patient, benevolent, penetrating ſpirit of patriotiſm this calculation diſcovers? Does not the calculator know that there are fifty-two Sundays in the year, during which, there is, by law, a total ſuſpenſion of uſeful induſtry and labour? let him apply his calculations to that data, and the loſs will be inconceivable. If he is conſiſtent in his principle, why does he not appeal to the wiſdom of the Legiſlature, to aboliſh the Sunday, by which there would be ſo immenſe an acceſſion to the induſtry and wealth of the nation?

He will perhaps ſay, that a ſacred regard is due to the inſtitutions of our Holy Religion, which no man will diſpute; but will he venture to affirm, in a free country, that a few days ought not alſo to be ſpared, for the purpoſe of ſupporting thoſe inſtitutions which are eſſential to the preſervation of our Liberties, and conſequently our political happineſs?

There are other days too, conſecrated to convivial pleaſures, to the commemoration of important events, the reſpect due to the ſupreme Magiſtrate, or the purpoſes of Religion. All theſe holidays ought naturally to be the objects of indignation to thoſe zealous ſons of unceaſing toil, thoſe ingenious calculators of avarice, who would not allow the people any repoſe from labour, any time for amuſement, or even any opportunity of exerciſing the franchiſes of citizens: In whom the paſſion for gain has extinguiſhed the ſenſe and the love of Liberty; and who ſeem rather inclined to forego the rights of men, than to undertake the trouble of ſupporting the inſtitutions which alone can preſerve them.

But, after all, what avails the poſſeſſion of property, or even the ſuperfluity of riches, without the enjoyment of Liberty? To what end is induſtry to be exerted and wealth accumulated? Is it only that we may provide a large and rich paſture, to feed like cattle; or that we may poſſeſs the ſentiments, practiſe the virtues, enjoy the pleaſures, and maintain the rights and dignity of men? If there are perſons whoſe only views are the former, for them it is not neceſſary to devote any time to the concerns of elections. They will be ſatisfied with any ſyſtem which allows them to hoard, to feed, and to ſleep. But if the latter are our objects, how can we attain them but by preſerving our Liberties; and how can this be accompliſhed, but by ſacrificing ſome little time to the ſupport of the inſtitutions which protect them?

CHAP.

CHAP. VI.

OF THE ROLLS OF ELECTORS, AND THE MANNER OF ADMITTING PERSONS THEREON, AND STRIKING THEM OFF.

The uſe and importance of keeping Rolls of Electors. The regulations in the Bill relative to that object. Obſervations thereon. Objection to the manner of keeping the Rolls, examined and refuted.

BY keeping a roll of electors, there are three important ends to be anſwered: *1ſt*, To know with preciſion the numbers and perſons of the electors: *2dly*, To aſcertain with certainty the title of every elector to vote, before the commencement of the poll: *3dly*, By theſe means to ſimplify and facilitate the execution of the elections, ſo as to ſhorten their period, and prevent any appearance of tumult, confuſion, or contention. This, in a popular election, it muſt be allowed, is a matter of great moment; and to accompliſh it, by regulations adapted to the purpoſe, has been the conſtant ſtudy of the framers of the bill, not only on account of the evident propriety of the thing itſelf, but in order, as far as poſſible, to remove every appearance of objection, to a more extenſive communication of the rights of election.

IN order to attain theſe objects ſo evidently important, the following regulations, relative to the rolls, are introduced in the Bill.

1ſt, THE common clerks of the ſeveral guildries or merchants, and of the ſeveral incorporations of trades, in the royal boroughs in which there are both eſtabliſhed guildries or merchant-counſellors, and incorporated trades; and the common clerks of the royal boroughs in which there are not eſtabliſhed guildries or merchant-counſellors and incorporated trades, are required, on or before the firſt Wedneſday of Auguſt, which ſhall be in the year 178 , to make up faithful and juſt rolls, of all perſons in their reſpective boroughs, who, according to the qualifications eſtabliſhed by the Bill, ſhall at that time be entitled, and claim to be inrolled as electors of common councils, and to certify the ſame upon oath, in preſence of any of the magiſtrates of the ſeveral boroughs, for the time.

2d,

2d, THE clerks of guildries, or merchants and incorporations, are required to enter the rolls, ſo made up by them, in the books of their ſeveral guildries and incorporations. The common clerks of the boroughs, in which there are not eſtabliſhed guildries, or merchant-counſellors and incorporations, are to enter the rolls made up by them, in the books of the common councils of their reſpective boroughs. The rolls of guild-brethren, or merchants and members of incorporations, ſhall be authenticated, reſpectively, by the ſubſcriptions of the deans of guild, and deacons of the incorporations. The rolls of burgeſſes, in the boroughs where there are not guildries or merchant-counſellors and incorporations, ſhall be authenticated by the ſubſcriptions of the chief magiſtrates of theſe boroughs.

3d, THE ſeveral rolls of electors, before deſcribed and appointed, ſhall, in all time coming, be continued and kept, under the authority and inſpection, reſpectively, of the ſaid guildries or merchants, incorporations and common councils, by their reſpective common clerks.

4th, IN order that new electors may be admitted on theſe rolls, and that perſons deceaſing, or removing from the boroughs, or otherwiſe legally diſqualified, may be ſtruck off, the books of inrolments ſhall be open yearly, four times in the year, *viz.* The firſt Wedneſday of November, the firſt Wedneſday of February, the firſt Wedneſday of May, and the firſt Wedneſday of Auguſt.

THE laſt of theſe days for purging the roll, is only about a month prior to the annual elections of the common councils; and the reaſon of fixing on it, was, that, on the one hand, perſons qualified near the time of the elections, ſhould not be deprived of the right of voting; and that, on the other, perſons any how diſqualified, during the courſe of the preceding year, ſhould not ſtand on the roll, or be entitled to vote.

AT the time of the poll, no perſons are either to be ſtruck off, or admitted on the rolls; the profeſſed intention of which, is, to prevent diſputes at that time, and to accelerate the execution of the elections.

5th, ON any of the ſaid four days appointed for keeping the roll-books open, claims of inrolment are to be preſented, diſcuſſed and determined, and the names of perſons diſqualified ſhall be expunged; but no perſon is to be ſtruck off the rolls, unleſs in conſequence of objections lodged, at leaſt eight free days prior to any of the four days appointed for expunging or keeping perſons from, or admitting them on the ſaid rolls of electors.

6th, The common councils, guildries or merchants, and incorporations, reſpectively, who are judges in the firſt inſtance, in relation to the titles of admiſſion on the roll, and diſqualifications of electors, ſhall continue their ſederunts *de die in diem*, after the ſaid four days reſpectively, until the claims of all perſons who ſhall offer the ſame,

any time before four o'clock in the afternoon of any of thoſe four days, ſhall be determined on.

7th, Any one or more members of each of the ſaid ſeveral guildries, or merchants and incorporations, and of the ſaid common councils, where there are no guildries or merchant-counſellors, and incorporations, ſhall be entitled to judge and determine in all queſtions relating to the expunging or keeping perſons from, or admitting them on the ſaid roll of electors.

8th, All perſons having intereſt, and agrieved by theſe determinations with regard to the titles of inrolment, or diſqualification of electors, may apply for redreſs to the Court of Seſſion, by ſummary complaint, at any time within four kalendar months of the date of pronouncing the act or determination complained of, but not afterwards.

9th, Persons preſenting ſuch complaints, and failing in their objects, ſhall be ſubjected in double coſts of ſuit; the amount of which, ſo far as concerns the expenditure, ſhall be aſcertained by the oath of the agent in the cauſe, who may have diſburſed the ſame; and the Court ſhall have no power of modification of articles below the ſums allowed by practice, or eſtabliſhed regulations.

10th, As it is of the greateſt moment, that the rolls of electors ſhould be preſerved in the utmoſt purity, it is provided, that no alteration ſhall be made thereon, otherwiſe than in the preciſe manner before mentioned; and that perſons guilty of making unwarrantable alterations, ſhall be ſubjected to the puniſhment of wilful falſehood, and be for ever incapable of enjoying the right of election, or being elected into any office in any of the royal boroughs of Scotland, or of voting in any affairs relating to the government and adminiſtration of the ſame.

11th, In order that the ſtate of the rolls of electors may be univerſally known, that no perſon may obtain a ſurreptitious admiſſion, nor continue on the rolls, without a title, it is provided, that during the time of every election, the rolls of electors ſhall be patent to the inſpection of any elector demanding the ſame, *gratis*; and that any elector, at any time demanding a copy of the roll, or of a part of the roll, in which he is an elector, ſhall be entitled to receive the ſame, on payment of the ſtated and ordinary dues of copying papers of an equal length, the ſame in no caſe exceeding five ſhillings Sterling.

On the expediency of theſe different regulations, relative to the rolls of electors, it is needleſs to enlarge. At firſt ſight, their propriety and utility are evident. They obviouſly carry along with them, without explanation or commentary, the reaſons on which they are founded. They are calculated equally to preſerve the purity of the rolls,

rolls, to aſcertain with certainty the titles of electors, prior to the poll, and thereby to attain to both facility and diſpatch in the execution of the elections.

The only objection that has ever been offered againſt the manner of keeping the rolls, is, That there are too many days appointed for admitting perſons on the roll, or ſtriking them off, and that one day would be fully ſufficient; but this objection we conceive to proceed from inattention, or the want of a comprehenſive view of the nature of the caſe, and the reaſons of the regulation objected to.

If one day only were appointed for purging the roll and admitting new voters, it behoved it to be fixed, either at a period diſtant from the time of the annual election, or near it.—If diſtant, the neceſſary conſequence would be, that a very great number of perſons who, in the intervening ſpace, might come to be qualified, and entitled to be inrolled, would be deprived of their votes, ſince, for reaſons already explained, and ſufficiently cogent, no voters are to be admitted on the rolls at the time of the elections. If the day were appointed near the time of the elections, the buſineſs would be exceedingly crowded; a very great number of claims would be preſented, and perhaps an equal number of objections to the votes of perſons ſtanding upon the roll. A ſingle day, therefore, would afford too little time for the diſcuſſion and determination of ſuch claims and objections.

It is true, the judges might be required, after that day, to ſit *de die in diem*, until all the claims and objections ſhould be diſcuſſed; but ſuch a regulation might be found to be extremely inconvenient. The number of objections and claims, if one time of the year only were appointed for receiving them, might be found to be ſo many as to require eight, ten, or fourteen days, or perhaps more, to diſcuſs them. Such a continued ſederunt, for ſo great a length, at one time, would turn out to be exceedingly burdenſome to the judges; of conſequence, the buſineſs would either be neglected, or executed in a manner which would not correſpond, either to its importance, or the juſtice due to the parties.

But, on the other hand, when four days of the year are appointed for receiving claims and objections, their number on each day will be comparatively inconſiderable. The buſineſs, by being thus divided, will be greatly lightened and ſimplified. It will be readily and accurately attended to, becauſe it can be executed with eaſe and with pleaſure, and in a ſhort time. A ſederunt of one, two, or even three days in each quarter of a year will not be thought troubleſome, while a continued ſederunt of twelve or fourteen days at a time would be reckoned intolerable; nor can the appointment of four days in a year be attended with any great inconvenience to the judges, ſince it is provided that a ſingle judge ſhall be competent, in the firſt inſtance, to the deciſion of every queſtion, either of inrolment or diſqualification; and as to the utility of the regulation, experience has ſufficiently demonſtrated, that the diviſion and ſubdiviſion of labour is the beſt means of attaining excellence in the performance, and diſpatch in the execution of buſineſs.

In

In ſhort, by the regulations of this bill, nothing will remain to be done at the annual elections, but to receive the annual certificates of inrolment, the very ſhort oath relative to them, and the vote of each elector; all which can be done in a few ſeconds, the title of every elector being previouſly fixed. The ſimplicity to which the execution of the elections is thus reduced, will give them both facility and diſpatch, and will remove every appearance of objection to a proper extenſion of the rights of Freedom.

CHAP. VII.

Of the annual Certificates of Inrolment.

Regulations of the Bill relative to theſe. Remarks thereon. Objections to the propriety of annual Certificates, mentioned and obviated.

It has already been ſeen, that the firſt Wedneſday of Auguſt, being about a month prior to the annual elections of common councils, is the laſt of the four days appointed annually for purging the roll, and receiving new electors.

1ſt, The bill therefore provides, that at any time *after* the ſaid firſt Wedneſday of Auguſt, every elector ſtanding for the time on the ſeveral rolls of electors, ſhall be entitled to demand, from the reſpective keepers thereof, certificates of their inrolment, properly atteſted, on payment of the ſum of ſixpence Sterling.

2d, It is alſo provided, that all electors, offering their votes at elections, under the authority of the propoſed act, ſhall be bound, at the ſame time that they give their votes, to produce and deliver to the clerk, to be left with him, the certificates of their inrolments, as electors, otherwiſe ſuch votes ſhall not be received or ſuſtained; nor ſhall any certificate, dated *prior* to the firſt Wedneſday of Auguſt, in the year in which the election happens, at which the electors offer their votes, be ſuſtained or admitted.

3d,

3d, The oath to be made at producing this certificate, is extremely ſhort, being conceived in the following words: "I A. B. *do, in preſence of Almighty God, ſolemnly "ſwear, that the certificate now produced by me, is a true certificate; and that it was "really and truly granted to me of the date it bears; and that I have not fraudulently "obtained poſſeſſion thereof, in any manner, from any perſon or perſons whatever. And "that this is truth, as I ſhall anſwer to God.*"

4th, The clerk of every election is required to keep and preſerve the certificates, in order that, in the event of a ſcrutiny, which is competent by the bill, the common council of the year preceding, who are the judges of the ſcrutiny, may compare the certificates of inrolments, with the return made by the preſes and clerk, or other returning officer, and may from thence, and the poll or vote-books, and the rolls of electors, and other evidence, be enabled to determine who are the counſellors having the majority of legal votes.

Already, it has been obſerved, that it is the uniform deſign of many of the proviſions in the bill, to ſimplify and facilitate the execution of the election, by a previous examination of the rolls, by a previous diſcuſſion and deciſion relative to the title of every elector, and by other means. Of all the regulations of this kind, contained in the bill, there is not one which has a more manifeſt tendency to conduct the elections with eaſe and diſpatch, than that concerning the ſubject of the preſent chapter.

The certificate and relative oath afford inſtant evidence of the title of every elector, and render it altogether unneceſſary to examine the rolls, in order to diſcover the name of every perſon offering to vote; a thing, which, were it requiſite, would always occaſion delay; and in caſes where the rolls are very long, would, by greatly retarding the proceedings at elections, be found exceedingly inconvenient.

It has been objected, that annual certificates of inrolment ought not to be required from electors, and that it is ſufficient for them once to obtain certificates, when they are admitted on the roll. What is the intention of this objection? Merely to ſave a ſixpence Sterling yearly to every elector. This degree of œconomy may be commendable; and we reſpect the penetration and capacity of ſome of the Gentlemen, by whom it is ſupported. But we muſt continue ſtill of opinion, that the ſaving to be made, would by no means be adequate to the benefit that would be forfeited, by excluding the neceſſity of annual certificates of inrolment.

If the certificates were not annually renewed, their utility would be greatly diminiſhed, if they ſhould not be rendered totally uſeleſs. The chief object of the certificates is, by affording inſtant evidence of a voter's title, to ſave the time and trouble of ſearching for his name in the rolls of electors, and thereby to ſimplify and accelerate the proceedings. How can this uſeful end be attained, unleſs the certificates are annually renewed, *poſterior* to the firſt Wedneſday of Auguſt, being the laſt

day appointed in each year for purging the roll, and admitting new electors? Let it be ſuppoſed, that a man comes to the poll, and produces a certificate, one, five or ten years old. This certificate can afford no evidence of his being ſtill on the roll, or entitled to vote; for, *poſterior* to the date of the certificate, he may poſſibly have been diſqualified, and his name expunged.

What then are the preſes and clerk of the election to do? If they receive the vote of a perſon not on the roll, they are ſubjected to a penalty. If they refuſe the vote of a qualified elector, they are ſubjected to a penalty; regulations which are ſalutary and indiſpenſable. They cannot, therefore, in duty to themſelves, either inſtantly reject or ſuſtain a certificate of an old date, or indeed of any date *prior* to the firſt Wedneſday of Auguſt, being the laſt day appointed for purging the rolls, becauſe, as already obſerved, if a certificate is dated before that day, and eſpecially, if it is one or more years old, the perſon who offers it, may poſſibly have been diſqualified, and ſtruck off the rolls.

The neceſſary conſequence is, that the preſes and clerk muſt ſtop. They muſt look back, with much waſte of time and labour, to the roll of electors, in order to know whether the name of the perſon, who offers a certificate of an old date, be there or not. This will of courſe greatly retard, perplex, and diſconcert the proceedings at the elections.

If, as is probable, a very great multitude of theſe old certificates appear, the matter will become ſtill more tedious, if not nearly inextricable; and every perſon concerned, will be wearied out by the length of the poll; whereas, by renewing the certificates annually, *poſterior* to the firſt Wedneſday of Auguſt, all theſe diſagreeable conſequences will be avoided. From that day, till after the day of election, the rolls ſuffer no alteration whatever. This is a fixed point, and a ſalutary principle of the bill, ſo that, *poſterior* to the firſt Wedneſday of Auguſt yearly, there is not a poſſibility of a voter's being diſqualified and ſtruck off the roll; and therefore, a certificate dated *after* that day, without looking farther, will afford inſtant convincing evidence of an elector's title to vote. The preſes and clerk will of courſe readily and ſecurely ſuſtain it, and the elections will proceed with the greateſt expedition and facility.

From theſe obſervations, is not the expediency of renewing the certificates annually apparent? or, by ſtill obſerving a contrary practice, Shall we incur all the embarraſſments and diſagreeable conſequences, which have been mentioned, and forfeit all the beneficial effects of annual certificates, in order to ſave, What? the important benefit of a ſixpence Sterling yearly to every elector!

CHAP.

CHAP. VIII.

Of Penalties and Incapacities.

The neceſſity of theſe to enforce the execution of laws. The nature of the penalties and incapacities in this bill, explained and juſtified.

On the ſubject of this chapter, a very few words will ſuffice. To enforce the execution of laws, the ſanction of penalties has ever been employed, and appears, indeed, indiſpenſably neceſſary. To introduce regulations of police, or any laws, without providing this eſſential ſecurity for their obſervance, would ſeem to be an act of very uſeleſs legiſlation, if not of very egregious folly. How then could ſuch ſecurity be omitted on the preſent occaſion, when a uſeful and liberal ſyſtem of Reform is about to be eſtabliſhed; and when it is notorious, that there are men who would not ſcruple to embarraſs and diſconcert it, if poſſible, in its execution and application to practice?

It has happened, notwithſtanding, that the penalties and incapacities, in the preſent Bill, have, we know not by whom, been objected to, as too many, and too high. To this, however, it appears to be a ſufficient anſwer, that no penalty or incapacity is inflicted, without preſuppoſing an offence againſt the indiſpenſable proviſions of the Bill; and if ſo, How can theſe penalties and incapacities be liable to objection?

In the Bill, two kinds of offences are provided againſt; 1*ſt*, Thoſe which may proceed from the effect of mere negligence, or culpable inattention; and, 2*dly*, Thoſe which may be the reſult of deſign, or of a criminal intention. To the former of theſe, moderate penalties are annexed; for, conſiſtently with the execution of the ſyſtem, they could not be paſſed over with entire impunity. On the latter, more ſevere penalties and incapacities are inflicted, which is altogether unavoidable, unleſs it were abſurdly ſuppoſed, that a beneficial ſyſtem of borough government were introduced for the purpoſe only of being deſpiſed and neglected. Where the penalties are ſmall, inferior judges are, from expediency, made competent to their recovery. Where they are high, or where the propoſed incapacities ſtrike deep, the cogniſance of them is uniformly reſerved to the Supreme Court.

CHAP.

CHAP. IX.

Of the manner of accounting for the Property, annual Revenues, and Expenditure of the Royal Boroughs.

The High Chamberlain of Scotland poſſeſſed anciently the power of compelling the Adminiſtrators of Boroughs to account for the common good. His office ſuppreſſed. His juriſdiction, in relation to the accounts of Boroughs, transferred afterwards to the Court of Exchequer. The inefficacy of this juriſdiction, and the reaſons of its imperfection. A new Plan of accounting for the common good of Boroughs, ſuggeſted in the Bill. The eſſential requiſites of a vigorous and efficient Syſtem of accounting; A domeſtic juriſdiction of accounts in every Borough, and an eminent Court of Appeal. The neceſſity and utility of both, illuſtrated and enforced.

TO inſpect the condition of the Royal Boroughs, to enquire into the conduct of Magiſtrates, and to demand an account of the common good, and of its application, was, in very ancient times, a part of the extenſive juriſdiction of the High Chamberlain of Scotland *. The exceſſive power of this great officer, who, beſides the inſpection of boroughs, had the care of the King's perſon †, was keeper of the royal wardrobe, exerted a general authority in matters of finance, and exerciſed juriſdiction over all the revenue-officers of the Crown, rendered his office, it has been ſaid, dangerous to the Government, and, for reaſons of ſtate, it was aboliſhed.

THE preciſe period of time at which the office of High Chamberlain had been ſuppreſſed, is unknown. It is, however, certain, that he exiſted in the exerciſe of his power, as far down as the 1503; for he is mentioned in a ſtatute of Parliament in that year, as the judge who was to preſide in the falſing of dooms within borough: But it is highly preſumable that his authority did not exiſt long after that period; nor does it appear, that, for ſome time, any other juriſdiction was eſtabliſhed to take cogniſance of the affairs of boroughs, and to bring the magiſtrates to an account for the application of the common good.

FROM

* Iter. Camerar. *c.* 39. § 17. and 45. Parl. 1491, *c.* 36.

† Dr Gilbert Stuart's Obſervations on the Public Law and Conſtitutional Hiſtory of Scotland.

FROM the time that the High Chamberlain's power was at an end, the adminiſtrators of boroughs appear to have acted without control, and to have waſted the public property and revenues, in a ſhameful manner; for the act of Parliament 1535, *c.* 26. proceeds on this narrative, "Becauſe all our Soveraine Lord's burrowes are put to "povertie, waſted and deſtroyed in their gudes and policie, and almaiſt ruinous, "through fault of uſing of merchandice; and that throw being of out-landes men, "Proveſt, Baillies, and Aldermen, within burgh, for their awin particular weill, in "conſuming of the common gudes of burrowes, granted to them be our Soveraine "Lord and his predeceſſours, Kings of Scotland, for the uphold of honeſtie and poli-"cie within burgh, It is therefore ſtatute," *&c.*

FOR theſe abuſes, therefore, this ſtatute attempted to introduce a remedy. It ordained that no man, in time coming, ſhould be choſen Provoſt, Bailies, or Aldermen, within borough, but honeſt and ſubſtantial burgeſſes, merchants and indwellers, under the pain of tinſel of their freedom. It farther provided, "That all Proveſtes, "Baillies, and Aldermen of boroughs, bring zeirly to the checker, at the day ſet "for giving of their compts, their compt-buiks of their commoun gudes, to be ſeene "and conſidered be the Lords Auditors, gif the ſamin be ſpended for the common "weil of the borough or not, under the paines foreſaids; and that the ſaidis Pro-"voſt, Baillies, and Aldermen of every burgh, warn zeirly, fifteene daies before "their coming to the checker, all they wha likis to cum, for the examining of the "ſaidis compts, that they may argunne and impugne the ſamin as they pleaſe, ſwa that "all murmure may ceaſe in that behalfe."

