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TWO

MEMOIRS

UPON

THE CATHOLIC QUESTION,

OCCASIONED BY

Recent Events.

BY

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1809.

THE first of these Memoirs was written previously to a knowledge of the answers returned by Earl Grey or Lord Grenville to a letter of Mr. Perceval inviting their Lordships to a co-operation in forming an administration. In consequence of what has since occurred a second has been added, containing a more ample discussion with respect to the measure which the former suggested, as likely to conciliate all party differences as far as they regard the Catholic question—the sole object of the following pages. They have been intended not for publication to the world, but for the private perusal of distinguished individuals. The shortness of the period in which they have been written, it is hoped, will be considered an apology for various inaccuracies in stile and in the impression.

Lincoln's Inn, 3d October, 1809.

MEMOIR,

&c. &c.

IN the settlement of a new administration, it is reasonable to imagine that the Catholic question, as it is generally called, will become a principal subject of consideration. The unequivocal declarations made upon former most solemn occasions by the distinguished statesmen invited to the councils of His Majesty at the present critical conjuncture of affairs—the increased difficulties and embarrassments in which the Empire is involved, requiring a strong administration which shall enjoy at the same time the confidence of the Sovereign, the sure support of Parliament, and the respect of the public; and be thereby enabled to devise measures of government with certainty and decision—the expediency of preventing the recurrence of any former misconception on the part of His Majesty's servants respecting the pleasure of the King—the propriety of sustaining a character for consistency and political integrity, at a moment when a disposition exists in the public mind to think most unfavorably of all public men, and of avoiding any thing which might be represented as a compromise of *principle* for *place*—all these considerations induce the supposition that Earl Grey and Lord Grenville, previously to undertaking office, will feel themselves bound in duty towards their Sovereign and themselves, however painful the discharge of such an obligation, to submit candidly and explicitly to His Majesty their opinions upon various points of policy, but especially on the propriety of repealing many remaining provisions of the penal code against His Majesty's Roman Catholic subjects.

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It is likely that such a course should be pursued in the first instance, not only in order that a clear understanding, so necessary to carrying on the business of the state, should be established between His Majesty and his confidential servants, but also because the new ministers, in the very outset of their career will be called upon to act according to those sentiments, which in the face of the country they have so repeatedly, so recently, and so distinctly avowed.

It has long since been voted by the Catholics of Ireland, and under circumstances requiring very particular attention, that a petition shall be presented to Parliament within the first fortnight of the approaching session; and it is not likely that subsequent events should have occasioned any disposition in that body to recede from their determination. An application therefore on the part of the Catholics to Parliament is not, as at the period of Mr. Pitt's death, a remote event—to be considered as only a possible contingency—but to be provided for in the present moment—and a resolution must at once be taken as to the conduct which government is to adopt on an occasion fast approaching, and not perhaps to be averted.

The author of this Memoir has never been a partisan, or allowed party or personal feelings ever to influence his sentiments or his conduct with respect to the Catholic question. His ideas upon the subject are well known in the circle of his friends, and have frequently been published to the world. His exertions have invariably been directed to a conciliation of differences; he has had the honor on more occasions than one, even from persons particularly opposed to the Catholic claims and from distinguished Prelates of the Protestant Church, to obtain commendation for the candor temper and loyalty, with which he has been thought to have treated the subject. In a late publication, 1807, he expressed a hope that after what had been divulged respecting the personal feelings of His Majesty,

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any pressure of these claims would have been suspended by the Catholics during the present reign; and he should have experienced great satisfaction, had that opinion prevailed among the body on a late occasion. It has however not been adopted, and the matter now stands, as already observed, almost for immediate discussion. If his views of this question have frequently varied from those in which it has by some been contemplated, he has not always been mistaken; and perhaps it may be said, without any charge of arrogance or presumption, that if former suggestions had obtained the concurrence of others, much inconvenience might possibly have been obviated.

The question is what can, and what ought to be done at present, with respect to the Catholic question? and it is proposed to consider this subject in the present Memoir.

Upon the formation of Lord Grenville and Mr. Fox's administration the author of these pages used the most assiduous exertions, conjointly at that time with a noble Earl of the Catholic persuasion, to prevent the agitation of the Catholic question; and upon that occasion he formed a plan calculated in his humble opinion, had it been adopted at the time, to have accomplished that object. It proposed to tranquillize the minds of the Catholics, and to satisfy in a considerable degree their expectations by means of the *Executive Government alone*, and without resorting to any legislative proceeding. In order to explain the nature and principle of this plan, it will be necessary to make a few general observations of a preliminary nature, and to consider the state of the law as it regards the Catholics.

THE DISABILITIES to which the Catholics are liable are to be considered as divided into TWO CLASSES:

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1. DISABILITIES imposed SOLELY and EXCLUSIVELY upon persons of this persuasion, and upon no other description of persons differing from the established church.

2. DISABILITIES imposed upon Catholics in common with all other persons not members of the establishment.

From this division there arise two questions respecting the repeal of these disabilities. These questions are perfectly distinct in their nature, and involve considerations widely different with respect both to abstract principle and political expediency; and likely to be received differently in public opinion. It may be thought one thing, both in THEORY and in EFFECT, to admit Catholics to the same privileges already enjoyed by PRESBYTERIANS and other DISSENTERS. It may be considered another thing to remove at once uno actu ALL CIVIL DISTINCTIONS ON ACCOUNT OF RELIGIOUS OPINIONS—to annul all disqualification on such an account—and to put the whole mass of persons differing from the established church, not upon the same footing among themselves, but upon a perfect equality WITH MEMBERS OF THE PROTESTANT ESTABLISHMENT. The minds of many persons may from various causes of habit, prejudice, or perhaps with reason, not be disposed to concur in a proposal calculated to accomplish the latter effect; and yet they would not hesitate to express a cordial acquiescence in the idea of equalizing the situation, in regard to civil rights, of Dissenters among themselves—to admit Catholics to the same privileges allowed to Presbyterians—Socinians—Unitarians—and others—if not perhaps to indulge them with a decided preference over such sectaries, and those who, having once belonged to it, have seceded from the establishment.

Impressed with this consideration, the writer of this Memoir has always kept in remembrance this division of the question, and he is fully persuaded that had it been sufficiently attended to, and distinctly impressed in

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other quarters, much dissention confusion and disquietude would have been prevented. All his exertions, and all his publications have been solely and carefully confined, on all occasions, to the consideration of the first head of this division, and to a demonstration of those principles of justice and LEGISLATIVE CONSISTENCY, which point out the propriety of repealing laws, imposing upon CATHOLICS ALONE grievous incapacities, to which SECTARIES and seceders from the Protestant Church, though more aberrant than the Catholics from her faith and discipline, suspected by some even of abetting the most seditious and republican principles, are in no manner liable or in any degree exposed.

Such is the course he has invariably adopted himself, and which he should certainly recommend to be adopted by Parliament in the present moment. He has always been anxious for a gradual course of proceeding, and for a limitation of concession, at least in the commencement of things, to the extent which he has intimated. It has always been his wish to respect existing prejudices, and never unreasonably or unnecessarily to offend them. He has never desired to see the Catholic question carried as a triumph or victory. In advocating the Catholic claims he never has sought to maintain their cause upon ideas introduced by modern revolutionary theories—by any novel doctrines of reform and innovation—by abstract metaphysical speculation—by arguments of pusillanimity or intimidation—or upon grounds of temporary expediency or inevitable necessity. It has been his aim and his labour to establish them successfully upon the basis of that IMMUTABLE JUSTICE, applicable to all circumstances whether of national prosperity or adversity—and without reference to the NUMBERS OR PAUCITY of the CLAIMANTS—upon the foundations of LAW and the SOLID PRINCIPLES OF THE BRITISH CONSTITUTION. He has also thought with Mr. Pitt, (looking at the measure not merely as it may regard the feelings or the interests of a particular portion of the community, but in it's obvious tendency to improve and confirm the general

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system of establishments civil and religious and to consolidate more effectually in one common cause of self preservation, and by a sense of common interest, the strength and talents and resources of the Empire) that much of the expected benefit would be diminished, unless it were adopted without a serious conflict—and if not with unanimity, at least with the preponderance in it's favour of public opinion.

