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D E F E N C E

O F T H E

PERTSHIRE RESOLUTIONS.

A LETTER has been lately published, addressed to the Framers of the Perthshire Resolutions, relative to the Distillery, the writer of which, in a manner highly unbecoming from a nameless individual to the gentlemen of a great county, accuses them of having acted with * violence and precipitation—† in defiance of all law and government—‡ of founding the trumpet of sedition—§ of suffering themselves to be inflamed by imaginary wrongs, and || terrified with chimerical phantoms

* P. 21. † P. 4. ‡ P. 21. § P. 3. || P. 17.

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phantoms of dangers that can never exist—of * talking without any sober intelligent meaning, and † without a due regard to truth.

These are heavy charges; and, left passing them over without any answer should be deemed an acquiescence under them, I have thought it proper to examine upon what grounds they are made. I am not perfectly clear, however, that I should not have done better to have made no answer at all, and to have left the letter-writer to that contempt which his petulance deserves. The evidence of obvious truths is ever weakened by reasoning on them; and, after having exposed all the cavils and misrepresentations of this writer, I shall not probably leave the minds of my readers so strongly impressed by those great truths I mean to establish, as they would be, from having them simply proposed as in the Perthshire Resolutions.

In order to render what I have to say more clear, I shall follow the order of the Resolutions,

* P. 16.

† P. 9.

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Resolutions*, and endeavour to obviate such objections as are made to any of them.

The *first* Resolution, it might have been expected, would have passed without animadversion. The letter-writer observes, however †, that ‘if, by the security of property, we mean that we will part with no share that belongs to us, upon any public account whatever, he denies that such an absolute security subsists in Great Britain, and far less in any other nation.’ What reason the author had for supposing that we could have such a meaning, or to what purpose this remark was made, he has not thought proper to inform his readers. I shall therefore take no farther notice of it than just to observe, that it shows a strong inclination to cavil at truths which he cannot controvert.

To the *second* and *third* Resolutions I do not observe that any objections are made.

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* For the convenience of more easy reference, the Resolutions are hereto annexed.

† P. 15.

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The *fourth* Resolution is that against which most of the letter-writer's arguments are pointed; but, if it be mere *verbiage*, as he is pleased to assert *, and as we ourselves, he says, must upon reflection be sensible that it is, it hardly deserved to have much argument employed in confuting it.

To talk slightly of any argument is an easy method of answering it, and may be very useful where a better cannot readily be found. If, by calling this resolution *verbiage*, the author means to deny that any burthensome office is imposed, the position is evidently false, and is contradicted by himself †, where he admits, that assistance is required at our hands for protecting Government, and saving the revenue from being defrauded. What is this but imposing an office upon us without our consent? The Resolution says, that the statute imposes this office without giving authority to act in it with effect. In answer to this, the letter-writer tells us, ‡ that we have all the power and jurisdiction

* P. 16.

† P. 17.

‡ P. 16.

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tion that country gentlemen in any quarter of Britain possess. This would be perfectly satisfactory, if no more were required of us than of the country gentlemen in any other quarter of Britain; but, when we are made liable to heavy penalties for offences committed in the parishes where we have property, surely we had reason to expect, that the means of preventing these offences would have been put into our hands. But this, we are repeatedly told * by the letter-writer, would have been entirely needless, since the gentlemen in the Highlands have such an absolute controul over their tenants, that it is in their power totally to suppress all illegal distilling; and † he knows no other human power that, without their assistance, can effect it.

That the proprietors in the Highlands have great influence over their tenants, is very certain; and I believe it to be true, that, when a scarcity was apprehended, most of the small distilleries in this county were stopped: But it does by no means follow, that the gentlemen can act with the

* P. 9. 18. 21.

† P. 15.

(8)

the same effect in preventing frauds against the revenue. The lower class of people feel the necessity, in the one instance, very differently from what they can be expected to do in the other. They will submit readily, under the dread of impending famine, to measures which, in the other case, they would take every method of evading. The nature of the country, too, affords so many opportunities of concealment, that the inhabitants must be expected, from time to time, to avail themselves of them. This is no more than what is done in all other parts of the country. We were lately informed, by the news-papers, that several stills had been detected near Glasgow at the bottom of a coal-pit; and can it be supposed possible to prevent the Highlanders from sometimes turning to the same use, shealings, which are often at the distance of ten or fifteen miles from any habitation?

These considerations would render it impracticable for proprietors in the Highlands to put such a total stop to illegal distilling as would secure them from being liable

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liable to the penalties imposed by this act, even if they were to make such exertions as can only be expected at a particular time, when some pressing occasion calls for their attention; but as these cannot be uniformly continued, without relinquishing every other concern, to impose them as a constant duty must be an intolerable grievance.

