A REVIEW,

*&c. &c.*

A

# REVIEW

OF THE

# LAW AND JUDICATURE

OF

# ELECTIONS,

AND OF

THE CHANGE INTRODUCED BY THE LATE

## IRISH DISFRANCHISEMENT BILL

BY

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"Il est plus facile de légaliser certaines choses que de les légitimer."—*Pensées de Chamfort.*

"Princes must provide that the laws may be so administered, that they be truly and really an ease to the people, not an instrument of vexation; and, therefore, must be careful, that the shortest and most equal ways of trials be appointed, fees moderated, and intricacies and windings as much cut off as may be, lest injured persons be forced to perish under the oppression, or under the law, in the injury, or in the suit. Laws are like princes, those best and most beloved, who are most easy of access."—*Jeremy Taylor's Holy Living.*

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A

# REVIEW,

*&c. &c.*

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Some expressions which fell from Mr. Peel on the introduction of the bill for the disfranchisement of the Irish forty shilling freeholders, seemed distinctly to intimate *the propriety of a general revision of the system of election law.* The importance of such a revision can only be estimated by those who have been professionally engaged in the practice connected with this department of the law, and by those who have had occasion to endeavour at the amendment of any portion of it. It was probably in the course of such endeavours with respect to the Irish county system, that there arose in Mr. Peel's mind the opinion he now apparently entertains of the necessity of extending, to this branch of our national code, those principles of simplification which he has adopted in other cases. This mode of contemplating the subject is neither that of the statesmen nor of the patriots who have considered the more philosophical and momentous questions—*how far the*

*present House of Commons may be said to represent the opinions and feelings of the nation,—how far a true representative of those opinions and feelings is of importance to national interests and character;—and by what means a legislative body which does represent, or one which does not represent the opinions, feelings, and interests of the nation, is to be secured;*—but it is simply that of a lawyer or administrator of law, considering not the end but the means, and not the general policy, but the particular arrangements by which the desires and orders of higher authorities are to be attained and enforced. It is, however, an essential mode of contemplating the law, and it is surprising that it has not sooner attracted deliberate attention. To this technical view of it the writer of the following pages intends strictly to confine himself, although he is sensible that it cannot fail to suggest to others—larger and more enlightened views and projects.

It is impossible to appreciate justly the difficulties and importance of the subject without a legal exposition of its chief imperfections; but as the persons most qualified by their great learning and experience in this department, have too little leisure for such an undertaking, the following attempt to present to the Members of the House of Commons some specimens of the arbitrary character and perplexed con-



dition of a branch of the law in which they and their constituents have a vital interest, will not, I hope, prove entirely useless.

Lord Glenbervie, Mr. Serjeant Heywood, and Sir Henry Blosset, the most learned writers upon the law, all complain of the difficulty of reducing it to any clear doctrines, and that in proportion as the judicial investigations and decisions of the House of Commons and its committees had increased in number, the original and theoretic principles had been lost sight of or overthrown; that inquiry had only led to confusion, and that every new "determination" had served rather to encumber, unsettle, and mystify the principles and practice, than to fix, elucidate, and simplify them. This will appear to be chiefly attributable to the constitution of the tribunals by which controverted elections have been determined, and is now scarcely remediable even by the improvement of the tribunal;—without also a consolidation of the statutes, and a reformation of the law in the adoption of a new and simple code.

Lord Glenbervie, a tory lawyer, who derived much assistance in his illustrations of the law from Mr. Speaker Onslow, published in 1775, the first volume of his reports; and in the introduction to it, speaking of the mode of determining controverted elections from the period of

the Revolution down to the time of the 2d year of George II. when an act was passed which made a "last determination" by the House, of the right of election for any place, *final*, says:—"This, in the course of a few years, produced a great number of illegal, inconsistent, and contradictory decisions. If a whig was a contending candidate when the whigs were in power, the right of election was declared to be in his friends. If for the same borough a new contest arose, under a tory administration, and the tory candidate had the suffrages of a class of men who had been excluded on the former occasion, the right of voting was then bestowed upon them. In short, to bring in the favourite candidate, and strengthen the majority by a new voice, every fence of law, justice, and even decency, was broken down." And even subsequently to the 2d of George II. until the passing of the Grenville Act, in 1770, it was still, he says, "the most imperfect, partial, and inconsistent tribunal, which, perhaps, ever was known in any civilized government."

Let us see, however, what persons of higher professional reputation, even than Lord Glenbervie, have said of the laws and decisions since the operation of the Grenville Act. Mr. Serjeant Heywood, the most able of the writers on election law, in 1797, in the preface to his



volume on Borough Elections, says, in excuse for interrupting his labours on that part of the law before he had completed his original design, "I cannot boast of such a share of resolution as to be able to persist, without respite, in the *disgusting* task of attempting to reconcile absurd and contradictory decisions, and in the repetition of often fruitless efforts to reduce to first principles a very important branch of the law, which *ignorance, caprice, and corruption* have united to render intricate and confused."

And Sir Henry Blosset, the last author of great practice, knowledge, and authority, in 1805, excusing himself for making a mere compilation of cases, instead of a methodical treatise, says, "And when it is considered with what great labour and difficulty the several points, arising from the law of elections, are to be sought for and ascertained, and the still greater difficulty of digesting and reducing them to any clear and certain principles, it will be found better entirely to abstain from such a task, than to attempt it, without the full possession of experience and leisure."

The unfortunate, and even the fortunate candidates, in cases of controverted elections, will not need from me any examples to induce their ready acquiescence in the opinion of these great law authorities. Those who have not acquired a ruinous or expensive experience of the evils

of the present state of the law, may, however, require some detail of instances, in corroboration of the assertions I have quoted, before they will be induced to take an earnest interest in any projects for the relief of future candidates and constituents, from the dangers which they may chance themselves to have hitherto escaped.

First, then, it will not be amiss to give a few examples of principles or prevailing practice, together with their contradictory principles or practice. It is sometimes a puzzling matter to decide on what rules should properly be bestowed the dignified name of *principles*, and what other rules should suffer the indignity of being classed among *contradictions;* but any errors of this kind may fairly, it is presumed, be referred to the nature of a task which has already driven from their purpose my more competent predecessors, and absolutely frustrated all their projects of a satisfactory and systematic arrangement. Wherever I have not cited any authority for the principle, or reason of the principle, (which are distinguished by being printed in Italics,) I wish it to be understood, that *both* have been taken from the *text*-writers and greatest authorities,—that they are familiar to the learned on this subject, and that, I think, the unlearned will be more ready to take a few assertions upon trust, than to read the quotations



I should else have occasion to trouble them with.

## I. GENERAL PRINCIPLES AND THEIR CONFLICTING PRINCIPLES OR PRACTICE.

1. PRINCIPLE:—

*Peers, English and Scotch, ineligible, to the House of Commons, because they are already members of another House of Parliament.* This reason suggests an inquiry into the history of the separation of the Peers from the Commons, in their deliberations, and into the reasons of their personal, instead of representative attendance in parliament, a subject of great importance to the Scotch and Irish Peers, but not material to the present purpose.

CONTRADICTION:—

*Irish Peers eligible in England or Scotland,* by de-privileging themselves, *pro tempore.* They may first vote in the choice of representative peers for Ireland, and they may then forego their privileges of peerage, and become themselves representatives, as commoners, for any county, city, or burgh, in England or Scotland. Vide Act of Union.

2. PRINCIPLE:—

*Eldest sons of English and Irish Peers,*

*(who may be called Peers-elect,) eligible in England, Scotland, and Ireland—of Scotch in England and Ireland.*

CONTRADICTION:—

*Eldest sons of Scotch Peers ineligible for places in Scotland.*

It seems questionable whether they were not once eligible to the Scotch Parliament. Peers appear in the English Parliament sometimes by proxy or representation of another peer, and appeared in the Scotch Parliament in the same way, or by proxy or representation of their eldest sons. But the principle on which they were finally decided to have been ineligible seems to have been, that, as forming a portion of the nobility, or "being of the body of peers," they might be considered to be represented by the peers in parliament. "They are," says Spottiswood, "*quasi* peers of the realm, and have a precedency allotted to them, and by their birth they enjoyed a privilege to sit in the parliament of Scotland, and to hear the transactions in the meetings of the estates of the kingdom, in order to fit them for being worthy members of that august assembly."* The principle on which Scotch Peers

* The pleadings in Lord Daer's case contain much valuable information on this subject, and especially the learned and curious paper of Lord Cullen, which gives an interesting picture of Scotch Parliaments.



elect, or eldest sons of peers, are excluded from the representation of Scotch counties, or burghs, should, if good for anything, extend to exclude them from English counties, and boroughs, and, in like manner, to exclude English, Irish, and Scotch from sitting in the British Parliament for any place whatever. I cannot but think the Irish and Scotch Peers, and their sons, alike unjustly degraded by the distinctions made between them and the English; nor can I see any sufficient reason for the still severer disqualification of the Scotch and Irish Peerage, by reducing their ancient privileges to the mere vain parade of precedency, the scarcely creditable one of exemption from arrest (the purpose of this exemption no longer subsisting), and the miserable one of choosing a few of their thus humbled and disfranchised compeers to represent them in the House of Lords—the Irish, indeed, for life.