I know not whether I have sufficiently expressed my general sentiments upon this subject, so as to be clearly intelligible; any deficiency may perhaps be supplied by the following illustration.

I have been the more anxious to confine my exertions to procure a repeal of the disabilities comprised in the *first* class of division, not only because the claims of the Catholics to relief in that behalf is more obvious and calculated to obtain an easy acquiescence from all parties, upon a due consideration of the subject; but because the principal grievance comprised in that division is more serious, at least it is so felt by the Catholics, than any other as I shall endeavour presently to establish.

What then is this principal disability? EXCLUSION FROM PARLIAMENT. It is no principle of the law or British constitution, *that those who concur in the enactment of laws should profess the religion of the state.* On the contrary, the sacramental test is not required as a qualification to sit and vote in parliament, all descriptions of dissenters, those the most removed from the doctrine and discipline of the church of England, even the most inveterate foes of episcopacy, are admitted to both houses indiscriminately. Catholics alone are excluded, and one may apply to the legislature the Irish inscription on the gates of Bandon,

Turk, — Jew, — or Atheist,
Enter there, but not a Papist.

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When it is considered therefore that this disqualification is imposed *solely* upon Catholics, that it is created by the operation of a statute separate and distinct from any other, and already in part repealed—enacted, also originally in the uproar of general delusion excited by the foul perjuries of the miscreant Oates, and at a moment described by Hume when “an universal panic being diffused, reason and argument, and common humanity lost all influence in the public mind,” when the journals of parliament inform us, that a similiar bill had but a short time before been rejected as a gross violation of the birthrights of Englishmen, and the principles of the constitution; under all these circumstances, the removal of such a disability always appeared to my mind only an act of undeniable justice—a measure proper to be proposed, discussed, and adopted by itself and upon it's own peculiar grounds, without reference to any other question—capable of being effected merely by the omission of a few words in the parliamentary oaths, objectionable even to Protestants themselves; a measure, which could not to be considered an innovation, involving any *general* question, or affecting in any respect the test act—would establish no *new* principles of legislation leading to ulterior consequences, but would be in itself only the consequence of a principle already established, and acted upon by the legislature: and that the Catholics, having given so strong a test of allegiance by the oaths which they have been called and scrupled not to take, were entitled to claim of the legislature in it's wisdom, liberality, and justice, that it should allow equally to THEM the same privilege ENJOYED BY ALL OTHER PERSONS DIFFERING IN RELIGIOUS OPINIONS FROM THE NATIONAL CHURCH. Whilst this disability is considered by Catholics particularly oppressive, it has seemed to me to admit more easily of removal, and that such a measure if distinctly explained, and brought forward separately and unaccompanied by any other proposal, might experience less difficulty in all quarters than any other which might be suggested. It may also be observed (although the matter

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has no great weight with myself, because I think the reasonableness of the Catholic claims in this behalf clearly established without reference to the argument) that the Catholics of Ireland were not excluded from Parliament until AFTER THE REVOLUTION OF 1688.

The second class of disabilities consisting of those, which affect not only the Catholics but all descriptions of persons differing from the established church, arises chiefly from a distinct statute, unconnected with that which has relation to the Parliamentary oaths. It is emphatically called the TEST ACT, and relates not to the discharge of legislative functions, but to the holding of CIVIL AND MILITARY OFFICES UNDER THE CROWN.

The TEST ACT I have never wished to disturb. First, because it is dear to the people of England, and they have been taught to consider it the principal bulwark of the Church. Secondly, because the grievance which it operates is more *nominal* than *real*, existing only in contemplation of law, and not in practical operation.

THE TEST ACT does not create any disability, which renders a Catholic or dissenter of any description incapable of taking any office in the first instance. IT DOES NOT PREVENT THE KING FROM NAMING, OR HIS MINISTERS FROM RECOMMENDING, any individual to an appointment: it only obliges the parties appointed to take certain oaths, and to conform to the Church of England within six months after their appointment: it allows that time for conformity, and the disability of remaining in office commences only from the default of the party in complying with the provisions of the statute at the expiration of that period. UNTIL DEFAULT, the law considers him a valid officer LEGALLY APPOINTED; and although he forfeit his office at the end of six months by an omission to conform, he is entitled to recover the intermediate fees of office; a proof that the above positions are correctly stated. This construction of the Test Act is not only true, as the words of the statute clearly manifest, but it is confirmed by a SOLEMN DECISION UPON THE POINT BY A COURT OF LAW.

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So far with respect to the Test Act in itself. It is to be observed, however, that the disabilities which it creates, and which it has been already shewn are of a nature supervenient and not precedent to appointment, are never allowed *in practice* by the legislature to attach; but the operation of the Test Act is annually suspended as a matter of course. This arrangement has been adopted in virtue of a tacit implied compact instituted previously to the present reign, and at a subsequent period formally ratified by the assurances expressed by Mr. Pitt in the house of Commons. The understanding is this, that whilst the body of persons differing from the established church comport themselves with propriety, the legislature will not allow them to be molested in office by the Test Act or that its provisions should be enforced, but consents to an annual suspension of the statute. It does not however wholly abrogate the act and efface it from the statute-book, but preserves its continuance in contemplation of law for the protection of the Church, in case it should be actually endangered; in which event Parliament would have only to omit the annual act of suspension and indemnity, (the original principle of legislation being still maintained) and thus would be able to provide for the national security with greater facility than by the introduction of a new law. Such is nearly the exposition of the practice and of the principle on which it proceeds, as explained by Mr. Pitt to the satisfaction of all parties in the house of Commons. Under these circumstances I have never wished to raise any question on the Test Act as unnecessary. The annual indemnity act has always appeared to my mind a security against molestation in office, with which every reasonable man ought to be satisfied. I have not unfrequently compared it to a vote of credit or the mutiny act, under which alone, although a temporary act, the army is maintained; and yet no one has ever hesitated on that account to abandon all other pursuits, and advance his whole fortune in a military career. Secure in the present times from any practical injury, resulting from the continuance of the Test Act

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virtually as a dead letter upon the leaves of the statute-book, I have never been fired with the romantic spirit of engaging in battles to vindicate the conduct of my departed ancestors; on the contrary, I have wished that most of the transactions which occurred in the times of penal legislation against the Catholics, for the honor of all parties—for the establishment of charity and good will amongst all descriptions of christians—and for the tranquillity and prosperity of the Empire, should be buried in profound and perpetual oblivion. *Dormiant in somno pacis.*

A most serious error, however, has been committed both by many crown lawyers, and even by some Catholics themselves in consequence of inadvertence to the Catholic toleration act of 1791. Previously to that year there existed old statutes enacted *antecedently* to the Test Act in the reign of James I. which in their operation, by rendering every Catholic liable to be made a *Polish recusant convict*, rendered persons of that communion, as a penalty upon the offence of recusancy, incapable of *receiving* any office, and the patent or commission *originally void*. These statutes are repealed by the act of 1791; and therefore since that period, Catholics are become like the Dissenters capable of taking appointments and of holding them, liable only in common with all other persons to be affected solely by the provisions of the Test Act, which I have already explained to be continued merely *in terrorem*, and not with any view of practical execution to their prejudice or molestation. Sufficient attention has not been given to this circumstance, which upon examination will be found incontrovertible; and hence has arisen a most fatal error producing much of that irritation, which we have the misfortune to witness among the body of Catholics.

If I have succeeded in making what I have written intelligible, I shall be able to explain in a very few words the plan which upon the first

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commencement of Lord Grenville and Mr. Fox's administration I had the honor of communicating to some distinguished personages.