It can by no means, therefore, be admitted, that the heritors in the Highlands have it in their power to suppress the practice of illegal distilling so totally and so easily as this author is pleased to suppose: But, even if the case were as he states, this at most could only justify the making a proprietor answerable for his own tenants, and would be no vindication of the law, which makes him equally liable for the tenants of other heritors, over whom he certainly has not the smallest controul.

No amendment in this respect, however, would reconcile us to this law. We object to the principle upon which it proceeds, of subjecting one man to penalties for the offences of another, as oppressive

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and tyrannical, and as totally inconsistent with every idea of liberty. The letter-writer, indeed, says *, That, where an extraordinary evil exists, the supreme power of every country is entitled to remove it by any practicable means, though it should be at the risk of encroaching on the ordinary rules of private right. This is a most dangerous maxim, and, if adopted without limitation, would furnish a pretext for every species of oppression. In one sense, indeed, it is undoubtedly true. *Salus populi suprema lex.* Where the safety of the whole is at stake, private considerations must give way: But, in this case, the evil complained of does not in the least endanger the safety of the state; nor can any necessity justify the inflicting severe penalties on one person for the offence of another. It has been said, indeed, that such a system of laws is established in Japan, and that whole districts are there exterminated for the crime of an individual: But the author will hardly choose to avail himself of this precedent.

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* P. 18.

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But this law, says the author *, proceeds on the principle of substantiating the protection which individuals have a right to from society; and, in return for this, the same expectation is given, of indemnity and support in similar cases. It appears to me that he could not have made a more unfortunate observation; for, by this law, no right of any individual is substantiated; nor is there any expectation of indemnity and support given to the heritors in the Highlands in cases similar to those in which such heavy penalties are inflicted on them.

The peculiar hardship of this case is, that the landholders of the Highlands are by this law bound to exert themselves to the utmost in preventing frauds against the revenue, while the landholders in every other part of the kingdom are not obliged to give themselves the smallest concern about the matter. In order to make them the return which they would have a right to expect, if this law were to be carried into execution, it would be necessary that all the other

* P. 19.

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ther landholders in Great Britain should become answerable for those frauds, which are most common in the particular parts of the country where their property lies. The smuggling on the coast of Suffex is more detrimental to the revenue, in one year, than all the frauds committed in the Highlands of Scotland can be in a century. Suppose the proprietors there should be subjected to heavy penalties, whenever any prohibited goods are landed on the coast, How would this be relished? Yet this regulation would be infinitely more reasonable than the present, in so far as the coast of Suffex being more closely inhabited than the Highlands of Scotland, it would be much more practicable for each person to watch the conduct of his neighbour in the former than the latter: Or, without attending to particular districts, suppose the regulations which this author seems to think so just and reasonable, were to be adopted with regard to all the other branches of the revenue, and their operations extended over the whole kingdom, let any minister dare to try the experiment, and

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and I will venture to engage that the gentlemen of Perthshire will be as ready to submit to them, as those in any other county.

I proceed now to that part of the argument upon which the author seems to lay the greatest stress, the instances which he gives of statutes enacted of a similar nature to the present.

The first that he mentions * are the Scots acts relative to the Highlands and Borders, and an English act, 13th Edward I. These laws, however, he himself allows †, relate to a state of society that terminated with the last century. As this is the case, and as the author does not certainly mean to propose that each Highland county should send ‡ hostages to the commissioners of excise, to be hanged, if any illegal stills are discovered in the county, it is difficult to guess for what purposes these instances are adduced, unless it be to swell the number of his authorities in the eyes of superficial readers, or to perplex a case which he was conscious could not stand the

* P. 12.

† Ibid.

‡ Stat. 1587. § 97.

the test of fair reasoning. It deserves to be remarked, however, that, notwithstanding the unsettled state of the country at the time when these laws were made, and the violent measures which, in consequence thereof, the legislature was in some cases obliged to pursue, there is not any one of these statutes that subjects the landlord to a penalty for the act of his tenant, except where there is some protection afforded to him; and that, where the criminal was produced to underlie the law, nothing further was required of the heritor in whose ground he lived.

The author goes on to alledge *, that, 'in England, it is well known, that, at this day, the hundred is liable when any man is robbed within it;' and 'that an action of the same nature is given by 9th Geo. I. cap. 22. to all who have suffered by the killing or maiming of cattle,' &c. In the first of these cases, the law is not fairly stated; for the hundred is not liable to make reparation for every robbery committed in it, but only for those which are committed

* P. 13.

committed in the day-time on the highway, and where one of the offenders is not apprehended within forty days. The other is the famous Black Act, made to repress the violence of licentious persons, who went about armed and disguised, committing terrible outrages. The damages to be recovered by this act are limited to L. 200; and no action lies, if any of the offenders be apprehended in six months after the offence is committed. The next statute taken notice of * is the 11th Geo. I. cap. 26. by which heritors of counties in Scotland are liable for the charges of apprehending, sustaining, and prosecuting criminals, and are appointed to assess themselves for that purpose. What connection this statute has with the matter in question, I own I have not penetration enough to discover. Nor can I see any reason why the author might not as well have quoted the act for laying on the land-tax, or the assessment for repairing high-ways and bridges. The purposes for which the money is levied are necessary articles of the public

* P. 13.