3. PRINCIPLE:—

*He that is chosen must serve.*

CONTRADICTION:—

*Evasion is always assisted* by the acceptance of a nominal office under the crown—the Chiltern Hundreds, and by collusion under the 28 Geo. III. c. 52, sec. 2, 4; (nor is this materially provided against by the 9 Geo. IV.) which enables a member, petitioned

against, to avoid his seat, by giving in a declaration in writing, that he does not intend to defend his return—for such is sometimes the necessary result; notwithstanding the privilege given to the electors, to petition to be admitted as parties in the room of such member.—(Note the Ipswich case:) also by the members absenting themselves from the House and country; as at present, in the case of Mr. Lushington, the member for Canterbury, who has for two years past been resident in India, as Governor of Madras.

4. PRINCIPLE:—

*None can be elected, who cannot also elect.*

CONTRADICTION:—

This convertibility *only* exists now *in Scotch Counties.*

5. PRINCIPLE:—

*Bribery* small or great, direct or indirect, is *forbidden*, and stigmatized by resolutions of the House, by statutes, by resolves of committees, and by speeches of members, and, in particular, by a resolution of the House at the commencement of every session:—"That if it shall appear that any person hath procured himself to be elected, or returned a Member of



this House, or endeavoured so to be, by bribery, or any other corrupt practices, this House will proceed with the utmost severity against such offender."

CONTRADICTION:—

*Bribery* is *countenanced* under the form of treating, *by* the narrow limits of the *Treating Acts, and* is cloaked by *collusion of* rival *candidates.* Sales of seats are as "notorious as the sun at noonday;" it has been justified too, by resolutions of the House against inquiry or against punishment of offenders, and by speeches of members. The conduct of members, and candidates, is in flagrant profligate violation of honour and law. The House has no eye for this subject, except that of a committee; and the committees are for the most part afflicted with cataract, on which lawyers are not found to be successful operators.

6. PRINCIPLE:—

*Persons summoned as assistants to the House of Lords not eligible;* as judges, and formerly the Attorney-General, &c.

CONTRADICTION:—

*Masters in Chancery,* and now, the *Attorney-General, &c.,* sit in the House of Commons.

7. PRINCIPLE:—

*Bankrupts, though honest, excluded,* on becoming so, (see the 52 Geo. III.) from sitting or voting for twelve months, and seat vacated, if the Commission of Bankrupt is not superseded in that time.

CONTRADICTION:—

Gentlemen *insolvents, though dishonest, permitted;* as a late member for Sudbury, and Rowland Stephenson still a member, &c.

8. PRINCIPLE:—

*Notorious or noticed disqualification of a candidate* at an election, *renders his election void;* for the votes, however numerous, given to a candidate whose disqualification has been mentioned to the electors at the time, have been held by committees to have been thrown away, or as never given; and the opposing, but qualified candidate, has been resolved to be duly elected, however few may have been the votes in his favour.

CONTRADICTION:—

It is a very nice and difficult matter *to understand the disqualification.*

9. PRINCIPLE:—

That there be *due time for proper*



*choice,* and, therefore, forty days between the teste and return of the writ.—Magna Charta, perhaps, and 7 and 8 Will. III. c. 25.

CONTRADICTION:—

*Considerable option* is *left to the returning officer,* and many elections are terminated in a week or less, after the teste of the writ. The practice on vacancies during the sitting of the House, is also in contradiction to the principle.

10. PRINCIPLE:—

*Peers or Lords Lieutenants concerning themselves in elections* is deemed *a high infringement of liberties.* Vide Resolutions of the House, and especially one at the commencement of every session—"That it is a high infringement of the liberties and privileges of the Commons of Great Britain, for any Lord of Parliament, or any Lord Lieutenant of any county, to concern themselves in the election of members to serve for the Commons in Parliament."

CONTRADICTION:—

The practice of *interference and influence* is *connived at, and notorious.* This very session Lord Falmouth turned out his two members for Truro, and brought in

others to vote against the Catholics. But Lord Falmouth only did what many other lords and patrons of boroughs, do ever and anon.

11. PRINCIPLE:—

*The legislative, judicial, and executive powers should be kept separate and distinct.*

CONTRADICTION:—

*Admission to the House of Welsh judges, ecclesiastical judges, Master of the Rolls, &c.*

12. PRINCIPLE:—

The *electors* shall be at liberty *to choose any man in whom they have confidence, provided* that he be *not by place or pension*, &c. *bound to the Crown, or subject to its influence.*

CONTRADICTION:—

*They shall have no confidence but in men of certain fortune*, for by the 9th Anne, &c. the qualification of 3 or £600 per annum from landed property is required;—*unless* he be dependent by place, pension, &c. on the crown or a coronet. Vide sec. 7, 8, of 41 Geo. III. c. 52; 18 Geo. II. c. 22, sec. 3; 6 Anne, c. 7, sec. 25, and 1 Geo. I. c. 56, in favour of old places of profit and pensioners for life, &c.; and as to the influence of coronets or aristocracy, the 2d sec. of the 9th of Anne exempts



from the necessity of having a money qualification, "the eldest son, or heir apparent of any peer or lord of parliament, or of any person qualified to serve as knight of a shire."

13. PRINCIPLE:—

*Community of Interest between the Crown and Members of Parliament, guarded against.* Vide prayer of the Commons, 22 and 25 Ed. III. against "taxours, resceivours," or "Coillours de l'Eide," down to the statutes, since the revolution, excluding placemen, pensioners, and contractors.

CONTRADICTION:—

*Placemen and pensioners admitted in swarms*, and persons holding commissions in the army and navy; and *contractors also*, by an exception in favour of public companies, viz. the Bank of England, &c.

14. PRINCIPLE:—

*Community of interest between the Representatives and Electors.* Vide letter of Charles II. to the royal burghs of Scotland, and the 22 Geo. III. c. 41. against officers of Excise and Customs concurring in the choice of Members of Parliament,—together with many other acts disqualifying servants of the

Crown from voting. This was also secured *in burghs* by the qualifications of *trading*, *freedom*, and *residence*, for which, as to England, vide 1 Hen. V. c. 1, and, as to Scotland, vide Wight, 403 ; 3 Luders, 255. In English counties, it was secured by making the choice be of " men of the counties," vide 23 Hen. VI. c. 14, and 8 and 10 Hen.VI. In Ireland, residency in counties and boroughs was provided for by 33 Hen. VIII. sec. 2. c. 1, sec. 2.

CONTRADICTION :—

*The practice* in England *since* 1620 ; in Scotland, since the Union, has been *to destroy the community of interest*—in Scotch burghs by the choice of persons, neither traffickers, free, nor resident. In England, the practice has been legalized by that most pernicious act, the 14th Geo. III. c. 58, which repealed the old, wholesome, though long neglected statutes of resiancy, not only with respect to members, but to voters, see 1 Douglas, 342, 3. The practice in Ireland also has been in opposition to the principle.

15. PRINCIPLE :—

*Every man is* said to be *in parliament—personally or by representation.*



CONTRADICTION :—

*Not so much as one in two hundred of the male adults have a right of voting for members of parliament.* The House of *Commons*, of its own authority, *suspends representation for twelve months or more.* Vide cases of Hindon and Shaftesbury in 1775; of East Retford in the present parliament, &c. and note too, the suspension occurring in cases of double returns.

16. PRINCIPLE :—

*Occasionality*, which means a vote *for the occasion*, a right given to enable the voter just to *serve the turn*, or the acquisition of *a qualification* to vote, *for the purpose of influencing* the ensuing election, is a great objection to a vote ; and there are many statutes against it.

CONTRADICTION :—

*It is no objection in burgage tenure boroughs*, where the title to the vote is often given the moment before polling, and taken away again the moment after. Vide East Grinstead case, 1 Peckwell.

And yet in the case of Onslow *v.* Rapley, it is said " that the making of votes by such means was a very evil and unlawful thing, and

tended to the destruction of the government and debauching of parliament," and "that it was senseless to think such practices were part of the constitution of our government, or to imagine that persons whom we entrust with our lives and fortunes, ought to be made and chosen by such evil devices;" and "the matter appeared so foul, the court began severely to censure the proceedings as evil and unlawful;" and the 7 and 8 W. III. c. 25, was framed, and introduced into parliament by Lord Somers, for the particular purpose of redressing that evil amongst others. And Lord Thurlow says, in 1787, in a judgment he gave in the House of Lords, "If the title to a seat in parliament had been in England, as now in Scotland, referred to the decision of a court of justice, we might venture to guess that a gentleman could not have been at liberty to send his steward with ten or a dozen parchments, to be distributed among as many voters round a green table, and then picked up after the election was over. I believe that could not have happened."