It proceeded upon the supposition that it was not expedient at the time, for reasons sufficiently notorious, to propose any legislative proceeding in favor of the Catholics. It therefore simply suggested the recognition of the above construction of the Test Act, and an elucidation of the error which in that respect had prevailed to the prejudice of the Catholics, by the nomination of one or more respectable and able English Catholics to some situation of honour and advantage in Great Britain, and similar nominations in Ireland. By the adoption of such a system I had reason to think the minds of the Catholics would have been tranquillized, and that finding no distinction made by the executive Government in the administration of the law—that no forced construction to their prejudice was attempted to be put on any of its provisions—that they were admitted to the full participation of the advantages to which they were legally entitled, and in the same proportion as if any of their body were actually returned to Parliament,—they would have avoided any pressure of their claims during the reign of his present Majesty, and even have been anxious to save the feelings of the Sovereign any painful emotion. In fact it is an idea generally prevalent among the Catholics, arising from the little countenance which they have experienced from the executive Government—the sparing hand with which the *douceurs* of Government have been administered in their favour—and the language of regret so frequently and injudiciously held in Parliament by persons in high official situations at the extent to which the penal laws have been already repealed—that they have no security for the actual enjoyment, or even for the preservation of what they have already obtained, but in the procurement of admission to the House of Commons, and the total abolition of any vestige in the penal code. In England, the seat of Empire, where they were taught to expect superior

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liberality, and where from the small number of Catholics less danger can be apprehended, those of Ireland had observed that their brethren are still subject to restraints from which they are themselves already liberated—that principles of exclusion are there still maintained, which were repudiated with abhorrence even by the former Parliament of Ireland, against which they had learnt even from Great Britain so bitterly to complain—that a most erroneous construction of the penal laws is still pertinaciously maintained, to the prejudice not only of their English Catholic brethren but even of themselves, in violation of their own privileges and even with respect to the laws of Ireland and against the opinions of the law officers of the Crown for Ireland upon Irish statutes. In Ireland also where they form so large a part of the population, and the property of the country, and where they are told that they are expressly admissible by law to all places of trust except a few particular offices—how few had been able to obtain the favour of the executive Government. “Who of the Catholic nobility and gentry had been appointed to any public employment?—What counsel, among about forty practising barristers, had at this period obtained even the inconsiderable office of a Commissioner of Bankrupts?—What favour had been shewn to persons engaged in commerce?” An intimate knowledge and familiarity with these complaints, and the facility with which they might be redressed, had induced the author of this Memoir to think favorably of the plan which he had preferred; he had answered for its success, and had offered his services on the occasion, but circumstances occurred which prevented its adoption, and on which it is unnecessary to enlarge.

To conclude this Memoir: it is necessary only to observe that after what has occurred considerable doubts may be entertained whether the same, or any similar plan would now succeed, and whether some legislative proceeding will not become advisable and even indispensable. If the latter *can* be accomplished the author would earnestly recommend, that it should precede and be totally independent of the Catholic petitions which it is in

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contemplation so speedily to present. Whatever is conceded should appear the voluntary spontaneous act of Government, and I have no difficulty in stating not only an opinion but even an anxiety, that in the present moment it should be CONFINED simply to a modification of the Parliamentary oaths, and to the admission of the Catholics to the privileges enjoyed by OTHER PERSONS DIFFERING FROM THE ESTABLISHED CHURCH.

Such a measure appears to be the most eligible both in *principle* and with a view to *practicability*. Upon the nature of such a measure and the facility with which it may be accomplished I have in a former part of this Memoir sufficiently enlarged. It is wholly unconnected with other questions, and has no reference to those points on which a difference can reasonably exist. The history and occasion of the only statute, which in such a proceeding it will be necessary to abrogate—the extent to which it has already been repealed—the impossibility of danger or inconvenience from the admission of Catholics to an imperial Parliament, where the preponderance of the Protestant interest would be so prodigious, particularly in the House of Peers—every consideration seems to establish the propriety of such a proposal with a view to the conciliation of the Catholic body—the satisfaction of English Protestants—and what in every account is principally to be considered THE PERSONAL FEELINGS OF HIS MAJESTY. Such a course whilst calculated perhaps more than any other which could be devised to attain that desirable object and to prevent alarm in the public mind of this country, would at the same time obviate any recurrence or recollection of the unpleasant transactions of 1807—preserve the honour of all parties—secure the dignity of the Crown, and by granting an essential boon to the Catholics of Ireland, and thus conciliating more effectually their attachment to the union, promote the best interests of the State.

THE END

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MEMOIR II.

&c. &c.

IN the preceding Memoir, I thought it unnecessary to anticipate or notice objections to the course recommended as an expedient, by which the termination of differences upon the Catholic question might perhaps be between all parties in the state, with the approbation of His Majesty, be accomplished. As it may have been expected, however, that I should have replied to some of the topics, which have occasionally been urged against admitting the Catholics to an equality of privileges with other dissenters, I have thought it advisable to add another, and separate Memoir, upon this subject.

I take these objections to arise either from apprehensions of *danger* to the established church, or from difficulties founded in *principle* to the proposed measure.

Requesting it to be born constantly in mind, that the measure which I have suggested is only the admission of the Catholics to Parliament, being in fact the most serious grievance to which they are exposed, I must observe first, that in the House of Lords, a preponderance or indeed any considerable influence, on the part of the Catholics cannot be seriously imagined by any person, who reflects on the comparatively small number of Catholic Peers in Great Britain, members of the house, and on the immense majority of the Protestant Peers in Ireland. The Catholic Peers of

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England are at present only seven. Their respectability, and the uniform tenor of their conduct are of a nature to secure them from suspicion; and the circumstance that they have been little engaged in political affairs or in the habits of debate, restrained as they have been from the exercise of their hereditary and constitutional functions, would induce I should think little apprehension, that they could obtain the lead of their assembly. The necessary concurrence of the House of Lords to the enactment of any law, and the particular deference usually shewn by the Commons to their proceedings, in cases regarding public morals or religion, would be a sufficient security, I should think, even in the extravagant supposition of a Catholic party obtaining an ascendancy in the House of Commons. That security might also be further improved by a conventional arrangement between the two houses, in which it might be settled that, as all money bills originate in the House of Commons, upon a similar principle all matters regarding religion should be first discussed in the House of Lords, of which the Bishops are a part, and where the twelve Judges are also summoned to attend. But that such an event as an ascendancy of a Catholic party in the House of Commons should ever occur, even at the most remote period, is not only improbable, but may fairly be considered an impossibility; unless it should happen that the majority of electors in the Empire should again embrace the Roman Catholic religion! Such a contingency does not seem to be in the contemplation even of those, by whom the Catholic claims are usually most strenuously opposed, and for many of whom the writer of these pages entertains the most sincere personal respect. On the contrary, many eminent and distinguished personages hail the day, as not far distant, when they shall contemplate the felicity which will accrue to Ireland by embracing the Protestant faith. A very learned and pious Prelate in the last discussion of the subject, and in *opposing* the prayer of the Catholic petition, is reported to have concluded his address to their Lordships with the following decided prognostication: "My Lords
" I look forward to the amelioration of their condition, *by the improve-*

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ment of the understanding of mankind, when they shall embrace the "greatest blessing upon Earth — a PROTESTANT RELIGION." A noble Viscount also (of whom, although not prepared to make further legislative concessions to the Catholics of Ireland yet justice requires it to be said, that during the time when his Lordship presided over the councils of His Majesty, there was *adopted, under his administration towards the people of Ireland by the executive Government a course of lenity and impartiality, if not of favour, which they had never previously experienced*) is also stated upon the same occasion to have declared, that "it was only by conciliation and mildness, we could hope to approach the object of which their Lordships must be desirous, namely, that of rendering Ireland a PROTESTANT COMMUNITY." How far such an expectation is likely to be realized, after every expedient resorted to since the reformation, so far from diminishing, has increased the number of Catholics in Ireland; and if it be prudent to discuss the possibility of such an occurrence, or indicate a wish to accomplish such a change in a country, where the people are susceptible of very quick and strong impressions upon the subject of religion, and where many circumstances often combine to fan a flame of religious bigotry; it is unnecessary to examine: one can only applaud the upright principle and benevolent motive, from which such expressions proceed. It may be allowable, however, on the part of the Catholics, to take some advantage of the argument afforded by the idea, that Ireland is, in the expectation of those who oppose their claims, likely to become Protestant as proving that, in such a case, there can be no danger to the English Church, from admitting the Catholics to a more intimate connection with this country, and to an experience beforehand of those benefits, which it is wished so anxiously to communicate for their improvement and welfare. In the contemplation of such an event, the plan of admitting the Irish Catholics to a participation in our parliamentary debates, and the inducement which it might afford of previous study at our

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Universities, in order to get rid of *a certain remnant of Irish popery* particularly unpleasant to the ears of Englishmen, would rather operate as a means of facilitating the conversion of Ireland, by enlarging the comprehension and improving the faculty of reason in those, who being elected to Parliament as representatives of the Catholic body, and enjoying their intimate confidence, would be more likely to influence their opinions by their example, when returning to their constituents.