THIS ſtatute, however well meant, was attended with manifeſt defects. The juriſdiction it created, was too diſtant from almoſt all the boroughs. To enforce execution, it gave the burgeſſes no proper direct compulſitor. It did not even afford them an opportunity of knowing what the accounts contained, unleſs they were to follow the Magiſtrates to Exchequer; for it was there only, and not at home, that inſpection of the accounts was to be given.

WHILE thus the burgeſſes, in order to obtain even a ſight of the public accounts, were obliged to travel upwards of a hundred miles, and ſome of them above two hundred, it was not natural to think that they ſhould be regular in their applications to ſo diſtant and inconvenient a juriſdiction, or that the revenues of boroughs ſhould be well adminiſtered. The execution accordingly of this ſtatute, correſponded entirely to the nature of the inſtitution. It was partial and ineffectual. It was in a manner a wild gooſe chace that was pointed out by the ſtatute; the burgeſſes, as already remarked, not knowing, until after a journey of a hundred, or two hundred miles, the nature of the accounts which they were required to impugn, or the objections to which they might be expoſed. In ſuch circumſtances, it was not natural to expect, that the burgeſſes ſhould purſue ſuch enquiries, and in the dark too, at ſo great a diſtance. Magiſtrates took advantage of the defects of the ſtatute, and the neglect of the burgeſſes. They ceaſed to bring their accounts regularly to the Court of Exchequer. The execution of the ſtatute lingered, and at laſt almoſt died.

In the 1693, an attempt was made by additional regulations, to enforce the execution of the act 1535; but that attempt proved also fruitless, the original defects of this latter statute not having been supplied.

Hence it has happened, that a borough can scarcely be named, whose accounts were audited in Exchequer. To the revenues of boroughs, the consequence was fatal; and this is a fact now too notorious to be disputed. The complaints against the administrators of boroughs, were so loud, that they reached the ears even of the ministers of Charles the Second. In that reign*, a commission was granted by the King to certain persons of high rank, authorising them to cite the Magistrates of boroughs to appear and produce their accounts in Exchequer. The terms of this commission, which stands on record, are worthy of remark; for they describe, in the most forcible manner, the abuses and corruption which had universally pervaded the administration of boroughs. We shall endeavour to give a literal translation from the Latin. After mentioning some acts of Parliament relative to the accounts of boroughs, the commission speaks as follows:

" We, understanding, that in many of our royal boroughs, *the common property and revenues have by the Magistrates for the time, been either profusely dilapidated, or pri-*
" *vately peculated,* and, for the most part, have been applied *to ends and purposes to-*
" *tally different from those directed by law, or by the beneficent donations made by us and*
" *our illustrious ancestors;* but more particularly, that our royal boroughs, without any
" necessity, have contracted debts; and that after grants and donations were made
" by us, and our predecessors, and after burdens were imposed by the consent of the
" citizens, all for payment of these debts, yet they, for the greater part, in most of
" our royal boroughs, remain unpaid; and the revenues arising from the common
" good, from our most liberal and beneficent gifts, and the voluntary contributions
" of the citizens, *have been wasted and misapplied;* from whence there have pro-
" ceeded, not only *numberless murmurs and complaints* in boroughs, *but also those*
" *who prefer their private advantage to the common interest of the borough, have excited*
" *factions and divisions, in order to procure themselves to be elected to the office of magi-*
" *stracy, and in order that they, their relations and dependents might be continued in that*
" *office, from whence they might take occasion to squander the properties and revenues of*
" *the borough, in rewarding their friends, and supporting their factions in the borough;*
" whereas, if they were strictly compelled to render an account of the public pro-
" perty and revenue of the borough, to prove that the same were necessarily and
" profitably applied to the common uses and affairs of the borough, to render an ac-
" count of their dilapidations and misapplications, and to pay and indemnify the same
" to the borough, and if they were otherwise fined and punished, as the laws of the
" kingdom require, *for their corrupt administration,* then these evils would in a great
" measure be remedied and prevented, from whence murmurs and complaints would
" cease, contentions for the office of magistracy would be restrained and mitigated,
" and merchants, manufacturers, and other citizens of boroughs, would diligently and
" peacefully

* Anno 1684. The Commission on Record in the Laigh Parliament-house.

" peacefully follow their callings and professions, and our boroughs be well and peace-
" ably governed, &c."

In this picture, so evidently drawn from the life, we can trace, even at the present day, the profligate features of borough administration. It is now, however, one of the great objects of the proposed Reform, to establish a beneficial and effectual method of protecting the common property and revenues of boroughs. In framing regulations for that purpose, we are in a situation to derive advantage from the information which experience has afforded. The burgesses have seen the defects, and have to lament the consequences of the laws formerly enacted on this subject. They must, therefore, be convinced, from reason, as well as experience, that, to the formation of a safe and effectual plan for protecting the property and revenues of boroughs, two things are essentially requisite: *1st*, That there should be a jurisdiction of accounts in every borough, to which ready and easy access may be had; and, *2dly*, That there should be a Court of Appeal, of considerable eminence, to correct the errors and injustice of local passions and prepossessions.

On these principles, the mode of accounting in the present Bill has been adopted. The two propositions on which it is founded, are now so strongly supported by experience, that they scarcely stand in need of any farther illustration. One of the original and fatal defects of the statutes 1535 and 1693, was, that they created no domestic jurisdiction, or court of revenue in every borough, to examine and decide on the public accounts. The administrators of the public revenues, of course, naturally told the burgesses, If you find fault with our accounts, you must follow us to the Court of Exchequer. This was too severe a trial of public spirit, for most of the boroughs of Scotland, situated as they are, at so great a distance from Edinburgh. Added to that, the great expence of coming annually to the Exchequer in the first instance, was sufficient to defeat the execution of the statutes.

These difficulties and inconveniences, having their origin in the nature of things, and the circumstances of the country, must ever continue to render useless every institution which shall place the radical jurisdiction of accounts beyond the reach of the burgesses, who are the persons truly interested in the salutary administration of boroughs. It appeared to us, therefore, as essential to a system of borough-reform, that there should be a domestic jurisdiction of accounts in every borough, to which ready and easy access might be had.

In fact, this plan of a domestic jurisdiction of accounts, is not new in the idea, but only in the mode in which it is now proposed to be carried into execution; for it will be remarked, that while the power of the Chamberlain to audite the accounts of boroughs remained, that officer in his Chamberlain-ayres, conveyed to every royal borough, all the advantages of a domestic jurisdiction. Accordingly, while the Chamberlain continued to exercise this power, we meet with few or no complaints of the malversation of Magistrates. But when the Chamberlain ceased to carry the ensigns and the terrors of justice to the boroughs, their Magistrates no longer confined them-

ſelves within the line of their duty. They appear to have broke looſe like felons from their fetters, and to have committed the moſt enormous waſte and dilapidation of the property of boroughs. Hence the ſtatutes are full of the loudeſt complaints againſt the malverſation of Magiſtrates; and Royal Commiſſions have deſcribed in the livelieſt colours, their corrupt adminiſtration. It is the object of the preſent plan of accounting, to reſtore the benefits of a domeſtic juriſdiction of accounts, which were loſt by the ſuppreſſion of the Chamberlain's office, and thereby to ſtop, if poſſible, that torrent of abuſe in the adminiſtration of boroughs, which has ſwept away a great part of the property of theſe communities, and which ſtill continues to run with almoſt undiminiſhed force.

It has been ſuggeſted by ſome, that the auditors of accounts, inſtead of being veſted, as propoſed in the bill, with a judicial power in determining the propriety of the expenditure of the revenue, and decreeing redreſs, ſhould only report their opinion; and that this report ſhould be the baſis of a proſecution in the Court of Exchequer; but to give the auditors of accounts only ſo limited and inefficient a power, is to eſtabliſh a mode of accounting, liable to all the abuſes, and ſubject to all the weakneſs and imperfections of the ſtatutes 1535 and 1693. Has not the experience of two centuries opened our eyes, and afforded the moſt convincing evidence, that men will not ſubmit, even for the public good, to the labour and enormous expence of travelling hundreds of miles, in order to inſtitute an original action of accounting in the Court of Exchequer?

In fine, if the domeſtic juriſdiction of accounts, propoſed to be inſtituted, ſhall not be veſted with powers of deciſion and execution, it is in vain to think that it will produce any ſalutary effect. Beſides, for what good reaſon ſhould the burgeſſes be obliged to travel ſome hundred miles, and to incur a great expence, in order to obtain an act of juſtice which the auditors can give them at home, and at the expence of a triſle? When the burgeſſes are poſſeſſed of the decree of the auditors, they can proceed to immediate execution againſt the defaulters, and redreſs the borough. This vigorous ſyſtem, by affording the eaſieſt acceſs, and the readieſt execution againſt defaulters, appeared, to the Committee, to be the only one that could produce any ſalutary effects.

The propriety of a Court of Appeal is not leſs obvious than that of a domeſtic juriſdiction of accounts. Courts, like individuals, eſpecially inferior courts, are naturally liable to error. Appeals to ſuperior tribunals, like the trial of gold by fire, are calculated to expoſe errors, to bring injuſtice to light, and to redreſs it. Beſides, were the burgeſſes inveſted with the ultimate power of judging of the public accounts, high favour for popular men in the adminiſtration, or high reſentment againſt perſons of an oppoſite character, might bias the judgment of the moſt upright and diſintereſted burgeſſes; and might, therefore, be the ſource of great injuſtice, on the one hand, to individuals, and, on the other, of great prejudice to the property and revenue of boroughs. Hence the expediency and wiſdom of an eminent Court of Appeal; nor can there

there be a more proper one than the Court of Exchequer, which formerly was inveſted with the cogniſance of the accounts of boroughs. This Court, from its ſituation, and the rank of the judges, is ſuperior to every influence, and will readily correct the errors and injuſtice of local paſſions and prepoſſeſſions of every kind.

To the eſtabliſhment of a Court of Appeal, it may perhaps be objected, that it is inconſiſtent with the reaſon of inſtituting, and would deſtroy the utility of the domeſtic juriſdiction. But here a material diſtinction is to be marked. When the Exchequer was the only court to which the burgeſſes could apply, they knew not, till they came there, at a great expence of money and labour, what was the nature of the accounts. They were, therefore, remiſs and irregular in their applications; but, when the domeſtic juriſdictions, propoſed to be inſtituted, exerciſe their powers, the burgeſſes will know, with preciſion, the merits of the accounts. The value of the ſubject in diſpute will be ſet before them. The evidence on either ſide will be brought in view. They will, therefore, ſee clearly the ground on which they ſtand, and will, of courſe, have every encouragement to come to the Court of Exchequer, to meet there any appellant, or to become themſelves appellants, if neceſſary. Many perſons who would not travel twenty yards to find the game, will follow it twenty miles, when it is once ſtarted. The ſame paſſion, enforced by a ſenſe of duty, founded on ſolid grounds, will lead the burgeſſes to proſecute with vigour in Exchequer, the final deciſion of every queſtion firſt agitated and prepared in their own inferior domeſtic juriſdictions.

An opinion has lately been ſtarted, that for auditing the accounts of boroughs, the Annual Convention of the royal boroughs is the proper juriſdiction. But, independent of the high inexpediency of a court of accounts, compoſed of the very perſons accuſed of malverſation, this novelty of a juriſdiction in the Convention, which is not ſupported by the authority of any law, the name of any lawyer, or the deciſion of any judicature, is too groundleſs, to be ſeriouſly liſtened to.

Prior to the 1503, it is notorious, that the High Chamberlain of Scotland poſſeſſed the ſole juriſdiction in relation to the accounts of boroughs. Soon after that period, was introduced the act 1535, which veſted the ſame juriſdiction in the Court of Exchequer, where it has continued ever ſince, and been enforced by a poſterior law. Is it poſſible to conceive, that theſe things are conſiſtent with the new opinion, that the Convention of royal boroughs, which exiſted, at leaſt, as early as the 1487, was the proper juriſdiction for determining in relation to the accounts of boroughs? Beſides, even if it were anciently inveſted with ſuch a juriſdiction, yet, as it ſits at Edinburgh, and only two or three days every year, it is expoſed to all the objections which have been ſo forcibly urged, and are ſo clearly founded againſt the ſole and original juriſdiction of the Court of Exchequer.

Since the preceding part of this chapter was written, the Barons of the Court of Exchequer, in deciding the queſtion between the Magiſtrates and Burgeſſes of Dumbarton, have juſtified, by their authority, the opinion here delivered, relative to the juriſdiction

jurisdiction of the Convention of royal boroughs. That claim of jurisdiction was reprobated by the Barons in the strongest manner, as being totally adverse to every principle of expediency, and destitute of every shadow of foundation in law.

At the same time, the consequences of the decision of the Court of Exchequer in the case of Dumbarton, merit the utmost attention from the burgesses of all the royal boroughs of Scotland. That decision, finding, that Magistrates are not accountable in Exchequer, places the royal boroughs of Scotland in a most singular situation; for the Court of Session, in a question between Provost Hamilton and the burgesses of Kinghorn, determined in the year 1771, had found, in express terms, that an action of accounting at the instance of private Burgesses against Magistrates, was not competent in that Court.

The conclusion is, in the highest degree, alarming to every royal borough in Scotland. As the law of this country is now explained by decisions of the Supreme Courts, there does not exist a power or jurisdiction to call the Magistrates of boroughs to an account, for even the grossest dilapidation or misapplication of the property of the communities. This is a situation, without example in any other department of the state. A public revenue of L. 100,000 *per annum* is under the administration of Magistrates who are not bound to render any account whatever! These unaccountable administrators are men self-elected into office; derive no power from the citizens; are therefore totally unconnected with them, and are in every sense superior to their control!

These considerations render the interposition of the Legislature to correct the government of boroughs, indispensably necessary. To leave them in their present condition, would be to license the most palpable peculation and dilapidation of their public property and revenues; to encourage the most culpable inattention to the interests of police, and the grossest neglect of every object of useful and beneficial administration.

APPENDIX

TO THE

ILLUSTRATION of the PRINCIPLES of the BILL proposed to be submitted to the consideration of PARLIAMENT, for correcting the Abuses, and supplying the Defects in the internal Government of the ROYAL BOROUGHS in Scotland.

No. I. A farther Refutation of the Objection to Reform, founded on the Treaty of Union.

THE objection is, that by the 21st Article of the Treaty of Union, the constitutions of the Royal Boroughs as they then stood, are rendered unalterable. In the Illustration, reasons are urged which appear fully sufficient to remove the objection, but since the first chapter of the Illustration, where that subject is treated, has been cast off, the Committee have obtained extracts of the sets of the Royal Boroughs. These, on being looked into, appear to contain additional conclusive argument to refute the objection, which was attempted to be founded on the Treaty of Union.

The sets of the Boroughs, establish beyond dispute, that from the Union down to the year 1760, the Convention had been in the constant practice of altering and modifying the constitutions of the Boroughs. Examples no fewer than fifteen or sixteen in number, are found in their books. In 1748, the Magistrates of Glasgow presented a petition to Convention, stating that they had agreed in certain regulations for *altering* and amending the set of the Borough, and craving the Convention to interpose their sanction. The Convention remitted the matter to a Committee of the Commissioners for Edinburgh, Perth, Dundee, Aberdeen, Stirling, Montrose and Dumfries, who made a report, of which the Convention approved, that the proposed *alterations* and *amendments* upon the set and constitution of Glasgow were *agreeable to law*. How could that be, if the Union had rendered the constitutions of all the Boroughs of Scotland *unalterable?*

In the year 1722, the Magiſtrates of Inverneſs preſented to the Convention of that year, a petition craving an alteration of the ſet of the Borough, which alteration was approven by Convention. The Commiſſioner for Dundee appears to have been an enemy to the alteration, againſt which he proteſted on various grounds. But it never once occurred to him even ſo recently after the 1707, that the Treaty of Union had afforded any objection againſt the alteration.

In the 1718, the ſet of Dunfermline was modified by Convention. In the 1724, there is an act of Convention *ratifying a new ſet for the Borough of Dunfermline*. One of the reaſons of the alteration is, that it was in the preſent *Council's power to re-elect themſelves both Merchants and Trades to the day of their death without any change*.—It is needleſs to particulariſe the alterations made in the ſets of the other Boroughs. Suffice it to obſerve, that the conſtitutions of Inverkeithing, Queensferry, Forfar, Rutherglen, Wick, Taine, Kirkcaldie, Burntiſland, Kinghorn, Crail and Sanquhar, have all been modified and altered by Convention ſince the date of the Union; and ſo late as the year 1781, the Attorney and Solicitor-General of England, the Lord Advocate of Scotland, the Privy Council and his Majeſty, in altering the conſtitution of the Borough of Stirling, gave a decided opinion, That the Treaty of Union has no relation to the political conſtitutions of the Royal Boroughs of Scotland.

Without entering at preſent into the queſtion, how far either the Crown or the Convention, had power to alter the conſtitutions of individual Boroughs, which derived their origin from acts of Parliament, it muſt be obſerved, that the Crown and Convention did not conſider the Treaty of Union as forming any bar againſt ſuch alteration. This is an *argumentum ad hominem* againſt the Convention in the preſent caſe, and which they will find it difficult, if not impoſſible, to anſwer; for in what manner muſt they now ſhape their argument? Having, ſince the Union, exerciſed themſelves the power of altering the conſtitutions of Boroughs, it is utterly impoſſible for them to contend, at the ſame time, that theſe conſtitutions were by the Treaty of Union rendered unalterable. What then is the ſituation to which they are reduced? They are under the neceſſity of affirming, that the conſtitutions of the Boroughs are alterable by Convention, but that Parliament, after the Treaty of Union, can never exerciſe any power of alteration! To uſe words or argument in refuting ſuch a propoſition, would be to abuſe the patience and inſult the underſtanding of the Public. The Convention of Royal Boroughs may alter and repeal ſtatutes of the Scottiſh Parliament, introducing the preſent forms of Borough Government. But it is not competent for the Parliament of Great Britain to exerciſe that power! Such is the argument of the Convention of Boroughs! Thoſe who are capable of uttering ſuch abſurdities, what would they not do, to preſerve the wretched ſyſtems in which they live and move and have their being!

But, indeed, there was little occaſion for argument on this ſubject from the beginning. The 18th article of the Treaty of Union is of itſelf ſufficient to decide the queſtion. It ſpeaks as follows: "That the laws concerning regulation of trade, "cuſtoms, and ſuch exciſe to which Scotland is by virtue of this Treaty to be liable, "be

"be the ſame in Scotland, from and after the Union, as in England; and that all "other laws in uſe within the kingdom of Scotland do, after the Union, and not-"withſtanding thereof, remain in the ſame force as before, (except ſuch as are con-"trary to, or inconſiſtent with this Treaty), *but alterable by the Parliament of Great "Britain*, with this difference betwixt the laws concerning public right, policy and "civil government, and thoſe which concern private right; that the laws which con-"cern public right, policy and civil government may be made the ſame throughout "the whole united kingdom; but that no alteration be made in laws which concern "private right, *except for evident utility of the ſubjects within Scotland*."

Words cannot render clearer this article of the Treaty. All laws, whether relative to private right, or to public right, policy and government, are alterable by the Parliament of Great Britain. The preſent conſtitutions of the Royal Boroughs, though a little modified by uſage, are all founded on three ſtatutes, in 1469, *c.* 29. 1474, *c.* 5. 1487, *c.* 108. It is impoſſible to pretend, that theſe ſtatutes, which eſtabliſhed the preſent governments of the whole Royal Boroughs of Scotland, are not relative to public right, policy and government. And if ſo, does it require argument to prove, that by the Treaty of Union, they are alterable, without limitation, in the Parliament of Great Britain?

Let it, however, be ſuppoſed, for the ſake of argument, contrary to every idea of juſt conſtruction and reaſoning, that the laws relative to the conſtitutions of the Boroughs are regulations of private right, What then? Does any concluſion from thence ariſe favourable to the oppoſers of Reform? None. All laws, even concerning matters of private right, are, by the expreſs words of the Treaty, made alterable, if the alteration be for the evident utility of the ſubjects within Scotland. Are the enemies of Reform deſirous to reduce their objection to this principle, that Reform is not an object of public utility? The friends of the meaſure are extremely willing to reſt the cauſe on that iſſue; and they demand from its enemies no other conceſſion, than to unite with them in having its merits fully and fairly diſcuſſed in Parliament. If they decline this, what motive can be aſcribed to their conduct, other than a conviction that the ſyſtems they would wiſh to defend, cannot bear the teſt of examination? But, in reality, as has been ſhown, they have neither juſtice nor form to ſupport their plea. They are in preſent poſſeſſion of parliamentary power; and *Force*, not *Reaſon*, is the weapon of their defence.

No. II. Of the Jurisdiction claimed by the Convention of the Royal Boroughs to call Magistrates to an Account.

The untenable nature of such claim of jurisdiction, inferred from the late opinions of the Barons. The extreme inexpediency of the jurisdiction contended for by Convention. In what court the jurisdiction of calling Magistrates to account resided in very ancient times. The nature, history and powers of Convention traced from its origin. The statutes on which they found their claim, demonstrated to be inapplicable. Their pretended exercise of jurisdiction examined, and clearly refuted.

THIS subject is treated very shortly in the Illustration. The claim of jurisdiction made by the Convention of Royal Boroughs, appeared originally to be utterly groundless. The idea was confirmed by the unanimous opinion of the Barons of Exchequer, in the case of Dumbarton, where the matter was fully investigated. After the decision given in that case, no person imagined that the Convention of Boroughs would ever again venture to offer a claim of jurisdiction which was reprobated, treated with contempt, and even with ridicule, by the opinions of these honourable Judges.

To the astonishment of the public, however, it has happened, that the Convention of the Royal Boroughs have thought proper to renew their exploded pretence of jurisdiction, to call themselves to an account for their administration of the common good; for in a circular letter subjoined, sent by the Lord Provost of Edinburgh, as Preses of the Convention of Boroughs, to the individual Town-councils, desiring them to instruct their Members of Parliament to give an unqualified opposition to Reform, The Convention speak as follows: "They (meaning the Committee of Reform) have "at last determined to bring forward to Parliament their proposed bill, not only for "altering the constitutions of the Burghs, but to vest in the Court of Exchequer a "power to oblige Magistrates to account, in manner above mentioned; and with "that view, have applied to Mr Pitt, as Minister of State, for his countenance and "support, in order to have it passed into a law, *upon a misrepresentation*, That as "the law of Scotland is now understood, there does not exist a power to control the "administration of Burghs, *whilst that jurisdiction, by ancient charters and public statutes, stands vested in the General Convention of the Royal Burghs, and whereof they "have been in the regular exercise, from an early period down to this day.*"

In these assertions made by Convention, after what had passed in the Court of Exchequer, there is a boldness and temerity which nothing can exceed. Their letter

ter has not only been transmitted to the individual Town-councils, but has, we learn, been communicated to many Members of Parliament. If the Convention did not thereby mean to mislead the Legislature and the public, it must be allowed, that they are under an unpardonable degree of ignorance with regard to the nature and extent of their own rights. It is therefore indispensably necessary to enter more deeply, than has hitherto been done, into the foundation and history of that jurisdiction, for which the Convention of Boroughs so eagerly, and, it must be said, so indecently contend; for, as already observed, what they claim is the exclusive right of calling themselves to an account.