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public expence ; and it is of no consequence whether the money for answering them be raised on each particular county, or on the nation at large.

The next statutes are *, 1st Geo. I. cap. 48. and 6th Geo. I. cap. 16. by which the inhabitants of parishes, towns, &c. are made liable for the damage sustained by the destroying of trees, unless the party offending shall be apprehended and convicted by such parish, town, &c. within six months. The last statute mentioned by the author of the letter, is † 1st Geo. I. cap. 5. commonly called the Riot Act, which subjects the inhabitants of hundreds, cities, towns, and counties, to make good the damages sustained by demolishing houses, and other acts of violence, therein mentioned.

These are all the precedents adduced in support of this law, and not one of them is in any degree applicable thereto. For, in the first place, the principle is totally different, the object of all these laws being to make reparation to certain individuals of the

* P. 13.

† P. 14.

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the damages they have sustained ; and in none of them is there the least appearance of any intention to inflict a penalty on the district, or to make it answerable for the fines laid on the persons offending. But, in the present law, the whole sum to be levied is merely penal, the parishes being bound to make good fines, which are excessive in themselves, and totally disproportioned to the offence. Many cases may occur, in which an individual has a right to a reparation of damages from the public ; and it may often be more adviseable to levy the sums requisite for this purpose upon the district where the damage happens, than to pay them from the general funds of the nation. This by no means implies any degree of punishment on that district : For this regulation might be perfectly reasonable, even in cases where the damage is purely accidental, since, in that case, it would just amount to a mutual insurance against that species of damage. No number of such instances, therefore, can give the least appearance of sanction to a measure so violent as that of imposing penalties

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ties on a whole district for the offence of an individual.

But, even supposing that these laws were intended to have a penal operation, they would not be applicable to the present case; for they are all calculated to secure individuals in their persons and properties, and principally from offences of the most atrocious nature, that strike at the very foundation of society. If, for such purposes as these, some encroachments on the ordinary rules of private right were to be permitted, would it follow from thence that the same measures might be taken for gaining a little additional revenue to the exchequer? or, that offences against the laws of excise, which have ever been deemed odious, and adverse to liberty, should be guarded against, with the same anxiety, as those crimes which endanger the safety of the state?

The same thing takes place also in all these statutes, excepting the riot act, which was before observed, and in the laws relative to the Highlands and Borders, that no action lies where the offender is apprehended and brought

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brought to justice within a limited time; whereas, by the present law, no heritor who detects an offender can bring him to justice, without rendering himself liable for a share of the penalty.

I shall only remark one other difference which takes place between the present law and these statutes which are adduced in its support. All these lay the burthen upon the inhabitants of the district; whereas this law lays it upon the heritors. This difference is material; for, if any man is to be made answerable for the conduct of his neighbour, there can be no reason for exempting those who have the best means of watching what is going on, and laying the whole burthen on those who, from their situation, must necessarily be much longer of knowing when any offence is committed. By this means also, the absurdity of including infants and absent persons is avoided. The letter-writer, indeed, asks, with some degree of triumph, What becomes of persons under this description, when an assessment is laid on in consequence of these statutes? I answer readily, that no
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part of it can fall upon them, since it is evident that absent persons, even though they should possess property in the district, are not inhabitants nor infants, if, as I apprehend, the term '*inhabitant*' be in this case equivalent to that of '*householder*.'

I have now, I hope, fully established, that this law is unjust and oppressive in its principle, and that it is totally without example, even in the most turbulent times. At least, if there be, as the author alleges *, any maxims of sound policy, or any legal precedents in cases of less necessity, by which it can be justified and supported, they remain yet to be produced.

I proceed now to the *fifth* Resolution, which the letter-writer is pleased to hold in great contempt, and assures us †, that the fears we entertain of being subjected to collusive prosecutions are totally groundless, as the prosecution is before own tribunal, and as there is no instance of any such thing having ever taken place. If, by our own tribunals, he means the courts of the justices of peace, I deny that any

* P. 38

† P. 17.