I might proceed with a long table of contradictory and contrasted principles and practice; for it is not possible to discover a single principle or doctrine, among those so called by the lawyers, to which there are not exceptions enough to bring the rule into doubt. But



it would be superfluous to present the subject any longer in this aspect, since the same conviction of the inconvenience and absurdity of the law, will be produced by a view of some of the topics that belong to two great branches of it, which should be noticed separately—the law regarding county elections and that regarding borough elections.

Let us begin by looking a little at the history of *Occasionality*, as it respects county voters.

## II.—County Elections.

*Occasionality*.—The 8 of Hen. VI. requires a voter for a county, to have a freehold of forty shillings per annum. This has always been confined to persons having *the legal estate;* and if the law had been enforced after *uses* became common, the greater part of the landholders of England must have been disqualified to vote. This disqualification was removed by the 7th and 8th of Wm. III. c. 25, s. 7. The same section directed against *splitting* the interest in houses or lands in order to multiply voices, has given rise to much dispute and to many contradictory decisions by committees of the House; the true construction of the act being so absurd as to have prevented its enforcement.

The great question has been whether *the intervention of fraud* in the transaction of multi-

plying votes, by the splitting or subdivision of property, was *requisite* to make the splitting illegal, and the votes bad—or whether the *mere circumstance of splitting* was in itself *conclusive evidence of fraud*. No time is fixed within which, previous to the election, the conveyance is invalidated. No length of time protects it from imputation. No criterion is given to the returning officer to judge of the intention of the parties. In one case the House decided that all tenements split since the Act, were bad votes. In another case that they were bad only when split since the last election. In the Haslemere case, 1775, the Committee came to no resolution at all; but it does not follow from their decision in favour of the sitting member, that they did not adopt some one of those propositions of the petitioner, of which Mr. Serjeant Heywood says, "The monstrous absurdity which went to overthrow conveyances of more than eighty years standing, and for which the owners had voted over and over again at different elections, without objection, must strike every man of common sense. If this doctrine had prevailed, an election of knights of the shire for such a county as Lancashire, where the number of freeholders is so prodigiously increased since the beginning of the last century, and many of the great estates



have been split into smaller tenements to answer the purposes of commerce (some suppose there are above forty thousand freeholders in Lancashire; if so, thirty thousand of them may be fairly presumed to be seised of tenements split since 1696) might (if the sheriff had authority to examine and judge upon the right of each individual voter) be spun out to the end of the parliament, to which the knights were to be summoned; or, if the merits of the election came by petition before a committee, the lives of the members who composed it might be spent in the inquiry."

And to enforce, therefore, the great election act of the great Lord Somers, would disfranchise one half of the kingdom, or much more.

"The legislature," says Serjeant Heywood, "finding that, notwithstanding the statute of the 7th and 8th Wm. III., the evil still increased, and that many fraudulent and scandalous practices were still used, for the purpose of creating and multiplying votes at elections of knights of the shire," passed the 10 Anne, c. 23, and 18 Geo. 2, c. 18, s. 5, rendering all fraudulent or collusive conveyances absolute against the granter—with exceptions, which have "been carried to a very extravagant length," allowing the son to vote for lands at the same election for which the father had voted for the same lands. After all, from the more

recent decisions in the cases of East Grinstead and Okehampton, 1 Peckwell, and Weymouth and Melcombe Regis, 2 Peckwell, what the law now really is "may be inferred," says Serjeant Heywood, and only *inferred!*

Of the blunders made by the patchers and menders and tinkers of acts of parliament, this subject affords an illustration. The 7 and 8, Wm. III., applies to counties and cities. The 18 Geo. II. only to counties, and the 53 Geo. III. c. 49, to counties and cities.

*Rating and Assessment.*—One mode of ascertaining the value of a freehold was to estimate it by the proportion of public taxes paid by it; the 10 and 12 Anne were passed with that view, but "great inconveniences arising," says Serjeant Heywood, "from the numberless questions which were necessarily agitated at county elections upon the rating of the lands and tenements of freeholders who claimed to vote, and the purpose for which the acts were made not having been answered, they were both repealed (as far as relates to this subject) by the 18 Geo. 2, c. 18," which "introduced a new system and made the assessment of the persons connected with the land itself, a qualification to vote, without any reference to the value of the property rated."

Mr. Serjeant Heywood appears to me to have mistaken the acts. The 10 and 12 Ann, made



the qualification depend on the assessment or charge of the land to public taxes with *reference to* the *value of the land.* The 18 Geo. 2, made it depend on the assessment or charge to the land tax, but *without any reference to* the *value or* the *person.* The assessment of *the person* instead of the land, was introduced by the 20 Geo. 3, c. 17, or rather of the person *and* the land.

Sergeant Heywood says, "Many cases came before the Gloucestershire committee in 1777, in which it appeared that voters had paid no land-tax directly, their freeholds being small parcels carved out of larger estates, purchased free from the land tax, which the owners of the principal estates still continued to be rated for, and pay, notwithstanding the dismemberment. Hence in the course of time it became difficult for the owners of the parcels to prove that their lands were assessed. This was one of the evils *intended to be remedied* by the 18 Geo. II." He says further on, "But numberless questions having arisen upon this act at county elections, and great delays and inconveniences having been occasioned by perpetual disputes concerning the rights of persons who claimed to vote as being *virtually rated,* where their names did not appear upon the rate, but the lands were rated not at all, or in other names, the 20 Geo. III. c. 17. was passed."

The wisdom of the legislature, however, still failed to secure the objects of its wisdom: "For," says Serjeant Heywood, "the *objections founded upon this act* of parliament intended to *remove* certain difficulties relative to voters, *make a principal part of this branch of the law.*" Out of about two thousand voters, upon the poll at the election for Bedfordshire, the committee decided upon five hundred and seventy-seven, out of which number the want of a regular assessment to the land tax was the objection to no less than two hundred and seventy-seven, or nearly *one half*. In the cases of Essex, Yorkshire, and Oxfordshire, before the 20 Geo. III. (which are mentioned as instances of elections more warmly contested than any other) the objections to votes, on account of their not being regularly assessed, bore no proportion to that number, and yet the act of the 20 Geo. III. was expressly made to prevent all disputes about *virtual* rating, by giving one general rule to proceed by, viz. that the estate for which any person claims to vote, shall be rated in his name, or in the name of his tenant or tenants occupying the same. If this provision had been strictly enforced by the Bedfordshire committee, it would have saved much expence, time, and trouble, for by departing from it, they fell into the very evil the statute was meant to prevent, and more than



two hundred questions of *virtual* rating were actually decided. "The *inconveniences and difficulties which have arisen from the attempt to subject the estates of voters to an assessment, shews how dangerous it is rashly to depart from the plain and simple rules of the common law.* The legislature had, for more than seventy years, had this object in view; statute upon statute had been made, and yet the necessity of some farther alteration was admitted by all. The assessment act operated as a *law of disfranchisement* upon most of the independent freeholders, while party men were not likely to forget that their tenants and retainers must be duly assessed. I have been informed from good authority, that at the general election in 1784, there were not more than four hundred freeholders in the county of Lancaster who were properly assessed, and could have voted, if there had been a contest. The attempt made by the 28 Geo. III. c. 36. to correct, would have *only aggravated* the evil. That statute, though objectionable in many particulars, might possibly have been carried into execution in the smaller counties, but in the larger ones it could not have been executed. In Cheshire the poll at an election must have been taken by no fewer than four hundred and eighty-one persons at the same time, and in Lancashire, by four hundred and forty. That

act, however, was repealed, and peace be to its *manes*."

A repugnancy between the body of the act and the form of the assessment, has given rise to contradictory resolutions of committees. The Buckinghamshire in 1785, the Cricklade in the same year, and the Bedfordshire in 1795, proceeding on opposite principles, decided several cases which it is impossible to reconcile.

The 30 Geo. III. did very little towards the removal of the grievances arising from the system of assessment. Objections to the assessment of voters still constitute a principal head of inquiry, and if we may judge by the Middlesex election in 1804, (2 Peckwell) we must conclude that they are now nearly as numerous at every contested election as before the last mentioned statute was passed. The statutes for the redemption of the land tax have added much to the grievance, for, as it is unnecessary for the holder of land exonerated from that tax to be rated at all, the poll is necessarily protracted by the inquiry from the voter of whether he is rated, or his land tax is redeemed. As the redemption advances, the evil will increase, introducing a new source of vexation and delay to the sheriff and the electors, and of expence to the electors and the candidates.