On the palpable inexpediency of such a jurisdiction, a very few words will suffice. It is enough to shew, from the very constitution of Convention, that it is a jurisdiction of that nature. Who are the persons liable to account for the common good of Boroughs, and are accused of malversation? They are the members of the Town-councils. Who are the persons that compose the Convention of Royal Boroughs? They are the members of the Town-councils, or Delegates from them. What then would be the effect of vesting in Convention the jurisdiction of accounts? Why, nothing less than to make the parties judges! to confer a power on the guilty to punish themselves and their associates involved in similar acts of abuse and malversation! On the consequences of such a jurisdiction, it is needless to comment; yet the Convention, in their late circular Letter, signify their high disapprobation *of any other jurisdiction*, as productive of expence, strife and litigation, and even reprobate, in strong terms, the jurisdiction of the Court of Exchequer, independent and disinterested as it is, both from the rank and situation of the Judges! If these sentiments, so avowedly held out by Convention to the public, do not afford a picture of the real spirit and intention of the Magistracy to set themselves above every species of control, except their own, it is impossible for human skill or ingenuity to paint them in their just colours.

In arguing the cause of the Burgesses of Dumbarton, the Honourable Mr Erskine, in his admirable pleading, and with his usual brilliancy of fancy, figured a case extremely applicable to the subject. He supposed, that flagrant reports had gone abroad, of gross frauds and abuses in the collection and management of the Excise, and that in order to remedy these evils, an act of Parliament was made, establishing a Court of Inquiry, composed of all the Excise-officers in the kingdom: Would not all mankind concur in reprobating the folly and absurdity of such a jurisdiction? But in what respects is it different from the jurisdiction of accounts contended for by the Convention of Boroughs? The one would have a strong and common interest to overlook and conceal the frauds committed in the collection of the Excise. The other would have an equally strong and common interest to veil and protect the abuses and malversations committed in the office of Magistracy.

Having submitted these observations on the inexpediency of the jurisdiction claimed by the Convention of Royal Boroughs, we shall next proceed to shew, that it is destitute of every shadow of foundation in law. The Convention are pleased to af-

 firm,

firm, that their jurisdiction is supported by ancient charters, public statutes, and regular exercise or usage of that jurisdiction. In treating the subject, therefore, it may be divided into three heads. In the *first* place, we shall enquire in what court the jurisdiction of calling Magistrates to account in very ancient times truly resided, and continued until it was vested in the Court of Exchequer. In the *second* place, we shall trace, from its source, the history of the Convention of the Royal Boroughs, and the nature and extent of its powers, in its original institution. In the *third* place, we propose to examine the statutes referred to in Exchequer by the Convention, posterior to its institution, as well as the instances or examples of jurisdiction appearing in their books, from which they would infer an exercise of the power for which they now contend. These instances or examples of a pretended exercise of jurisdiction, were under the consideration of the Barons, in the case of Dumbarton, and excerpts of them taken from the books of Convention, are subjoined.

FIRST POINT, The ancient jurisdiction of accounts, and transference of it to Exchequer.

To the first of the points of inquiry that have been suggested, the answer is easy. The High Chamberlain of Scotland appears to have possessed, in the most ancient times, the jurisdiction of calling Magistrates of Boroughs to an account. Of this there is the most complete and satisfactory evidence from the public laws and records of the kingdom.

It. Cam. c. 38. § 17. and 45.

IN the Iter Camerar. or Chamberlain Ayre contained in the *Regiam Majestatem*, some of the articles to be specially inquired into, are the following: "*1st*, Gif the "purse or common gude is weel keep'd, and devyded equally, as it sould be. "*2dly*, Gif there be ane gude assedation and uptaking of the common gude of the "burgh, and gif faithful compt be made thereof to the community of the burgh; "and gif na compt is made, be quhom, and in quhais hands it is come, and how it "passes by the communitie."

THE act of Parliament 1491, c. 36. "Statuted and ordained *anent the common* "*gude* of all our Sovereign Lord's burrowes within the realme, that the said com- "mon gude be observed and keeped to the common profite of the town, and to be "spended in common and necessary things of the burgh, be the advice and councel "of the towne and deacons of crafts quhair they are, *and inquisition yeerly to be ta-* "*ken in the chamberlaine ayre of expences and disposition of the samen.*"

THESE authorities appear of themselves clearly to establish, that the jurisdiction over the accounts of boroughs was anciently vested in the High Chamberlain; but they are supported by the opinions of the most eminent writers on the law of Scotland, Lord Stair, b. 4. t. 1. § 4. Mr Erskine, b. 1. t. 3. § 38. This is also the opinion of Dr Gilbert Stuart, c. iv. of his learned observations concerning the public law and constitutional history of Scotland. It is indeed beyond all doubt, that the High Chamberlain anciently possessed the jurisdiction over the accounts of Boroughs.

THE

THE office of High Chamberlain, it is said, was, for reasons of State, suppressed, or fell into disuse; but at what precise period is unknown. It is, however, certain, as already observed in the Illustration, that he existed in the exercise of his power as far down as the 1503, for he is mentioned in a statute of Parliament of that year, c. 95. as the Judge who was to preside in the falsing of dooms within borough; but it is presumable, that his authority, at least over the Boroughs, did not long continue after that period; nor does it appear, that for some time thereafter any other jurisdiction was established for taking cognisance of the affairs of Boroughs, and for calling the Magistrates to account for the administration of the common good.

THE administrators of Boroughs being thus in a manner relieved from the fear of any judicial enquiry into their conduct, appear to have acted in the most improvident manner. It was found indispensably necessary to transfer the jurisdiction of the Chamberlain over the accounts of Boroughs to another court; and accordingly, by the act 1535, c. 26. it was fully vested in the Court of Exchequer. This act, while it establishes the jurisdiction of accounts in the Court of Exchequer, contains the loudest complaints against the Magistracy, with regard to the administration of the common property and revenues of Boroughs.

HERE it falls to be observed, that at the time of passing this act of Parliament, and for a long time prior to it, even during the power of the High Chamberlain, and as far back at least as 1487, the Convention of Royal Boroughs existed; but it does not appear to have then occurred to the Legislature, to the Convention itself, or to any person in the kingdom, that this body possessed a judicial power over the accounts of Boroughs.

ALTHOUGH posterior to the 1503, the exercise of the Chamberlain's powers declined, and went gradually and insensibly into disuse, the name of the office was still kept up, and served to add to the dignities successively of the great and illustrious families of Home, Fleeming, and Lennox, in which last it was made hereditary. On the failure of heirs-male of Charles Duke of Lennox, King Charles II. was served heir to him in 1680, by which he carried right to the Duke's heritable offices and estates. The King afterwards conferred the office of High Chamberlain on his natural son the Duke of Monmouth; and on his forfeiture, the office returned again to the family of Lennox and Richmond, who, in 1703, resigned it into the hands of the Crown.

WHEN the authority of the High Chamberlain over the Boroughs ceased to be exercised, here was a fit opportunity for the Convention to step in, and vindicate its own jurisdiction, when it could no longer be opposed by the power and influence of that high officer. But the Convention were silent. They were conscious, and the whole nation was conscious, that they had no such jurisdiction as they now pretend; and accordingly, they not only did not attempt to claim it, even when there was no other court in existence which was in use to exercise it; but this jurisdiction was, by the authority of Parliament, in the manner already mentioned, fully vested in the Court of Exchequer.

IT

In that Court, the jurisdiction over the accounts of Boroughs has continued ever since; nor can there be any doubt that it was exercised, although from the imperfection of the records, the *complete* evidence of it cannot be discovered.

In the 1684, however, a commission was granted by King Charles II. to William Marquis of Queensberry, treasurer, and to John Drummond of Lundin, treasurer-depute, narrating several acts of Parliament relative to the common good of Boroughs, and particularly, the act 1535, c. 26. and authorising them to direct precepts commanding the Magistrates, and other administrators of Boroughs, to appear before the Court of Exchequer, and to bring with them, and produce the accounts of charge and discharge of the rents and profits of the said Boroughs, to the end that they might be considered and examined by the treasurer and treasurer-depute, with power to the said treasurer, principal and depute, with consent of the other Lords of Exchequer, of judging and determining in every point and article in relation to the said accounts of charge and discharge, and of ordaining reparation to be made to the Boroughs, so far as they were injured by their administrators; nor at this time did any man conceive, that a jurisdiction over the accounts was competent to the Convention of Boroughs.

The act 1693, c. 28. appears to have been made in order to enforce the execution of the act 1535; for it renews the appointment on Magistrates and Counsellors, to produce their accounts in Exchequer. This act of Parliament further speaks of the King and Queen's intention of granting commissions, one or more, to enquire into the condition and state of the common good and revenues of all the Royal Boroughs, and how the same have been, or shall be hereafter employed or misemployed, and to call the malversers to make an account, and to ordain them to refund, or otherwise to repair the Borough by them lesed.

Even yet, the idea of a jurisdiction in the Convention of Boroughs, in relation to this subject, appears never to have been adopted by any person whatever. In a word, the power exclusively exercised by the High Chamberlain, even at a time when the Convention were in existence, the transference of that power to the Court of Exchequer, and the uniform sense of the Legislature, who, in recognising the jurisdiction of accounts, first in the Chamberlains, and afterwards repeatedly in Exchequer, and even in the Crown itself, never appear to have conceived, that a judicial authority to call Magistrates to an account for the common good was competent to the Convention; these are all circumstances utterly inconsistent with the supposition, that the jurisdiction now claimed by the Convention of Royal Boroughs has any solid foundation. Add to this, that the idea of such a power in the Convention is not supported by a single decision or authority of any regular judicature.

In short, it is not only clearly established, that the ancient jurisdiction over the accounts of Boroughs was vested in the High Chamberlain, but the different circumstances which have been mentioned, afford convincing evidence, that this jurisdiction never was competent to the Convention of Boroughs.

Here

Here the Burgesses might rest the case; but in order to render the matter still more clear, they will proceed, in the *second* place, to trace the history and powers of the Convention of Boroughs. Second Point. History and powers of Convention.

There appears very anciently to have been a court composed of the four Boroughs of Edinburgh, Berwick, Roxburgh and Stirling, whose office it was to judge, under the superintendence of the High Chamberlain, *in the falsing of dooms*, or the reduction or reviewing of decrees pronounced within Borough, relative to matters of ordinary civil jurisdiction.

It is in this court of the four Boroughs, appointed for the falsing of dooms, that we have the first traces or appearance of a Convention of the Royal Boroughs of Scotland. The period of its original institution is unknown, but its existence and powers are ascertained beyond a doubt.

Subjoined to the Borough laws, in the *Regiam Majestatem*, there are four chapters on the nature and powers of this court of the four Boroughs, or, as it was called, the *Curia quatuor Burgorum*. In the first chapter, mention is made of a statute of King David II. holden at Perth the 6th of March 1348, by which it was "statuted "and ordained, that swa long as the burghs of Berwick and Roxburgh, are de-"tained and holden be Englishmen, (quhilks are and sould be twa of our four "Burghs, quha, in auld time, did hauld ane Chamberlaine-court anes in the zeare *at* "*Hadington, anent falsing of dooms*, quhilks were again said before the Chamberlain "Ayres), the burgh of Lanark and Lithcow shall be received and admitted in their "place."

In section third of this chapter, it is declared, "That the court to be swa holden "by the Commissioners of Edinburgh, Stirling, Lithcow and Lanark, in sa far as "concerns *common justice*, shall be as available as gif there were nae impediment "or obstacle of the other twa Burghs halden and occupied be Englishmen."

In chapter second, it is provided, that the *dooms of the Burghs*, that is, *reductions of decrees within burgh*, shall be decided before the Chamberlain, in a court to be holden at *Haddington*, to which he is to summon three or four discreet Burgesses of Edinburgh, Stirling and Lanark.

It was evidently no part of the jurisdiction of this court of the four Boroughs, to call Magistrates to account for the administration of the common good: For, *1st*, It is expressly said in the statute of David II. that the business of that court was concerning *the falsing of dooms*. *2dly*, From section third of the first chapter of the court of the four Boroughs, it is evident, that the decrees to be reduced by it, related to matters of ordinary civil jurisdiction, or, as they are there called, *of common justice*. *3dly*, This court was anciently to have been held once in the year at the *town of Haddington* only; whereas the High Chamberlain was to take cognisance of the accounts of Boroughs in his *Chamberlain ayres*, at every town where he went throughout Scotland; and the High Chamberlain was indisputably, as has been already

 shown,

ſhown, in the exerciſe of that power in his Chamberlain ayres, as far back as the records of the country reach.

Hence we may ſafely conclude, that in the firſt inſtitution or rudiments, ſo to ſpeak, of the Convention of Boroughs, they poſſeſſed no power whatever to call Magiſtrates to account for the application of the common good.

In chap. 3. of the court of the four Boroughs, it is ſaid, that in the court holden at Stirling, the 12th October 1405, it was decreeted, "That twa or three ſufficient "Burgeſſes of ilk ane of the King's burghs upon the ſouth ſide of the water of Spey, "having ſufficient commiſſion, compear yearly to the Convention of the four Bo- "roughs, to treat, ordain and determine upon all things concerning *the utility of* "*the common weel of all the King's burghs, their liberties and court.*"

This was an evident extenſion of the *Curia quatuor Burgorum*, and was a ſtep towards the eſtabliſhment of a complete Convention of the Royal Boroughs, on the footing on which it preſently ſtands. But this decree or ordinance of the court of the four Boroughs appears not to have taken effect. It is indeed evident, that this court had no authority for the powers they aſſumed, of compelling, by their decree, all the Boroughs on the ſouth of the Spey to attend them; but that ordinance, ſuch as it was, ſpeaks nothing of the accounts of the common good; nor could the court of the four Boroughs, however fond they were of power, pretend to wreſt the juriſdiction in that reſpect from the High Chamberlain, by whom it was then actually exerciſed, in order to veſt it in themſelves.

To eſtabliſh a Convention of all the Royal Boroughs, the interpoſition of Parliament was found neceſſary. The firſt ſtatute we meet with on this ſubject is the act 1487, c. 3. which "ſtatuted and ordained, that zeerly in time to come, certain "Commiſſaries of all Boroughs, baith ſouth and north, convene and gedder togedder "anes ilk zeir, in the burgh of Inverkeithing, on the morn after St James' day, "with free commiſſion; and there to commune and treat *upon the welfare of mer-* "*chandiſe, the gude rule and ſtatutes for the common profite of Boroughs, and to pro-* "*vide for remeid upon the ſkaith and injuries ſuſtained within the Borrowes.*"

Although the idea of a Convention evidently aroſe from the ancient court of the four Boroughs, yet the ſtatute juſt now recited, may be ſaid to be the foundation of the Convention, on its preſent footing; and as the old court from which it originated, had moſt evidently no juriſdiction to call Magiſtrates to account for the common good, ſo no ſuch juriſdiction appears to have been given to the Convention by the act 1487: For, *1ſt*, The words of that ſtatute certainly make no mention of the common good, or accounts of Boroughs. *2dly*, Neither was that object within the meaning or intention of the ſtatute. Of this the act 1491, paſſed only four years thereafter, and already recited, affords evidence the moſt convincing; for it expreſsly appoints, that *an inquiſition yearly be taken in the Chamberlain ayre*, of the expence and diſpoſition *of the common gude of Borrows*.

If,

If, by the act 1487, the juriſdiction of accounts was veſted in Convention, what uſe or occaſion was there for the enactment of the ſtatute 1491? Nothing can afford a more clear demonſtration, than does this act, that by the one of 1487, no power over the accounts of Boroughs was conferred on Convention. Beſides, the act 1491 ſhews alſo, that wherever the Legiſlature meant to make regulations concerning the common good, it mentioned that object in preciſe and clear words, and did not leave it to depend on the conſtruction of any general expreſſion.

Such being the caſe, it appears almoſt unneceſſary to enter into any more particular explanation of the act 1487. To treat of the welfare of merchandiſe, and of making ſtatutes for the common profit of the Boroughs, in relation to each other, has evidently no reference to the common good of the individual Boroughs. The Convention ſeemed to lay ſtreſs upon the words, "To provide for remead upon the "*ſkaith* and *injuries* ſuſtained within the Boroughs." But the Barons were moſt perfectly convinced that theſe words had no relation to the management of the common good. What was meant by them is explained by the act 1607, c. 6. referred to by the Convention themſelves, which uſes almoſt the very ſame words with the act 1487. After a general confirmation of the privileges of the Royal Boroughs, the act 1607 proceeds thus: "And conſidering the great *hurt* and *ſkaith* daily ſuſtained "by the Burgeſſes and inhabitants of his Majeſty's Royal Burrowes, who underlyes "and bears all burdings impoſed upon the ſtate of Burrowes in all his Majeſty's ſer- "vices, throw the continual intereſs of unfree traffickors, dwelling in diverſe parts "of this realme, not being burgeſſes of the ſaid Royal Boroughs, and nevertheleſs "keeps and holds buiths, buys and ſells merchandiſe, and otherways uſes the liber- "ties and privileges of free Burgeſſes and actual reſidents within the ſaid Royal Bor- "roughs, in manifeſt defraud of our Soveraine Lord's cuſtomes, and to the preju- "dice of the liberties of the ſaids free Royal Burrows; and therefore," *&c.* Then follows a prohibition againſt all unfreemen, to exerciſe, trade, or traffic within Borough.

By the act 1466, c. 12. it was provided, that no man of craft, that is, no mechanic, ſhould uſe merchandiſe, unleſs he renounced his craft.

It was to *ſkaith* or *injuries* of this kind, or thoſe ariſing from the practices of unfree traders, and to other objects of police, traffic, or mercantile concern, that the words of the act 1487 related; but it is ſufficient for the Burgeſſes to ſay, that for the reaſons already mentioned, they could not poſſibly have any relation to the power of accounting for the common good. Theſe words had lain in the ſtatute for 299 years, without its having ever been conceived by any mortal, that they conveyed to Convention a juriſdiction of accounts. The diſcovery had eluded the ſearch of ages. It had eſcaped the penetration of all the lawyers, writers and judges, and even of all the Conventions of former times. The law was made in 1487. But the unexampled acuteneſs that could alone develope its meaning, was not to exiſt in the world till about 300 years thereafter. The blazing merit of the diſcovery was deſtined to crown with laurels the Head of the Convention of the year 1786. Neceſſity, it has been juſtly ſaid, is the mother of *invention*. The Convention of that year,

in

in order to find out a plauſible pretext for refuſing to account in Exchequer, were driven to the laſt extremity. The occaſion was preſſing. There was little time for a choice of expedients. In this perplexity, their evil genius maliciouſly diſpoſed, anxiouſly ſtudious to involve them in difficulty and abſurdity, and thereby to expoſe them to public ridicule, has, it ſeems, told them, that under the act 1487, *they might account to themſelves;* which would be fully ſufficient, or at leaſt would afford a very good blind to ſatisfy the unthinking multitude. This extravagant conceit, becauſe it gratified their ſtrongeſt paſſion, was adopted by Convention with avidity; and neither the cleareſt deduction of fact and reaſoning, the public diſapprobation, nor the unanimous and decided opinions of the ableſt judges, can now induce them to abandon it. Such is the hiſtory and nature of the new diſcovery of a juriſdiction in Convention. Is it neceſſary to ſay more, in order to evince the inexpediency, futility and illegality of the claim? There remains, however, one branch of the taſk we had undertaken.

THIRD POINT. Examination of the acts of Parliament, and examples of juriſdiction referred to by Convention.

WE come therefore, in the *third* place, to examine the acts of Parliament poſterior to the inſtitution of Convention, and the examples of juriſdiction reſorted to by them. They had, in the Court of Exchequer, in ſupport of their new plea, appealed to a great variety of ſtatutes, ſuch as 1555, c. 49. 1563, c. 86. 1567, c. 26. 1579, c. 85. 1592, c. 154. 1594, c. 225. 1633, c. 24. 1672, c. 5. 1690, c. 12. 1693, c. 30. But it muſt be confeſſed, that, in referring to theſe, the Convention have only amuſed or deluded themſelves; for not one of them has the ſmalleſt relation to the points which the Convention would wiſh to eſtabliſh by them. The public are requeſted to look into them. They contain not a ſingle word concerning the common good of Boroughs, or its management, or even about the powers of the Convention. They are all general ratifications, extenſions or limitations of the privileges of the individual Boroughs; which, as already explained at length in the Illuſtration, conſiſted in the excluſive rights of incorporations within Boroughs, and excluſive rights of foreign trade; and when the oppoſers of Reform would inſinuate, that the letters of horning allowed to be iſſued, for enforcing and ſecuring theſe privileges, have relation to the accounting for the common good, they attempt an impoſition on the public, for which there is not a colour of excuſe or juſtification.

THE Convention appealed alſo to the act 1581, c. 119. But what is that to the purpoſe? This act only appoints the times of the meetings of Conventions, and the manner of calling them, without expreſſing a word concerning their powers. They again refer to the act 1593, c. 185. But neither will this ſtatute avail them in the ſmalleſt degree; for it only appoints the common good to be rouped yearly, and applied to the uſe of the Boroughs at the ſight of their own Magiſtrates; but gives no power whatever over it to the Convention, which the ſtatute does not ſo much as mention.

IT is therefore in vain that the Convention reſort to acts of Parliament, in order to ſhew that they poſſeſs a judicative power to call the Magiſtrates of Boroughs to account for malverſation in the management of the revenue. Equally vain is the expectation to eſtabliſh that propoſition by any evidence or authority from their own books. This leads us to examine the inſtances or examples of an exerciſe of juriſdiction reſorted to by Convention.

IT

IT would be tedious to remark articulately on every ſingle inſtance or example. A few general obſervations will be ſufficient to ſhew, that they do not in any reſpect apply.

ON examining the excerpts ſubjoined, it will be found, that all the inſtances ſpecified are only examples of one or other of the following particulars: *1ſt*, A power of authoriſing the individual Boroughs to ſell the common property for the pretended advantage of the community. This power was exerciſed in Convention, ſometimes by granting warrants to ſell, and at other times by approving of ſales already made, both in conſequence of applications from the Magiſtrates of the individual Boroughs. *2dly*, A power of authoriſing the Boroughs to ſet tacks of the common good for ſeven, nine, ſixteen, twenty-one, and ſometimes twenty-ſeven years, and orders for rouping the common good to the beſt advantage. *3dly*, A power of appointing interim managers of the affairs of Boroughs where there were no Magiſtrates. *4thly*, A practice in Convention of interpoſing, not as judges, but as friends or mediators, to compoſe diſputes and differences in Burghs, whether in relation to the common good, or any other ſubjects of controverſy. It is to this mediatory power that the late very reſpectable author of the Inſtitutes of the Law of Scotland muſt have alluded, when he ſays, that Convention had been in uſe to enquire how the yearly revenues had been applied by the Magiſtrates, for no judicative power to that purpoſe ever was exerciſed by Convention. *5thly*, A right of ſuperintending the common intereſt of the Burghs, in relation to trade and manufactures, and the proper adjuſtment of the tax-rolls.