(21)

prosecution can be brought before them upon this act; at least, there is not one word in it giving them any such jurisdiction; and it contains an express clause, (sect. 42.) which declares, 'That all penalties imposed by this act, and not herein otherwise directed, shall be sued for in the court of exchequer in Scotland, if the matter shall arise in that part of the united kingdom.' This, however, is not material, except in so far as it increases the expence of the prosecution. In every other respect, the gentleman could not wish for any other tribunal. It only serves to shew, that the author has not bestowed much time in considering the law which he undertakes to defend. '*But there is no instance of any such prosecution.*' How should there be? It is not four months since the law passed, and no attempt has yet been made to carry it into execution. I have already shown, that this law is singular in its nature, so that, from what has happened in other cases, there is no reasoning to what may happen in this. No other law ever gave the same temptation to collusive prosecutions. It never

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never could be the interest of any man, previous to the passing this law, to encourage a prosecution against himself. But if this law were to take effect, the case would be quite otherwise. For, let us suppose that two men of desperate fortunes, one of whom was prepared to leave the country, had a mind to get L. 50 from the heritors of a particular parish. In order to accomplish this, nothing more is necessary than for him who is about to depart, to set up a Still in the parish, of which the other may immediately give information. What means have the heritors to prevent their being made liable for the penalty? The conviction must pass of course; nor could the heritors, who are no parties to the suit, have any opportunity of being heard to offer proof of the collusion, if that proof, which, from its nature, must be exceedingly difficult, were in their power. And, after conviction, when the deficiency of the penalty comes to be demanded of them, I do not see that they can have any remedy which would not involve them in greater expence than paying the fine.

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The author says further on this head *, that the revenue boards have a power to mitigate penalties, even when they are justly incurred. But this observation, I apprehend, is totally void of foundation in the present case; for no such power is given them by the law. Nay, every thing of this kind seems to have been anxiously guarded against by appropriating the whole of the penalty to the poor of the parish and to the informer. Yet this circumstance is mentioned † as a great condescension in favour of the highlands.

With regard to the *sixth* Resolution, the letter writer asserts ‡, that no commercial advantages are meant to be given to us, none of our constitutional rights to be taken away. What was meant, it is not easy to ascertain; what has been done, we know with certainty. I am willing to allow, that ministers, in framing this bill, or in agreeing to it when proposed to them, acted without due consideration, and did not intend any injury to the constitution. But, I flatter myself, that I have already proved,

* P. 18.

† P. 38.

‡ P. 20.

proved, beyond contradiction, that the subsistence of this law is utterly incompatible with the liberty of the subject, and the safety of the constitution. Whether the advantages given to the Highlands, which the author is at so much pains to magnify, be of a *commercial* nature, it is of little consequence to inquire. The objection at most goes no farther than to the propriety of an expression; the meaning of which, I am convinced, did not appear doubtful to any reader. The author expressly advises us *, to consider, whether the savings of duty, which may be made by means of this act, do not outweigh the danger of paying a few pounds once or twice in our lives to the poor of our own districts; and the principal scope of his performance is to show, that the advantages conferred by this law are much greater than the hardships imposed by it; and, as it evidently appeared that this was also the meaning of the law, the gentlemen of Perthshire thought it proper to declare, that no advantages would induce them to consent

* P. 39.

sent to any infringement of their constitutional rights.

The remaining part of this Resolution, which relates to the restrictions with which the exemption granted to the Highlands is hampered, will fall to be considered afterwards.

In our *seventh* Resolution, we are charged, not obscurely †, with deviating from truth; and, in order to give this charge some appearance of foundation, our Resolution is misquoted, though, even as it stands in the Letter, the unfairness of the charge is evident. We have said that, in '*our station as magistrates*, we have given every support to the officers of excise,' &c. In quoting this, the author leaves out the material words, *in our station as magistrates*, and affects to understand us, as if we had meant to say, that we had made great exertions to put a stop to the practice of illegal distilling. Had we foreseen this objection, the expression could not have been more strictly guarded against any misapprehension of this sort. To support the

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† P. 9.

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officers of excise in our station as magistrates, is a very different thing from taking the whole drudgery of their business upon ourselves. The former, we are sensible, is our duty; the latter we can by no means think of submitting to, and certainly did not mean to say that we had ever undertaken it. Had the letter writer meant to controvert what we have *really* said, it would have been incumbent upon him to have produced instances, where country gentlemen, acting as justices of peace, had withheld their support from the officers of excise. Nor would there have been any reason for expressing his wonder that the united endeavours of so many noblemen and gentlemen should have had so little effect upon their own tenants and dependents, since it never was asserted that any such endeavours were used.

It is no doubt a very desirable object to engage the proprietors in the Highlands to exert that influence which they actually possess in favour of the revenue. But by what means is this to be obtained? Will gentlemen submit to be driven, like slaves,

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with whips and scorpions? Would it not be better policy to endeavour to induce them to this, by good treatment, and reasonable advantages? That this method would be attended with the desired effect, there is the greatest reason to believe. So long as it was possible for the people of the Highlands to distill in a legal manner, the county of Perth were at great pains to prevent all illicit practices; and various resolutions of the county to that purpose might be produced. But, when laws were made, which amounted to a total prohibition, and left no option to the country, but either to relinquish the business of distilling altogether, or to carry it on in a clandestine manner, it is not to be wondered at, if the zeal of the gentlemen in this respect was considerably abated. The officers of excise, also, who found it much more for their interest to exact fines, of which they drew a considerable share, than duties which they were obliged to account for, were far from wishing to put a total stop to a practice, from which they derived such advantages; so that the maxim was verified in this case,