To many this reasoning would appear well founded ; but if the inclination of the people of Ireland is conceived to be more disposed to Protestantism than Catholicity, and that under a judicious treatment *they* are the persons likely to change their religious faith ; it will naturally be asked upon what calculation it is thought, that danger can arise to the established Church from the admission of a few Catholic members to the House of Commons, or that the people of England, superior to the Irish in numbers, in affluence, in learning, in information, in civilization, perhaps in steadiness of character, and sobriety of reflection, and solidity of judgment, instead of reclaiming from errors Ireland her weaker part, should by an unaccountable infatuation, by some strange process of *evangelical alchymy* become themselves converted of a sudden to Popery!! Many extraordinary revolutions in the world we certainly have of late experienced ; but such as I have described would undoubtedly fill the measure of astonishment.

To pursue however a more grave course of argument: even in the House of Commons it will be found upon an examination of the case, that the admission of the Catholics, however satisfactory to their feelings and honourable to their pride, would not materially encrease the present strength of their political influence in that assembly. At the present moment they return perhaps a greater number of members to the Imperial Parliament, than if they were themselves admissible. In consequence of

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their property, which hourly encreases in a commercial country like Ireland where the majority of the population is Catholic, they decide in most counties the fate of a contested election. The strength of their influence is such, as even to excite a disposition to a contest among the Protestant Gentry, and to occasion a strong competition for their favour. Under such circumstances it becomes daily more easy for them to find a candidate, who will be even obsequious to their wishes, and whose conduct they can effectually controul. We all know the proneness of men to sacrifice, in many instances, principle to ambition ; and in Ireland politics and religion have heretofore been peculiarly blended. Now in what manner, it may be asked even of those most opposed to the Catholic claims, are the counties and commercial towns of Ireland most likely to be represented with security to the Protestant religion and the establishment? By a system which tends to place in the bosom of the House of Commons a number of persons, nominally Protestants but who in many instances may be merely political slaves to angry and disappointed Catholic electors, and bound by instructions from which they dare not depart; and yet whose motives it may not be easy to detect, impossible to arraign, and whose arguments against the establishment may not be perceptible, from the credit which they may claim, as persons belonging to its communion?—Is such a system of representation the most wise, or one which shall allow the property of the country, according to its level, to make a free unshackled choice of its representatives, and return to Parliament persons whose characters may be known,—whose motives can be ascertained,—whose combinations can be watched,—and whose schemes, if pernicious, may be more easily discovered and effectually disappointed?

Conceiving these considerations sufficient to remove, even from the most prejudiced mind, any objection against the admission of Catholics to the Imperial Parliament arising from an apprehension of DANGER TO THE CHURCH, as likely to result from such a proceeding; I shall proceed to

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consider the effect of other arguments frequently adduced against concession to the Catholics of those privileges, enjoyed by other descriptions of persons dissenting from the establishment. They relate more to matter of law, than to the question of political expediency: They proceed upon the refusal of Catholics to take the OATH OF SUPREMACY, and upon the supposition that, in consequence of their communion with the See of Rome, they are bound by, what it has been fashionable to denominate, a DIVIDED ALLEGIANCE. I shall endeavour to demonstrate the error entertained by those, who have advanced this supposition.

In the first place, if any objections are maintained by Catholics to the OATH OF SUPREMACY, (*improperly so called,*) they relate more to the wording of it, than to its substance and effect as understood by Protestants. Their objections would vanish, if a few words were added to the last clause of this oath, importing the abjuration to be meant only of all such foreign ecclesiastical or spiritual authority, &c. which can counteract *that allegiance due by law from them as subjects of His Majesty to his person and government.*

In a report of the debate upon the last Catholic petition which has claims to peculiar accuracy, Lord Grenville is stated to have concluded his reply with the following sentence: "My Lords, The noble Baron has told you that the whole question turns upon the oath of supremacy; but from the description he has given of it, I CAN POSITIVELY PROMISE THAT NO CATHOLIC OF IRELAND WILL REFUSE TO TAKE THE OATH, AFTER THE MANNER IN WHICH HIS LORDSHIP HAS REPRESENTED IT." The writer of this Memoir has long been of opinion, from his conception of the sense in which the oath was originally propounded—from a consideration of its history—and from a knowledge of the construction put upon its language and the nature of its effect as understood by public Magistrates and Jurists in this country—that, however desirable an alteration, the oath *may be* taken by a

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Catholic. The *lawfulness of religious tenets* expressed in an oath is a question of theology; but the meaning of words, or the sense of any particular passage, is a matter of personal judgment to which every man endowed with reason is competent. It appears to me clear that the sense, in which the words ecclesiastical "or *spiritual*" are used by the legislature in propounding this oath, imports only what is the avowed interpretation of the word spiritual in the old oath, and only such spiritual authority, as comprehends any right of temporal power, or of interference with the civil government of the state!

To return however to the subject. In the oaths already taken by the Catholics, throughout the united kingdom, they swear that they do not believe "The POPE OF ROME or any other foreign Prince, prelate, state, or potentate, HATH OR OUGHT TO HAVE ANY TEMPORAL OR CIVIL JURISDICTION, POWER, superiority, or pre-eminence *directly or indirectly within this realm.**"

* They also swear that "it is NOT AN ARTICLE of the CHRISTIAN FAITH, neither are they thereby required to believe or profess, that the POPE IS INFALLIBLE, or that THEY ARE BOUND TO OBEY ANY ORDER IN ITS OWN NATURE IMMORAL; though the Pope or any ecclesiastical power should issue or direct such order; but on the contrary they hold that it WOULD BE SINFUL IN THEM TO PAY ANY RESPECT OR OBEDIENCE THERETO."

They also abjure, condemn, and detest, as unchristian and impious, the principle that it is lawful to MURDER, DESTROY, OR ANY WAY INJURE ANY PERSON WHATSOEVER for "or under pretence of being a heretic;" they believe "no act IN ITSELF UNJUST, IMMORAL, OR WICKED, can ever be justified or excused by or under pretence or colour, that it was done either FOR THE GOOD OF THE CHURCH, OR IN OBEDIENCE TO ANY ECCLESIASTICAL POWER WHATSOEVER." That no sin "CAN BE FORGIVEN AT THE MERE WILL OF ANY POPE OR PRIEST;" that they will defend to the utmost of their power "THE SETTLEMENT AND ARRANGEMENT OF PROPERTY, in Ireland, as established by the laws now in being"—and they solemnly abjure "ANY INTENTION TO SUBVERT THE PRESENT CHURCH ESTABLISHMENT FOR THE PURPOSE OF SUBSTITUTING A CATHOLIC ESTABLISHMENT IN ITS STEAD.

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Such is the disclaimer of the Catholics, upon oath, with respect to *any allegiance* due from them to any foreign power, and they swear "to be faithful and bear TRUE ALLEGIANCE TO HIS MAJESTY."

The question however turns upon the last clause in the oath of supremacy; in which the parties are called to declare that "no foreign Prince, person, prelate, state or potentate hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority ECCLESIASTICAL OR SPIRITUAL within this realm." In what sense these epithets are used by the legislature will presently appear.