In passing the several statutes for making



effectual those of 38 Geo. III., for granting and making perpetual a land-tax, and for giving a power to redeem and purchase it, "the legislature seems to have *forgotten* that the qualification of most electors depended upon their being assessed to a tax, which these acts were designed to redeem and abolish." The redemption proceeded, accompanied in its progress by a gradual disqualification of freeholders, till, in 1802, the statute 42 Geo. III., c. 116, was passed. Then arose indescribable confusion from the general wish of the proprietors of the smaller portions of land, derived from the divisions of large estates, in consequence of increasing wealth and population in some parts, to be exonerated from the land-tax. At the Yorkshire election in 1807, the greatest contest of recent times, few voters came prepared with the proper evidence of redemption, and many claimed under contracts made in the names of other persons. The minute investigation of the right would, in other respects, have occupied much more time than could possibly be spared at an election, where the fifteen days allowed might not be sufficient even for the uninterrupted polling of all the freeholders. A great variety of intricate questions arose with respect to how far the redemption of the land-tax, charged upon large estates and tracts of land, operated to the exoneration of smaller

tenements, which had been split off and conveyed in fee, or granted out upon freehold leases; and the assessors were compelled to have resort, especially in cases respecting allotments of common, to very nice and subtle distinctions.

*Registry of Freeholds.*—The acts that require registry of certain freeholds in England are a source of great difficulty and confusion.

The objections that occur on Irish election committees are chiefly connected with the registration of freeholds. A comparison of the Irish and English county election questions, suggests much matter for consideration, and makes peculiarly manifest the importance of a general revision of the law of elections, and the adoption of such extensive amendments as have been hinted at by Mr. Peel in the debates on the Irish Disfranchisement Bill. The consideration and adoption of such amendments by the House of Commons, upon the invitation of the government, will compensate for the uncomfortable bill alluded to, by which the Duke of Wellington has thought it prudent, or found it necessary, to accompany his great, just, wise, and necessary measure, for the pacification of Ireland, the sincere union of the three kingdoms, and the propagation of true religion. It is impossible not to admire his great conduct, and, perhaps the more, for the little that he



himself says about it. Those who may have been put out apprentices to civil office, as soon as they came from college—who have gradually plodded their weary way up to the cabinet by the dutiful drudgery of feeble faculties—who, by dint of this mechanical training, and the encouragement of subservient silence or parasitic cheers, have acquired a tedious facility of talking for hours without stopping, without thinking, and without making others think,—are full of wonder and jealousy to find, overtopping them, a first minister who has neither been a professor in politics, nor a prater in parliament. They had been so long accustomed to admire

> "Des harangeurs du tems l'ennuyeuse éloquence,"

that when the duke came saying, like Cæsar to the Tribune Metellus, "It is harder for me to say than to do," they and their followers were fain to mutiny, "and cackling save the monarchy" of nonsense. It has been delightful, however, to witness the duke, allowing them with indifference to cackle on, now and then wringing the neck of any one rash enough to endeavour to bite, and sometimes dealing confusion and destruction among them, with his plain, straightforward, resolute, single-stick common-sense.

I see that many orators quote against religious freedom the great names of many of the

actors in the revolution of 1688. They seem to be ignorant of the great names in favour of the nobler and wiser policy. These men, pretending to be statesmen and learned sages, take down from the shelves of old libraries the huge volumes of forgotten controversies and appeased antipathies, only to disturb their dust to the blinding of themselves and all those about them. These bigots go down into the mines of antiquity, not to search for forgotten or abandoned ore, but to gather up the dross, and to dwell in the darkness. I cannot refrain from this opportunity of citing some passages from the writings of the politicians of the time alluded to, which will prove that they were wiser in those days, than some modern politicians would represent them.

Jeremy Taylor, who is almost always wise and eloquent, says, "Princes must not multiply public oaths without great eminent and violent necessity; lest the security of the king become a snare to the people, and they become false when they see themselves suspected; or impatient, when they are violently held fast; but the greater and more useful caution is upon things than upon persons; and, if security of kings can be obtained otherwise, it is better that oaths should be the last refuge, and when nothing else can be sufficient."

Lord Halifax was not singular in his opinion



when, on occasion of the non-resisting Test Bill in 1675, he said, "That as no man would ever sleep with open doors, though all the town should be sworn not to rob, so the state gained no security by oaths; and their only effect was, to disturb or exclude some honest, conscientious men, who would never have prejudiced the government." See Lord John Russel's Life of William Lord Russel.

The distinguished author and patriot, Henry Neville, in his Plato Redivivus, or Dialogue concerning Government, published in 1681, speaking of the Catholics, says, "The remedie is very easie and obvious, as well as very just and honourable, which is the taking away their cruel laws: and if that were done, they would be one people with you, and would have no necessity, *and by consequence, no desire* to engreaten the king against the interest and liberty of their own country."

Sir William Petty, the celebrated ancestor of the present Lord Lansdowne, in his Political Arithmetic, which was published by his son in 1691, ascribes the prosperity of the Dutch to the entire freedom of religion among them, and has the following admirable observations: "These people believing the justice of God, and seeing the most licentious persons to enjoy most of the world and its best things, will never venture to be of the same religion and profes-

sion with voluptuaries and men of extreme wealth and power, who they think have their portion in this world. They cannot but know, that no man can believe what himself pleases, and to force men to say they believe what they do not, is vain, absurd, and without honour to God. The Hollanders knowing themselves not to be an infallible church, and that others had the same scripture for guides as themselves, and withal the same interest to save their souls, did not think fit to make this matter their business; not more than to take bonds of the seamen they employ, not to cast away their own ship and lives.—They observe, where most endeavours have been used to keep uniformity, there heterodoxy hath most abounded. They believe that if one-fourth of the people were heterodox, and that if the whole one-fourth should by miracle be removed, that within a small time one-fourth of the remainder would again become heterodox some way or other, it being natural for men to differ in opinion in matters above sense and reason: and for those who have less wealth to think they have the more wit and understanding, especially of the things of God, which they think chiefly belong to the poor;" and then he asks, why "may not the three kingdoms be united into one *equally* represented in parliament?"

I will conclude this digression by a passage



from the Catholic Historian Thuanus, in his beautiful dedication to Henry IV. of France, where the influence of persecution and of freedom upon religious opinions and sects is eloquently described, "Nempe ad cætera, quibus hoc infestum virtuti seculum scatet, mala, religionis dissidium accessit, quod jam toto pœne sæculo orbem Christianum continuis motibus vexat, et deinceps vexabit, nisi tempestiva remedia, atque adeo alia quam quæ hactenus adhibita sunt, ab iis, quorum præcipue interest, adhibeantur. Nam experientia satis edocti sumus, ferrum, flammas, exilia, proscriptiones, irritasse potius quam sanasse morbum menti inhærentem; ad quem proinde curandum, non iis, quæ in corpus tantum penetrant, sed doctrina et sedula institutione; quæ in animum leniter instillata descendit, opus esse. Alia quippe omnia pro arbitrio civilis magistratus atque adeo principis sanciuntur: sola religio non imperatur, sed ex præcepta veritatis opinione, accedente divini Numinis gratia, bene præparatis mentibus infunditur. Ad eam cruciatus nihil valent; quin obfermant potius animos quam frangunt aut persuadent. Quod de sua illa sapientia tam magnifice prædicavere Stoici, hoc nos multo justius de religione dixerimus. Nam ubi quis religione ducitur, in eo nullum habent momentum vexatio et dolor: et quic-

quid aliud incommodi est, virtute, quæ ab illa præcepta opinione ingeneratur, obruitur. Nihil illi eorum quæ ferenda sunt displicet, quicquid cedere in hominem potest, in se cesidisse non queritur. Vireis suas novit; dumque se dei gratia fretum putat, oneri ferendo se quoque parem futurum confidit. Stet illic licet carnifex, licet tortor ferrum et flammam admoveat, perseverabit; nec quicquid passurus, sed quid facturus sit cogitabit. Felicitas ille quippe domestica est, et si quid extrinsecus intervenit, leve est, et summam tantum cutem stringit."

I will make no excuse for this digression from my subject. I should have been ashamed not to have been tempted to it, I now return to county election-law.

One of the evils of the English system is the necessary attendance of lawyers at the hustings, by whose discussions so much time is occupied, that the great majority of the freeholders in English Counties might be, and sometimes have been, prevented from voting. The Irish system is founded on an endeavour to get rid of this evil. By the 35 Geo. III. c. 29, sec. 2, no barrister, counsel, friend, or adviser of the court, is permitted to plead before, or be heard as counsel by, any returning officer at any election, either for or against the right of any person to vote. But a



contrary evil has grown from the contrary practice; and to this provision of the Irish acts, forbidding the assistance or intervention of lawyers, may be attributed the enormous multiplication of fictitious or fraudulent freeholds in Ireland. The presence of lawyers at elections has *disfranchised* multitudes of wealthy persons in England. The absence of lawyers from the hustings has *enfranchised* multitudes of paupers in Ireland. The arrangement of the new disfranchisement bill for litigating the rights of voting, is in part, therefore, a return to the English system—with the great improvement of making that litigation precede instead of accompanying or succeeding the election.

*Copyholds.*—There is a species of copyholders called customary freeholders, whom Committees have sometimes determined to have a right of voting for counties. It is, however, an improper decision, and the the 31st of George the II. c. 14, against the right of all kinds of copyholders, is only declaratory of the old law. But the old law is no longer a law of reason. Those who hold estates, "according to the custom of the manor," are in truth no more tenants at will now, than tenants in fee are.