WITH regard to the firſt article, it does not appear, that the power aſſumed by Convention, had the ſmalleſt foundation in law. The common good of every Borough was the property of the community or corporation of that Borough, under the management of its own Magiſtrates. If theſe adminiſtrators had at common law a right of alienation, they might exerciſe it without the conſent or approbation of the Convention of Boroughs. If at common law they had no right, it is indiſputably clear, that the Convention of Boroughs could not beſtow it. If therefore the Convention truly meant to exerciſe powers which the laws of the land moſt aſſuredly did not confer on them, all the inſtances ſpecified are no more than ſo many acts of uſurpation; but the real fact ſeems to be, that the Convention did not intend to exerciſe any powers, either judicative or legiſlative, of ſelling the common property, but only to give their advice, on being oſtenſibly aſked, whether it was, or was not prudent for the individual Boroughs, in certain circumſtances, to make ſuch alienation. In fact, there is reaſon to preſume, that the ſole object of theſe applications for the Convention's authority, was nothing more than to procure a cover for a ſhameful profuſion and dilapidation of the public property.

2dly, THE ſame obſervations are applicable to the allowances ſometimes given by Convention, of letting tacks, and to their approving ſuch acts of adminiſtration when already executed. Beſides, by the act 1491, all tacks of the revenues of Boroughs, for more than three years, were prohibited. What power then had the Convention

to authoriſe leaſes of twenty and twenty-ſeven years? They moſt certainly had none; and if the adminiſtrators of Boroughs had at common law a right of letting ſuch leaſes, they did not need any authority from the Convention.

As to the orders they ſometimes pronounced about rouping the common good, they can import nothing. The public law had appointed the common good of Boroughs to be yearly rouped; and the orders of Convention to that purpoſe, were nothing more than an advice to execute the public law, as being for the intereſt of the Boroughs.

The import of the argument ariſing from the ſales and long leaſes authoriſed by Convention, may be reduced to a very ſhort point. If a juriſdiction of accounts were to be eſtabliſhed by a uſage of alienating and miſmanaging the common property, there is not an individual Town-council in the kingdom, which would not by this time have acquired an unqueſtionable right to call itſelf to an account. For it may ſafely be affirmed, that there is ſcarcely a ſingle Borough where alienations and long leaſes of its property have not been both ancient and frequent. The juriſdiction of the Town-councils of Inverneſs, for example, would be eſtabliſhed beyond all diſpute; for they have alienated common property for trifling feu-duties, not exceeding in all L. 20; whereas the real rent of that very property is now not leſs than L. 3000 Sterling yearly! But is it tenable in law or in common ſenſe to ſay, that an individual Town-council, by a habit of alienating the public property, could acquire to itſelf a judicature of accounts in relation to its own adminiſtration? Can a manager, by the very act of management, pretend to prove, that he is in law bound to account only to himſelf? It is the adminiſtration or management that gives riſe to the propriety and neceſſity of accounting. Is the manager therefore entitled to ſay, Becauſe I have managed, I ſhall account only to myſelf! Theſe things, when applied to the individual Town-councils, appear to involve abſurdities too groſs, and too glaring, to be maintained. In what manner is the caſe varied, when the ſame things are done and pleaded by the Convention, who are the Delegates of the Town-councils? It is impoſſible to perceive the ſmalleſt ground of diſtinction. What then is the reſult of the enquiry to which the Convention have led, by referring to ſales and leaſes of the common property, as precedents to eſtabliſh their pretended judicature of accounts? It is this, that, inſtead of evidence of a regular exerciſe of juriſdiction to call Magiſtrates to an account, we find nothing more than a record of groſs abuſe and dilapidation!

3dly, With regard to the practice of appointing interim managers, where there were no Magiſtrates at the time, it does not appear ever to have been exerciſed by Convention, except on the application of the inhabitants of the Boroughs where there happened to be an interregnum. It does not occur, that the Convention had any power to make ſuch appointments. At the ſame time, it was perhaps natural for them to interpoſe, in caſes ſo urgent, when the affairs of the Boroughs were in danger of being ruined by the want of a legal Magiſtracy; but nothing can be inferred from their exerciſing ſuch a power. The Lords of Seſſion are now in uſe to appoint interim

interim Commiſſaries, interim Sheriffs, and interim Magiſtrates, in caſes of death or diſqualification; but it never was yet thought, that this gave the Court of Seſſion a right to exerciſe any power over Commiſſaries, Sheriffs or Magiſtrates, when regularly and legally appointed by the proper authority.

Where there were no Magiſtrates in a Burgh, it was at leaſt juſtifiable in the Convention to aſſume the management, to prevent the ruin of the common affairs; but the moment a legal Magiſtracy was appointed, the powers of Convention were excluded, and entirely at an end.

The Convention ſeemed to lay ſtreſs on the circumſtance, that they called to account the interim managers of the revenues of Boroughs appointed by themſelves; but this is really inapplicable. Theſe interim managers derived their authority entirely from them. They were in a manner their ſervants, and could not therefore refuſe to account to thoſe who had appointed them, in relation to the truſt that was committed to them; but how can it be from thence inferred, that the Convention could exerciſe the ſame powers over a Magiſtracy regularly and legally appointed? The concluſion is totally untenable.

It deſerves at the ſame time to be remarked, that ſince the year 1738, the Convention have not been able to ſpecify a ſingle inſtance in which they pretended to exerciſe the power of nominating interim managers or Magiſtrates. Such powers are now exerciſed by the Court of Seſſion only.

4thly, In relation to this article, the Convention, from the inſtances they have given, would wiſh to have it underſtood, that in interfering in the differences in Boroughs, relative to the accounts of the common good, they had exerciſed a judicial power. To ſhow this, three inſtances are chiefly relied on, but all equally inapplicable to the point.

The firſt is the general order of 1706, No. 23. of the excerpts. But when the order itſelf is looked into, as it ſtands in the original record, the words of which are given in the excerpts, it is perfectly clear, that the Convention interpoſed only *as friends and mediators*, and did not even pretend to exerciſe a judicative power. No. 23. of the excerpts.

The Convention, by that order, ordained differences to *be firſt* brought and tabled before them, *in order to be compoſed and agreed by their mediation.* Is that the language of a court poſſeſſed of judicative and compulſive powers? It is directly the reverſe. It is a plain confeſſion, that ſuch power was not competent to the Convention, in relation to the accounts. This is ſtill more clear from the certification added to their order. Do they thereby pretend to compel defaulters to account, and to indemnify the Boroughs? No. They were convinced they had no ſuch power. They were contented with emitting a *brutum fulmen*, that thoſe who diſobeyed ſhould be *reckoned diſturbers of the public peace, contemners of their authority, and be fined and otherwiſe puniſhed as the Convention or Committee ſhould think fit*; a certification which, while

while it teſtified their ambition of power, proved, at the ſame time, the impotence of their pretenſions to exerciſe a regular juriſdiction of accounts. The power here aſſumed by the Convention, of declaring men diſturbers of the public, of fining and puniſhing at pleaſure, was juſtly treated by the Barons with contempt, and by ſome of them, even with indignation. The acute feelings and conſtitutional ideas of Sir John Dalrymple could not brook ſuch exerciſe of lawleſs authority.

If the acts of Convention were always a juſt ſtandard of their rights, they would be found to be poſſeſſed of very high authority indeed. *Mr Cullen*, in his very able and ingenious pleading in Exchequer, took occaſion to ſhow, in paſſing, that they ſometimes arrogated even legiſlative powers, in prohibiting for a limited time, *the exportation of eggs*, and other commodities!

No. 46. of the excerpts.

The ſecond particular inſtance referred to by Convention, is the caſe of Jedburgh in 1706, No. 46. of the excerpts. It is ſaid, that a Committee was appointed to repair to Jedburgh, to compoſe the differences in that town, and that the Committee *found no cauſe of complaint as to the management of the revenue*, from which the Convention would infer, that a judicial power in that matter was exerciſed by them, or their Committee.

But when the report of the Committee is looked into on record, the very reverſe is indiſputably evident. The Convention interpoſed merely as friends or mediators, in order to put an end to a proceſs for malverſation, depending in the Court of Seſſion, at the inſtance of ſome of the Burgeſſes, againſt the Magiſtrates of Jedburgh. The method they propoſed for this purpoſe was pretty curious, and ſhews how inexpedient it would be to lodge in Convention the juriſdiction of accounts. This reſpectable body propoſed, that the Burgeſſes who complained of the miſapplication of the public money, ſhould, in order to ſooth their tempers, be *brought into the Town-council, and inveſted with the honours of the Magiſtracy*, which, it was conceived, would make them good and quiet citizens. This is the moderate and gentle remedy of every abuſe. This is the eaſy and eligible mode of accounting, for which the practice of Convention affords precedent and example!

The Burgeſſes who were proſecutors in the caſe of Jedburgh, had too much virtue and public ſpirit to agree to ſuch a propoſition, which they rejected with diſdain. The Convention were enraged. They reſolved, as in the caſe of Dumbarton, to undertake the defence of the Magiſtrates of Jedburgh; nay, ſo far did they forget every rule of form, and every appearance of decency, that they *appointed a Committee to acquaint the Lords of Seſſion* of the obſtinate behaviour of the Burgeſſes of Jedburgh, who refuſed to ſacrifice the intereſts of the Borough, even for the honour of ſitting in Council.

These two inſtances, to which the Convention ſeem to have appealed, without examination, are a key to open the meaning of the whole orders made by them,

them, and ſhew clearly, that they never intended, or thought themſelves entitled to exerciſe any judicial power relative to the miſapplication of the common good; but merely to interpoſe as mediators, to prevent or compoſe differences among the Burgeſſes.

Of this, the caſe of Jedburgh affords the moſt concluſive evidence; for at the very time that the Convention appointed a Committee of Mediators, to compoſe the differences between the Magiſtrates and Burgeſſes of that Borough, there was an action of accounting actually depending in the Court of Seſſion, at the inſtance of the latter againſt the former. It is true, the Court of Seſſion have ſince found, that they have no juriſdiction in the caſe; but it is clear from what happened in the inſtance of Jedburgh, that the Convention of Boroughs did not then conceive the idea of their having ſuch juriſdiction, otherwiſe they would have claimed and exerciſed it, in acquitting the Magiſtrates of Jedburgh, and condemning the Burgeſſes, with whom they were ſo highly offended, for the inſolence of refuſing to drop their action, even on the honourable condition of being made members of the Town-council, and adorned with the robes of Magiſtracy.

The laſt particular inſtance referred to by the Convention, under the fourth article, is the appointment by Convention in 1691, of a Committee of their number, to viſit the whole Royal Boroughs, and to take trial of the ſtate and condition of their common good, *&c.* This general order or appointment is No. 9. of the excerpts. It has been pretty fully copied, as the Convention ſeemed to reſt ſo much upon it. But it is only neceſſary to glance at the narrative or inductive cauſe of it, in order to be ſatisfied, that it is totally inapplicable to the point which was meant to be eſtabliſhed by referring to it. That general order or viſitation proceeds on the narrative of complaints *of the decay of trade, and that the Burghs were not rightly adjuſted in the tax-roll, as to the quota and proportion of burden.* The general viſitation is therefore appointed. What connection has this with the internal adminiſtration of the common good of Boroughs? The intereſts of trade, and the proper adjuſtment of the tax-roll, were the evident objects of that general viſitation. This is farther illuſtrated in the cleareſt manner, by the particular inſtructions given to the viſitors or Commiſſioners, which the public are requeſted to look into.

No. 9. of the excerpts.

5thly, The practice of attending to, or ſuperintending the general intereſts of trade, appear to be the proper province of the Convention of Boroughs, and in ſo far as their reſolutions embrace that object, they are liable to no objection, but, on the contrary, are highly commendable. At the ſame time, it muſt be obvious, that the general regulations of trade have nothing to do with the adminiſtration of the revenues; and that while the Convention might properly exerciſe powers in relation to the former, they were deſtitute of every ſhadow of juriſdiction concerning the latter.

In this manner, we have evinced the high inexpediency of the juriſdiction claimed by Convention. We have pointed out a Court entirely different from it, in which

 that

that jurisdiction was vested and exercised in the most ancient times, and in which it continued until it was transferred to the Court of Exchequer. We have explained the powers of the Convention in its institution, and demonstrated, that they do not comprehend the jurisdiction of accounts. We have examined the various posterior statutes to which the Convention appealed in support of their claim to that jurisdiction, and shewn them to be utterly inapplicable. We have finally investigated the force and authority of the different instances or examples from which the Convention pretended to deduce a regular exercise of jurisdiction, in relation to the accounts; and have proven, in the clearest manner, that they have no relation whatever to the point, in support of which they were so confidently and so ostentatiously adduced. For there is not a single example, from the beginning to the end of the books of Convention, as far as yet appears, in which that body ever pretended to exercise a judicative power of examining the administration of the common good, and of decreeing redress where it was misapplied.

To that reasoning, and these remarks on the jurisdiction claimed by Convention, it is a proper conclusion to present to the Public, the opinions of the Honourable Barons of Exchequer, as delivered in the case of Dumbarton.

The Lord Chief Baron spoke as follows:—"The question submitted to the consi- "deration of the Court is, Whether the act 1535 is a subsisting law, and binding up- "on this Court of Exchequer? As, in the case of Selkirk, the Lords of Session en- "tertained a doubt, whether they had jurisdiction to take up this matter, therefore, "(argued the petitioners,) if the jurisdiction does not lie with this Court, it lies no "where, and a remedy will be altogether wanting. The defenders, feeling the force "of this argument, endeavoured to remove it, by shewing such a jurisdiction to sub- "sist, and exercised in the Convention of Royal Burghs. I have looked into *every* "*act of Parliament* concerning the Convention; and neither in them, nor any where "else, *can find a single word, giving, or seeming to give this jurisdiction to the Con-* "*vention*. Traffic and police, and matters relating to them, were placed within "their cognizance, but no judicative power to determine any thing whatsoever. In- "deed, for the examination and control of the expenditure of Borough revenues, no "judicature could *be conceived more improper* than this of the Convention; a body "appointed by the very Magistrates, whose conduct they were to review, fluctuating "and uncertain, without any summons, process, proper officer, or any other requi- "site for executing such a jurisdiction."

Sir John Dalrymple said, "As to the Convention, here again it must be asked, "On which side does the public good lie? Let us consider the constitution of "the Convention of Royal Boroughs. The Magistrates send the members; and is "a body made up of the defaulters themselves to try these defaulters? for all the "acts and commissions proceed upon a narrative of the malversation of the *Magi-* "*strates*. No trace of this power of the Convention is to be found *either* in the "*statutes*, or in the books *of the common law* of Scotland. From the opinion of "Duncan Forbes and James Graham, read by my Lord Advocate, it appeared, "that

"that there had been two acts of Convention, one in 1670, and the other in 1706; "by the first, it was declared, that questions between Burgh and Burgh should be "determined by the Convention, and *without appeal;* by the second, it was de- "clared, that the Convention should have the power of mediating between Burgh "and Burgess in public concerns, and whosoever did not submit to that *mediation* "was to be held a breaker of the peace of Burghs, a contemner of the authority of "Convention, and *fined;* which two acts shew, that the jurisdiction of the Conven- "tion was *private*, of *consent*, of *prorogation*, *self-created* and *illegal*."

In these words, the Lord Chief Baron, and Sir John Dalrymple, expressed their opinions of the jurisdiction claimed by the *Convention of Boroughs;* and with their opinions, on this point, all the other Barons agreed.

It is only necessary to offer a very few words on what is said in Mr Grieve's letter, that this Committee have endeavoured to obtain the ministers support by *a misrepresentation*.—To misrepresent either facts, or the state of the law, for any purpose, or on any occasion, we should always consider as culpable; but to carry such representation to the minister, and in a business of a very important nature, we could not but look upon as criminal. We would spurn the idea of adopting so improper a conduct. To obtain the Minister's countenance by misrepresentation, is a practice, which, with respect to him, we would deem presumptuous, and which, with respect to ourselves, we would disclaim and despise.

In our letter to Mr Pitt, we have undoubtedly said, "That as the law of Scotland is now understood, there does not exist a power to control the administration of Boroughs." That proposition we still continue firmly to maintain. We pretend not, however, like the Convention, to offer assertion for demonstration. We give the authorities on which we confidently rest.

We have specified the case of Kinghorn, decided in the 1771, in which the Court of Session had found, that they had no jurisdiction to call the Magistrates of Boroughs to an account, and we cannot believe there is any man so bold, as to deny the truth of what we affirm. To the recent decision of the Barons of Exchequer, finding that they have no jurisdiction, we have appealed as a notorious fact. That the Convention of Royal Boroughs have not a pretence of power to bring Magistrates to an account, we have demonstrated in the clearest manner. Such claim of jurisdiction, indeed, never was heard of till within these three or four months. The late very respectable Preses of the Convention of Royal Boroughs, Sir James Hunter-Blair, was utterly ignorant of it; for, in a declaration under his hand, he admitted, that Magistrates were liable to account, not in Convention, but in Exchequer. Nay, he went much farther. He hinted a desire to abolish entirely the Convention of Boroughs, as a *useless institution*. After mentioning the annual expence bestowed by the town of Edinburgh, in entertaining the Convention, Sir James Hunter-Blair uses the following words: *The last* (viz. *expence*) *must continue until the Convention is abolished; and I confess, I think the whole charge of the Royal Boroughs Convention, is much greater than any benefit de-*

rived

rived from it! Such was the language of the Head of the Convention in 1784. The Convention was at that time to be aboliſhed, as uſeleſs; for no man had then conceived, that it poſſeſſed ſo important a power as that of calling the Town-councils to an account for the common good. In the year 1787, however, the very reſpectable Preſes of Convention retracts the whole doctrine of his immediate predeceſſor! holds out this aſſembly as a wiſe, ſalutary, and uſeful inſtitution! claims to himſelf and the other members of that reſpectable body, the power of calling themſelves to an account! a juriſdiction reprobated by the Barons, and by all mankind, as illegal, inexpedient and abſurd.

It therefore remains for the public to determine, Whether in ſaying, that as the law of Scotland is now underſtood, there does not exiſt a power to control the adminiſtration of Boroughs, we have been guilty of a miſrepreſentation; or whether the charge does not recoil upon thoſe who have not ſcrupled to hazard an aſſertion equally injurious and groundleſs.

No. III. Excerpts from the Books of the Convention of Royal Boroughs, of the Examples or Inſtances appealed to by them, in Support of their pretended Exercise of the Juriſdiction of Accounts.

No.

1. 1583.

THIS article relates ſolely to the cuſtoms payable to the King, of which the Boroughs had leaſes, and to collect which they appointed officers.

2. 1678. Dumfries.

Allowance or approbation of a tack of a piece of ground granted by the Magiſtrates, for ſixteen years, in reſpect it was for the advantage of the common good.

3. 1687. Haddington.

Approbation of Convention, of an alienation of feu-duties by the Council of Haddington, for a price paid, the intereſt of which exceeded the feu-duty.

4. 1675. Perth.

Allowance by Convention to Perth, on its ſupplication, to let the common mills and fiſhings, *&c. for nine years.*

5. 1675. Linlithgow.

The ſame as to the common muir, which was ſaid to be uſeleſs and unprofitable.

6. 1675. Haddington.

Approbation of a leaſe of the Town's waulk-mill for nine years.

7. 1676. Glasgow.

Approbation by Convention, of ſales of different pieces of ground of the common good.

3. 1691. Glasgow.

Supplication of the Magiſtrates of Glaſgow, repreſenting the large debts contracted, the miſapplication and dilapidation of the Town's patrimony by former Magiſtrates, and their employing the common ſtock for their own ſiniſtrous ends and uſes, which brought on an abſolute neceſſity to ſell a great part of the patrimony of the Borough, and therefore craving the Convention's allowance to ſell the lands of Provan, and others, which was granted.

No.
9.

1691. Commission.

In the General Convention of Boroughs, holden at the Burgh of Edinburgh, upon the 9th day of July 1691 years, by the Commiſſioners of Boroughs therein convened. The which day, the Convention taking into their ſerious conſideration, that there are many complaints given into the reſpective General Conventions of Burrows, theſe ſeveral years bypaſt, by many particular Burrows, yea univerſalie by the whole Burrows, complaining of their poverty, want and decay of trade, and that they are not rightlie adjuſted in the tax-roll, as to the quota and proportion of the burden; and conſidering that there has been ſeveral remedies propoſed, yet none has been received with that univerſal ſatisfaction, as a general ſearch and enquiry to be made into the condition and ſtate of every Burgh, as their trade and common good, by a viſitation to be made over the whole Royal Burrows, which, although not practiſed formerly, yet it's thought to be the moſt juſt and equal way how to adjuſt the tax-roll, if impartially gone about: Therefore, the Convention ordains every particular Royal Burgh within the kingdom, to be viſited as to the trade and common good, conform to the inſtructions ſubjoined; and for that effect, appoints and nominates four viſitors, *viz.* James Fletcher, Commiſſioner for the Burgh of Dundee, and Alexander Walker, Commiſſioner for the Burgh of Aberdeen, John Mure, Commiſſioner for the Burgh of Air, and James Smollet, Commiſſioner for the Burgh of Dumbartoun, and that the Commiſſioners for the Burgh of Dundee and Aberdeen ſhall viſit the South Royal Burghs of the kingdom, and the ſaids Commiſſioners for the Burghs of Air and Dumbartain to viſit the North Royal Burghs of the ſaid kingdom, and that according to the diviſions to be made in their reſpective circuits, as the ſaids Commiſſioners can beſt agree amongſt themſelves; and ordains the ſaids Commiſſioners to begin their journeys in their reſpective circuits and diviſions, betwixt and the day of excepting always furth of this viſitation the Burgh of Kirkwall in Orkney, Wick in Caithneſs, Inveraray in Argyleſhire, and Rothſay in Bute, becauſe of the difficulty of acceſs to theſe places, and the Convention, conſidering that the charges and expence of the ſaid viſitation ought in juſtice and equity be made upon the common charges of the Burrows, and that the ſame ought to be ſuch as is ſuitable for the Burrows to grant, and the Commiſſioners to receive: Therefore, they ordain the agent to pay to the four ſaid Commiſſioners the ſum of L. 200 Sterling, declaring, that if the ſaids Commiſſioners ſhall happen to be ſuperexpendit in more than the ſaid L. 200 Sterling, that the Burrows will reimburſe them upon their ain ſimple declaration and word of honours. Follow the inſtructions to the Commiſſioners, *1ſt*, That the viſitors take an exact account, to be given in by the Magiſtrates and Town-clerk of every particular Borough, of their common good and debts upon oath, and the Magiſtrates and Town-clerk to ſubſcribe the ſame. *2d*, That the Magiſtrates and Town-clerk produce an exact account, upon the terms foreſaid, of all the mortifications belonging to the Town-council, or Guildry, or Trades thereof; and that the ſaids viſitors are to conſider the mortifications, ſo far as they only are employed to eaſe the Burghs of public burdens, and taxes laid on the ſame. *3d*, The viſitors appointed for the South Royal Burrowes of this kingdom, that in their circuits they call for the meaſures kept by Jedburgh, to ſee if they conform to the ſtandart. *4th*, The viſitors of the Royal Burrowes to take enquiry, that when they come to the Burghs

No.