It is obvious however that the oath of supremacy, in as much as it regards SPIRITUAL AUTHORITY, is wholly negative, and in no manner affirmative. It requires no acknowledgment that spiritual authority resides in any particular person, or that it EVEN EXISTS ANY WHERE; and it obliges no person to declare his belief of ANY SPIRITUAL SUPREMACY IN THE KING OF THESE REALMS. The suppression of such a declaration was indeed the object, for which this oath was altered at the Revolution; it was reformed expressly to remove the scruples, and quiet the minds of Protestants themselves upon this very point, occasioned by the expression "SPIRITUAL." It is well known, that upon the institution of the OLD OATH OF SUPREMACY in the reign of Queen Elizabeth, in which she was declared "Supreme Governor in all *spiritual* things or causes," much alarm arose in the minds of the PROTESTANT CLERGY; who scrupled to acknowledge such a power in the Sovereign, and conceived the assumption of it to be a violation of Christ's church, and contrary to the fundamental principles of the Christian religion. The objection indeed had been removed by an explanation, which for greater certainty was incorporated into the 39 articles of religion; but to prevent any *doubt* upon the subject in future, and particularly at a period such as the revolution, it was thought advisable to

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alter the oath to its present form. I therefore venture to lay down as incontrovertible the following positions.

First, that in refusing to take the oath of supremacy it is not fair to charge the Catholics with denying a SPIRITUAL SUPREMACY IN THE KING, since as by taking the oath it is not admitted, by objecting to take it is not denied. Even if they did deny a SPIRITUAL SUPREMACY IN THE KING, they are authorized in that denial by law, and act in common with the PROTESTANT CLERGY OF THIS REALM, construing the word "*spiritual*" in an abstract sense.

Secondly, That by positively abjuring in any foreign power *directly or indirectly* all CIVIL OR TEMPORAL AUTHORITY, &c. (*the only legitimate claim in the Sovereign of any state,*) the Catholics give a complete and satisfactory test, refuting the idea of DIVIDED ALLEGIANCE, and recognising at the same time in the fullest extent the LAWFUL SOVEREIGNTY OF THE KING, according to the CONSTITUTION of these realms AS BY LAW ESTABLISHED. It will be impossible for any Jurist to contend that such an abjuration, accompanied by the solemn promise "to be faithful and bear TRUE ALLEGIANCE to His Majesty" is not a complete recognition of that, which constitutes in the STATE, according to the established maxims of public law, PLENUM DOMINIUM or FULL SOVEREIGNTY.

In all Christian States, I have ever considered the precept of the gospel to have been admitted as the rule of allegiance, and as marking the boundary of power between Church and State. GIVE TO CÆSAR THE THINGS WHICH ARE CÆSAR'S—TO GOD WHAT BELONGS TO GOD. Upon this principle, I have ever conceived the right to religious belief, and to the worship of the creator according to the conscience of the individual to be, abstractedly considered, an unalienable right of nature independent of the state; and controllable by the Sovereign only in cases, where particular religious opinions may tend to molest the peace and order of society—that the Sovereign is

not invested with a right of dictating in religious matters to the interior conscience of the party, however authorised to prohibit the open promulgation of an obnoxious and pernicious doctrine ; and that the adoption of any particular religious belief, with respect to things spiritual, was no act of rebellion to the Sovereign, no violation of his authority, or a departure in any respect from TRUE ALLEGIANCE. These I have ever thought axioms of public jurisprudence—principles recognized in every age,—and in the language of the Greek Poet with such sublimity described to be

Κηρυγμαδα αγραπτα χ' ασφαλη θεων
Ου γαρ τε νυν γε χ' αχθες αλλ' αιει ωστε
Ζη ταυτα.

Sophoc. Ant.

The law of God upon no tablet written,
But deep engraven on the heart of man,
Fixt and immutable, which not to-day
Nor yesterday was born, but ever lives.

Upon these principles the belief of a Catholic, that the abstract *power of the ministry* in his religion can be conferred only under the authority of a particular person and by a particular form, and that a question of mere abstract *religious faith*, as with respect to the Trinity or the Sacrament, can be authoritatively decided by a person not a subject of the King of England but resident abroad, can never be said to be an infringement upon any right of the state, or of His Majesty. The authority of such a person is distinct in its institution, and its object: it is totally separate from and unconnected with that of civil sovereignty, and temporal Government: nor have Princes received from Christ any commission or faculties of such a description. This is the doctrine even of the Protestant church, and the Catholics do not consider the Bishop of Rome, in religious matters, as a TEMPORAL PRINCE: he is in the eye of religion only the

FISHERMAN destitute of wealth and grandeur—who when he assumed the sword received not only a reproof, but a divine command to put it in the scabbard—and who was reminded, even by our Saviour, that HIS KINGDOM WAS NOT OF THIS WORLD.

This doctrine upon the division of temporal and spiritual authority, as I have already observed, is equally received by Protestants as by Catholics; and it will appear by a reference to the settled law of England upon this subject.

THE KING IS THE SUPREME GOVERNOR OF THE REALM; and the old oath of supremacy added, “in all SPIRITUAL THINGS AND CAUSES AS TEMPORAL.” What however is the acknowledged extent of this *spiritual supremacy*?

The explanation is not only to be found in an official declaration of the crown, in the reign of Queen Elizabeth, by whom it was challenged, but it is contained in the ARTICLES of the PROTESTANT RELIGION confirmed by PARLIAMENT, and therefore to be considered a most formal and solemn exposition, recorded *inter acta regni* of this authority.

The 37th article accordingly declares, that “where we attribute to the Queens Majesty the chief government, by which titles we understand “the minds of some slanderous folks to be offended, we give not to “our Princes *the ministering either of God’s word or of the sacra-
ment*; the which thing the injunctions also lately set forth by Queen “Elizabeth do most plainly testify; but that *only prerogative* which “we see to have been given *always* to all godly Princes, in holy scrip- “tures by God himself; that is THAT THEY SHOULD RULE ALL ESTATES COM- “MITTED TO THEIR CHARGE BY GOD, WHETHER THEY BE ECCLESIASTICAL OR “TEMPORAL, AND RESTRAIN WITH THE *civil* SWORD THE STUBBORN AND EVIL “DOERS.”

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From this exposition it is obvious, that the supremacy of the King in respect to religion, cannot be said to be of a SPIRITUAL, but a TEMPORAL nature; that it was in the contemplation of those who concurred in the reformation, to invest the sovereign in this particular instance with no *new* power or authority—to commit no violation upon the independence of the church and of her ministers—to establish no novel or unprecedented prerogative! only to restore what was thought to have been usurped by the Bishop of Rome upon the temporal rights of Princes—to preserve the lawful authority of the crown—to secure to Cæsar the things which are Cæsar's—to assert that doctrine QUOD SEMPER, QUOD UBIQUE, QUOD AB OMNIBUS had been allowed and prevailed, being established upon the FUNDAMENTAL PRINCIPLES OF SOCIAL GOVERNMENT. At the same time although they repudiated the authority of the Bishop of Rome, and separated from communion with that see; it is obvious they meant not to give to Cæsar the things which were of God; to admit the power of the ministry, or of conferring such faculty, in the Prince: nor do Protestants of the present day conceive such power to be vested in the Sovereign, but in Bishops and Priests lawfully ordained, who claim their mission not from His Majesty, but from CHRIST THROUGH HIS APOSTLES.

Does any Catholic refuse an assent to the prerogative of the King thus defined? Certainly not. The only authority which he recognises in the Pope is THAT, which the 39 articles of the Protestant religion DENY to His Majesty. It consists of that power in “*the ministry of God's word and of the sacrament,*” confided by Christ to the Apostles and their successors; with a pre-eminence believed by the Catholics in St. Peter, under the words “*thou art Peter*” and “*feed my flocks.*” This authority alone is what they acknowledge in the Pope with that incidental jurisdiction, *strictly spiritual*, in the government of the church; which although not mentioned in the articles, being necessarily included in the power of the ministry, has nevertheless been maintained universally by PROTESTANT

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PRELATES as inherent in their *spiritual* character, and independent of that *civil jurisdiction* which they have at various times received from the state, *in aid of and beyond the extent* of that, which may be deemed APOSTOLICAL.

The SPIRITUAL AUTHORITY of the Pope cannot establish any tribunal, execute any commission, or pass any censures or judgment with respect to the lives, liberties, or property of His Majesty's subjects. It cannot exempt any persons from the jurisdiction of the King's Courts. It cannot oblige the King to receive any stranger into his dominions; it cannot call upon the state to alter any of its institutions: nor *can it even introduce new regulations of church discipline into a territory without the consent of the Sovereign.* It cannot absolve subjects from their allegiance—confer kingdoms—depose or exalt Princes—nor has it any greater power than it possessed in the very commencement of its Institution, and in the primitive ages of the church, under the Emperors of Rome: in short it cannot when duly examined, and as recognized by Catholics throughout the British Empire, be said to interfere with the just prerogatives of the King as settled by law, or to abridge in any respect the lawful Sovereignty of the State.