Perhaps enough of the confusion and contradictions of the statutes, and the decisions on them as respects counties, have been now

pointed out, and it will be sufficient to give to the Members of the House, who have never yet had the misfortune to sit on a committee for the decision of a controverted county election, a list of the objections that committees have had to understand, or rather to decide. The following list is collected from the objections in the Bedfordshire Committee, reported 2 Luders, and the Middlesex Committees in the second volume of Peckwell :—

No freehold.
None as described on poll.
No freehold of forty shillings value, clear of rents and charges.
No freehold in occupation of the tenant named on the poll.
No freehold in the hundred or division in which he polled.
Not resident as described on the poll.
Not assessed to land-tax.
Not duly so.
Not twelve months possession before the election.
Annuity or rent-charge not duly registered, or certificate not duly entered.
Occupier not specified.
Disqualified by office.
Copyholder.
Leaseholder.
Redeemed land-tax, no title to vote.
Purchased ditto ditto.
No such place of freehold as described.



No freeholder in the county.
No such place in the county.
No such street or place as described.
No such place known.
Place not duly described.
Freehold not sufficiently described.
No such place in the parish.
Nature of freehold not described.
Nature of freehold not sufficiently described.
Estate mortgaged or incumbered.
Mortgaged, or not in possession and receipt of profits.
No such occupier as named.
No house in occupation of voter at ——.
Occupier described, not tenant to voter.
No such person or occupier described.
Neither voter nor occupier known in parish.
Place of residence not sufficiently described.
Place of residence not described.
Alms within twelve months of election.
Voter convicted of perjury.
Christian name not stated.
Christian name not sufficiently stated.
Parish clerk not duly appointed
License of clerk in orders not duly granted.
—————————— not duly registered.

The propriety of giving a right of voting to copyholders, and even leaseholders, I do not examine, because I have resolved not on this occasion to meddle with any topics that peculiarly belong to political projects of general parliamentary reform. But none who have read the preceding imperfect statement of the

multitudinous grounds of objection to county votes, and the meagre (though it be) account of the acts of parliament at various times passed for the purpose of introducing *order* and *certainty*, each new act reproaching its predecessor with folly and futility, and all at last having utterly failed to attain, or even, it is no exaggeration to say, to promote *either certainty or order*, can doubt that the Legislature has adhered to a qualification, and has adopted tests of it, neither of which accord with reason or convenience. Some new qualification must be adopted, together with some new mode of ascertaining and certifying its existence. Previous registry will probably be found the most beneficial mode of ascertaining the right, and certificate of registry the best evidence at the poll. But all regulations will be vain for securing to voters the exercise of their rights, and to candidates the benefit of their good reputations, as heads of families, as landlords, as chief ornaments of their party in the state, or as patriots, if provision be not made for affording to county voters the same facility and privilege which is ordinarily enjoyed by borough voters—*that of giving their votes in the place of their residence.* But the present purpose being not so much to propose the remedies as to demonstrate the mischiefs, I proceed to another part of the subject.



### III. Borough Elections.

It is not necessary to be so particular in pointing out the principles and contradictions which the statutes, and more especially the decisions of the House and of its committees, have recorded upon borough elections; for almost the whole of the law, as laid down by the House before the Grenville Act, and still more by the committees of the House since that act, are but reiterated violations of the only principles that have any semblance of reason, or are in the least accordance with the most signal and most boasted characteristics of the English Constitution, *the common law right*, as it is called, and perhaps *the right by charter*.

The doctrine of *usage*, as adopted by committees, and applied to these rights, is in utter and flagrant opposition, not only to the immemorial theory of our constitution, but to the principles of our municipal law.

These violations of the constitution, of law, and of reason, have been attended and followed by such numberless, capricious, conflicting distinctions, that they make the reports of the proceedings of election committees an humiliating example of the mean, miserable degradation of intellect to which circumstances can reduce even enlightened and powerful minds; for it would be gross injustice and false reason-

ing to infer, that the capacity, rectitude of judgment, and knowledge of the Members of the House of Commons were below the ordinary average, as the resolutions and decisions reported in those cases might lead us inadvertently to imagine.

But it cannot be wondered at, that the House and its committees, under the influence of sinister interests and subtle wits, should have made the law what it is. They certainly did not find it what it is. How fruitful their legislation has been of unblushing contradictions, and ludicrous subtleties will be sufficiently manifested, however, as to borough elections, by an enumeration of some of the rights of voting which they have invented or established. These are—

| | |
|---|---|
| Mayors, | Boroughmen, |
| Masters, | Freemen by birth, |
| Bailiffs, | Freemen by servitude, |
| Aldermen, | Freemen by marriage, |
| Councilmen, | Freemen by redemption, |
| Portmen, | Freemen by election, |
| Portreeves, | Freemen by purchase; |
| Burgesses, | |

and, as a creature of election, purchase, or fraud, there are *honorary freemen*, whose pretension to vote is the most impudent of any which the ignorant or corrupt have ever countenanced.



*Honorary Freemen.*—Lord Eldon has said, that "there would be no difficulty in shewing, that anciently *all the inhabitants* of the several boroughs in England and Scotland *were* the *burgesses;*" and none who remember this clear position, and will at the same time be at the trouble to consider the statutes concerning resiancy, and will look into Madox's Firma Burgi, or take the trouble to read attentively Mr. Serjeant Merewether's report of the West Looe case, will fail to be convinced also, that *none but inhabitants were burgesses,* and that no privileges were intended to be conferred by the granting of freedoms by the corporations and trading companies of boroughs, except the privilege of trading, and certain mercantile benefits.

Those trades or companies, however, sought protection, honour, and profit, sometimes by conferring their privilege of freedom of trade on country gentlemen in their neighbourhood, or other more considerable persons from whose patronage or purses, they might expect advantage, but from whose dispositions, education, or necessities they had no occasion to fear any competition in tailoring, shoemaking, pinmaking, or any other handicraft.

These persons, so complimented, with no real privilege which they could, or were intended to exercise, came to be distinguished as *honorary*

or nominal freemen; and so far from being sanctioned before the Revolution, in the usurpation of a right of voting for members of parliament, they are in truth excluded from any such pretension by the express words of all the election cases of any authority, decided before that time, as collected in the much valued reports of the learned Glanville.—See there, the cases of Winchelsea, Chippenham, *Dover*, (though this case has been unaccountably overruled by a decision of the House in 1770, and by a committee during the present parliament), Arundel, Newcastle-under-Lyne, Gloucester, Pontefract, and Blechingley, where the qualification of freemen is always defined as "freemen *resident* or *inhabitant*."

The tampering with corporations and corporate rights, for the purpose of influencing the return of members of parliament, was one of the tyrannous corruptions of the Stuarts, which is to be enumerated among the then grievances of the nation, and the grounds of the Revolution. The grievance was, however, only complained of—not redressed; and from the reign of William the Third, may be dated the gradual progress of the violation of the rights of the inhabitants of boroughs and cities, by the intervention of honorary freemen at elections, and from a much subsequent period, the occasional sanction by parliamentary decisions, of this illegal and unconstitutional pretension.



An extravagant and flagrant abuse of this pretended power of making freemen for the purpose of influencing an election, occurred at Durham in 1762. The persons so made were determined by the House of Commons not to be entitled to vote; and the Durham Act, against "occasional" freemen, was passed to prevent such abuses in future. Its preamble is, "Whereas great abuses have been committed in making freemen of corporations, in order to influence elections of members to serve in parliament, to the great infringement of the rights of the freemen of such corporations, and of the freedom of elections;" and then it enacts, that no freemen should vote at elections who had not been regularly admitted twelvemonths before the day of the election.

The letter of this act has generally been complied with since that time, but the object of it has been evaded by a more cautious admission of freemen for the *same illegal purpose* of influencing elections of members; and the admission of honorary or nominal members of corporations, for *that illegal end*, has continued to subsist and increase.

The first important case in which the claim of honorary freemen to vote is admitted by a

Committee of the House, is the Tewkesbury case in 1797, in favour of the government members, against two obnoxious members of the opposition—Mr. Peter Moore and Mr. Francis. The decision is not entitled to respect. The subject is not sufficiently illustrated in the arguments of counsel: the distinction between admissions for trade, and admissions to vote, seems not to have been understood; and the history of corporation law and election law, as connected with this point, has never been in the possession of committees, or of the profession, until the recent publications of Mr. Serjeant Merewether on this subject.

No effective remedy for the abuse can now be expected but from legislative interposition; and I will illustrate its necessity from the practice of two corporations, which has come particularly within my own observation—Chichester and Leicester.

