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APPEAL
TO THE
MEMBERS OF PARLIAMENT,
UPON
The Bill,
PRESENTLY DEPENDING IN
THE HOUSE OF COMMONS,
RESPECTING THE
SCOTCH DISTILLERIES.

A P P E A L,

Et. Et. Et.

IT is a self-evident proposition, that no Government can be supported but at the public charge; but it is an object of perpetual attention to a wise Legislature, that the duties necessarily imposed for that purpose, shall be laid upon the community with an equal hand, shall be as little as possible detrimental to the public interest, and upon no account be oppressive upon any individual. But if, at any time, any person or set of men become particularly marked, and are oppressed with taxes which are not made to operate equally upon others in similar circumstances, it is not, in

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that case, to be wondered at, if they should take the liberty to complain. It is, with much anxiety, that the Scotch Distillers have beheld Resolutions formed in Parliament, which, if carried into execution, would place them in that unfortunate predicament; and though they are exceedingly averse to complain, yet, as they consider these Resolutions as subversive of every principle of sound policy, as opposed by the strictest rules of material justice, and as necessarily involving themselves in inevitable ruin, they cannot avoid coming forward to state their case to the Legislatures of their Country, being persuaded, that if impartial attention is given to the subject, the Honorable the House of Commons will decide in a manner, which will fully guard the just rights both of the public, and the individuals who are so deeply concerned.

Before the Distillers proceed to observe upon the Resolutions of which they complain, they must be permitted to state, that the Committee of the House of Commons, who were appointed to investigate into the state of the Scotch Distilleries, after having examined into the matter with much ability and unexampled patience, have reported to Parliament, *that they have not as yet had time sufficient to investigate*

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investigate the business compleatly, so as to be able to form a judgement upon the great questions in which the public and the different parties have an interest; and that it was therefore only competent for Parliament to form a few temporary arrangements which should subsist till April next, when, after full enquiry, they might be enabled to settle the business upon just principles and a permanent arrangement. After the Committee had given in this report, it appears somewhat singular that Resolutions should have been offered to the House compleatly subversive of the present system, and which introduce arrangements which have been uniformly opposed by the whole body of the Distillers, making a compleat revolution, which is only intended to continue till April next; and which, during that short space of time, must not only be very hurtful to the Distillers, but be an occasion of expenditure to Government of upwards of 40,000*l.* in the single article of the expence of officers, without benefiting the revenue a single shilling. Upon this simple view of the matter, both in justice and prudence, these Resolutions will fall to be revised; and it is believed another argument will hardly be needful to prove that they ought to be revised; but it is not upon a general statement of this nature, nor upon the

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introduction of a temporary arrangement, though inconvenient and distressing to themselves, upon which the distillers, in the present instance, found their complaints. For the Resolutions in question go deeper; and, first, they affect a property of theirs which is not at the disposal of Parliament; and, secondly, they enter into arrangements which Parliament, by preceding solemn enactments, have expressly put beyond their own power.

We beg leave to state, that the first Resolution takes hold of a property belonging to the distillers, which is not at the disposal of Parliament, being by them already, *for a full equivalent*, made over *in full right* to the distillers themselves, a right which cannot be invaded without breaking through the most solemn compact, and outraging the established principles of material justice.

The Resolution is, "That a duty of one shilling and six-pence shall be laid upon every gallon of spirits now in the possession of the distillers in Scotland."

Now it is necessary to attend unto the manner in which the distillers came into possession of that stock of spirits, and this will clearly
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shew, that they have purchased that possession from the Parliament itself, who can therefore, upon no principles of justice, break through that compact by which this right has been established. Particular attention is desired to the following statement:

When duties are laid not upon an article itself, but upon the person who deals in it, and a licence is granted to him for that purpose, in that case the article must be considered as *farmed out to the holder of that licence, for the term limited, at a certain price*. This transaction bears every characteristic mark of a contract entered into by engaging parties; and without the consent of those parties, no interposition of power can dissolve a single obligation contained in it. The man who has acted under that licence, having been intitled to use it for his own benefit, to the utmost extent of his abilities, has become in every respect the proprietor of the goods manufactured by him under it, and is intitled to hold them in the same manner as he might have held the price, had they been converted into money; for when articles of agreement are implimented, the power of parties over each other is at an end: Government, on the one hand, cannot justly say, you have had too
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good a bargain, and you must give me more; neither, on the other hand, can the manufacturer say, I have paid too much, and you must give me a deduction. In a commercial country, such language would be held as ridiculous.