On the other hand the legal supremacy of the King; even in religious matters, however erroneously denominated spiritual, is in fact only a branch of CIVIL SOVEREIGNTY, which he possesses as representative of the STATE—the power not of the KEYS but of the CIVIL SWORD—and that prerogative, vested in TEMPORAL GOVERNMENT agreeably to the first principles of regulated society from the nature of its constitution, and not proceeding FROM ANY CONCESSIONS OF THE CHURCH. I anticipate the concurrence of every Prelate of the established church in the accuracy of what I have advanced; and I venture to flatter myself, that I have explained the nature of the authority which the Catholics acknowledge in the Pope in a satisfactory manner, which may tend to remove any objections to granting

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further privileges to the Catholics, arising from a reluctance on their part to take the oath of supremacy in its present form. I trust also it is proved that Catholics do not take a test of allegiance inferior to that of other Dissenters, who no more than they admit, in a religious sense of the expression, ANY SPIRITUAL SUPREMACY IN HIS MAJESTY.

Having thus answered as I conceive those objections, usually advanced against the concession of the same privileges, enjoyed by other descriptions of persons dissenting from the established church, to Roman Catholics; I might perhaps here terminate all discussion upon this subject; but as it also may be thought, that some observations ought to be made upon what has recently passed in Ireland, with respect to the election of Catholic Bishops, I think it proper to extend this Memoir. Previously to the statement of my individual sentiments upon this subject, it may be advisable to make a few preliminary remarks.

The author has reason to know, and indeed *ocular demonstration can be given of the fact*, that certain distinguished Members of Parliament were fully warranted by the INDIVIDUAL, whose name was mentioned in a late debate, to the full extent of those declarations, which they made on that occasion respecting the nomination in Ireland of Catholic Prelates. It is also certain that a number of the Catholic Bishops in Ireland had, in the year 1799, voted resolutions similar in principle to those declarations; and notwithstanding the extraordinary, and reasoning with reference to English impressions the ill-judged, resolution passed last autumn by the Irish Catholic Prelacy, it is well known from what cause it proceeded; and that they had not in contemplation to decide upon any principle of religion, but only upon the circumstances which existed at the moment. It will appear in the sequel how, differently from the opinions of others, my mind is impressed upon this subject, and it must be admitted to be equally

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a *juridical* as a *theological* question—as much connected with municipal law and the rights of the STATE, as with ecclesiastical discipline and the Canons of the church—open to discussion by lay civilians, as well as by sacerdotal Canonists. In fact a cry had been artfully raised in Ireland that the CATHOLIC RELIGION WAS IN DANGER. Unfortunately, the abridgment of the grant voted in the preceding year to Maynooth College—the elevation of a magistrate from the tendency of his publications and discourses particularly unpopular to the rank of Privy Counsellor, and for ecclesiastical affairs—the language held both in and out of Parliament by many respectable individuals, pointing at the *Protestantising* of Ireland—all these circumstances, in a country so susceptible of quick feeling on these subjects, had combined to raise an alarm and to induce an apprehension, that the safety of the Catholic religion in Ireland might be endangered by any concession in the election of Bishops, or by any influence obtained by persons, avowedly hostile to the religion professed by so large a majority of the people of Ireland.

When it is considered, what respectable individuals at present constitute the Irish Catholic Prelacy—what support they have uniformly given to His Majesty's Government, (as will be admitted, I am persuaded, by all who have been connected with the administration of Ireland,) in the late perilous times—with what moderation they have always expressed their wishes even when Government have spontaneously offered to improve their situation, and to promote their personal comforts—what pains they take in the election of their body to select only men eminent for piety and moderation, when left entirely to their own discretion—it may upon sober reflection be an important question, whether it be really the interest of Government to introduce any alteration in the existing system, and whether having had no reason to complain of a single nomination, except perhaps of one which proceeded from their own recommendation, it would be ex-

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 pedient at all to interfere. This is a consideration solely of policy, upon which the wisest statesman may differ: at the same time jealousy on the part of a Protestant Government is certainly natural; and if the Catholics of Ireland call upon their Protestant fellow subjects in Great Britain to make great sacrifices of opinion, to lay aside prejudice, and concede privileges so long withheld; His Majesty and his Government have a right to expect a deportment on their part corresponding with that liberality, which they claim to be exerted in favour of themselves. I am however of opinion, formed upon much serious consideration of the point, that if the State decide upon the expediency of interfering with the elections of Catholic Bishops in Ireland; the IMPERIAL PARLIAMENT has a right by virtue of the CIVIL SUPREMACY to enact, without the consent of even the Catholics themselves still less of the Pope or the necessity of communication with the See of Rome, any *civil regulations* upon this subject which it may deem expedient; provided that it allow the body of Irish Catholics the ministry of Bishops in holy orders; and that it attempt not to encroach or usurp upon that SPIRITUAL AUTHORITY, which I have already shewn not to be vested in the STATE, even in the contemplation of ENGLISH PROTESTANTS.

I am aware that this position may to some appear bold—to many novel—and to all persons differing from the understanding which hitherto, on both sides, has prevailed. I trust whoever that I shall be able to prove its correctness by reference to the same principles, which I have already established in reasoning upon the oath of supremacy, and which indeed will, I think, be admitted by all parties.

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 The character or faculty of the *ministry*, it is true, emanates from and can be conferred by the church alone; and the clergy, of whatever order in the church, hold their abstract *spiritual* functions, solely under a divine commission as successors of the Apostles; those faculties not being of human institution—or derived from any authority given by Christ to the Princes

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of the Earth—or capable of being conferred in any manner by the STATE. But although the state enjoy not the power of conferring the abstract faculty of divine ministers; it is invested by the fundamental rules of society, and in virtue of its CIVIL SUPREMACY and PLENUM DOMINIUM, with a right of controul over all persons who are its subjects, of ordering its domestic polity, and therefore with a right of declaring by what persons, in what places, and under what qualifications that spiritual authority, which it cannot confer, shall actually be exercised within its dominions. It cannot claim obedience, it is true, in cases where it shall command a transgression of the law of God: nor can it absolutely deprive persons of their spiritual rights, of worship, or of ministry according to their particular religious opinions, if not offending against the laws of morality, or the peace of society; but it can enact reasonable regulations of police in religious matters, to which submission becomes a moral obligation.

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 This has been done in every age, in every country of christendom; and it has been universally allowed: nor has it ever been doubted, that the state is entitled to impose civil restraints upon any description of religious ministers, and to require their conformity to municipal regulations, as the conditions on which they shall be allowed to exercise their spiritual functions. Without referring to the long series of statutes, denominated those of *Præmunire*, and enacted during the reigns of Catholic Sovereigns; or recapitulating the general history of episcopal appointment throughout Europe, and tracing more particularly the origin of the system actually adopted in England with respect to Protestant Bishops at the present day; I would ask whether the Toleration Act of 1791 does not compel the Catholic Clergyman not only to take an oath before he is allowed to officiate in a family, but to record his name at the Quarter Sessions before he can exercise his ministry in a public Chapel; and whether in some instances he be not prohibited from officiating at all? On what principle then would an act of Parliament be of less validity, “expressly de-

claring," in order to remove all legal doubts upon the subject, "that it shall be lawful for Catholic Bishops actually in holy orders to exercise the ministry of episcopacy in those divisions, where they at present exercise the same—that it shall be lawful for their survivors, in case of a vacancy by death or by other good and sufficient causes, to assemble from time to time and proceed, according to the accustomed usage, in the election of a successor to the vacant See—and that it should also be lawful, any statute to the contrary notwithstanding, to apply to the Pope for bulls of consecration, to receive and act upon the same, and for the person so consecrated to exercise his ministry in as ample a manner as heretofore was done by his predecessor—providing however that before any such application shall be made to the Pope notice shall be given to the person so elected to the Lord Lieutenant, or other Members of His Majesty's Government; (or perhaps to Commissioners appointed by His Majesty, among whom a certain number of Catholic Bishops shall always be included) who shall within a limited period declare an approbation or objection as to such person so elected; and in case of objection that the said Prelates, according to the accustomed usage, should proceed to a new election—containing however clauses to obviate delay in the supply of such vacancies," and thus effectually ensuring a succession of episcopal ministry to the Catholics of Ireland, in all future ages, so long as there shall exist THE IMPERIAL SOVEREIGNTY OF THE BRITISH EMPIRE ?