*Chichester*.—The learned antiquarian Dallaway, in his History of Sussex, mentions the year 1737, as the time when the honorary freemen first claimed a right to vote; but I trace this pretension farther back, perhaps to the tampering times of James the Second—(the registers of the corporation, prior to 1685, are not to be found!)—certainly as far back as the year 1710, when there appears on the Journals of



the House of Commons an election petition, from, amongst others, "Honorary freemen;" but it does not appear that their influence ever turned the election, or that their claims were ever resisted, till 1782, when the contest between the Hon. Percy Charles Wyndham, and Bryan Edwards, Esq., was determined, by a majority of only eight, in favour of the former. Bryan Edwards petitioned the House against their right of voting, and litigated in a court of law the right of the corporation to make freemen. He failed in the latter attempt, and he withdrew his petition before the latter had been decided. If the corporation had no right to make freemen, it was clear that the pretension to vote was unfounded. But the pretension to make freemen might be perfectly legal, and the claim to vote still indefensible. The distinction does not appear to have been well understood by the lawyers of that day. At all events, Mr. Edwards was not rich enough to prosecute his petition against the return, and there was, therefore, no decision by the House of Commons on the validity of the pretended right of voting.

The only decision of the House on the right of voting for that city, is in 1660, when the "question appeared to be, whether the *free citizens alone, or the commonalty at large*, ought

to elect; and it appeared that, for twenty-one parliaments, the *commonalty as well as the citizens* had had voice;" and it was resolved "that the *commonalty, together with the free citizens,* have right of election." There is nothing hinted here of freemen, *not being citizens,* having a right. The only question was, whether citizens, *i. e.* inhabitants of the city, *being freemen,* had the sole right; or, whether citizens, *i. e.* inhabitants of the city, *not being freemen,* had not as much right as the citizens or inhabitants being also freemen; and I insist now, as I have contended at the two last elections for that borough, that neither reason nor law do sanction, and that Parliament never would sanction, the unconstitutional, though no doubt sincere, opinion of the legal assistant of the returning officer in favour of honorary freemen, or of any persons *not being inhabitants* of the city. Since the last election, the corporation has continued, in the words of the Durham act, "*the great abuse of making freemen, in order to influence elections of members to serve in parliament.*"

*Leicester.*—I reserve to a future opportunity, a history of the illegal conduct of the corporation of Leicester, with regard to elections. It is sufficient at present, to call the public attention to the number and character of the honorary freemen made since 1820. They amount



to 800!—and only one of the whole 800 is resident in Leicester; the rest are scattered all over the kingdom. There are to be found among them, about 27 medical men; 9 military men; 118 graziers and farmers; 137 baronets, honourables, and squires; 137 lawyers! (if 'gent.,' in the list I have, means, as it usually does, attorney); and 103 clergymen!!! The indecency of a mob of electioneering clergymen, I would rather attribute to the corporation, than to the reverend gentlemen themselves; but if they feel as I do, they will, on bestowing that reflection on the subject which, perhaps, these observations, if they should chance to fall in their way, may excite, regret the having permitted their names to be enrolled, by a corrupt electioneering corporation, among their eight hundred usurpers of the representation of Leicester.

The interposition of such a body of *non-residents* is against the spirit of the Durham act; and if not an express violation of the precise words of that or any other act, is, nevertheless, a clear and direct violation of the most established and oftenest reiterated principles of our representative system. The permission of honorary freemen as voters, is a fraud upon the real freemen, often rendering nugatory, and always diminishing in value, the real freeman's privilege

of voting, which he has acquired by long residence, or long service, or marriage with all the incumbrance of its duties, and by the acquisition of some craft or skill, by which he is enabled to contribute to the credit and prosperity of the town in which he has been born or bred, or both, to the support of his family, and to the revenue of his country. But neither service of the town, nor merit of the country, nor capacity of any kind, are essential elements of an *honorary freeman*. It is imposture to call them honorary, for no compliment is intended by it; and the object of making them is dishonourable. A revenue may either be raised by their admission (when fees of admission are received), or squandered by it, (when the corporation chuse, as they often do, themselves to pay the admission fees, in order to induce the parties to complete their titles); but whether corporations give money or receive money on the occasion, it is a transaction commencing with bribery, proceeding with fraud, and terminating in robbery—a robbery of the people's rights. The permission of such, or, indeed, any *non-resident* voters is, too, a virtual disfranchisement of the inhabitants of a city. It is well known that they often determine the choice, which ought to belong to, as it is intended for, the benefit of, the city. They often,



too, determine the conduct of candidates, deterring some, who might be agreeable to the city, from presenting themselves at all; and encouraging others to enter into contests, alike injurious to the interests of the city, the morals of the residents and non-residents, and the interests of both the encouraged and the deterred,—the successful and the disappointed candidates.

The legislature has, it seems to me, unwisely and unfortunately, done its utmost to facilitate, encourage, and extend, these illegal and disgraceful proceedings, by so recent an act as that of the 14th of Geo. III. which repealed the statutes that regard residence, upon a ground not acknowledged by lawyers to exist in the law of England,—that they were become "obsolete." The same act states that they "were become unnecessary." As far as respects the residence of the *members*, perhaps the act is not to be blamed, for it disfranchises no persons, and leaves to the chusers the free choice of whomsoever they shall deem most fit to render them service. But, as it regards the residence of *voters*, the act has sanctioned an abuse which the Durham Act was intended to remedy; and the evil has now grown to that height, (as would appear matter of surprise, if the House were to call for returns from all the cities and boroughs in England, or, rather, I should say, in the three kingdoms, similar to those they

have recently required from Ireland, stating the number of residents and non-residents claiming a right to vote, together with lists of the members of corporations, distinguishing honorary freemen from others), that legislative interposition can alone provide a sufficient remedy, and can only provide it by recurring to the ancient and reasonable principles of the statutes of residency.

To resume the enumeration of the rights of voting in burghs. There are

| | |
|---|---|
| Freeholders, | Burgage-holders, |
| Copyholders, | Half-burgage-holders, |
| Leaseholders, | Quarter-burgage-holders, |

(and these burgage-holders, or "faggots," vie in honour with honorary freemen—see the severe observations on this subject before quoted, p. 17, from the case of Onslow and Rapley, and from Lord Thurlow in Elphinstone's case)—

| | |
|---|---|
| Inchoate rights and perfect rights, | Populacy, |
| In-burgesses, | Lord of the manor's tenants, |
| Out-burgesses, | Assistants, |
| Inhabitants, | Capital burgesses, |
| Householders, | Innholders, |
| Inhabitant householders, | Reversioners, |
| Inhabitants paying scot and lot, | Vianders, |
| Inmates, | Burgage holders having a certain right of pasture, |
| Potwallers, | Jurats, |
| Commonalty, | Bailiff peers, &c. &c. |



Then some committees have decided, that in scot and lot boroughs, the voter must be rated and pay the rate; some that he need only be rated; some that he need neither be rated nor pay the rate, so that he be entitled to be rated, or be rate*able*.

Again—alms under the name of charity does not disqualify; but charity under the name of alms does disqualify. In most places alms does disqualify; but in some it does not: and altogether, "The difficulty," as Serjeant Heywood says, "of reducing the different rights of voting into systematical arrangement, is increased by the franchise being enjoyed in some places by more than one description of persons, each capable of almost an infinite variety of modifications."

For there is not a single name I have enumerated which has not been the subject of varying definition. Upon the names and definitions too, learned and famous lawyers have bestowed long and repeated arguments full of antiquarian research and eternal ingenuity. Committees also have bestowed much time and patience on such inquiries, and then have decided no better than if they had had no knowledge but arithmetic, although no worse than if they had possessed all the knowledge and

judgment of the lawyers. And then the resolves of Committees have been quoted as precedents, and their "last determinations" have settled the rights of election, by, for the most part, disfranchising the great majority of those, who, according to reason, and the true, professed, and vaunted principles of the constitution, have the best title to vote.

### IV. Scotch System.

The Scotch election law and representative system, as regards both burghs and counties, has in England passed into a sort of proverb for a mockery of representation. It is, therefore, quite superfluous to enter into any details; and I shall be contented with quoting a passage from Lord Thurlow's judgment in Elphinstone's case, which was entirely concurred in by Lord Loughborough:—"The right of representation in Scotland has most lamentably and unfortunately fallen off its antient basis; insomuch, that the whole value of the landed property of that country (speaking largely and generally about it) may be in the hands of those that would have no concern whatsoever in the choice of the representatives of the countjes, which might be placed in the hands of men, who have no earthly estates but such as I have been



describing. That certainly was not the object of the law. But if it be a political object, and an honest object, to give to the land of Scotland its due weight in parliamentary representation, I am afraid that is not to be obtained by a judgment of any court of law; but that resort must be had to parliament, to cure the great mischief that has happened to the constitution of that country, as well as other countries, where the change of circumstances has been such, that (the rule and order of government not being changed conformably to it) things have been turned so absolutely round, as to disappoint all the good sense and sound policy upon which the constitution stood originally. I have been anxious to state this, as to what I look upon to be the *right* of voting in Scotland. I am afraid, in *practice*, it has been reduced to the condition of a burgage-tenure."

### V. Bribery.

The decisions of committees in these cases are the subject of much chuckling, or, as the philosopher of Malmsbury would say, "inly glorying," to honourable members—of much mockery, perhaps even blushing, to lawyers—and of scandal to the Parliament.