This whole argument applies in every point to the Scotch distillers, when, in consequence of an Act of Parliament, they received their licences for distillation, their compact with Government was peremptory, and express; sureties, along with themselves, became bound, that on their part, every article should be implemented, and their duties were paid per advance, so that the agreement by them has been punctually fulfilled. Under the sanction therefore of the licence which they held from Government, they were justly intitled to manufacture spirits to any extent, and to hold these spirits as a property upon which Government cannot justly lay any claim. They have, in consequence, manufactured a quantity of spirits, which they have on hand, as they must, to serve the purpose of the trade, always have a large stock of spirits in their possession, upon which it is now proposed to levy a heavy tax. But can it be once supposed, that in circumstances like these, our Legislature shall

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shall now come forward, and say to these men: By a fictitious bargain we have caught you in a snare; your misfortune, your want of sales, has put you within our power, and we will double upon you your calamity, by doubly taxing the goods which you have on hand; and upon your ruin will we increase the revenue of the public.

The distillers have placed a most unlimited confidence in the faith of Government, which they hope will not be converted to their ruin. It is well known, that after they had carried on their manufacture for some considerable time, they found their market in every corner occupied by the Highland smugglers; upon complaint of this, and it being represented by them, that in these circumstances they could not advance their duties, the Treasury gave them permission to warehouse spirits in security that the duties should be paid, by this means they were induced to continue their operations; but, unfortunately for them, the Highlander also continued to smuggle, and over and above the stock in hand, the quantity of their spirits continued to accumulate. The excise officers, (who declared their plan was formed a twelve-month before) in the critical moment, gave it out that a duty was to be

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be laid upon the stock in hand, and this put an entire stop to the sale of spirits, so that thus, by a refined policy, they have entwined the snare around the unsuspecting distillers; and when stocks of spirits manufactured in confidence under a licence legally obtained from Government itself, were thus accumulated upon their hands, advantage is taken of their misfortune, and it is proposed to increase their sufferings by the imposition of a very heavy additional tax. The scheme is so revolting to an honest mind, that with whomsoever it has originated, the distillers cannot think it possible the measure can ever meet with approbation from the justice of a British Parliament.

Were there a possibility of a mutual release from the bargain, and parties could be put in the situation in which they stood before the agreement commenced, though even in that case, any infringement of it would be unjust, yet the injury would not be felt so deeply; but the power of Parliament itself cannot restore them to their original situation; for they are now possessed of this stock, of which they cannot divest themselves; and it would be in vain for them to say, we have acted upon our agreement with Government, we have
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erected works, we have purchased grain, we have expended large sums in prosecuting the manufacture, and we have produced a stock of spirits, which the imposition of additional duty puts it out of our power to sell; put us therefore in our former situation; pay these expences, and take the produce to yourselves, allowing us only for our waste of time; and however hard it is, we will make no complaint; but to this proposal, Government says no. We find you in possession of a stock of spirits, and for that possession we hold you indebted to us, and nothing but payment can give you release from it; it is nothing to us whether your spirits sell or not, or from what funds you will derive your supplies, but pay you must. This is truly a plan devised for ruin; but our Legislature cannot be deceived so easily, the quick discerning eye of justice will reprobate a Resolution, which would so violently outrage every sentiment of right. Suffer this to be illustrated by an example:—

A gentleman has taken out his licence for using hair powder, and continued possessed of it for three quarters of a year: now, suppose Government should come to him, and say, we want money, and though you have paid us one guinea for your yearly licence, you must
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now pay five; the gentleman might then justly say, I cannot afford it, I did not engage to use it upon such terms; but now I will cease to use it, and avoid the tax; but in reply to this he is told, you have no choice left you, you have already used it, and on this account must pay the additional duty; then, says he, I will only pay for the quarter of the year which remains; that too is over-ruled, and he is compelled to pay for the whole of the time past, since he received his licence; it would certainly be equally just, to go to that man and demand his money, without adorning the demand with the legal name of a taxation. It is a certain maxim, that a retrospective law, from whose penalties there can be no escape, is unjust and oppressive in the extreme, and no measure of this nature, can receive the sanction of a British Parliament.