Burghs of Stirling, Lithgow, Haddington, Banff and Burghs, where the Burgeſſes of theſe Burghs lye under ane abſolute neceſſity of loading and unloading at unfree Burghs, to the effect, that, if it appear that they lye under ane impoſſibility to load and unload at free ports, that then they may have a particular diſpenſation to load and unload at unfree ports. *5th*, That the Magiſtrates and Town-clerk produce to the ſaids viſitors the Theſaurer's accompts and æquies, five or mae years backwards, upon the terms foreſaids. *6th*, In all Burghs, that they take exact trial into the trade, both forraigne and inland, and particularly of the wines, and of the vent and conſumption of malt for five years backwards. *7th*, That they take an exact account of what ſhips, barks, boats, and ferry-boats they have belonging to them, the names of the ſaid ſhips, their burden, and value of each of them, and how employed, and by whom. *8th*, They are alſo to take an accompt of what ſhips they are owners of, or partners in, out of their own Burgh, as well as in the ſame; and this to be given accompt of, conform to their oath of knowledge, and how far they are concerned with the Burghs of regalities and barronies, in the matter of trade. *9th*, That they take particular notice, how their ceſs is paid, whether out of the common good, or by taxation on the Burgh. *10th*, To take exact accompts of the miniſters ſtipends, ſchoolmaſters, precentors, and all other public ſervants, what it is, and how paid, whether out of any mortification, or out of the Town's common good, or by taxation upon the people, or teinds of the pariſh. *11th*, To take exact notice, how their public works are maintained, and out of what funds, ſuch as churches, hoſpitals, bridges, harbours, and the like. *12th*, They are to take exact inſpection of the caſe of the houſes of the Town, and how they are inhabited, and what rents they may be of, and of what rait houſes inhabited by ſtrangers are. *13th*, To take an exact accompt, how many fairs and public mercats each Burgh has yearly, and of how long indurance, and what the intrinſic value or importance of the ſame may be of. *14th*, That the viſitors of the Royal Burrowes, in the circuit of viſitation, take information from the Magiſtrates of the Royal Burghs, of the ſtate and condition of the regalities, barronies, and other unfree Burghs within their reſpective precincts, as to their trade, common good, and condition of their houſes and inhabitants of the unfree Burghs; and that the ſaids informations be given in by the ſaids Magiſtrates to the viſitors during the time they ſtay within the Burgh. *15th*, That the viſitors take an exact accompt and tryale of every thing elſe that occurs to them, relating to the condition of the reſpective Burghs whom they ſhall viſit. The better to inforce the ſeveral Burghs to a compliance with, and obedience to the act aforeſaid, the Convention ſtrictly enjoined them to concur with the ſaid viſitors, and to give full and clear anſwer to as many of the above inſtructions or queries as concerned each of them, under the pain of being deemed ungrateful to the ſtate of the Boroughs, and conſidered as places of eminence, and as ſuch, be repreſented to the approaching Convention, at the making up the tax-roll. But anſwers to the ſaid inſtructions or queries being readily and chearfully made by the ſeveral Burghs to the ſaid viſitors, they delivered the ſame to the Convention, held at Dundee in the year 1692; and by the Convention held at Aberdeen, *anno* 1699, they were ordered to be recorded in a particular regiſter, to prevent embezzlements in all times thereafter.

No.

No.

10. 1691. DUMBARTON.

ALLOWANCE to ſet the common mills thereof for nineteen years, with conſent of the Deacons and moſt ſubſtantial Burgeſſes.

11. 1696. IRVINE.

APPROBATION by Convention, of an aſſignment by the Magiſtrates of Irvine, of rents in payment of debt, with power to ſet tacks, long or ſhort, but not exceeding nineteen years.

12. 1696. EDINBURGH.

RATIFICATION of Convention, of a leaſe by the Council of Edinburgh, for twenty-ſeven years, of part of the common lands.

13. 1698. FORRES.

AN approbation of a contract made with the Sheriff of Murray, relative to diſputes between him and the Town.

14. 1698. DUNDEE.

ALLOWANCE by Convention, to ſet Oliver's Croft, part of the common good, for ſeven or nine years.

15. 1699. DUMFRIES.

ALLOWANCE to incloſe two commonties belonging to the Town, and to ſet the ſame for nineteen or twenty-one years.

16. 1699. DUNDEE.

SUPPLICATION of the Burgh of Dundee, praying, that five Boroughs therein mentioned, might be appointed to viſit the common good, trade, and all the public works, and to report, which was granted.

17. 1699. ANNAN.

A SIMILAR appointment made.

18. 1699. BANFF.

WARRANT of Convention on the ſupplication of the Town, to ſet certain waſte grounds for nineteen years.

19. 1699. DUNDEE.

ALLOWANCE to ſet Oliver's Croft, on application of the Council, for ſeven or nine years.

20. 1703. DUNDEE.

WARRANT to ſell Hilton, part of the common good, at the ſight of two Boroughs, and to apply the price for payment of the Town's debts.

No.

No.

21. 1704. ABERBROTHEC.

RATIFICATION of the ſale of Baddie's Hill to Captain Smeaton, the price being applied to the Town's debts.

22. 1705. STIRLING.

WARRANT by Convention to this Borough, on their application, to *ſell their whole lands*, towards payment of their debts.

23. 1706.

A GENERAL order, by which the Convention, on the narrative, that frequent debates do happen within Burghs, both in relation to the management of the common good, and the manner of their elections of Magiſtrates and Deacons, and other office-bearers, and management " of their revenues, and how neceſſary and conve-" nient it would be, that, conform to the power granted to the Royal Burghs, by " ſeveral acts of Parliament, ſuch differences and debates might be compoſed and " agreed by the Royal Burghs, or a Committee of their number, *without bringing* " *the party concerned to unneceſſary trouble and expence*, and to great heat and ani-" moſities within Burgh, in caſe the ſame cannot be agreed at home; therefore, the " Convention did ordain all ſuch differences *to be firſt brought and tabled* before them, " or a Committee of their number yearly, to be appointed to ſit at Edinburgh for " that end, in *order to be compoſed and agreed by their mediation;* declaring, that " whoever ſhould do in the contrary, ſhould be reckoned diſturbers of the public " peace of the Boroughs, contemners of their authority, and be fined, and other-" wiſe puniſhed, as the Convention or Committee ſhould think fit, conform to law."

24. 1707. KIRKCUDBRIGHT.

AN allowance to that Burgh to ſet a nineteen years tack of their fiſhings, at the ſight of Ayr, Dumfries and Wigton, or any two of them, in caſe they find it for the utility of the Burgh; and the Convention appointed the ſaids viſitors to report the ſame, with the ſtate and condition of the kirk and ſteeple of the ſaid Burgh.

25. 1713. CRAIL.

ON application of this Burgh, for liberty to ſet a tack, the Convention remitted to three Burghs in the neighbourhood, to meet with the parties concerned, to adjuſt matters amongſt them, and ſee the ſaid tack ſet for the benefit of the Burgh.

26. 1716. DUNDEE.

ON application of this Burgh, warrant granted by Convention to execute a tack of their New Port for nine or ten years, to any perſon who ſhould make the greateſt offer, and grant the beſt ſecurity.

27. 1717. ANNAN.

ALLOWANCE by Convention, on application of this Burgh, to feu one part of their muir, and ſet another part thereof in tack, for twenty-one years, in payment of their debts, at the ſight of three Boroughs there mentioned, or any two of them.

No.

28. 1720. PITTENWEEM.

RATIFICATION of a ſale, on application of this Burgh, of ſome acres of land, and ruinous houſes, for the payment of a price to be applied for payment of the Town's debts, at the ſight of four neighbouring Burghs, or any two of them.

29. 1720. FORRES.

RATIFICATION of a ſale of a piece of ground belonging to the Burgh, in feu, for payment of a feu-duty equal to the rent, and the price to be applied to the Town's debts.

30. 1720. HADDINGTON.

RATIFICATION of a ſale of a tenement belonging to the Burgh, which paid L. 3 Sterling yearly, and is now ſold to George Smith, merchant there, for 2190 merks Scots, to be applied to the Town's debts, at the ſight of two Burghs there mentioned.

31. 1723. KIRKCALDY.

APPROBATION of a contract of feu of the lands of Eaſter Muir, belonging to the Burgh, neither feuar nor price mentioned.

32. 1723. St ANDREWS.

ON application of this burgh, liberty granted by Convention, to feu a ſmall piece of their commonty of Pillmuir, by a public roup, to the higheſt bidder.

33. 1724. KIRKCALDY.

APPROBATION of feus granted by this Burgh, in conſequence of the above mentioned allowance to Mr Robert Hay, doctor of medicine, Mr James Oſwald of Dinniekeir, and Alexander Williamſon, Bailie in Kirkcaldy, for payment of a greater feu than theſe lands paid formerly of rent, beſides a conſiderable ſum of entry-money, by and attour the feu.

34. 1726. LOCHMABEN.

ON application of this Burgh, warrant granted to feu out to the beſt advantage, ſuch parts of their muir-ground as they ſhould think fit, at the ſight of three neighbouring Burghs.

35. 1726. ANNAN.

ON application of this Burgh, warrant granted to feu 160 acres of their common muir, at the ſight of the Commiſſioners of Dumfries and Lochmaben.

36. 1726. DUMFRIES.

ON application of this Burgh, a warrant granted to them to ſet in feu or long tack their common muir, not yet improven, at the ſight of three Burghs therein mentioned. Another petition from the Burgh, craved the Convention's advice anent the contract

No.

contract made with ſeveral tradeſmen, about building of their kirk, which was remitted to the Committee of the three Burghs above mentioned.

37. 1726. EDINBURGH.

A PETITION from this Burgh, by their Commiſſioner, craving approbation of an act of the Town-council, anent the ſetting of tacks and feus of lands, which was remitted to four Burghs therein mentioned, to conſider and report; and on report of the Committee, the act of Council was approved of.

38. 1727. DUMFRIES.

THE report of the Committee, anent the church of this Town, was received, and the Convention authoriſed the Magiſtrates to grant bond to one of the miniſters for 600 merks of additional ſtipend.

39. 1727. LOCHMABEN.

REPORT of the Committee appointed laſt year, anent the feuing of ſome pieces of ground belonging to this Burgh; which report was approved of by Convention, and warrant granted to the Magiſtrates of Lochmaben, at the ſight of the Burghs mentioned in the ſaid report, to feu ſuch other pieces of ground as they ſhall ſee neceſſary, for the good of the ſaid Burgh.

40. 1729. ABERDEEN.

ON application of this Burgh, warrant granted to the Magiſtrates to feu the lands of Weſtfield, to Patrick Duff of Pramnay.

41. 1729. GLASGOW.

RECEIVED and approved the report of the Committee to whom the petition of this Burgh was remitted laſt year; which Committee reported, that it would tend to the benefit of the ſaid Burgh, that the Convention ſhould authoriſe the Magiſtrates to feu the lands mentioned in the petition; and alſo reported, that as the trade of this Burgh was in a languiſhing condition, a Committee ſhould be appointed to viſit the ſaid Burgh, and examine the ſtate of the revenue thereof, and the burdens thereon, and report the ſame, with the ſtate of the trade of the ſaid Burgh, to the next Convention, which was done accordingly.

42. 1729. INVERKEITHING.

AN order of Convention, approving a report of their Committee, to diſmiſs a complaint againſt John Cant, clerk of Inverkeithing, and to ratify the charters granted by the Town to him.

43. 1731. HADDINGTON.

APPROBATION by Convention, of a report of their Committee, appointed to conſider a petition of John Nairn, Burgeſs of Haddington, that the feu-right mentioned in that petition was a rational deed, beneficial to the Burgh, and that therefore the feu-

No.

feu-right, and infeftment thereon, ought to be ratified and approven by the Convention, and the feu-right recorded in the Burgh-books.

44. 1731. KINGHORN.

A PETITION from Robert Bruce of Grangmire, and Robert Hamilton, merchant in Kinghorn, craving the Convention's ratification of two feu-rights granted by the Burgh to them, of two ſmall pieces of ground, which was granted accordingly.

45. 1732. BANFF.

RATIFICATION by the Convention, of two contracts of excambion betwixt the Magiſtrates and Town-council of this Burgh, and William Duff of Braco, as being for the utility of the Burgh.

46. 1706. JEDBURGH.

A COMMITTEE appointed to compoſe all differences in the ſaid Burgh, in relation to their public concerns, and to enquire into the ſtate and condition thereof; but no mention is made of the common good, or revenues.

IN the 1707, the Committee made a report to the Convention of that year, "That "there had been no miſapplication or embezzlement of the common good of the "ſaid Burgh, but that the ſame was applied for the utility thereof, *though not di-* "*ſtinctly ſtated;* and that for the compoſing the differences, ſome of the purſuers "party ſhould be brought to the Magiſtracy, and into the Town-council, which "nevertheleſs did not pleaſe the purſuers of the proceſs againſt the Magiſtrates: "Therefore, the Convention appointed Sir Robert Forbes, their agent, to concur "with the Magiſtrates and Town-council of the ſaid Burgh, in the action intented "and depending before the Lords of Seſſion againſt them, at the inſtance of ſome of "the inhabitants thereof; and withal, the Convention recommended to theſe per- "ſons, who were members of the ſaid Committee, to go and acquaint the Lords of "Seſſion with the ſtate of the ſaid affair, and how, after much pains taken by them, "in order to adjuſt the ſaid differences, yet all endeavours that way, through the "obſtinacy of the purſuers, proved fruitleſs and unſucceſsful."

47. July 5. 1707. KIRKCUDBRIGHT.

ACT and order of Convention, upon the report of the Committee ſettling differences among the inhabitants, relative to the conſtitution of this Burgh.

48. 1718. BURNTISLAND.

ON the petition of the Burgeſſes of this Burgh, ſetting forth, that they had no Magiſtrates or Council, whereby their common good, and other public concerns, were in great confuſion, and their inhabitants in danger of being ruined thereby; and therefore, craving the Convention to impower a proper perſon to uplift their common good, and appoint ſtent-maſters, who may equally and impartially proportion the ceſs on the inhabitants. The deſire of the petition was granted, as mentioned in the note of authorities.

No.

No.

49. 1724. BURNTISLAND.

THIS as in the note of authorities.

50. 1725. CRAIL.

THE order made is in the note.

51. 1727. DYSART.

WHEN there was no legal Magiſtracy at Dyſart, ſome perſons were appointed by Convention to ſet the common good; and one or two of theſe perſons having acted improperly, were puniſhed, as in the note, particularly John Black and John Mortimer.

52. 1738. JEDBURGH.

THERE being no Magiſtracy at this Town, certain perſons appointed by Convention to manage the common good.

53. 1589.

A GENERAL order, that no poſſeſſor of common ſubjects ſhould hinder the rouping thereof, and that the Magiſtrates and Council of every Burgh ſhould ſet the common good to roup, to the beſt avail.

54. 1591.

THE reſolution of 1589 enforced.

55. 1652.

THIS as in the note of authorities.

56. 1657.

THIS article relates only to the 12s. on every pack. No mention of common good.

57. 1649. DUNDEE.

THIS Burgh was ordained to give an account of their common good, and burdens, in order to ſhew the expediency of their being allowed to ſet their common mills in tack, for nineteen years.

58. 1673. PERTH.

ALLOWANCE to ſet the common good, on application, for nineteen years.

59. 1675. LINLITHGOW.

ON application, allowance granted to ſet or feu the common muir, as the Magiſtrates ſhould think fit.

No. IV. Copy of the Letter from the Right Honourable John Grieve, Esq; Lord Provost of Edinburgh, as Preses of the Convention of Royal Boroughs, to the individual Town-councils, desiring them to instruct their Members of Parliament to oppose Reform, so far as concerns that Object.

Gentlemen,

YOU were formerly advised of the Resolutions of the General Convention of the Royal Boroughs of Scotland, to oppose the measures that have been framing for some considerable time past, by a certain class of people, styling themselves a Convention of Delegates from the Burgesses of the Royal Boroughs, in order to overturn the whole of their ancient constitutions; for the preventing whereof, the last General Convention did particularly enjoin their Annual Committee, carefully to attend to, and oppose every measure of so dangerous a tendency to the interest and welfare of every Royal Borough.

However, the persons engaged in carrying on these measures, and who have really neither the interest or welfare of the Boroughs at heart, have not hitherto ventured to bring forward to Parliament their proposed bill on that subject; yet in consequence of their having failed in the late attempt, under colour of the names of some Burgesses in Dumbarton, and an obsolete clause of an act of Parliament, to subject the Magistrates thereof, and of course all the other Boroughs of Scotland, to account for the expenditure of their revenues in the Court of Exchequer; in which had they prevailed, it must have involved the whole in a heavy annual expence, besides giving a constant handle for strife and litigation, to the great hurt and prejudice of those very revenues they would pretend to be so anxious to preserve. They have at last determined to bring forward to Parliament, their proposed bill, not only for altering the constitutions of the burghs, but to vest in the Court of Exchequer a power to oblige Magistrates to account, in manner above mentioned; and with that view, have applied to Mr Pitt, as Minister of State, for his countenance and support, in order to have it passed into a law, upon a misrepresentation, *That as the law of Scotland is now understood, there does not exist a power to controul the administration of Burghs*, whilst that jurisdiction, by ancient charters and public statutes, stands vested in the General Convention of the Royal Burghs, and whereof they have been in the regular exercise, from an early period down to this day. They have also wrote to many of the Members of Parliament, to the same purpose, and requesting them to introduce their proposed bill into the House of Commons.

The

The Annual Committee being fully satisfied, that, were such a law to take place, it would be productive of the most unhappy consequences to this part of the United Kingdom, have, therefore, in compliance with the instructions of the Convention, firmly resolved to take every step in their power to prevent such measures taking place; and have directed me to advise you hereof, and desire, that, without loss of time, you will write to your Representative in Parliament, as also such of the county-members as you may have influence with, requesting them to exert their utmost interest and best endeavours, to prevent the introduction of any such bill into Parliament, for the reasons stated in the former letters wrote to you on that subject; for, were such a scheme to take place, it would unhinge a constitution which has stood the test of ages; and after being continued from the glorious Revolution down to the Union of the two kingdoms, was, by a fundamental article of that Union, in the most solemn manner confirmed, and has been attended with as many advantages as could have been expected from any human institution whatever. But if, instead of this tried and approved constitution, were the new and undigested systems for the government of this country, as now proposed to be adopted, upon the visionary schemes of those who cannot be supposed to be competent judges in an affair of such magnitude, anarchy, and confusion, disorder and riot, which must ever be hurtful to industry, unfriendly to decency, and subversive of good order, would be the natural and unavoidable consequences.

I am, with all due respect,

Gentlemen,

Your most obedient and most humble servant,

Edinburgh, *3d March* 1787.

(Signed) JOHN GRIEVE, *Preses.*

APPENDIX

TO THE

ILLUSTRATION of the PRINCIPLES of the BILL propoſed to be ſubmitted to the conſideration of PARLIAMENT, for correcting the Abuſes, and ſupplying the Defects in the internal Government of the ROYAL BOROUGHS in Scotland.

No. I. A FARTHER REFUTATION OF THE OBJECTION TO REFORM, FOUNDED ON THE TREATY OF UNION.

THE objection is, that by the 21ſt Article of the Treaty of Union, the conſtitutions of the Royal Boroughs as they then ſtood, are rendered unalterable. In the Illuſtration, reaſons are urged which appear fully ſufficient to remove the objection, but ſince the firſt chapter of the Illuſtration, where that ſubject is treated, has been caſt off, the Committee have obtained extracts of the ſets of the Royal Boroughs. Theſe, on being looked into, appear to contain additional concluſive argument to refute the objection, which was attempted to be founded on the Treaty of Union.

THE ſets of the Boroughs, eſtabliſh beyond diſpute, that from the Union down to the year 1760, the Convention had been in the conſtant practice of altering and modifying the conſtitutions of the Boroughs. Examples no fewer than fifteen or ſixteen in number, are found in their books. In 1748, the Magiſtrates of Glaſgow preſented a petition to Convention, ſtating that they had agreed in certain regulations for *altering* and amending the ſet of the Borough, and craving the Convention to interpoſe their ſanction. The Convention remitted the matter to a Committee of the Commiſſioners for Edinburgh, Perth, Dundee, Aberdeen, Stirling, Montroſe and Dumfries, who made a report, of which the Convention approved, that the propoſed *alterations* and *amendments* upon the ſet and conſtitution of Glaſgow were *agreeable to law*. How could that be, if the Union had rendered the conſtitutions of all the Boroughs of Scotland *unalterable?*

In the year 1722, the Magiſtrates of Inverneſs preſented to the Convention of that year, a petition craving an alteration of the ſet of the Borough, which alteration was approven by Convention. The Commiſſioner for Dundee appears to have been an enemy to the alteration, againſt which he proteſted on various grounds. But it never once occurred to him even ſo recently after the 1707, that the Treaty of Union had afforded any objection againſt the alteration.

In the 1718, the ſet of Dunfermline was modified by Convention. In the 1724, there is an act of Convention *ratifying a new ſet for the Borough of Dunfermline*. One of the reaſons of the alteration is, that it was in the preſent *Council's power to re-elect themſelves both Merchants and Trades to the day of their death without any change*.—It is needleſs to particulariſe the alterations made in the ſets of the other Boroughs. Suffice it to obſerve, that the conſtitutions of Inverkeithing, Queensferry, Forfar, Rutherglen, Wick, Taine, Kirkcaldie, Burntiſland, Kinghorn, Crail and Sanquhar, have all been modified and altered by Convention ſince the date of the Union; and ſo late as the year 1781, the Attorney and Solicitor-General of England, the Lord Advocate of Scotland, the Privy Council and his Majeſty, in altering the conſtitution of the Borough of Stirling, gave a decided opinion, That the Treaty of Union has no relation to the political conſtitutions of the Royal Boroughs of Scotland.

Without entering at preſent into the queſtion, how far either the Crown or the Convention, had power to alter the conſtitutions of individual Boroughs, which derived their origin from acts of Parliament, it muſt be obſerved, that the Crown and Convention did not conſider the Treaty of Union as forming any bar againſt ſuch alteration. This is an *argumentum ad hominem* againſt the Convention in the preſent caſe, and which they will find it difficult, if not impoſſible, to anſwer; for in what manner muſt they now ſhape their argument? Having, ſince the Union, exerciſed themſelves the power of altering the conſtitutions of Boroughs, it is utterly impoſſible for them to contend, at the ſame time, that theſe conſtitutions were by the Treaty of Union rendered unalterable. What then is the ſituation to which they are reduced? They are under the neceſſity of affirming, that the conſtitutions of the Boroughs are alterable by Convention, but that Parliament, after the Treaty of Union, can never exerciſe any power of alteration! To uſe words or argument in refuting ſuch a propoſition, would be to abuſe the patience and inſult the underſtanding of the Public. The Convention of Royal Boroughs may alter and repeal ſtatutes of the Scottiſh Parliament, introducing the preſent forms of Borough Government. But it is not competent for the Parliament of Great Britain to exerciſe that power! Such is the argument of the Convention of Boroughs! Thoſe who are capable of uttering ſuch abſurdities, what would they not do, to preſerve the wretched ſyſtems in which they live and move and have their being!