Upon what principle I would ask is the validity of such an act to be opposed? what is the privilege of the people of Ireland to exemption from such a civil regulation of the state, upon a matter of domestic policy with respect to its own subjects? what canon or immemorial usage is to be pleaded in bar of such authority? and I may also put the question, where after all is there infringement in such a proceeding of the Pope's supremacy? where danger to the Catholic religion? where a subversion of Catholic hierarchy, in an act of parliament permitting re-

course to that supremacy—providing for the maintenance and honour of that religion—preserving the succession of that hierarchy—sanctioning its existence,—and promoting its honor by a LEGAL ESTABLISHMENT ?

I should conceive it unnecessary to enlarge upon the point: it may be observed, however, that the rights of the church and of the state being separate and distinct in their nature, they must ever so continue in themselves; and being wholly independent of each other, no forfeiture of that, which belongs to the State, can accrue either by abuse or non-user to the Church. The right moreover of the State from the nature of its origin is the same, whatever may be religion of its Sovereign. The independence of these rights, however, renders it in general desirable that an understanding should prevail in the exercise of them, to prevent the confusion which would ensue from their clashing with each other. For whilst the state has obviously a clear right to refuse admittance to any foreigner, commissioned by the Pope with the faculty of the ministry, within its dominions, and the power of restraining its subjects in the exercise of such faculty; on the other hand, the Pope may refuse to invest the person nominated by the State, with the necessary spiritual authority. The history of England, and of other kingdoms, exhibits various instances of conflicts upon this point between the Church as represented by the Popes and the Temporal Sovereign, which have frequently disturbed the peace of Christendom, and have not always tended to the honor of religion, or of its ministers. To ensure the protection of Princes written compacts, called *concordata*, have frequently been established. These, however, like other treaties, not being always formed upon a clear view of fundamental principles,—with due attention to the respective rights of the parties,—and many of them with reference to feudal or obsolete usages,—have often occasioned new controversies, and have given rise to a system of conventional law, little studied even by divines, and still less generally understood. Hence

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has arisen much of that confusion, which we so often witness upon this subject in the ideas of the most eminent jurists and enlightened clergy. In the early ages of Christendom, and upon the introduction of the feudal system, the Princes of Europe incorporated the Clergy into the Civil Magistracy of the State: they obtained various municipal distinctions and immunities: they were in many instances, as in England, invested with TEMPORAL JURISDICTION.* The bounty of Princes, came to be considered in subsequent times an inherent right of episcopacy, and as part of the *divine institution*: as such it was often arrogantly claimed; and as such the pretension, on some occasions, was erroneously acknowledged. The origin of long subsisting privileges was forgotten in the inveteracy of custom, or in the general ignorance of the times: it required perhaps the Reformation, and latterly the French Revolution, to elucidate (as they have done) the true principles, on which the authorities of the Church and of the State are severally founded.

That it is necessary any formal arrangement should be effected with the Pope, the author of this Memoir is by no means convinced; perhaps indeed it may be more expedient that each power should be left to its own discretion, in the exercise of their respective rights. The probability of a consecration at any time by the Pope of another person than the individual, chosen by the Catholics and the King, to my mind is most remote; and should such an event ever occur, which they are all interested in resisting, the means of opposition to such an abuse as would be committed by such an extraordinary proceeding are obvious, and must prove successful. Should such a formal arrangement be thought more politic, it is to be observed, that although the law does not recognize what it denominates "the usurped authority" of the Pope within these

* If we look through the body of the statutes establishing the reformation, we shall find nothing which, upon due consideration, will authorize the idea, that although in

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realms, and renders the maintenance of it a criminal offence; his Holiness is still a BISHOP IN THE ORDER OF THE GENERAL CHURCH, according even to Protestant ideas, and in the contemplation of LAW: if ever impleaded, also in our courts he must be sued as SUCH, our tribunals taking notice of foreign prelacy, although not of foreign nobility. Let us consider however a more important point, the principle on which such an arrangement should proceed, if at all desirable.

Its object should be *to accomplish such a co-operation, in the exercise of the independent rights appertaining to both parties, as should be injurious to the interests neither of the state nor of religion; but conduce in the most effectual manner to the improvement of morals, and the tranquillity of the Empire.* In treating upon such a basis, the State I conceive should be satisfied only with such stipulations, as may be necessary for its own security; and the Church should be disposed to concur with the State in all points, which may not be opposed to the fundamental doctrines of the Catholic religion.

IT IS NO POINT OF THAT RELIGION that under arrangements of this nature, whether resting upon tacit understanding or expressly declared by formal compact, a PROTESTANT SOVEREIGN cannot be invested with the same rights

contemplation to change the national religion, it was sought at any time to invest the King, in religious matters, with more than a temporal supremacy. "The reforming of heresy and schism," &c. is an exercise only of that supremacy, as the Catholic Church can only execute her sentences on those subjects, by depriving parties from the benefit of sacraments and excluding them from her communion. The *spiritual* and *temporal* authorities have been so frequently blended, and such confusion prevailed upon the subject, in the times when these laws were enacted, that one cannot be surprised if inconsistent impressions were adopted. At the present day, and in an English mind, the word "BISHOP" combines a seat in the House of Lords—an episcopal palace—also a right of holding courts of very extensive *civil jurisdiction*—and even these courts are generally, although erroneously denominated THE SPIRITUAL COURTS!!!

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enjoyed by a CATHOLIC PRINCE. It is a matter entirely of convention ; but of discretion on the part of the church, in the consideration of the question how far it may be prudent to *bind* itself in an obligation to invest with *spiritual faculties* those, who may be designated for the order of episcopacy by a temporal power not of its communion. It must depend upon the particular circumstances of each case; on the confidence which it may be disposed to place in the good will of a Protestant Sovereign and of his Counsellors towards the Catholic religion ; the credit which it may be inclined to give them for being competent to discern the merits and virtues of those, who may be proposed for promotion to the episcopal order; or for an inclination to select none but persons worthy of being invested with the sacred office of a Christian Bishop. Now the reasonable object of interference on the part of a State, not professing the Roman Catholic religion, can only be to maintain the rights of its Sovereignty, the liberties of its subjects, and the security of social order. If Princes have imposed on them the duty of protecting for themselves, their successors and their subjects, the independence of the state; the Church is bound by an equal obligation to preserve the purity of religion, by a proper vigilance in the consecration of her pastors. Whilst therefore in the treaty of any arrangement between powers thus circumstanced, the claims of the state should not be urged to an extent beyond what may be necessary for the assurance of its own security ; it would be at the same time a duty on the part of the Church, as well as a conduct dictated by prudential consideration, to conciliate the benevolence of the State; and by every concession, consistent with the principles of her faith, to obtain for those of her communion the favour and protection of the Sovereign: certainly it would be reprehensible by a predilection, not for the institutions of the brighter periods of christianity—but for the obscure ideas and blind bigotry of the dark ages—by an unyielding stubbornness—by an unreasonable distrust, and by raising unfounded and frivolous objections,—“ to bring scandal into the “ world”—to offend powers, which although established merely for the

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government of civil society, also “are of God”—and to disturb the harmony of that excellent polity, the support of which ought to be its desire as it is its duty, although it be not the sole and limited object of its own SACRED INSTITUTION*.