But if the necessities of the state were so extremely urgent, that property must be seized whilst the eye of him who demands it must be blind to justice or compassion, yet it would be some consolation to find that this hard necessity laid hold upon all alike; but it is impossible to avoid complaining, when others are seen in similar circumstances, and no demand is made upon them. It is a well known fact, that

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that the London distillers give over distillation in the Summer months; and it cannot be doubted but they have, at this moment, stocks of spirits on hand equal to the demand of their customers for half a year at least, and probably double of that which is now held by the Scotch distillers. The brewers also always have a large stock of their manufacture on hand, that they may be enabled to supply the market with ale and porter fit for the general consumption. A great variety of manufacturers are precisely under the same predicament, and yet upon none of those has Government made any additional demand; now, in strictest justice, the Scotch are intitled to a similar treatment; and if the principles of equal taxation were here to be departed from, the measure would be marked with characters of bold injustice, and the precedent would be dangerous indeed, for the rights of Scotland are guarded to them by the solemn treaty of the Union of the two Kingdoms, which expressly provides against all inequality of taxation; and it must be no slight reason which must permit the violation of a convention so solemn and important.

The second resolution is not less inimical to justice, no less in violation of positive contract,

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tract, no less disrespectful to the Union treaty, whilst in every point of view it is subversive of the interests of the revenue which it professes to increase, and of the prosperity of the distilleries in Scotland. The resolution is this; "That an additional duty of one shilling and six pence shall be paid upon all spirits manufactured from grain in Scotland."

In order to understand this, it is necessary to notice, that for a long time the revenue arising from distillation in Scotland, was so insignificant, as scarcely to engage the public attention: but when it came to be more an object to Government, in order to secure the collection of it against fraud, a variety of regulations were instituted, from time to time, and the execution of these was committed to the officers of Excise; but whether it arose from their incapacity, want of attention, or corruption, cannot properly be decided upon, but it is in evidence before the Committee, that under their survey the sixth part of the revenue was not collected, that the revenue gradually decreased, until upon the last year of the existence of survey, the spirits consumed in Scotland, though the quantity was very great, did not afford one shilling to Government; and under the immediate survey

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vey of the Excise, considerable quantities were manufactured without paying duty in Scotland, which were sent to the English market. It might have been expected, that during this period of extensive fraud, the distillers would have prospered; but the reverse of this is so true, that under that system an universal bankruptcy took place. It is not our business to say where the profits went, but one thing we must observe, that the Excise officers are anxious for the restoration of the system of survey, and we are still told in their evidence, that survey is *congenial to their ideas*; by which nothing can be understood, but that they were not interested to prevent, but to punish frauds, and the consequence was, that fines and forfeitures furnished a consolation to them for their labours. This representation of the matter is softened as much as possible in favour of the officers of the Excise, who are represented, during the period of survey, in a very different point of view, in some part of the evidence. But one thing is very extraordinary, that in the year 1786, an unanimous application was made by the Scotch distillers, that they might be put upon such a system of Excise laws, as might insure the revenue to Government in its full extent, without the possibility of fraud, whilst at the same time

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time the trade might be delivered from the intolerable oppression of survey. It was just about this time also, that the brewers in Edinburgh, equally oppressed, anxiously wished for a system to relieve them from the ruin of a smuggling trade, carried on under the immediate survey of the Edinburgh Excise; a history of which was published in Edinburgh, in the year 1791, which, though it was never answered, we dare not even take extracts from, lest we should be prosecuted as guilty of the most pointed calumny. In consequence of the most earnest application of the Scotch distillers, after much discussion, by the consent and approbation of all parties, a plan was adopted for Scotland, in the place of survey, which has been denominated the Licence Act, by which the duty upon distillation was imposed upon the gallon of the content of the stills employed in the manufacture, which, from time to time, has been gradually raised, as the skill of the distiller improved, and the decrease of smuggling increased the consumption of the country from the legal distiller; so that the revenue upon the Scotch distilleries, which, during the survey for which the Excise contend, did not defray the expence of collecting, has amounted to the sum of nearly 300,000*l.* which was paid into the treasury without