‘ That

*' That the too great severity of the law
' must always prove an obstacle to its exe-
' cution.'*

Ever since the law was enacted, which prohibits the use of all Stills betwixt two gallons and four hundred, the gentlemen of the Highland counties have been using their endeavours to obtain some alteration of the law, such as would render it applicable to the peculiar situation of that part of the kingdom. This, I suppose, is what the author refers to †, when he talks of the law being carried through on our own earnest and repeated supplications. For, if he means to say that the law, as it stands, was solicited, I can give credit to the assertion. To grant them any relief in this respect, the letter writer affects to consider as a very dangerous measure, tending to produce a variety of bad consequences. ' Private exemptions from public laws,' says he ‡, ' are dangerous engines of state, ' and never to be dealt out but with the ' greatest reserve.' What became of this reserve, when, for the accommodation of a
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† P. 9. 38.

‡ P. 9.

single individual, the very statute of which we complain granted to Mr George Bishop of Maidstone an exemption from the general law. Neither is this exemption attended by any penalties of unusual severity. The inhabitants of Maidstone are not made answerable for any penalties he may incur. Far less are the advantages they may derive from the establishment of this manufacture made a pretext for subjecting them to severe fines on account of any other frauds that may be detected there. I have no doubt that the encouragement granted to Mr Bishop is perfectly reasonable ; but ought his interest to have greater weight with the legislature than the necessities of seventeen counties in Scotland ?

When the treaty of Union was concluded between England and Scotland, it was foreseen that many cases might occur, in which laws that were proper for England could not, without great injustice, be extended to Scotland ; and a clause was therefore inserted, in the 14th article of that treaty, declaring, that no further ex-
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emption was insisted upon for any part of the united kingdom, from the conviction that the parliament of Great Britain, in any future burthens which it might be necessary to lay on, would have a due regard to the circumstances and abilities of every part of the united kingdom. That the matter in question is one of the cases which calls for the performance of this article, has not, I think, been denied.

But, if we will not accept of the law as it now stands, the letter-writer tells us *, that we can expect no redress, and that administration will punish our ingratitude in objecting to a measure that was calculated for our advantage, by turning a deaf ear to our most reasonable requests. Upon what grounds he dares to threaten us in this manner, I am not anxious to inquire. It most probably arises from his own vanity and presumption; for it will not easily be believed, that he is authorised to hold this language by any of his Majesty's servants. They, it is to be presumed, have sufficient liberality of sentiment to

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* P. 24. 37. 38.

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acknowledge the error that has been committed, and will be ready to concur in rectifying it; or, should they be so imprudent as to persist in their mistake, and to justify the provisions of this statute; yet surely it is not to be supposed that parliament will be altogether guided by their humour and caprice, and that the justice and wisdom of that great assembly will not induce them to grant the proper redress in so flagrant a case. By this very act it is declared, that, 'in the Highlands of Scotland, the laws formerly made with regard to the distillery of corn spirits have not produced the intended effect, either to the public revenue, or to the people; and that the regulations and provisions by the present statute enacted, would be equally defective in their application to, or execution in the said districts, as the laws already subsisting have hitherto proved.' Can parliament, in consistency with this declaration, refuse to take proper measures for remedying the evils which are there so strongly set forth? For my own share, I cannot entertain the smallest doubt

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doubt that this grievance needs only to be stated in parliament, in order to be redressed, and that the injustice and arbitrary tendency of the law in question are so manifest, that it never would have passed in a British House of Commons, had they not been prevented from attending to it by the multiplicity of important business in which they were engaged.

If it were true that this exemption could not be granted without having recourse to violent and unconstitutional methods, in order to guard it from abuse, this would have been a good reason for withholding it altogether; but, in fact, the penal clauses, of which we complain, are totally unconnected with the exemption which is granted. They are not calculated to prevent the abuses of the licensed Stills, but to prevent frauds of a quite different nature; and, if the granting an indulgence in one case were a good reason for imposing a hardship in another, these provisions might as well have been coupled to the law which permits the wearing of the Highland dress as to the present. And that these two parts
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of the law have no necessary connection, the author of the letter plainly saw, when he proposed * to inflict the penalties without granting the exemption.

If the exemption asked for the Highlands had really a tendency to injure the revenue, this also would have been a good reason for refusing to grant it; but even the Author of the Letter has not pretended to point out in what respect it can have any such operation. He talks much, indeed, in general, of the danger of granting such exemptions, and instances † the bad consequences which have arisen from the exemption granted to the lands of Ferintosh. But this instance, like most others which he adduces, has no sort of connection with the matter in question. It would have been as much to the purpose to have mentioned the grant of the Isle of Man to the family of Derby. The circumstance which sets the difference between the two cases in the strongest light, is taken notice of in the Letter. When it was found that the grant of the duties of Ferintosh was of considerable

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* Page 38.