The rules which the committees have adopted

with respect to the proof of agency, have made it but rarely possible to disqualify a member, or even avoid an election on the ground of bribery; although there is scarce a single member for a borough who is ever returned to the House, without, if not known, acknowledged, or notorious, at least virtual and understood bribery, to a most deplorable and scandalous extent.

Mr. Orme, the author of the most useful work on Election Law, says, "Although many cases have been brought before select committees on charges of bribery and treating, yet but few of their decisions will serve as precedents in future cases. This may be considered to arise from two causes: First, from committees not having expressly decided on any specific objection, although in most cases the petitions have contained several charges, either of which would, if proved, have been sufficient to have avoided the election, or to disqualify the member accused; and, secondly, from cases of this nature being seldom alike, nearly every case affording a new mode of creating influence by money, or money's worth, but still attempting to evade the operation of the laws against bribery and treating. It is therefore, probable that what acts do or do not amount to bribery, or to treating, will continue



to remain in the same undecided state, and (until some legislative provisions are made) committees will continue to act and decide upon the particular circumstances of each case, as they are made out in evidence before them. All that can, therefore, be given under this division of the title, are those cases which have been reported since the passing of the Grenville act, leaving the reader to form his own opinion as to the probable grounds on which the committees have proceeded in such cases where no specific resolution is stated."

In the present parliament, the committee on the Penryn election reported, "that gross bribery and treating prevailed during the last election;" and although no doubt can remain on the mind of any person, who reads the evidence given to the committee, and that subsequently taken before the House itself, that Mr. Manning was returned in consequence of "gross bribery and treating," and that he was an accessary (as the lawyers say) before or after the fact,—yet the committee also reported, that it did not "appear that Mr. Manning was concerned in such bribery and treating." The parties who endeavoured to prove the agency, in the East Retford case were more lucky, or the committee were more quick-sighted, and the committee reported to the House, that there was a

" notorious, long-continued, and general practice" of bribery in that borough, and that the successful candidates had been guilty of it. The public have yet, however, after two years debates on the subject of these two boroughs, derived no benefit from the discovery.

The modes of bribery are various, notorious, and cloak themselves, as the vilest things are apt to do, under the fairest pretensions and the purest names. Witness the preamble to the 11 Geo. III. c. 55 :—" Whereas a wicked and corrupt Society, calling itself the Christian Society, hath for several years subsisted in the borough of New Shoreham, in the county of Sussex, and consisted of a great majority of persons having right to vote at elections of members to serve in parliament for the said borough ; and whereas it appears that the chief end of the institution of the said society was for the purpose of selling, from time to time, the seat or seats in parliament for the said borough," &c.; and then it prescribes an oath to the electors.

This is one of the precedents for what is called disfranchising a borough, by the admission of the freeholders of the neighbouring hundreds to join with the inhabitants of the borough in the chusing of its members. The endeavour to diminish the likelihood of bribery by increasing the number of resident voters, proceeds upon a sound principle, and hardly deserves to be called disfranchisement. It certainly does not deserve that name so much as the permission of multitudes of persons who do not reside in a city, nor even in its neighbourhood, to enter into competition with the residents who are, in reason and law, the only proper possessors of the right, and the only proper objects of protection by the power to be exerted by the members for the place. If it were a disfranchisement, I should doubt the propriety of such a mode of punishment for the corruption of electors : and, at all events, should not approve of extending to the innocent the penalties of the misconduct of the guilty. The association, however, of the freeholders of the hundreds with the inhabitants of the borough, is in contradiction to a sound principle asserted by Lord Thurlow :—" That it is clear that the policy of the law does not mean to give to any man, let his fortune be what it will, more than one vote," and the freeholders, therefore, who are thus enfranchised for a borough, should at the same time be disfranchised for their county. The punishment by transference of the privilege to some other town or city, or even to the county, is a principle adopted by a curious and important bill agitated in parliament before the revolution, and of which I shall give a copy

near the end of this letter. It appears to me the best of the alternatives lately proposed with regard to the boroughs of Penryn and East Retford.

But there are other places in which the attempt should be made to strike at the root of bribery and treating. Why is no oath against treating and bribery taken by members at the table of the House!!

The whole of the foregoing observations are intended as hints only to awaken attention, if possible, to a subject whose complete development would lead into greater length than seems adviseable at the present time: and the observations on this portion of the subject may be properly concluded with a passage from Thos. Carew, an enlightened patriotic Tory, in the preface to his Historical Accounts of Rights of Elections, who says, "This may be one step towards having a legal and fair representative of the Commons in Parliament, which will add *dignity* and *weight* to its proceedings. There is also another benefit which may arise from these collections, and which every *honest, serious,* and *Christian* Briton must heartily wish for. The public will see how odious and loathsome *bribery* and *corruption* were in the eyes of our forefathers—they will see the just indignation shewn, in many cases, by the House of Com-



mons upon complaints of this sort—they will see the construction which that House formerly put upon the laws against *treating,* and how difficult it was to evade the *meaning* of laws to prevent crimes of this kind. This may, perhaps, terrify candidates, agents, and electors from engaging in these indirect practices, which, if not put a stop to, neither the antiquity of parliaments, nor the greatest solemnity they may be attended with, will be looked upon as a benefit to the nation, and must therefore become a general scandal."

Hasty legislation, by ignorant persons, proceeding upon erroneous principles, has been a main source of the inconveniences and mischiefs which I have pointed out over the whole field of election law; but it is impossible to deny that very much of the evil and confusion, is owing to the erroneous constitution of the ELECTION JUDICATURE, *of which it is well now to proceed to give a very brief historical sketch.*

## VI. ELECTION JUDICATURE.

*History of it.*—The shortness of the duration of parliaments, for some ages after their establishment, of which it frequently happened that three or four new ones were summoned to

meet at different places in the space of a year,* afforded but few opportunities for receiving or proceeding upon complaints of undue elections or returns, if any had been made; and the laborious Prynne,—the contemplation of whose works is sufficient to astonish and fill with despair any man not endowed with a Herculean constitution of mind and body—with all his industry, could not find that more than two or

* It is better not to incumber this pamphlet with a list of the English and Scotch Parliaments, from both of which it would be made to appear wonderful how it should ever have been denied that annual elections are peculiarly constitutional, by the law and the practice both of England and Scotland. The admirable act of James I. of England, for the regulation of elections in Scotland, is too little known to Scotchmen, and not at all to Englishmen. The following is the substance of what relates to the times of election:—"Our Sovereign Lord, considering the act of his Highness's parliament, holden in 1585, making mention how necessary it is to his Highness and his estates, to be truly informed of the needs and causes pertaining to his loving subjects in all estates, especially the Commons of the realm, and remembering a good and loveable act made by his Highness's progenitor, James I., and now intending, God willing, to take order for the final settling and establishing of that *good form and order most meet and expedient to stand in perpetuity*, his Majesty ordains the representatives of all the counties, to be elected by the freeholders at the first county court, after Michaelmas, *yearly*, and the representatives being chosen, their names to be notified yearly in writing to the Chancery, by the representatives of the year preceding, and the King's Council and Judges shall yearly direct letters to convene the freeholders for that purpose."



three cases, on elections, were questioned or complained of, from the 49th year of Hen. III., or the year 1265, to the 22d of Edward IV., or the year 1483.

In the 12th year of *Edward* II., one claiming to represent the county of Devonshire, petitioned the *King's Council*, which referred the matter to the inquiry and determination of the *Court of Exchequer*.

In the 36th of *Edward III.* (1362), the election of the members for Lancashire was controverted, and, after the end of the parliament, a writ issued to the *sheriff*, directing him to hold a full *county court*, to inquire, and determine, and return who had been duly elected; and the sheriff, having wilfully neglected to do so, a second writ was issued to the *justices of the peace* of the county, to do the same at their next *sessions*. The object of this inquiry, after the dissolution of the parliament, was to determine whether the persons who had attended the parliament, as members for the county, were entitled to receive their wages.

In the 7th year, of *Richard II.* (1384), a baron was returned as member for the county of Surrey: and the *King and Council* took notice of it before the parliament met, and issued a writ for a new election.

In the same year, the Mayor, Bailiff, and

Commons, of Shaftesbury, petitioned the *King, Lords, and Commons*, complaining of an undue return for that borough, but what was done in consequence does not appear.

In the 5th year of *Henry the Fourth's* reign (1413), the House of Commons prayed the *King and Lords* to inquire of an undue return for the County of Rutland; and the *King, in full Parliament*, commanded the *Lords in Parliament* to inquire and direct, according to their discretion, and the *Lords* did accordingly.

In the reign of *Henry the Sixth*, there is a statute, the 8th of that king, which seems to me to have, in effect, referred the decision of controverted county elections to the *justices at the assizes*. In the 29th year of the same reign, the freeholders of Huntingdonshire complained *to the King* of an undue election; but whether it was referred to the justices of assize, or whether any proceedings at all took place in consequence of the complaint, seems questionable.