But, indeed, there was little occaſion for argument on this ſubject from the beginning. The 18th article of the Treaty of Union is of itſelf ſufficient to decide the queſtion. It ſpeaks as follows: "That the laws concerning regulation of trade, "cuſtoms, and ſuch exciſe to which Scotland is by virtue of this Treaty to be liable, "be

"be the ſame in Scotland, from and after the Union, as in England; and that all "other laws in uſe within the kingdom of Scotland do, after the Union, and notwithſtanding thereof, remain in the ſame force as before, (except ſuch as are contrary to, or inconſiſtent with this Treaty), *but alterable by the Parliament of Great Britain*, with this difference betwixt the laws concerning public right, policy and civil government, and thoſe which concern private right; that the laws which concern public right, policy and civil government may be made the ſame throughout the whole united kingdom; but that no alteration be made in laws which concern private right, *except for evident utility of the ſubjects within Scotland*."

Words cannot render clearer this article of the Treaty. All laws, whether relative to private right, or to public right, policy and government, are alterable by the Parliament of Great Britain. The preſent conſtitutions of the Royal Boroughs, though a little modified by uſage, are all founded on three ſtatutes, in 1469, *c.* 29. 1474, *c.* 5. 1487, *c.* 108. It is impoſſible to pretend, that theſe ſtatutes, which eſtabliſhed the preſent governments of the whole Royal Boroughs of Scotland, are not relative to public right, policy and government. And if ſo, does it require argument to prove, that by the Treaty of Union, they are alterable, without limitation, in the Parliament of Great Britain?

Let it, however, be ſuppoſed, for the ſake of argument, contrary to every idea of juſt conſtruction and reaſoning, that the laws relative to the conſtitutions of the Boroughs are regulations of private right, What then? Does any concluſion from thence ariſe favourable to the oppoſers of Reform? None. All laws, even concerning matters of private right, are, by the expreſs words of the Treaty, made alterable, if the alteration be for the evident utility of the ſubjects within Scotland. Are the enemies of Reform deſirous to reduce their objection to this principle, that Reform is not an object of public utility? The friends of the meaſure are extremely willing to reſt the cauſe on that iſſue; and they demand from its enemies no other conceſſion, than to unite with them in having its merits fully and fairly diſcuſſed in Parliament. If they decline this, what motive can be aſcribed to their conduct, other than a conviction that the ſyſtems they would wiſh to defend, cannot bear the teſt of examination? But, in reality, as has been ſhown, they have neither juſtice nor form to ſupport their plea. They are in preſent poſſeſſion of parliamentary power; and *Force*, not *Reaſon*, is the weapon of their defence.

No. II. Of the Jurisdiction claimed by the Convention of the Royal Boroughs to call Magistrates to an Account.

The untenable nature of such claim of jurisdiction, inferred from the late opinions of the Barons. The extreme inexpediency of the jurisdiction contended for by Convention. In what court the jurisdiction of calling Magistrates to account resided in very ancient times. The nature, history and powers of Convention traced from its origin. The statutes on which they found their claim, demonstrated to be inapplicable. Their pretended exercise of jurisdiction examined, and clearly refuted.

THIS subject is treated very shortly in the Illustration. The claim of jurisdiction made by the Convention of Royal Boroughs, appeared originally to be utterly groundless. The idea was confirmed by the unanimous opinion of the Barons of Exchequer, in the case of Dumbarton, where the matter was fully investigated. After the decision given in that case, no person imagined that the Convention of Boroughs would ever again venture to offer a claim of jurisdiction which was reprobated, treated with contempt, and even with ridicule, by the opinions of these honourable Judges.

To the astonishment of the public, however, it has happened, that the Convention of the Royal Boroughs have thought proper to renew their exploded pretence of jurisdiction, to call themselves to an account for their administration of the common good; for in a circular letter subjoined, sent by the Lord Provost of Edinburgh, as Preses of the Convention of Boroughs, to the individual Town-councils, desiring them to instruct their Members of Parliament to give an unqualified opposition to Reform, The Convention speak as follows: "They (meaning the Committee of Reform) have "at last determined to bring forward to Parliament their proposed bill, not only for "altering the constitutions of the Burghs, but to vest in the Court of Exchequer a "power to oblige Magistrates to account, in manner above mentioned; and with "that view, have applied to Mr Pitt, as Minister of State, for his countenance and "support, in order to have it passed into a law, *upon a misrepresentation*, That as "the law of Scotland is now understood, there does not exist a power to control the "administration of Burghs, *whilst that jurisdiction, by ancient charters and public sta-* "*tutes, stands vested in the General Convention of the Royal Burghs, and whereof they* "*have been in the regular exercise, from an early period down to this day.*"

In these assertions made by Convention, after what had passed in the Court of Exchequer, there is a boldness and temerity which nothing can exceed. Their letter

ter has not only been transmitted to the individual Town-councils, but has, we learn, been communicated to many Members of Parliament. If the Convention did not thereby mean to mislead the Legislature and the public, it must be allowed, that they are under an unpardonable degree of ignorance with regard to the nature and extent of their own rights. It is therefore indispensably necessary to enter more deeply, than has hitherto been done, into the foundation and history of that jurisdiction, for which the Convention of Boroughs so eagerly, and, it must be said, so indecently contend; for, as already observed, what they claim is the exclusive right of calling themselves to an account.

On the palpable inexpediency of such a jurisdiction, a very few words will suffice: It is enough to shew, from the very constitution of Convention, that it is a jurisdiction of that nature. Who are the persons liable to account for the common good of Boroughs, and are accused of malversation? They are the members of the Town-councils. Who are the persons that compose the Convention of Royal Boroughs? They are the members of the Town-councils, or Delegates from them. What then would be the effect of vesting in Convention the jurisdiction of accounts? Why, nothing less than to make the parties judges! to confer a power on the guilty to punish themselves and their associates involved in similar acts of abuse and malversation! On the consequences of such a jurisdiction, it is needless to comment; yet the Convention, in their late circular Letter, signify their high disapprobation *of any other jurisdiction*, as productive of expence, strife and litigation, and even reprobate, in strong terms, the jurisdiction of the Court of Exchequer, independent and disinterested as it is, both from the rank and situation of the Judges! If these sentiments, so avowedly held out by Convention to the public, do not afford a picture of the real spirit and intention of the Magistracy to set themselves above every species of control, except their own, it is impossible for human skill or ingenuity to paint them in their just colours.

In arguing the cause of the Burgesses of Dumbarton, the Honourable Mr Erskine, in his admirable pleading, and with his usual brilliancy of fancy, figured a case extremely applicable to the subject. He supposed, that flagrant reports had gone abroad, of gross frauds and abuses in the collection and management of the Excise, and that in order to remedy these evils, an act of Parliament was made, establishing a Court of Inquiry, composed of all the Excise-officers in the kingdom: Would not all mankind concur in reprobating the folly and absurdity of such a jurisdiction? But in what respects is it different from the jurisdiction of accounts contended for by the Convention of Boroughs? The one would have a strong and common interest to overlook and conceal the frauds committed in the collection of the Excise. The other would have an equally strong and common interest to veil and protect the abuses and malversations committed in the office of Magistracy.

Having submitted these observations on the inexpediency of the jurisdiction claimed by the Convention of Royal Boroughs, we shall next proceed to shew, that it is destitute of every shadow of foundation in law. The Convention are pleased to af-

firm,

firm, that their jurisdiction is supported by ancient charters, public statutes, and regular exercise or usage of that jurisdiction. In treating the subject, therefore, it may be divided into three heads. In the *first* place, we shall enquire in what court the jurisdiction of calling Magistrates to account in very ancient times truly resided, and continued until it was vested in the Court of Exchequer. In the *second* place, we shall trace, from its source, the history of the Convention of the Royal Boroughs, and the nature and extent of its powers, in its original institution. In the *third* place, we propose to examine the statutes referred to in Exchequer by the Convention, posterior to its institution, as well as the instances or examples of jurisdiction appearing in their books, from which they would infer an exercise of the power for which they now contend. These instances or examples of a pretended exercise of jurisdiction, were under the consideration of the Barons, in the case of Dumbarton, and excerpts of them taken from the books of Convention, are subjoined.

First Point, The ancient jurisdiction of accounts, and transference of it to Exchequer.

To the first of the points of inquiry that have been suggested, the answer is easy. The High Chamberlain of Scotland appears to have possessed, in the most ancient times, the jurisdiction of calling Magistrates of Boroughs to an account. Of this there is the most complete and satisfactory evidence from the public laws and records of the kingdom.

It. Cam. c. 38. § 17. and 45.

In the Iter Camerar. or Chamberlain Ayre contained in the *Regiam Majestatem*, some of the articles to be specially inquired into, are the following: "*1st*, Gif the "purse or common gude is weel keep'd, and devyded equally, as it sould be. "*2dly*, Gif there be ane gude assedation and uptaking of the common gude of the "burgh, and gif faithful compt be made thereof to the community of the burgh; "and gif na compt is made, be quhom, and in quhais hands it is come, and how it "passes by the communitie."

The act of Parliament 1491, c. 36. "Statuted and ordained *anent the common* "*gude* of all our Sovereign Lord's burrowes within the realme, that the said com-"mon gude be observed and keeped to the common profite of the town, and to be "spended in common and necessary things of the burgh, be the advice and councel "of the towne and deacons of crafts quhair they are, *and inquisition yeerly to be ta-*"*ken in the chamberlaine ayre of expences and disposition of the samen.*"

These authorities appear of themselves clearly to establish, that the jurisdiction over the accounts of boroughs was anciently vested in the High Chamberlain; but they are supported by the opinions of the most eminent writers on the law of Scotland, Lord Stair, b. 4. t. 1. § 4. Mr Erskine, b. 1. t. 3. § 38. This is also the opinion of Dr Gilbert Stuart, c. iv. of his learned observations concerning the public law and constitutional history of Scotland. It is indeed beyond all doubt, that the High Chamberlain anciently possessed the jurisdiction over the accounts of Boroughs.

The office of High Chamberlain, it is said, was, **for reasons of State, suppressed,** or fell into disuse; but at what precise period is unknown. It is, however, certain, as already observed in the Illustration, that he existed in the exercise of his power as far down as the 1503, for he is mentioned in a statute of Parliament of that year, c. 95. as the Judge who was to preside in the falsing of dooms within borough; but it is presumable, that his authority, at least over the Boroughs, did not long continue after that period; nor does it appear, that for some time thereafter any other jurisdiction was established for taking cognisance of the affairs of Boroughs, and for calling the Magistrates to account for the administration of the common good.

The administrators of Boroughs being thus in a manner relieved from the fear of any judicial enquiry into their conduct, appear to have acted in the most improvident manner. It was found indispensably necessary to transfer the jurisdiction of the Chamberlain over the accounts of Boroughs to another court; and accordingly, by the act 1535, c. 26. it was fully vested in the Court of Exchequer. This act, while it establishes the jurisdiction of accounts in the Court of Exchequer, contains the loudest complaints against the Magistracy, with regard to the administration of the common property and revenues of Boroughs.

Here it falls to be observed, that at the time of passing this act of Parliament, and for a long time prior to it, even during the power of the High Chamberlain, and as far back at least as 1487, the Convention of Royal Boroughs existed; but it does not appear to have then occurred to the Legislature, to the Convention itself, or to any person in the kingdom, that this body possessed a judicial power over the accounts of Boroughs.

Although posterior to the 1503, the exercise of the Chamberlain's powers declined, and went gradually and insensibly into disuse, the name of the office was still kept up, and served to add to the dignities successively of the great and illustrious families of Home, Fleeming, and Lennox, in which last it was made hereditary. On the failure of heirs-male of Charles Duke of Lennox, King Charles II. was served heir to him in 1680, by which he carried right to the Duke's heritable offices and estates. The King afterwards conferred the office of High Chamberlain on his natural son the Duke of Monmouth; and on his forfeiture, the office returned again to the family of Lennox and Richmond, who, in 1703, resigned it into the hands of the Crown.

When the authority of the High Chamberlain over the Boroughs ceased to be exercised, here was a fit opportunity for the Convention to step in, and vindicate its own jurisdiction, when it could no longer be opposed by the power and influence of that high officer. But the Convention were silent. They were conscious, and the whole nation was conscious, that they had no such jurisdiction as they now pretend; and accordingly, they not only did not attempt to claim it, even when there was no other court in existence which was in use to exercise it; but this jurisdiction was, by the authority of Parliament, in the manner already mentioned, fully vested in the Court of Exchequer.

In that Court, the jurisdiction over the accounts of Boroughs has continued ever since; nor can there be any doubt that it was exercised, although from the imperfection of the records, the *complete* evidence of it cannot be discovered.

In the 1684, however, a commission was granted by King Charles II. to William Marquis of Queensberry, treasurer, and to John Drummond of Lundin, treasurer-depute, narrating several acts of Parliament relative to the common good of Boroughs, and particularly, the act 1535, c. 26. and authorising them to direct precepts commanding the Magistrates, and other administrators of Boroughs, to appear before the Court of Exchequer, and to bring with them, and produce the accounts of charge and discharge of the rents and profits of the said Boroughs, to the end that they might be considered and examined by the treasurer and treasurer-depute, with power to the said treasurer, principal and depute, with consent of the other Lords of Exchequer, of judging and determining in every point and article in relation to the said accounts of charge and discharge, and of ordaining reparation to be made to the Boroughs, so far as they were injured by their administrators; nor at this time did any man conceive, that a jurisdiction over the accounts was competent to the Convention of Boroughs.

The act 1693, c. 28. appears to have been made in order to enforce the execution of the act 1535; for it renews the appointment on Magistrates and Counsellors, to produce their accounts in Exchequer. This act of Parliament further speaks of the King and Queen's intention of granting commissions, one or more, to enquire into the condition and state of the common good and revenues of all the Royal Boroughs, and how the same have been, or shall be hereafter employed or misemployed, and to call the malversers to make an account, and to ordain them to refund, or otherwise to repair the Borough by them lesed.

Even yet, the idea of a jurisdiction in the Convention of Boroughs, in relation to this subject, appears never to have been adopted by any person whatever. In a word, the power exclusively exercised by the High Chamberlain, even at a time when the Convention were in existence, the transference of that power to the Court of Exchequer, and the uniform sense of the Legislature, who, in recognising the jurisdiction of accounts, first in the Chamberlains, and afterwards repeatedly in Exchequer, and even in the Crown itself, never appear to have conceived, that a judicial authority to call Magistrates to an account for the common good was competent to the Convention; these are all circumstances utterly inconsistent with the supposition, that the jurisdiction now claimed by the Convention of Royal Boroughs has any solid foundation. Add to this, that the idea of such a power in the Convention is not supported by a single decision or authority of any regular judicature.

In short, it is not only clearly established, that the ancient jurisdiction over the accounts of Boroughs was vested in the High Chamberlain, but the different circumstances which have been mentioned, afford convincing evidence, that this jurisdiction never was competent to the Convention of Boroughs.

Here

Here the Burgesses might rest the case; but in order to render the matter still more clear, they will proceed, in the *second* place, to trace the history and powers of the Convention of Boroughs. Second Point. History and powers of Convention.

There appears very anciently to have been a court composed of the four Boroughs of Edinburgh, Berwick, Roxburgh and Stirling, whose office it was to judge, under the superintendence of the High Chamberlain, *in the falsing of dooms*, or the reduction or reviewing of decrees pronounced within Borough, relative to matters of ordinary civil jurisdiction.

It is in this court of the four Boroughs, appointed for the falsing of dooms, that we have the first traces or appearance of a Convention of the Royal Boroughs of Scotland. The period of its original institution is unknown, but its existence and powers are ascertained beyond a doubt.

Subjoined to the Borough laws, in the *Regiam Majestatem*, there are four chapters on the nature and powers of this court of the four Boroughs, or, as it was called, the *Curia quatuor Burgorum*. In the first chapter, mention is made of a statute of King David II. holden at Perth the 6th of March 1348, by which it was "statuted "and ordained, that swa long as the burghs of Berwick and Roxburgh, are de-"tained and holden be Englishmen, (quhilks are and sould be twa of our four "Burghs, quha, in auld time, did hauld ane Chamberlaine-court anes in the zeare *at* "*Hadington, anent falsing of dooms*, quhilks were again said before the Chamberlain "Ayres), the burgh of Lanark and Lithcow shall be received and admitted in their "place."

In section third of this chapter, it is declared, "That the court to be swa holden "by the Commissioners of Edinburgh, Stirling, Lithcow and Lanark, in sa far as "concerns *common justice*, shall be as available as gif there were nae impediment "or obstacle of the other twa Burghs halden and occupied be Englishmen."

In chapter second, it is provided, that the *dooms of the Burghs*, that is, *reductions of decrees within burgh*, shall be decided before the Chamberlain, in a court to be holden at *Haddington*, to which he is to summon three or four discreet Burgesses of Edinburgh, Stirling and Lanark.

It was evidently no part of the jurisdiction of this court of the four Boroughs, to call Magistrates to account for the administration of the common good: For, *1st*, It is expressly said in the statute of David II. that the business of that court was concerning *the falsing of dooms*. *2dly*, From section third of the first chapter of the court of the four Boroughs, it is evident, that the decrees to be reduced by it, related to matters of ordinary civil jurisdiction, or, as they are there called, *of common justice*. *3dly*, This court was anciently to have been held once in the year at the *town of Haddington* only; whereas the High Chamberlain was to take cognisance of the accounts of Boroughs in his *Chamberlain ayres*, at every town where he went throughout Scotland; and the High Chamberlain was indisputably, as has been already

 shown,

ſhown, in the exerciſe of that power in his Chamberlain ayres, as far back as the records of the country reach.

Hence we may ſafely conclude, that in the firſt inſtitution or rudiments, ſo to ſpeak, of the Convention of Boroughs, they poſſeſſed no power whatever to call Magiſtrates to account for the application of the common good.

In chap. 3. of the court of the four Boroughs, it is ſaid, that in the court holden at Stirling, the 12th October 1405, it was decreeted, "That twa or three ſufficient "Burgeſſes of ilk ane of the King's burghs upon the ſouth ſide of the water of Spey, "having ſufficient commiſſion, compear yearly to the Convention of the four Bo- "roughs, to treat, ordain and determine upon all things concerning *the utility of* "*the common weel of all the King's burghs, their liberties and court.*"

This was an evident extenſion of the *Curia quatuor Burgorum*, and was a ſtep towards the eſtabliſhment of a complete Convention of the Royal Boroughs, on the footing on which it preſently ſtands. But this decree or ordinance of the court of the four Boroughs appears not to have taken effect. It is indeed evident, that this court had no authority for the powers they aſſumed, of compelling, by their decree, all the Boroughs on the ſouth of the Spey to attend them; but that ordinance, ſuch as it was, ſpeaks nothing of the accounts of the common good; nor could the court of the four Boroughs, however fond they were of power, pretend to wreſt the juriſdiction in that reſpect from the High Chamberlain, by whom it was then actually exerciſed, in order to veſt it in themſelves.

To eſtabliſh a Convention of all the Royal Boroughs, the interpoſition of Parliament was found neceſſary. The firſt ſtatute we meet with on this ſubject is the act 1487, c. 3. which "ſtatuted and ordained, that zeerly in time to come, certain "Commiſſaries of all Boroughs, baith ſouth and north, convene and gedder togedder "anes ilk zeir, in the burgh of Inverkeithing, on the morn after St James' day, "with free commiſſion; and there to commune and treat *upon the welfare of mer-* "*chandiſe, the gude rule and ſtatutes for the common profite of Boroughs, and to pro-* "*vide for remeid upon the ſkaith and injuries ſuſtained within the Borrowes.*"

Although the idea of a Convention evidently roſe from the ancient court of the four Boroughs, yet the ſtatute juſt now recited, may be ſaid to be the foundation of the Convention, on its preſent footing; and as the old court from which it originated, had moſt evidently no juriſdiction to call Magiſtrates to account for the common good, ſo no ſuch juriſdiction appears to have been given to the Convention by the act 1487: For, *1ſt*, The words of that ſtatute certainly make no mention of the common good, or accounts of Boroughs. *2dly*, Neither was that object within the meaning or intention of the ſtatute. Of this the act 1491, paſſed only four years thereafter, and already recited, affords evidence the moſt convincing; for it expreſsly appoints, that *an inquiſition yearly be taken in the Chamberlain ayre*, of the expence and diſpoſition *of the common gude of Borrows*.

If,

If, by the act 1487, the juriſdiction of accounts was veſted in Convention, what uſe or occaſion was there for the enactment of the ſtatute 1491? Nothing can afford a more clear demonſtration, than does this act, that by the one of 1487, no power over the accounts of Boroughs was conferred on Convention. Beſides, the act 1491 ſhews alſo, that wherever the Legiſlature meant to make regulations concerning the common good, it mentioned that object in preciſe and clear words, and did not leave it to depend on the conſtruction of any general expreſſion.

Such being the caſe, it appears almoſt unneceſſary to enter into any more particular explanation of the act 1487. To treat of the welfare of merchandiſe, and of making ſtatutes for the common profit of the Boroughs, in relation to each other, has evidently no reference to the common good of the individual Boroughs. The Convention ſeemed to lay ſtreſs upon the words, "To provide for remead upon the "*ſkaith* and *injuries* ſuſtained within the Boroughs." But the Barons were moſt perfectly convinced that theſe words had no relation to the management of the common good. What was meant by them is explained by the act 1607, c. 6. referred to by the Convention themſelves, which uſes almoſt the very ſame words with the act 1487. After a general confirmation of the privileges of the Royal Boroughs, the act 1607 proceeds thus: "And conſidering the great *hurt* and *ſkaith* daily ſuſtained "by the Burgeſſes and inhabitants of his Majeſty's Royal Burrowes, who underlyes "and bears all burdings impoſed upon the ſtate of Burrowes in all his Majeſty's ſer- "vices, throw the continual entereſs of unfree traffickors, dwelling in diverſe parts "of this realme, not being burgeſſes of the ſaid Royal Boroughs, and nevertheleſs "keeps and holds buiths, buys and ſells merchandiſe, and otherways uſes the liber- "ties and privileges of free Burgeſſes and actual reſidents within the ſaid Royal Bor- "roughs, in manifeſt defraud of our Soveraine Lord's cuſtomes, and to the preju- "dice of the liberties of the ſaids free Royal Burrows; and therefore," *&c.* Then follows a prohibition againſt all unfreemen, to exerciſe, trade, or traffic within Borough.

By the act 1466, c. 12. it was provided, that no man of craft, that is, no mechanic, ſhould uſe merchandiſe, unleſs he renounced his craft.

It was to *ſkaith* or *injuries* of this kind, or thoſe ariſing from the practices of unfree traders, and to other objects of police, traffic, or mercantile concern, that the words of the act 1487 related; but it is ſufficient for the Burgeſſes to ſay, that for the reaſons already mentioned, they could not poſſibly have any relation to the power of accounting for the common good. Theſe words had lain in the ſtatute for 299 years, without its having ever been conceived by any mortal, that they conveyed to Convention a juriſdiction of accounts. The diſcovery had eluded the ſearch of ages. It had eſcaped the penetration of all the lawyers, writers and judges, and even of all the Conventions of former times. The law was made in 1487. But the unexampled acuteneſs that could alone develope its meaning, was not to exiſt in the world till about 300 years thereafter. The blazing merit of the diſcovery was deſtined to crown with laurels the Head of the Convention of the year 1786. Neceſſity, it has been juſtly ſaid, is the mother of *invention*. The Convention of that year,

in

in order to find out a plauſible pretext for refuſing to account in Exchequer, were driven to the laſt extremity. The occaſion was preſſing. There was little time for a choice of expedients. In this perplexity, their evil genius maliciouſly diſpoſed, anxiouſly ſtudious to involve them in difficulty and abſurdity, and thereby to expoſe them to public ridicule, has, it ſeems, told them, that under the act 1487, *they might account to themſelves;* which would be fully ſufficient, or at leaſt would afford a very good blind to ſatisfy the unthinking multitude. This extravagant conceit, becauſe it gratified their ſtrongeſt paſſion, was adopted by Convention with avidity; and neither the cleareſt deduction of fact and reaſoning, the public diſapprobation, nor the unanimous and decided opinions of the ableſt judges, can now induce them to abandon it. Such is the hiſtory and nature of the new diſcovery of a juriſdiction in Convention. Is it neceſſary to ſay more, in order to evince the inexpediency, futility and illegality of the claim? There remains, however, one branch of the taſk we had undertaken.