† Page 7.—11.

able prejudice to the revenue, it became necessary to purchase that privilege from the Proprietor, as, without his consent, government had it not in their power to introduce any new restrictions on his right, still less to take it away altogether. But, if the privilege of using small Stills were given to the Highland parts of the country, there would be nothing to prevent the Legislature from putting it under such farther restrictions and regulations as should be found necessary. Nay, it might even be taken away altogether, if it appeared, from experience, to be incompatible with the general good of the community.

But the licensing small Stills is so far from being prejudicial to the revenue, that it is the only effectual measure which can be adopted for putting an end to those frauds which are daily practised against it, both by illegal distilling and smuggling. It is a well known fact, that none of the spirits made at the great distilleries have ever found their way into the Highlands. They are so inferior in quality to those made in small Stills, that it would be very difficult

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to reconcile the Highlanders to the use of them; and, as whisky has, for some time, been scarce and dear, from the prohibitions of the laws, and the high price of grain, they have in many places betaken themselves to foreign spirits, which are smuggled upon the coast; infomuch that, in many places in the heart of the Highlands, it is easier to get rum, brandy, or geneva, than whisky. It appears, therefore, that, if it were possible to put a total stop to all distilling in the Highlands, the only effect would be, to increase the consumption of smuggled spirits; and that, whatever revenue is collected from the small Stills, ought to be considered as clear gain to the revenue.

Nor is this all; for the distillers who take out licenses would have so strong an interest in preventing others from carrying on the same business with superior advantages, that there can be no doubt of their being very active in detecting all those who may attempt to distill without licenses in their neighbourhood. These men, from their situation and habits of life, will

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not fail to get intelligence when any thing of that sort is going on, and their own interest is a sufficient security that they will not conceal it.

Much is said in the Letter of the favours done to the Highlands, in permitting them to distill at a duty so much lower than what is paid by the entered distiller: But this difference is not so great as he states; for he supposes the great distiller to pay the full duty on all his spirits, whereas it is well known, that the business could not be carried on, if this were the case. It is also well known, that great Stills can pay a higher duty than small ones. But no person, who wishes for a permanent advantage to the inhabitants of the Highlands, would think of asking that they should be permitted to distil on such terms as would enable them to undersell the entered distilleries. Some little indulgence they might be entitled to expect, such as would enable them to sell their spirits rather cheaper at home than can be done by the great distiller, but not sufficient to pay for the expence of carriage, if they

they should attempt to interfere with him by bringing them into the low country: And this for two reasons; *first*, Because the duty, being paid by composition, is collected without any expence to Government; and, *secondly*, Because the whole grain used by the small Stills must be malted, and pays a duty in that shape*; whereas a very great proportion of that used in the great distilleries is unmalted. If, therefore, it should appear, upon trial, that the composition established by this law is so small as to enable the Highland distillers to interfere with the trade of the entered distilleries, it must no doubt be raised until matters be brought to a balance.

Neither

* It is alledged in the letter, (p. 29. 36.) that no duty is paid for any malt used in the Highlands; but in this I apprehend the author is mistaken. Few indeed, if any, of the distillers, have entered barns, because their having them would subject the officers of excise, with whom they must keep on good terms, to additional trouble; and, therefore, they in general buy the malt they distill. Some small quantities are made by stealth; but, in this case, as much is lost in the quality of the malt as is gained by evading the duty, and the licensed distillers would all enter their barns.

Neither is this the only means which the law has provided, for preventing any inconvenience of this sort; for it is in the power of the Commissioners of Excise to limit the number of licensed Stills, in such a manner as may prevent the possibility of their interfering in any considerable degree with the great distilleries.

When the officers of the crown had in their own hands such effectual means for remedying any evils which might be apprehended from licensing small Stills, it seems totally unnecessary to restrain the licensed distiller from buying grain, or selling his spirits, except in a particular district; to declare the spirits, if carried out of the district, to be forfeited, *ipso facto*; and to allow the Commissioners of Excise to withdraw the licenses at any time, without any occasion. It is true, these provisions are of such a nature as might easily be evaded; and many people, trusting to this, would be ready to take out licenses. But it is always bad policy to enact laws which cannot be carried into full execution, and only exposes the subject to be harassed

harassed and oppressed by vexatious prosecutions. To these restrictions, therefore, the Gentlemen of Perthshire objected in their sixth Resolution, judging, that, if strictly enforced, they would render the indulgence granted by the act entirely nugatory; and that the purposes for which they appear to have been intended would be much better, and more effectually answered, by a proper regulation of the rate of composition, and of the number of licensed Stills. If these observations be well founded, it necessarily follows, that it is for the interest of the revenue that these parts of this law which have given such offence should be immediately repealed, the unnecessary restrictions taken off, and a proper indulgence granted to the Highlands, in a liberal and effectual manner.