The present system of electing Bishops to the vacant Catholic dioceses of Ireland, and it may be observed that the Catholic division of that country into dioceses regards only *the cure of souls* and no claim therein of *civil jurisdiction or temporal magistracy* (enjoyed by Protestant Prelates not in virtue of their abstract *spiritual* functions, but by the *investiture of the Crown*;) appears to me so calculated to ensure a succession satisfactory to the Crown; that I must own it appears to my mind doubtful, upon an impartial consideration of the case, whether it would not be more politic, on the part of His Majesty's Government, to be contented with what at present secures the desired object of interference. Should a change of circumstances occur, it has it always in its power to provide an effectual remedy. If however in the settlement of this question it be otherwise determined, and it be thought advisable to establish a formal arrangement; it is perhaps a fortunate circumstance that the ample authority which the Irish Catholics acknowledge in the Pope, with respect to the appointment of their Bishops, may contribute to the facility of such a proceeding. Although the successors of the vacant Sees are in the first instance elected in Ireland, and recommended from thence to His Holiness, persons not included in the list of recommendation have been sometimes appointed by the Pope, and received in that country. This circumstance prevents the necessity of considering a question which lately arose in France, upon the re-establishment of the Roman Catholic religion. The conduct however of the French Clergy at the commencement of the French Revolution ex-

* The Catholic Bishop of Canada is appointed only with the concurrence of His Britannic Majesty.

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emplies many of the positions which I have advanced. In refusing to take the oath required by the National Assembly, which had new modelled the ecclesiastical division of that kingdom, they admitted the right of the state to enact regulations respecting the external police of the Church, its external dominion over the persons and actions of the Clergy—and also its right to CHANGE THE LIMITS OF THE EXISTING DIOCESES: but they refused to take the oath required of them to support what was nominated the CIVIL CONSTITUTION OF THE CLERGY; because they conceived it to encroach upon the Catholic faith, by asserting a right to confer the *faculties of ministry* upon the persons nominated to the new dioceses, by the sole authority of the TEMPORAL GOVERNMENT.

In concluding this Memoir, and terminating most probably the literary labours of ten long years, assiduously and gratuitously bestowed upon this most important question, which had arisen indeed in Ireland, from a natural course of events, previously even to the contemplation of a legislative union—which had formed a principal feature in the discussion of that measure—which, when raised by a proposed modification of the Parliamentary oaths, during the progress of the Union Act in the House of Lords, had been postponed, only in consequence of a public assurance from Ministers, that it should be considered upon the first meeting of the Imperial Parliament—which since that period, (in consequence of a discussion under such circumstances inevitable, and which perhaps from the feelings and passions of men it may again be impossible to avert,) has CONVULSED THE EMPIRE, RENT THE COUNCILS OF THE STATE, AND MADE THE VERY FOUNDATIONS OF THE THRONE TO TREMBLE—in treating such a question, the author trusts he may be permitted to entertain the consolatory hope, that if nothing which

* I allude to the questions which have been raised respecting the CORONATION OATH, a matter which I have discussed heretofore in “*an essay upon the history and effect*” of that important obligation.

(39)

he has written may have tended to allay the ferment of the public mind and to compose distractions, at least he has not contributed to enkindle animosity or extend the flames of discord; that upon the present occasion, if he has declared his sentiments with the freedom of independence, he has not been wanting in candor, impartiality, or in moderation; in courtesy towards those with whom he may have the misfortune to differ in opinion; but above all in RESPECT TOWARDS THE NAME AND FEELINGS OF A SOVEREIGN, whose exalted station commands the deference, as his virtues ought to ensure the veneration of all classes of his people: a SOVEREIGN who, particularly from his Catholic subjects has claims not only to affectionate attachment but heartfelt gratitude, for benefits experienced under the auspices of his reign which they had never obtained from any OTHER PRINCE, who since the reformation, with due regard to the rights and liberties of the subject, had swayed the sceptre of Great Britain.

THE END.

A note upon various matters discussed in the Preceding Memoir.

THE case to which I have alluded, page 8, with respect to the construction of the Test Act, is that of THURSTON v. STAFFORD, 1 Lutwyche, 910. That case is a decision expressly on the point; and indeed a mere perusal of the statute would be sufficient to ascertain the true construction, even in the absence of a legal decision.

I might also mention, although by no means necessary, what was said by the court in the case of GOODWIN v. HALES, Comb. 21; where it is observed that the Test Act does not in the first instance "impose a disability on any one; it only requires certain things to be done." The decision however in this case regarded the validity of a dispensation from the crown, pretending to release the party appointed from the supervenient disability and penalty, to which he had become liable, by having acted in his office after the time allowed for conformity without complying with the provisions of the statute. I have alluded to this case of course not as to an authority with respect to the point decided, but to introduce the observation, that if it were objected to the Government of JAMES II. that Papists were employed contrary to law; it is to be recollected that at this period the statutes of recusancy were in existence, and by rendering every Catholic liable to the conviction of recusancy might justly be said to render them, under the provisions of those laws, incapable *ab initio* of receiving any commission whatever from the Crown; and therefore to invest them with authority was an illegal act. These statutes are however repealed.

As the law therefore allows all persons nominated to public employments to continue in-office during the period of six months, under the provisions of the Test Act, and does not make the profession of the Protestant religion a condition precedent to appointment, it is manifest that the Crown may legally appoint whomsoever it shall please. In fact, such an appointment, admitting a party not of the established Church to an enjoyment of the advantages derived from office only during a time, might operate as a powerful inducement to subsequent conformity; and the executive government has no authority to presume that such might not be the object of the legislature, in leaving the right of appointment open, and making the disabilities to commence only at a subsequent period. No course can be more dangerous to the liberties of the subject and the existence of the constitution, than an extension by the executive government of acts of Parliament beyond the letter of a penal statute; or in other cases contrary to the fair import of the enactment: to adopt a construction in direct opposition to the judicial determinations of courts of Justice, the only constitutional expositors of the law, would equal the abuse of authority heretofore committed, in the attempt to dispense with the law itself. I am convinced that this will be considered sound doctrine, and be universally admitted. It would apply to the adoption of a principle that a Catholic or other dissenter ought not, if qualified in other respects, to be employed under the crown, on account of the Test Act. Such a principle would be the more erroneous, since it would amount to an EXECUTION IN PRACTICE, of what the LEGISLATURE dispenses with annually, and does not permit to be ENFORCED BY LAW.

The statute by which Catholics were excluded in England from PARLIAMENT, (where it is to be recollected no sacramental test or conformity to the established church is at all required of its members,) is the 30 Charles 2. St. 2. It was enacted at the time, and merely in consequence, of the popular clamour excited by the nefarious conspiracy of TYRUS OATES; which caused the shedding of so much guiltless blood, and among other personages brought to the block the aged and venerable Sir William Howard, Viscount Stafford. The case indeed of that innocent victim illustrates strongly the fatality to which delusion had extended, when we find that even the SUPREME COURT OF JUDICATURE IN THE LAND could violate the most established rules of evidence, and depart from the first principles of criminal Jurisprudence.

This statute also, as a principal enactment, excluded the Catholics from Court; a provision since repealed by St. 31. G. 3. c. 52. the Catholic Toleration Act.

THE CATHOLICS OF IRELAND were excluded from Parliament by an ENGLISH ACT 3 WILL. & M. c. 2; and therefore, according to the declaratory act passed during the present reign respecting the independence of the Irish Parliament, THEIR EXCLUSION was ILLEGAL during the subsequent reigns of Anne, George I. and George II. and even in that of his present Majesty. The Irish Parliament however, in 1782, re-enacted this statute with several others *in globo*. The LEGAL EXCLUSION therefore of the IRISH CATHOLICS from Parliament is to be dated only from THAT PERIOD.

I have not thought it necessary to take notice of the Corporation Act, which is the 13 Charles 2. St. 2. c. 1. and was enacted principally against the adherents of the republican party. By the Irish Act of 1793, the Catholics are admissible to Corporations *sub modo*. The English Catholics are not a commercial description of persons, and the provisions of the Indemnity Act extend also to this statute.

In support of the argument respecting what I have urged on the subject of the King's supremacy, I must observe, that the 37th article of religion is entitled as concerning the CIVIL MAGISTRATES, and simply declares that the BISHOP OF ROME has no Jurisdiction within the Realm. This expression therefore in itself, but especially if understood with reference, as it ought to be, to the whole article, which professedly relates solely to TEMPORAL GOVERNMENT, clearly establishes all that I have advanced on this subject of SUPREMACY.

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