THIRD POINT. Examination of the acts of Parliament, and examples of juriſdiction referred to by Convention.

WE come therefore, in the *third* place, to examine the acts of Parliament poſterior to the inſtitution of Convention, and the examples of juriſdiction reſorted to by them. They had, in the Court of Exchequer, in ſupport of their new plea, appealed to a great variety of ſtatutes, ſuch as 1555, c. 49. 1563, c. 86. 1567, c. 26. 1579, c. 85. 1592, c. 154. 1594, c. 225. 1633, c. 24. 1672, c. 5. 1690, c. 12. 1693, c. 30. But it muſt be confeſſed, that, in referring to theſe, the Convention have only amuſed or deluded themſelves; for not one of them has the ſmalleſt relation to the points which the Convention would wiſh to eſtabliſh by them. The public are requeſted to look into them. They contain not a ſingle word concerning the common good of Boroughs, or its management, or even about the powers of the Convention. They are all general ratifications, extenſions or limitations of the privileges of the individual Boroughs; which, as already explained at length in the Illuſtration, conſiſted in the excluſive rights of incorporations within Boroughs, and excluſive rights of foreign trade; and when the oppoſers of Reform would inſinuate, that the letters of horning allowed to be iſſued, for enforcing and ſecuring theſe privileges, have relation to the accounting for the common good, they attempt an impoſition on the public, for which there is not a colour of excuſe or juſtification.

THE Convention appealed alſo to the act 1581, c. 119. But what is that to the purpoſe? This act only appoints the times of the meetings of Conventions, and the manner of calling them, without expreſſing a word concerning their powers. They again refer to the act 1593, c. 185. But neither will this ſtatute avail them in the ſmalleſt degree; for it only appoints the common good to be rouped yearly, and applied to the uſe of the Boroughs at the ſight of their own Magiſtrates; but gives no power whatever over it to the Convention, which the ſtatute does not ſo much as mention.

IT is therefore in vain that the Convention reſort to acts of Parliament, in order to ſhew that they poſſeſs a judicative power to call the Magiſtrates of Boroughs to account for malverſation in the management of the revenue. Equally vain is the expectation to eſtabliſh that propoſition by any evidence or authority from their own books. This leads us to examine the inſtances or examples of an exerciſe of juriſdiction reſorted to by Convention.

IT

IT would be tedious to remark articulately on every ſingle inſtance or example. A few general obſervations will be ſufficient to ſhew, that they do not in any reſpect apply.

ON examining the excerpts ſubjoined, it will be found, that all the inſtances ſpecified are only examples of one or other of the following particulars: *1ſt*, A power of authoriſing the individual Boroughs to ſell the common property for the pretended advantage of the community. This power was exerciſed in Convention, ſometimes by granting warrants to ſell, and at other times by approving of ſales already made, both in conſequence of applications from the Magiſtrates of the individual Boroughs. *2dly*, A power of authoriſing the Boroughs to ſet tacks of the common good for ſeven, nine, ſixteen, twenty-one, and ſometimes twenty-ſeven years, and orders for rouping the common good to the beſt advantage. *3dly*, A power of appointing interim managers of the affairs of Boroughs where there were no Magiſtrates. *4thly*, A practice in Convention of interpoſing, not as judges, but as friends or mediators, to compoſe diſputes and differences in Burghs, whether in relation to the common good, or any other ſubjects of controverſy. It is to this mediatory power that the late very reſpectable author of the Inſtitutes of the Law of Scotland muſt have alluded, when he ſays, that Convention had been in uſe to enquire how the yearly revenues had been applied by the Magiſtrates, for no judicative power to that purpoſe ever was exerciſed by Convention. *5thly*, A right of ſuperintending the common intereſt of the Burghs, in relation to trade and manufactures, and the proper adjuſtment of the tax-rolls.

WITH regard to the firſt article, it does not appear, that the power aſſumed by Convention, had the ſmalleſt foundation in law. The common good of every Borough was the property of the community or corporation of that Borough, under the management of its own Magiſtrates. If theſe adminiſtrators had at common law a right of alienation, they might exerciſe it without the conſent or approbation of the Convention of Boroughs. If at common law they had no right, it is indiſputably clear, that the Convention of Boroughs could not beſtow it. If therefore the Convention truly meant to exerciſe powers which the laws of the land moſt aſſuredly did not confer on them, all the inſtances ſpecified are no more than ſo many acts of uſurpation; but the real fact ſeems to be, that the Convention did not intend to exerciſe any powers, either judicative or legiſlative, of ſelling the common property, but only to give their advice, on being oſtenſibly aſked, whether it was, or was not prudent for the individual Boroughs, in certain circumſtances, to make ſuch alienation. In fact, there is reaſon to preſume, that the ſole object of theſe applications for the Convention's authority, was nothing more than to procure a cover for a ſhameful profuſion and dilapidation of the public property.

2dly, THE ſame obſervations are applicable to the allowances ſometimes given by Convention, of letting tacks, and to their approving ſuch acts of adminiſtration when already executed. Beſides, by the act 1491, all tacks of the revenues of Boroughs, for more than three years, were prohibited. What power then had the Convention

to authoriſe leaſes of twenty and twenty-ſeven years? They moſt certainly had none; and if the adminiſtrators of Boroughs had at common law a right of letting ſuch leaſes, they did not need any authority from the Convention.

As to the orders they ſometimes pronounced about rouping the common good, they can import nothing. The public law had appointed the common good of Boroughs to be yearly rouped; and the orders of Convention to that purpoſe, were nothing more than an advice to execute the public law, as being for the intereſt of the Boroughs.

The import of the argument ariſing from the ſales and long leaſes authoriſed by Convention, may be reduced to a very ſhort point. If a juriſdiction of accounts were to be eſtabliſhed by a uſage of alienating and miſmanaging the common property, there is not an individual Town-council in the kingdom, which would not by this time have acquired an unqueſtionable right to call itſelf to an account. For it may ſafely be affirmed, that there is ſcarcely a ſingle Borough where alienations and long leaſes of its property have not been both ancient and frequent. The juriſdiction of the Town-councils of Inverneſs, for example, would be eſtabliſhed beyond all diſpute; for they have alienated common property for trifling feu-duties, not exceeding in all L. 20; whereas the real rent of that very property is now not leſs than L. 3000 Sterling yearly! But is it tenable in law or in common ſenſe to ſay, that an individual Town-council, by a habit of alienating the public property, could acquire to itſelf a judicature of accounts in relation to its own adminiſtration? Can a manager, by the very act of management, pretend to prove, that he is in law bound to account only to himſelf? It is the adminiſtration or management that gives riſe to the propriety and neceſſity of accounting. Is the manager therefore entitled to ſay, Becauſe I have managed, I ſhall account only to myſelf! Theſe things, when applied to the individual Town-councils, appear to involve abſurdities too groſs, and too glaring, to be maintained. In what manner is the caſe varied, when the ſame things are done and pleaded by the Convention, who are the Delegates of the Town-councils? It is impoſſible to perceive the ſmalleſt ground of diſtinction. What then is the reſult of the enquiry to which the Convention have led, by referring to ſales and leaſes of the common property, as precedents to eſtabliſh their pretended judicature of accounts? It is this, that, inſtead of evidence of a regular exerciſe of juriſdiction to call Magiſtrates to an account, we find nothing more than a record of groſs abuſe and dilapidation!

3dly, With regard to the practice of appointing interim managers, where there were no Magiſtrates at the time, it does not appear ever to have been exerciſed by Convention, except on the application of the inhabitants of the Boroughs where there happened to be an interregnum. It does not occur, that the Convention had any power to make ſuch appointments. At the ſame time, it was perhaps natural for them to interpoſe, in caſes ſo urgent, when the affairs of the Boroughs were in danger of being ruined by the want of a legal Magiſtracy; but nothing can be inferred from their exerciſing ſuch a power. The Lords of Seſſion are now in uſe to appoint interim

interim Commiſſaries, interim Sheriffs, and interim Magiſtrates, in caſes of death or diſqualification; but it never was yet thought, that this gave the Court of Seſſion a right to exerciſe any power over Commiſſaries, Sheriffs or Magiſtrates, when regularly and legally appointed by the proper authority.

Where there were no Magiſtrates in a Burgh, it was at leaſt juſtifiable in the Convention to aſſume the management, to prevent the ruin of the common affairs; but the moment a legal Magiſtracy was appointed, the powers of Convention were excluded, and entirely at an end.

The Convention ſeemed to lay ſtreſs on the circumſtance, that they called to account the interim managers of the revenues of Boroughs appointed by themſelves; but this is really inapplicable. Theſe interim managers derived their authority entirely from them. They were in a manner their ſervants, and could not therefore refuſe to account to thoſe who had appointed them, in relation to the truſt that was committed to them; but how can it be from thence inferred, that the Convention could exerciſe the ſame powers over a Magiſtracy regularly and legally appointed? The concluſion is totally untenable.

It deſerves at the ſame time to be remarked, that ſince the year 1738, the Convention have not been able to ſpecify a ſingle inſtance in which they pretended to exerciſe the power of nominating interim managers or Magiſtrates. Such powers are now exerciſed by the Court of Seſſion only.

4thly, In relation to this article, the Convention, from the inſtances they have given, would wiſh to have it underſtood, that in interfering in the differences in Boroughs, relative to the accounts of the common good, they had exerciſed a judicial power. To ſhow this, three inſtances are chiefly relied on, but all equally inapplicable to the point.

The firſt is the general order of 1706, No. 23. of the excerpts. But when the order itſelf is looked into, as it ſtands in the original record, the words of which are given in the excerpts, it is perfectly clear, that the Convention interpoſed only *as friends and mediators*, and did not even pretend to exerciſe a judicative power. No. 23. of the excerpts.

The Convention, by that order, ordained differences to *be firſt* brought and tabled before them, *in order to be compoſed and agreed by their mediation.* Is that the language of a court poſſeſſed of judicative and compulſive powers? It is directly the reverſe. It is a plain confeſſion, that ſuch power was not competent to the Convention, in relation to the accounts. This is ſtill more clear from the certification added to their order. Do they thereby pretend to compel defaulters to account, and to indemnify the Boroughs? No. They were convinced they had no ſuch power. They were contented with emitting a *brutum fulmen*, that thoſe who diſobeyed ſhould be *reckoned diſturbers of the public peace, contemners of their authority, and be fined and otherwiſe puniſhed as the Convention or Committee ſhould think fit*; a certification which, while

while it teſtified their ambition of power, proved, at the ſame time, the impotence of their pretenſions to exerciſe a regular juriſdiction of accounts. The power here aſſumed by the Convention, of declaring men diſturbers of the public, of fining and puniſhing at pleaſure, was juſtly treated by the Barons with contempt, and by ſome of them, even with indignation. The acute feelings and conſtitutional ideas of Sir John Dalrymple could not brook ſuch exerciſe of lawleſs authority.

If the acts of Convention were always a juſt ſtandard of their rights, they would be found to be poſſeſſed of very high authority indeed. *Mr Cullen*, in his very able and ingenious pleading in Exchequer, took occaſion to ſhow, in paſſing, that they ſometimes arrogated even legiſlative powers, in prohibiting for a limited time, *the exportation of eggs*, and other commodities!

No. 46. of the excerpts.

The ſecond particular inſtance referred to by Convention, is the caſe of Jedburgh in 1706, No. 46. of the excerpts. It is ſaid, that a Committee was appointed to repair to Jedburgh, to compoſe the differences in that town, and that the Committee *found no cauſe of complaint as to the management of the revenue*, from which the Convention would infer, that a judicial power in that matter was exerciſed by them, or their Committee.

But when the report of the Committee is looked into on record, the very reverſe is indiſputably evident. The Convention interpoſed merely as friends or mediators, in order to put an end to a proceſs for malverſation, depending in the Court of Seſſion, at the inſtance of ſome of the Burgeſſes, againſt the Magiſtrates of Jedburgh. The method they propoſed for this purpoſe was pretty curious, and ſhews how inexpedient it would be to lodge in Convention the juriſdiction of accounts. This reſpectable body propoſed, that the Burgeſſes who complained of the miſapplication of the public money, ſhould, in order to ſooth their tempers, be *brought into the Town-council, and inveſted with the honours of the Magiſtracy*, which, it was conceived, would make them good and quiet citizens. This is the moderate and gentle remedy of every abuſe. This is the eaſy and eligible mode of accounting, for which the practice of Convention affords precedent and example!

The Burgeſſes who were proſecutors in the caſe of Jedburgh, had too much virtue and public ſpirit to agree to ſuch a propoſition, which they rejected with diſdain. The Convention were enraged. They reſolved, as in the caſe of Dumbarton, to undertake the defence of the Magiſtrates of Jedburgh; nay, ſo far did they forget every rule of form, and every appearance of decency, that they *appointed a Committee to acquaint the Lords of Seſſion* of the obſtinate behaviour of the Burgeſſes of Jedburgh, who refuſed to ſacrifice the intereſts of the Borough, even for the honour of ſitting in Council.

These two inſtances, to which the Convention ſeem to have appealed, without examination, are a key to open the meaning of the whole orders made by them,

them, and ſhew clearly, that they never intended, or thought themſelves entitled to exerciſe any judicial power relative to the miſapplication of the common good, but merely to interpoſe as mediators, to prevent or compoſe differences among the Burgeſſes.

Of this, the caſe of Jedburgh affords the moſt concluſive evidence; for at the very time that the Convention appointed a Committee of Mediators, to compoſe the differences between the Magiſtrates and Burgeſſes of that Borough, there was an action of accounting actually depending in the Court of Seſſion, at the inſtance of the latter againſt the former. It is true, the Court of Seſſion have ſince found, that they have no juriſdiction in the caſe; but it is clear from what happened in the inſtance of Jedburgh, that the Convention of Boroughs did not then conceive the idea of their having ſuch juriſdiction, otherwiſe they would have claimed and exerciſed it, in acquitting the Magiſtrates of Jedburgh, and condemning the Burgeſſes, with whom they were ſo highly offended, for the inſolence of refuſing to drop their action, even on the honourable condition of being made members of the Town-council, and adorned with the robes of Magiſtracy.

The laſt particular inſtance referred to by the Convention, under the fourth article, is the appointment by Convention in 1691, of a Committee of their number, to viſit the whole Royal Boroughs, and to take trial of the ſtate and condition of their common good, *&c.* This general order or appointment is No. 9. of the excerpts. It has been pretty fully copied, as the Convention ſeemed to reſt ſo much upon it. But it is only neceſſary to glance at the narrative or inductive cauſe of it, in order to be ſatisfied, that it is totally inapplicable to the point which was meant to be eſtabliſhed by referring to it. That general order or viſitation proceeds on the narrative of complaints *of the decay of trade, and that the Burghs were not rightly adjuſted in the tax-roll, as to the quota and proportion of burden.* The general viſitation is therefore appointed. What connection has this with the internal adminiſtration of the common good of Boroughs? The intereſts of trade, and the proper adjuſtment of the tax-roll, were the evident objects of that general viſitation. This is farther illuſtrated in the cleareſt manner, by the particular inſtructions given to the viſitors or Commiſſioners, which the public are requeſted to look into.

No. 9. of the excerpts.

5thly, The practice of attending to, or ſuperintending the general intereſts of trade, appear to be the proper province of the Convention of Boroughs, and in ſo far as their reſolutions embrace that object, they are liable to no objection, but, on the contrary, are highly commendable. At the ſame time, it muſt be obvious, that the general regulations of trade have nothing to do with the adminiſtration of the revenues; and that while the Convention might properly exerciſe powers in relation to the former, they were deſtitute of every ſhadow of juriſdiction concerning the latter.

In this manner, we have evinced the high inexpediency of the juriſdiction claimed by Convention. We have pointed out a Court entirely different from it, in which

 that

that jurisdiction was vested and exercised in the most ancient times, and in which it continued until it was transferred to the Court of Exchequer. We have explained the powers of the Convention in its institution, and demonstrated, that they do not comprehend the jurisdiction of accounts. We have examined the various posterior statutes to which the Convention appealed in support of their claim to that jurisdiction, and shewn them to be utterly inapplicable. We have finally investigated the force and authority of the different instances or examples from which the Convention pretended to deduce a regular exercise of jurisdiction, in relation to the accounts; and have proven, in the clearest manner, that they have no relation whatever to the point, in support of which they were so confidently and so ostentatiously adduced. For there is not a single example, from the beginning to the end of the books of Convention, as far as yet appears, in which that body ever pretended to exercise a judicative power of examining the administration of the common good, and of decreeing redress where it was misapplied.

To that reasoning, and these remarks on the jurisdiction claimed by Convention, it is a proper conclusion to present to the Public, the opinions of the Honourable Barons of Exchequer, as delivered in the case of Dumbarton.

The Lord Chief Baron spoke as follows:—"The question submitted to the consi-
"deration of the Court is, Whether the act 1535 is a subsisting law, and binding up-
"on this Court of Exchequer? As, in the case of Selkirk, the Lords of Session en-
"tertained a doubt, whether they had jurisdiction to take up this matter, therefore,
"(argued the petitioners,) if the jurisdiction does not lie with this Court, it lies no
"where, and a remedy will be altogether wanting. The defenders, feeling the force
"of this argument, endeavoured to remove it, by shewing such a jurisdiction to sub-
"sist, and exercised in the Convention of Royal Burghs. I have looked into *every*
"*act of Parliament* concerning the Convention; and neither in them, nor any where
"else, *can find a single word, giving, or seeming to give this jurisdiction to the Con-*
"*vention*. Traffic and police, and matters relating to them, were placed within
"their cognizance, but no judicative power to determine any thing whatsoever. In-
"deed, for the examination and control of the expenditure of Borough revenues, no
"judicature could *be conceived more improper* than this of the Convention; a body
"appointed by the very Magistrates, whose conduct they were to review, fluctuating
"and uncertain, without any summons, process, proper officer, or any other requi-
"site for executing such a jurisdiction."

Sir John Dalrymple said, "As to the Convention, here again it must be asked,
"On which side does the public good lie? Let us consider the constitution of
"the Convention of Royal Boroughs. The Magistrates send the members; and is
"a body made up of the defaulters themselves to try these defaulters? for all the
"acts and commissions proceed upon a narrative of the malversation of the *Magi-*
"*strates*. No trace of this power of the Convention is to be found *either* in the
"*statutes*, or in the books *of the common law* of Scotland. From the opinion of
"Duncan Forbes and James Graham, read by my Lord Advocate, it appeared,
"that

"that there had been two acts of Convention, one in 1670, and the other in 1706;
"by the first, it was declared, that questions between Burgh and Burgh should be
"determined by the Convention, and *without appeal;* by the second, it was de-
"clared, that the Convention should have the power of mediating between Burgh
"and Burgess in public concerns, and whosoever did not submit to that *mediation*
"was to be held a breaker of the peace of Burghs, a contemner of the authority of
"Convention, and *fined;* which two acts shew, that the jurisdiction of the Conven-
"tion was *private*, of *consent*, of *prorogation*, *self-created* and *illegal*."

In these words, the Lord Chief Baron, and Sir John Dalrymple, expressed their opinions of the jurisdiction claimed by the *Convention of Boroughs;* and with their opinions, on this point, all the other Barons agreed.

It is only necessary to offer a very few words on what is said in Mr Grieve's letter, that this Committee have endeavoured to obtain the ministers support by *a misrepresentation*.—To misrepresent either facts, or the state of the law, for any purpose, or on any occasion, we should always consider as culpable; but to carry such representation to the minister, and in a business of a very important nature, we could not but look upon as criminal. We would spurn the idea of adopting so improper a conduct. To obtain the Minister's countenance by misrepresentation, is a practice, which, with respect to him, we would deem presumptuous, and which, with respect to ourselves, we would disclaim and despise.

In our letter to Mr Pitt, we have undoubtedly said, "That as the law of Scotland is now understood, there does not exist a power to control the administration of Boroughs." That proposition we still continue firmly to maintain. We pretend not, however, like the Convention, to offer assertion for demonstration. We give the authorities on which we confidently rest.

We have specified the case of Kinghorn, decided in the 1771, in which the Court of Session had found, that they had no jurisdiction to call the Magistrates of Boroughs to an account, and we cannot believe there is any man so bold, as to deny the truth of what we affirm. To the recent decision of the Barons of Exchequer, finding that they have no jurisdiction, we have appealed as a notorious fact. That the Convention of Royal Boroughs have not a pretence of power to bring Magistrates to an account, we have demonstrated in the clearest manner. Such claim of jurisdiction, indeed, never was heard of till within these three or four months. The late very respectable Preses of the Convention of Royal Boroughs, Sir James Hunter-Blair, was utterly ignorant of it; for, in a declaration under his hand, he admitted, that Magistrates were liable to account, not in Convention, but in Exchequer. Nay, he went much farther. He hinted a desire to abolish entirely the Convention of Boroughs, as a *useless institution*. After mentioning the annual expence bestowed by the town of Edinburgh, in entertaining the Convention, Sir James Hunter-Blair uses the following words: *The last* (viz. *expence*) *must continue until the Convention is abolished; and I confess, I think the whole charge of the Royal Boroughs Convention, is much greater than any benefit de-*
rived

rived from it! Such was the language of the Head of the Convention in 1784. The Convention was at that time to be aboliſhed, as uſeleſs; for no man had then conceived, that it poſſeſſed ſo important a power as that of calling the Town-councils to an account for the common good. In the year 1787, however, the very reſpectable Preſes of Convention retracts the whole doctrine of his immediate predeceſſor! holds out this aſſembly as a wiſe, ſalutary, and uſeful inſtitution! claims to himſelf and the other members of that reſpectable body, the power of calling themſelves to an account! a juriſdiction reprobated by the Barons, and by all mankind, as illegal, inexpedient and abſurd.

It therefore remains for the public to determine, Whether in ſaying, that as the law of Scotland is now underſtood, there does not exiſt a power to control the adminiſtration of Boroughs, we have been guilty of a miſrepreſentation; or whether the charge does not recoil upon thoſe who have not ſcrupled to hazard an aſſertion equally injurious and groundleſs.

No. III. Excerpts from the Books of the Convention of Royal Boroughs, of the Examples or Inſtances appealed to by them, in Support of their pretended Exercise of the Juriſdiction of Accounts.

No.

1. 1583.

THIS article relates ſolely to the cuſtoms payable to the King, of which the Boroughs had leaſes, and to collect which they appointed officers.

2. 1678. Dumfries.