To the remaining Resolutions, I do not observe that any particular objection is made, but against the general tenour of them. The letter writer brings a heavy accusation of violence, hostility to government, faction and sedition; and concludes, by calling them a libel against the legislature.

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ture. To general charges like these, it is difficult to give a precise answer. That, in framing these Resolutions, no factious opposition to government was intended, I can assert with the utmost confidence. When any set of men apprehend that they have sustained a considerable injury, they will not be disposed to talk of it with perfect coolness; but, on the strictest review, I cannot perceive that we have any where expressed ourselves with unbecoming warmth. That the gentlemen of Perthshire entertained a just sense of the present law, when they considered it as oppressive to a great part of that county, and subversive of the constitution, I have already endeavoured to show; and it would be no easy task, I suspect, to express that sense in terms which this author would reckon decent and proper. It was the intention of the county to state the bad tendency of this act in a strong and pointed manner, and in such language as might call the attention of the other counties to this interesting object. As citizens of a free state, this they surely had a right to do, without giving
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any person a title to accuse them of sounding the trumpet of sedition; and they should have thought themselves wanting to their duty had they acted otherwise. To view the matter merely as it affects the Highlands, is taking it up on much too narrow a ground. It is to be considered as a great constitutional question, in which the whole nation is interested. The precedent which this law goes to establish might be made use of to authorize the most oppressive measures. On this principle, those gentlemen in this county who were nowise affected by the provisions of the act, were no less zealous in opposing it, than those who were immediately concerned. And, for this reason also, the law officers of the crown would deserve great blame for allowing such a law to pass, although the gentlemen of the Highlands had been willing to submit to it.

It is asked †, Why we said nothing when the act was depending in parliament? I wish the author had told us how long the bill had depended. If I remem-

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† P. 22.

ber right, it was so late of being introduced into the House of Commons, that it required to be very much hurried, in order to get it passed before the end of the session. This hurry, which I have good reason to believe was very uncommon, rendered it utterly impossible to make any opposition to it from this country. And to this also it must be imputed that the oppressive tendency of this law escaped the attention of our representatives in parliament.

It is also asked †, Why we did not offer to substitute something in place of this law, and suggest what alterations or amendments ought, in our opinion, to be made? The answer is obvious: We did not think ourselves entitled to dictate to Parliament. To state, in the most forcible manner, grievances which were obvious and palpable, we considered as our right and our duty. We could not go farther without getting beyond our depth. To frame a new law required various information of which we were not possessed. We wished also to confine our resolutions

† P. 22.

to those great principles which we did not believe any person would venture to controvert; and, for this reason, we took no notice of many clauses in the law which appeared to be highly exceptionable. Among these may be ranked the taking away the landlord's right of hypothec; the laying on the penalties in the same proportion as the ministers stipend; and the anxiety expressed to detain, in perpetual imprisonment, those unhappy wretches whose poverty renders them unable to pay the fine inflicted for a single offence against this law.

With that part of the letter which relates to the size of Stills, and the profits of them, I have no concern. The publications to which it refers are not authorized by this county.

Enough has been said, I hope, to obviate every objection made in the letter upon the distillery to the Perthshire resolutions. In considering this matter, I have not availed myself of the general concurrence and approbation they have met with from the other counties, however flattering

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ing and honourable to us. Confident of the strength of my argument, and sensible that it needed no adventitious support, I wished it to stand on its own legs. But some regard to modesty and good manners might have taught this writer to treat with respect what had gained so respectable a sanction. His illiberal abuse can take nothing from the force of the resolutions; and there wanted, perhaps, but such a censurer to complete the evidence in their favour. Had I not been prevented by business from perusing that performance till some time after its publication, these observations might have appeared sooner; for none of his reasoning was difficult to confute; yet it required some pains to examine all the statutes referred to, so as to be certain that their import was accurately stated; and it is but an irksome task to answer frivolous objections, however speciously dressed up; so that I shall not easily be prevailed on to continue the correspondence.

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THE Justices of Peace and Commissioners of Supply for the county of Perth met in their General Annual meeting, on the 5th of October 1784, having taken into their consideration, that part of the 46th act of the last session of Parliament, which relates to the Licencing Small Stills in the Highlands of Scotland, came to the following Resolutions:

First, That the absolute security of property is one of the principal advantages which we derive from our free constitution; and that every attempt to invade this great right ought to be watched with the most jealous attention.

Second, That it is contrary to the spirit of our happy constitution, and inconsistent with the rights and privileges to which every British subject is entitled, to have any employment imposed on him, without his own consent, which is not immediately connected with the safety of his country.