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without trouble or expence; whilst, under that system, the manufacture flourished, and they were still found disposed to meet the reasonable demands of Government.—It must be here carefully attended to, that this system, which in every point of view has been found so conducive to general advantage, was the fruit of much negotiation, and was at last adjusted by the consent of both the Scotch and English distillers. It was thought by many, that Government at that time entered into a very improper discussion, when it formed ideas of equalizing the circumstances of the different countries, and making arrangements which should distinguish them from each other, and that even the consent of parties was not sufficient to authorize the transaction, because the distillers, both of England and Scotland, had no commission or right to represent their respective countries; but certain it is, that the regulations which were then framed, as some thought, contrary to the express stipulations of the treaty of Union, were only authorized by this consent. The English distillers, to this day, are satisfied with the arrangement; and the Scotch were more than satisfied, they rejoiced in it; and discontent upon the subject, has been found no where but amongst the officers of Excise, to whose interests the peace and good

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order of the licence system is not congenial; for under it, no seizures, no fines, no forfeitures, can take place; and for want of these emoluments they are not satisfied, though they were obliged to confess that this system was productive of the largest and most steady revenue, and that it would always be collected at the least expence; though they were sensible that one additional officer was not necessary under the licence system; whereas, 40,000*l.* sterling will not defray the expence of the system of survey, which they have recommended. They pretend to be anxious to equalize the duties amongst the distillers themselves, whilst the distillers express no anxiety upon the subject, but to be kept free from survey, which would introduce a smuggling system of fraud, in which the knave must always get the better of the honest man.

Upon this candid representation of the matter, the Scotch distillers think themselves intitled to remonstrate, not against the duty which by the resolution of the Committee is proposed to be laid upon them, but upon the introduction of a new system of survey, which they are persuaded will be found more oppressive than the former, but which they apprehend can in no shape be imposed upon them without
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having first obtained the consent of the parties concerned: yea, they think themselves intitled to plead, that the licence system, upon which their prosperity has been formed, cannot be annulled, but by restoring to them, in their full effect, privileges secured to them by the constitutional articles of the Union which required “that all parts of the united kingdom
“shall have the same allowances, encourage-
“ments, and drawbacks, and be under the
“same prohibitions, restrictions, and regula-
“tions of trade; and that the kingdom of
“Great Britain shall be represented by one
“parliament, and that all parts of the united
“kingdom be for ever liable to the same
“excise upon all excisable liquors.” Whether the consent of parties is sufficient to set aside such express and strong stipulations, may be difficult to determine, but nothing can be more obvious, than that without the consent of parties, the smallest deviation from them cannot be admitted; and upon this foundation we are intitled to say, that the regulation, introductory of survey, cannot be admitted to pass into an act to subsist, no, not for an hour; and if we are to be put under a survey, it must be the survey under which the English distilleries are at present placed; and the whole

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British market must be open to receive our goods.

I have only to observe farther, that the resolution imposing duty upon unmalted grain, comes directly under the former description, and it is in evidence before the Committee, that the English distillers use a great proportion of unmalted grain in their distilleries, and the present resolution of parliament has expressed no intention of exacting from them a similar duty: this is indeed a measure too little covered; if Scotland is reduced to this, Scotchmen may lay aside the name of Britons, for here they must be sensible, the treaty by which they acquired that name is completely set aside; the article under consideration is to be found in every corner of the British isles; it is found as described in much larger quantities in England than in Scotland, and the utmost ingenuity cannot devise a reason, why in this instance Scotland should be singled out for partial taxation: it is hoped government will re-consider this matter; the cold climate of Scotland, and the lateness and variableness of the seasons, occasions such an uncertainty in the harvest, that even in the best years, a large proportion of barley is of too inferior a quality for malting, but in many seasons,

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two-thirds of the general crop is stained and unfit for that purpose; and the House may rest assured, that if this resolution passes, not one ounce weight of it will ever be used by the distillers, who if ever they shall use unmalted grain in their process, will be obliged by the tax, which makes no distinction of quality, to have recourse to the best that Norfolk shall produce. The Scotch farmers are a respectable body of men, and have manifested a bold decided character of loyalty, in opposition to every domestic and foreign enemy. Yet were they much alarmed, when they apprehended that Government intended to put a stop to, or discourage the Scotch distilleries, they met in great bodies upon the occasion, and voted resolutions in their support; but how will they now feel themselves affected, when they will see the Scotch distillers driven from their market, and a full third of the production of their farms lying rotting upon their hands. The times are troublesome, it is hoped Government will re-consider the matter of this resolution, which will not fail, if carried into a law, to excite an universal indignation throughout all Scotland.

FINIS.

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