Allowance or approbation of a tack of a piece of ground granted by the Magiſtrates, for ſixteen years, in reſpect it was for the advantage of the common good.

3. 1687. Haddington.

Approbation of Convention, of an alienation of feu-duties by the Council of Haddington, for a price paid, the intereſt of which exceeded the feu-duty.

4. 1675. Perth.

Allowance by Convention to Perth, on its ſupplication, to let the common mills and fiſhings, *&c. for nine years.*

5. 1675. Linlithgow.

The ſame as to the common muir, which was ſaid to be uſeleſs and unprofitable.

6. 1675. Haddington.

Approbation of a leaſe of the Town's waulk-mill for nine years.

7. 1676. Glasgow.

Approbation by Convention, of ſales of different pieces of ground of the common good.

8. 1691. Glasgow.

Supplication of the Magiſtrates of Glaſgow, repreſenting the large debts contracted, the miſapplication and dilapidation of the Town's patrimony by former Magiſtrates, and their employing the common ſtock for their own ſiniſtrous ends and uſes, which brought on an abſolute neceſſity to ſell a great part of the patrimony of the Borough, and therefore craving the Convention's allowance to ſell the lands of Provan, and others, which was granted.

No.
9.

1691. Commission.

In the General Convention of Boroughs, holden at the Burgh of Edinburgh, upon the 9th day of July 1691 years, by the Commiſſioners of Boroughs therein convened. The which day, the Convention taking into their ſerious conſideration, that there are many complaints given into the reſpective General Conventions of Burrows, theſe ſeveral years bypaſt, by many particular Burrows, yea univerſalie by the whole Burrows, complaining of their poverty, want and decay of trade, and that they are not rightlie adjuſted in the tax-roll, as to the quota and proportion of the burden; and conſidering that there has been ſeveral remedies propoſed, yet none has been received with that univerſal ſatisfaction, as a general ſearch and enquiry to be made into the condition and ſtate of every Burgh, as their trade and common good, by a viſitation to be made over the whole Royal Burrows, which, although not practiſed formerly, yet it's thought to be the moſt juſt and equal way how to adjuſt the tax-roll, if impartially gone about: Therefore, the Convention ordains every particular Royal Burgh within the kingdom, to be viſited as to the trade and common good, conform to the inſtructions ſubjoined; and for that effect, appoints and nominates four viſitors, *viz.* James Fletcher, Commiſſioner for the Burgh of Dundee, and Alexander Walker, Commiſſioner for the Burgh of Aberdeen, John Mure, Commiſſioner for the Burgh of Air, and James Smollet, Commiſſioner for the Burgh of Dumbartoun, and that the Commiſſioners for the Burgh of Dundee and Aberdeen ſhall viſit the South Royal Burghs of the kingdom, and the ſaids Commiſſioners for the Burghs of Air and Dumbartain to viſit the North Royal Burghs of the ſaid kingdom, and that according to the diviſions to be made in their reſpective circuits, as the ſaids Commiſſioners can beſt agree amongſt themſelves; and ordains the ſaids Commiſſioners to begin their journeys in their reſpective circuits and diviſions, betwixt and the day of excepting always furth of this viſitation the Burgh of Kirkwall in Orkney, Wick in Caithneſs, Inveraray in Argyleſhire, and Rothſay in Bute, becauſe of the difficulty of acceſs to theſe places, and the Convention, conſidering that the charges and expence of the ſaid viſitation ought in juſtice and equity be made upon the common charges of the Burrows, and that the ſame ought to be ſuch as is ſuitable for the Burrows to grant, and the Commiſſioners to receive: Therefore, they ordain the agent to pay to the four ſaid Commiſſioners the ſum of L. 200 Sterling, declaring, that if the ſaids Commiſſioners ſhall happen to be ſuperexpendit in more than the ſaid L. 200 Sterling, that the Burrows will reimburſe them upon their ain ſimple declaration and word of honours. Follow the inſtructions to the Commiſſioners, *1ſt*, That the viſitors take an exact account, to be given in by the Magiſtrates and Town-clerk of every particular Borough, of their common good and debts upon oath, and the Magiſtrates and Town-clerk to ſubſcribe the ſame. *2d*, That the Magiſtrates and Town-clerk produce an exact account, upon the terms foreſaid, of all the mortifications belonging to the Town-council, or Guildry, or Trades thereof; and that the ſaids viſitors are to conſider the mortifications, ſo far as they only are employed to eaſe the Burghs of public burdens, and taxes laid on the ſame. *3d*, The viſitors appointed for the South Royal Burrowes of this kingdom, that in their circuits they call for the meaſures kept by Jedburgh, to ſee if they conform to the ſtandart. *4th*, The viſitors of the Royal Burrowes to take enquiry, that when they come to the Burghs

No.

Burghs of Stirling, Lithgow, Haddington, Banff and Burghs, where the Burgeſſes of theſe Burghs lye under ane abſolute neceſſity of loading and unloading at unfree Burghs, to the effect, that, if it appear that they lye under ane impoſſibility to load and unload at free ports, that then they may have a particular diſpenſation to load and unload at unfree ports. *5th*, That the Magiſtrates and Town-clerk produce to the ſaids viſitors the Theſaurer's accompts and æquies, five or mae years backwards, upon the terms foreſaids. *6th*, In all Burghs, that they take exact trial into the trade, both forraigne and inland, and particularly of the wines, and of the vent and conſumption of malt for five years backwards. *7th*, That they take an exact account of what ſhips, barks, boats, and ferry-boats they have belonging to them, the names of the ſaid ſhips, their burden, and value of each of them, and how employed, and by whom. *8th*, They are alſo to take an accompt of what ſhips they are owners of, or partners in, out of their own Burgh, as well as in the ſame; and this to be given accompt of, conform to their oath of knowledge, and how far they are concerned with the Burghs of regalities and barronies, in the matter of trade. *9th*, That they take particular notice, how their ceſs is paid, whether out of the common good, or by taxation on the Burgh. *10th*, To take exact accompts of the miniſters ſtipends, ſchoolmaſters, precentors, and all other public ſervants, what it is, and how paid, whether out of any mortification, or out of the Town's common good, or by taxation upon the people, or teinds of the pariſh. *11th*, To take exact notice, how their public works are maintained, and out of what funds, ſuch as churches, hoſpitals, bridges, harbours, and the like. *12th*, They are to take exact inſpection of the caſe of the houſes of the Town, and how they are inhabited, and what rents they may be of, and of what rait houſes inhabited by ſtrangers are. *13th*, To take an exact accompt, how many fairs and public mercats each Burgh has yearly, and of how long indurance, and what the intrinſic value or importance of the ſame may be of. *14th*, That the viſitors of the Royal Burrowes, in the circuit of viſitation, take information from the Magiſtrates of the Royal Burghs, of the ſtate and condition of the regalities, barronies, and other unfree Burghs within their reſpective precincts, as to their trade, common good, and condition of their houſes and inhabitants of the unfree Burghs; and that the ſaids informations be given in by the ſaids Magiſtrates to the viſitors during the time they ſtay within the Burgh. *15th*, That the viſitors take an exact accompt and tryale of every thing elſe that occurs to them, relating to the condition of the reſpective Burghs whom they ſhall viſit. The better to inforce the ſeveral Burghs to a compliance with, and obedience to the act foreſaid, the Convention ſtrictly enjoined them to concur with the ſaid viſitors, and to give full and clear anſwer to as many of the above inſtructions or queries as concerned each of them, under the pain of being deemed ungrateful to the ſtate of the Boroughs, and conſidered as places of eminence, and as ſuch, be repreſented to the approaching Convention, at the making up the tax-roll. But anſwers to the ſaid inſtructions or queries being readily and chearfully made by the ſeveral Burghs to the ſaid viſitors, they delivered the ſame to the Convention, held at Dundee in the year 1692; and by the Convention held at Aberdeen, *anno* 1699, they were ordered to be recorded in a particular regiſter, to prevent embezzlements in all times thereafter.

No.

No.

10. 1691. DUMBARTON.

ALLOWANCE to ſet the common mills thereof for nineteen years, with conſent of the Deacons and moſt ſubſtantial Burgeſſes.

11. 1696. IRVINE.

APPROBATION by Convention, of an aſſignment by the Magiſtrates of Irvine, of rents in payment of debt, with power to ſet tacks, long or ſhort, but not exceeding nineteen years.

12. 1696. EDINBURGH.

RATIFICATION of Convention, of a leaſe by the Council of Edinburgh, for twenty-ſeven years, of part of the common lands.

13. 1698. FORRES.

AN approbation of a contract made with the Sheriff of Murray, relative to diſputes between him and the Town.

14. 1698. DUNDEE.

ALLOWANCE by Convention, to ſet Oliver's Croft, part of the common good, for ſeven or nine years.

15. 1699. DUMFRIES.

ALLOWANCE to incloſe two commonties belonging to the Town, and to ſet the ſame for nineteen or twenty-one years.

16. 1699. DUNDEE.

SUPPLICATION of the Burgh of Dundee, praying, that five Boroughs therein mentioned, might be appointed to viſit the common good, trade, and all the public works, and to report, which was granted.

17. 1699. ANNAN.

A SIMILAR appointment made.

18. 1699. BANFF.

WARRANT of Convention on the ſupplication of the Town, to ſet certain waſte grounds for nineteen years.

19. 1699. DUNDEE.

ALLOWANCE to ſet Oliver's Croft, on application of the Council, for ſeven or nine years.

20. 1703. DUNDEE.

WARRANT to ſell Hilton, part of the common good, at the ſight of two Boroughs, and to apply the price for payment of the Town's debts.

No.

No.

21. 1704. ABERBROTHEC.

RATIFICATION of the ſale of Baddie's Hill to Captain Smeaton, the price being applied to the Town's debts.

22. 1705. STIRLING.

WARRANT by Convention to this Borough, on their application, to *ſell their whole lands*, towards payment of their debts.

23. 1706.

A GENERAL order, by which the Convention, on the narrative, that frequent debates do happen within Burghs, both in relation to the management of the common good, and the manner of their elections of Magiſtrates and Deacons, and other office-bearers, and management "of their revenues, and how neceſſary and convenient it would be, that, conform to the power granted to the Royal Burghs, by "ſeveral acts of Parliament, ſuch differences and debates might be compoſed and "agreed by the Royal Burghs, or a Committee of their number, *without bringing "the party concerned to unneceſſary trouble and expence*, and to great heat and animoſities within Burgh, in caſe the ſame cannot be agreed at home; therefore, the "Convention did ordain all ſuch differences *to be firſt brought and tabled* before them, "or a Committee of their number yearly, to be appointed to ſit at Edinburgh for "that end, in *order to be compoſed and agreed by their mediation;* declaring, that "whoever ſhould do in the contrary, ſhould be reckoned diſturbers of the public "peace of the Boroughs, contemners of their authority, and be fined, and otherwiſe puniſhed, as the Convention or Committee ſhould think fit, conform to law."

24. 1707. KIRKCUDBRIGHT.

AN allowance to that Burgh to ſet a nineteen years tack of their fiſhings, at the ſight of Ayr, Dumfries and Wigton, or any two of them, in caſe they find it for the utility of the Burgh; and the Convention appointed the ſaids viſitors to report the ſame, with the ſtate and condition of the kirk and ſteeple of the ſaid Burgh.

25. 1713. CRAIL.

ON application of this Burgh, for liberty to ſet a tack, the Convention remitted to three Burghs in the neighbourhood, to meet with the parties concerned, to adjuſt matters amongſt them, and ſee the ſaid tack ſet for the benefit of the Burgh.

26. 1716. DUNDEE.

ON application of this Burgh, warrant granted by Convention to execute a tack of their New Port for nine or ten years, to any perſon who ſhould make the greateſt offer, and grant the beſt ſecurity.

27. 1717. ANNAN.

ALLOWANCE by Convention, on application of this Burgh, to feu one part of their muir, and ſet another part thereof in tack, for twenty-one years, in payment of their debts, at the ſight of three Boroughs there mentioned, or any two of them.

No.

28. 1720. PITTENWEEM.

RATIFICATION of a ſale, on application of this Burgh, of ſome acres of land, and ruinous houſes, for the payment of a price to be applied for payment of the Town's debts, at the ſight of four neighbouring Burghs, or any two of them.

29. 1720. FORRES.

RATIFICATION of a ſale of a piece of ground belonging to the Burgh, in feu, for payment of a feu-duty equal to the rent, and the price to be applied to the Town's debts.

30. 1720. HADDINGTON.

RATIFICATION of a ſale of a tenement belonging to the Burgh, which paid L. 3 Sterling yearly, and is now ſold to George Smith, merchant there, for 2190 merks Scots, to be applied to the Town's debts, at the ſight of two Burghs there mentioned.

31. 1723. KIRKCALDY.

APPROBATION of a contract of feu of the lands of Eaſter Muir, belonging to the Burgh, neither feuar nor price mentioned.

32. 1723. St ANDREWS.

ON application of this burgh, liberty granted by Convention, to feu a ſmall piece of their commonty of Pillmuir, by a public roup, to the higheſt bidder.

33. 1724. KIRKCALDY.

APPROBATION of feus granted by this Burgh, in conſequence of the above mentioned allowance to Mr Robert Hay, doctor of medicine, Mr James Oſwald of Dinnickeir, and Alexander Williamſon, Bailie in Kirkcaldy, for payment of a greater feu than theſe lands paid formerly of rent, beſides a conſiderable ſum of entry-money, by and attour the feu.

34. 1726. LOCHMABEN.

ON application of this Burgh, warrant granted to feu out to the beſt advantage, ſuch parts of their muir-ground as they ſhould think fit, at the ſight of three neighbouring Burghs.

35. 1726. ANNAN.

ON application of this Burgh, warrant granted to feu 160 acres of their common muir, at the ſight of the Commiſſioners of Dumfries and Lochmaben.

36. 1726. DUMFRIES.

ON application of this Burgh, a warrant granted to them to ſet in feu or long tack their common muir, not yet improven, at the ſight of three Burghs therein mentioned. Another petition from the Burgh, craved the Convention's advice anent the contract

No.

contract made with ſeveral tradeſmen, about building of their kirk, which was remitted to the Committee of the three Burghs above mentioned.

37. 1726. EDINBURGH.

A PETITION from this Burgh, by their Commiſſioner, craving approbation of an act of the Town-council, anent the ſetting of tacks and feus of lands, which was remitted to four Burghs therein mentioned, to conſider and report; and on report of the Committee, the act of Council was approved of.

38. 1727. DUMFRIES.

THE report of the Committee, anent the church of this Town, was received, and the Convention authoriſed the Magiſtrates to grant bond to one of the miniſters for 600 merks of additional ſtipend.

39. 1727. LOCHMABEN.

REPORT of the Committee appointed laſt year, anent the feuing of ſome pieces of ground belonging to this Burgh; which report was approved of by Convention, and warrant granted to the Magiſtrates of Lochmaben, at the ſight of the Burghs mentioned in the ſaid report, to feu ſuch other pieces of ground as they ſhall ſee neceſſary, for the good of the ſaid Burgh.

40. 1729. ABERDEEN.

ON application of this Burgh, warrant granted to the Magiſtrates to feu the lands of Weſtfield, to Patrick Duff of Pramnay.

41. 1729. GLASGOW.

RECEIVED and approved the report of the Committee to whom the petition of this Burgh was remitted laſt year; which Committee reported, that it would tend to the benefit of the ſaid Burgh, that the Convention ſhould authoriſe the Magiſtrates to feu the lands mentioned in the petition; and alſo reported, that as the trade of this Burgh was in a languiſhing condition, a Committee ſhould be appointed to viſit the ſaid Burgh, and examine the ſtate of the revenue thereof, and the burdens thereon, and report the ſame, with the ſtate of the trade of the ſaid Burgh, to the next Convention, which was done accordingly.

42. 1729. INVERKEITHING.

AN order of Convention, approving a report of their Committee, to diſmiſs a complaint againſt John Cant, clerk of Inverkeithing, and to ratify the charters granted by the Town to him.

43. 1731. HADDINGTON.

APPROBATION by Convention, of a report of their Committee, appointed to conſider a petition of John Nairn, Burgeſs of Haddington, that the feu-right mentioned in that petition was a rational deed, beneficial to the Burgh, and that therefore the feu-

No.

feu-right, and infeftment thereon, ought to be ratified and approven by the Convention, and the feu-right recorded in the Burgh-books.

44. 1731. KINGHORN.

A PETITION from Robert Bruce of Grangmire, and Robert Hamilton, merchant in Kinghorn, craving the Convention's ratification of two feu-rights granted by the Burgh to them, of two ſmall pieces of ground, which was granted accordingly.

45. 1732. BANFF.

RATIFICATION by the Convention, of two contracts of excambion betwixt the Magiſtrates and Town-council of this Burgh, and William Duff of Braco, as being for the utility of the Burgh.

46. 1706. JEDBURGH.

A COMMITTEE appointed to compoſe all differences in the ſaid Burgh, in relation to their public concerns, and to enquire into the ſtate and condition thereof; but no mention is made of the common good, or revenues.

IN the 1707, the Committee made a report to the Convention of that year, "That "there had been no miſapplication or embezzlement of the common good of the "ſaid Burgh, but that the ſame was applied for the utility thereof, *though not di-* "*ſtinctly ſtated;* and that for the compoſing the differences, ſome of the purſuers "party ſhould be brought to the Magiſtracy, and into the Town-council, which "nevertheleſs did not pleaſe the purſuers of the proceſs againſt the Magiſtrates: "Therefore, the Convention appointed Sir Robert Forbes, their agent, to concur "with the Magiſtrates and Town-council of the ſaid Burgh, in the action intented "and depending before the Lords of Seſſion againſt them, at the inſtance of ſome of "the inhabitants thereof; and withal, the Convention recommended to theſe per- "ſons, who were members of the ſaid Committee, to go and acquaint the Lords of "Seſſion with the ſtate of the ſaid affair, and how, after much pains taken by them, "in order to adjuſt the ſaid differences, yet all endeavours that way, through the "obſtinacy of the purſuers, proved fruitleſs and unſucceſsful."

47. July 5. 1707. KIRKCUDBRIGHT.

ACT and order of Convention, upon the report of the Committee ſettling differences among the inhabitants, relative to the conſtitution of this Burgh.

48. 1718. BURNTISLAND.

ON the petition of the Burgeſſes of this Burgh, ſetting forth, that they had no Magiſtrates or Council, whereby their common good, and other public concerns, were in great confuſion, and their inhabitants in danger of being ruined thereby; and therefore, craving the Convention to impower a proper perſon to uplift their common good, and appoint ſtent-maſters, who may equally and impartially proportion the ceſs on the inhabitants. The deſire of the petition was granted, as mentioned in the note of authorities.

No.

No.

49. 1724. BURNTISLAND.

THIS as in the note of authorities.

50. 1725. CRAIL.

THE order made is in the note.

51. 1727. DYSART.

WHEN there was no legal Magiſtracy at Dyſart, ſome perſons were appointed by Convention to ſet the common good; and one or two of theſe perſons having acted improperly, were puniſhed, as in the note, particularly John Black and John Mortimer.

52. 1738. JEDBURGH.

THERE being no Magiſtracy at this Town, certain perſons appointed by Convention to manage the common good.

53. 1589.

A GENERAL order, that no poſſeſſor of common ſubjects ſhould hinder the rouping thereof, and that the Magiſtrates and Council of every Burgh ſhould ſet the common good to roup, to the beſt avail.

54. 1591.

THE reſolution of 1589 enforced.

55. 1652.

THIS as in the note of authorities.

56. 1657.

THIS article relates only to the 12s. on every pack. No mention of common good.

57. 1649. DUNDEE.

THIS Burgh was ordained to give an account of their common good, and burdens, in order to ſhew the expediency of their being allowed to ſet their common mills in tack, for nineteen years.

58. 1673. PERTH.

ALLOWANCE to ſet the common good, on application, for nineteen years.

59. 1675. LINLITHGOW.

ON application, allowance granted to ſet or feu the common muir, as the Magiſtrates ſhould think fit.

No. IV. Copy of the Letter from the Right Honourable John Grieve, Esq; Lord Provost of Edinburgh, as Preses of the Convention of Royal Boroughs, to the individual Town-councils, desiring them to instruct their Members of Parliament to oppose Reform, so far as concerns that Object.

Gentlemen,

YOU were formerly advised of the Resolutions of the General Convention of the Royal Boroughs of Scotland, to oppose the measures that have been framing for some considerable time past, by a certain class of people, styling themselves a Convention of Delegates from the Burgesses of the Royal Boroughs, in order to overturn the whole of their ancient constitutions; for the preventing whereof, the last General Convention did particularly enjoin their Annual Committee, carefully to attend to, and oppose every measure of so dangerous a tendency to the interest and welfare of every Royal Borough.

However, the persons engaged in carrying on these measures, and who have really neither the interest or welfare of the Boroughs at heart, have not hitherto ventured to bring forward to Parliament their proposed bill on that subject; yet in consequence of their having failed in the late attempt, under colour of the names of some Burgesses in Dumbarton, and an obsolete clause of an act of Parliament, to subject the Magistrates thereof, and of course all the other Boroughs of Scotland, to account for the expenditure of their revenues in the Court of Exchequer; in which had they prevailed, it must have involved the whole in a heavy annual expence, besides giving a constant handle for strife and litigation, to the great hurt and prejudice of those very revenues they would pretend to be so anxious to preserve. They have at last determined to bring forward to Parliament, their proposed bill, not only for altering the constitutions of the burghs, but to vest in the Court of Exchequer a power to oblige Magistrates to account, in manner above mentioned; and with that view, have applied to Mr Pitt, as Minister of State, for his countenance and support, in order to have it passed into a law, upon a misrepresentation, *That as the law of Scotland is now understood, there does not exist a power to controul the administration of Burghs*, whilst that jurisdiction, by ancient charters and public statutes, stands vested in the General Convention of the Royal Burghs, and whereof they have been in the regular exercise, from an early period down to this day. They have also wrote to many of the Members of Parliament, to the same purpose, and requesting them to introduce their proposed bill into the House of Commons.

The

The Annual Committee being fully satisfied, that, were such a law to take place, it would be productive of the most unhappy consequences to this part of the United Kingdom, have, therefore, in compliance with the instructions of the Convention, firmly resolved to take every step in their power to prevent such measures taking place; and have directed me to advise you hereof, and desire, that, without loss of time, you will write to your Representative in Parliament, as also such of the county-members as you may have influence with, requesting them to exert their utmost interest and best endeavours, to prevent the introduction of any such bill into Parliament, for the reasons stated in the former letters wrote to you on that subject; for, were such a scheme to take place, it would unhinge a constitution which has stood the test of ages; and after being continued from the glorious Revolution down to the Union of the two kingdoms, was, by a fundamental article of that Union, in the most solemn manner confirmed, and has been attended with as many advantages as could have been expected from any human institution whatever. But if, instead of this tried and approved constitution, were the new and undigested systems for the government of this country, as now proposed to be adopted, upon the visionary schemes of those who cannot be supposed to be competent judges in an affair of such magnitude, anarchy, and confusion, disorder and riot, which must ever be hurtful to industry, unfriendly to decency, and subversive of good order, would be the natural and unavoidable consequences.

I am, with all due respect,

Gentlemen,

Your most obedient and most humble servant,

Edinburgh, *3d March* 1787.

(Signed) JOHN GRIEVE, *Preses.*