Third, That, if any occasion were to exist which should render it necessary to depart from this principle, it would be extremely unjust and impolitic not to render the exercise of the office imposed as easy as possible to the persons so called upon, by furnishing them with proper authority to act in it with vigour and effect. But, if every such power was withheld, and severe penalties were, at the same time, inflicted on these men for the offences of others, which they had no means of preventing, this would not only be a great personal hardship,

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hardship, but also a flagrant violation of the rights of property.

Fourth, That this meeting has observed, with the utmost surprize and regret, that the 46th act of the last session of parliament has, in effect, imposed on a great part of the gentlemen of this county the degrading office of acting as spies and assistants to the inferior officers of excise, without giving them any authority to prevent the abuses which that statute is meant to redress; while, at the same time, they are subjected to make good the penalties incurred by offenders, over whom they have not the smallest controul. Neither is any person exempted from bearing his share of these penalties, although he should be absent in the service of his country, or by minority, or other circumstances, incapable of acting for himself.

Fifth, That, although this law were less exceptionable in its principle, yet the consequences which must inevitably follow from subjecting our whole fortunes to the malice of the meanest informers, who would not fail to act in concert with the offenders, and share our spoils with them, are so obvious, and so ruinous, as to afford a sufficient reason for opposing this act, by every means that is consistent with the spirit of the constitution.

Sixth, That our constitutional rights and privileges are of a nature much too valuable to be bartered for any commercial advantages whatever, and that we should not, therefore, have considered that part of the above mentioned

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mentioned act, which empowers the commissioners of excise to issue licences for small stills, as any equivalent for the hardships imposed on us, even if that indulgence had been granted in the most ample manner. But, hampered as it is by many illiberal and injudicious restrictions, it appears to us to be of exceeding little value, and we cannot but look upon it as an insult to our understandings to suppose, that, for so trivial an advantage, we would submit to have our dearest rights invaded.

Seventh, That we are sensible that the suppression of illegal distilleries is a most desirable object, not only as they are prejudicial to the revenue, but also as they are ruinous to those who are concerned in them, and, on this principle, we have, hitherto, in our station as magistrates, given every support to the officers of excise in carrying into execution the former laws, though we could not but consider them as bearing hard upon the Highland part of the county, where it is impossible to use the large stills which the law require, and where the total prohibition of distilling is a very great hardship. But we conceive that there can be no difficulty in framing a law which may give a reasonable relief in that respect, and may be effectual for preventing illicit practices, without infringing the great principles of justice and liberty.

Eighthly, That to inflict punishments extremely disproportioned to the guilt of the offence, is by no means the wisest or most effectual method of enforcing any law,

law, and that there is just cause for suspecting that law to be improper in itself which requires to be guarded by penalties of unusual severity. And we cannot but think that the very unusual clauses contained in this act must have passed, either by surprise, or through want of due consideration.

Nimbley, That we should think ourselves criminal, were we to suppose for a moment that the guardians of our liberty could be so far wanting to the trust reposed in them, as not to repeal the provisions of this statute as soon as they are brought under their review. And we resolve to make the earliest application to parliament to have this grievance removed; and we appoint His Grace the Duke of Athol, the Right Honourable Earl of Breadalbane, and the Right Honourable Lord Kinnaird, Sir William Murray of Ochertyre, General Graeme of Gorthie, Mr Nairne of Dunfinnan sheriff-depute of the county, Mr Smyth of Methven, Mr Graham of Balgowan, Mr M'Donald of St Martins, and Mr Haldane of Gleneagles, or any three of them, and Mr Smyth to be convener, a committee for drawing up a proper petition to be presented to parliament for that purpose, with power to them to meet and correspond with committees of other counties, and the general committee of the counties interested at Edinburgh.

Tenthly, That we apprehend it to be clear, from the spirit of the law, that, if no licences are issued for this county, we shall not be liable to make good the penalties

ties inflicted thereby, and we do therefore recommend it to all the heritors of this county, not to apply for licences to any of their tenants, and we do resolve to make application to the commissioners of excise not to licence any small Stills within this county until the further resolution of parliament respecting this matter shall be known, authorising our Preses to write to the Board of Treasury and Commissioners of excise, in name of the county, to that effect. And if, notwithstanding this Resolution, any heritor of the county shall be prosecuted on the said act, we resolve to defray the charge of the defence at our common expence, in proportion to our valued rents.

Eleventhly, That these resolutions be printed, and copies of them transmitted to the other counties which are interested in this affair, with letters inviting them to concur with this county in whatever measures shall be judged most effectual for obtaining a repeal of such parts of the said law as we feel ourselves so materially aggrieved by, and also such exemptions as may be effectually beneficial to the Highland parts of the country.

And this meeting is adjourned to the 26th of October current, when the petition to parliament, to be prepared by the committee, will be taken into consideration.

(Signed) A T H O L, *Preses.*

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