In the reign of *Queen Mary*, it appears by the Journals of the House of Commons, that the *House* then exercised the power of determining on the qualification of members, and of directing new writs to be issued in the case of double returns; but there are no other traces in the journals of any complaints made to the House of undue elections.



In the reign of the queenly *Elizabeth*, when long parliaments had come to prevail, the Lord Chancellor, on suggestions made to him during prorogations of parliament, directed new writs to issue for choosing other members in the room of those suggested to be dead, or absent in the queen's service, or sick. These proceedings led to improper or inconvenient practices; and the House of Commons, having taken notice on the 16th January 1680, "That many of the Knights, Citizens and Burgesses, and Barons, since the last session of that parliament, were changed—some by death, and some by other occasions—and new returned in some of their places, and in some others none," it was on the 18th January moved, "That all such as were newly returned in the places of others, yet living, should forbear to repair to the house till their cases were further considered;" and upon subsequent debate, whether members absent by reason of sickness or foreign employment, might be removed by suggestion in the Chancery, or ought only to be so by judgment of the House of Commons, it was determined that the new burgesses in that condition should be received and allowed. Yet, a few days after, the Lord Chancellor chose to stay for the judgment of the House, before he would issue a writ for election of a new member in room of one,

not convicted, but indicted of felony. In the next month a committee was appointed to inquire into returns, precedents, and orders, on the subject; and upon receiving their report, in the month of March, the house resolved, that all persons not duly returned, in lieu of others absent, should be utterly discharged and disabled of their said rooms and places; and "that during *the time of sitting of this court*, there do not, at any time, any writ go out for the choosing or returning of any Knight, Citizen, Burgess, or Baron, without the warrant of this House, first directed for the same to the clerk of the Crown, *according to the ancient jurisdiction and authority of this House, in that behalf accustomed and used.*"

In the year 1586, two members were duly chosen and returned for the county of Norfolk; but, before the meeting of the parliament, on a suggestion in Chancery, that the writ had not been executed, or irregularly so, another writ issued. When the parliament met, the House of Commons took notice of the matter, with an apparent intention of inquiring into the merits. The imperious virgin reprimanded the House for their impertinent meddling, and told them she had referred it to the *Chancellor and the Judges*. But the House, nevertheless, appointed a committee to examine witnesses



and make a report. They did so, and, it seems, came to the same judgment with that of the Lord Chancellor and Judges; but the House directed that it should be entered on their journals, that the members were received and allowed, "not out of any respect the said House had, or gave, to the resolution of the Lord Chancellor and Judges, though they thought very reverently of the said Lord Chancellor and Judges, and thought them competent judges in their places, but merely by reason of the resolution of the House itself, by which the said election had been approved."

In 1588, the *House* inquired and determined of an election of a member not returned.

In 1601 they decided a person to be disqualified, and they directed their warrant for a new writ.

In the beginning of the reign of James I. occurred the famous case of Sir Francis Goodwin; wherein the resolution of the Commons not being pleasing to the King, the Lords, at his suggestion, desired a conference with the Commons, who refused the invitation, but consented to attend the King on the subject. He then required them to admit of a conference with the Judges, and to make report of all the proceedings to his council. They consented to appoint a committee to confer with the

Judges, and petitioned the King to hear, moderate, and judge the case himself. They finally issued a warrant for a writ of new election, "upon deliberate consideration, *and for some special causes, moving the Commons House of Parliament.*"

The House soon after, however, shewed their resentment of the King's interference in the matter; and in their celebrated and proud apology to their "dread sovereign," touching their privileges, which is distinguished, like other papers and speeches of that time, by a singular union of humble professions and haughty pretensions—of servile language and brave resolution—they "avouch, that the House of Commons is the sole proper judge of return of all such writs, and of the election of all such members as belong unto it, without which the freedom of election were not entire: and that the Chancery, though a standing court under your Majesty, be to send out those writs, and receive the returns, and to preserve them; yet the same is done only for the use of the parliament, over which, *neither the Chancery, nor any other court, ever had, or ought to have,* any manner of jurisdiction."

There is hardly any instance of the Chancellor's pretending to decide *between two competitors.* Indeed, in those times, questions of



elections were generally brought on, not by the contention of individuals who had been rival candidates, but from the jealousy of the House concerning its privileges.

Immediately after the affair of Sir Francis Goodwin had been moved, a *committee of privileges and returns,* consisting of twenty-five members, was appointed; and it is said in the journals to be a usual motion in the beginning of every Parliament, "so as order might be taken according to the occasion, and agreeable with ancient custom and precedent." And ever after, the Commons were able to maintain an exclusive right of trying controverted elections, which was confirmed to them by the act of the 7th and 8th William III., chap. 8, sect. 1, which adjudges a "return contrary to the last determination of the House of Commons to be a false return."

The number of disputed elections having greatly increased in the two last parliaments of James, made many of the ablest members of those parliaments agree in opinion, that some *certain rules* or great outlines of the legal rights of voting were become necessary, as a guide to the electors and candidates in the country, and as a remembrance of the *reasons* and *grounds* upon which the determinations of the House were founded, and a *select committee*

was therefore formed of a certain number *of members, eminent* for their great abilities and their knowledge in the laws and constitution. Their names are sufficient to give celebrity to their decisions; and their decisions, which are reported by Glanville, with their "reasons and grounds," are such as might confer honourable celebrity on any names.

In Mr. Glanville's sixth case, that of Chippenham, the House resolved that it was "the ancient and natural undoubted privilege and power of the Commons in Parliament, to examine the validity of elections and returns concerning their House and assembly, and to cause all undue returns in that behalf to be reformed, and to punish the offenders concerning the same according to justice."

In 1625-6, a *committee of twenty* was appointed, "and all that will come to have voice." But this order was not renewed till 1673. The number of the members, however, on the standing committee increased greatly. In 1628-9, they amounted to *eighty-five*. In 1660 (from which time the title was a *committee of privileges and elections*), to between *two and three hundred*.

But election causes were sometimes, on motion for that purpose, tried at the bar of the House.

In 1707-8 it was resolved that they should all be tried at the bar of the House and be



determined, if any member insisted on it, by *ballot*. In the same session several standing orders were made for regulating the manner of balloting, and one question determined accordingly; but in the next session, the resolution as to ballot was negatived. In 1710, an unsuccessful attempt was made to revive the trial by ballot; and from 1708 till the 10th Geo. III. a *committee of privileges and elections* continued to be appointed.*

By the 2d of Geo. II. the last determination in the House was declared to be final as to the

* The different value of *judgment* by ballot, and *election* by ballot—(which last was a favourite project before the Revolution; the last sentence of a pamphlet of those times is, "*All very easily performed in a short time, without noise, without tumult, without animosities, and the most deserving always is elected*")—is worthy of particular consideration. A distinction should also be made between *lot* and *ballot*. The choice of select committees under the Grenville Act is in truth by *lot*, and not by *ballot*. The practice of the House affords examples of all these modes of proceeding. The result of *ballot* is a choice made by persons voting secretly. The result of *lot* is a choice made by nobody but chance. If a judicial tribunal be the purpose of the choice, the first method is one of protection and favour to the rulers, choosers, or judges; the second method is one of protection and favour to the sufferers, suitors, or objects of the jurisdiction. But the topic of ballot, being of the very utmost importance, is indeed ill-placed in a note, and deserves so much illustration, that justice could not be done to it without passing the limits of those merely legal inquiries, to which it seems best to restrict this view of the state of election law.

right of election. This act made a last determination binding on the House of Commons itself. That of the 7 and 8 of Wm. III., before noticed, made the last determination binding only upon the returning officers. Whether those last determinations were right or wrong, and established justice or injustice, restored men's rights, or disinherited them,—seems to have been esteemed of no consequence in comparison with the attainment of some *certainty*, by rendering the first arbitrary will of the House or its committees, immutable by other houses or committees. The judges in all other courts of justice, from the lowest to the highest, pay the greatest respect to *previous decisions* —but paying no implicit obedience, except to the *law*, they examine and try those previous decisions of even the most learned judges by all the tests which their own judgment and erudition afford to them; and they then sometimes overrule great authorities and repeated precedents, by the greater authorities of reason and justice. This anomalous mode of converting, by the 2d of Geo. II., an opinion or decree of the judges into a command or law of the legislature, has been another considerable source of injustice and confusion in the present state of election rights; for it has not only legalized



those decisions upon the rights of individuals and communities by the House, which had been the result of "ignorance, caprice, and corruption," (the words of Serj. Heywood), but it has forbidden all the future tribunals and judges to reconsider the unfortunate or unjust precedents offered to them—made it useless for them or their suitors, "to prosecute their studies and increase their knowledge"*—and proscribed all new lights and better principles, the benefits of experience, and the discoveries of time.

By the celebrated act of Mr. Grenville, the 10 Geo. III., (which was made perpetual in 1774, by the 14 Geo. III.,) was introduced the present mode of trying controverted elections. It is not necessary to notice the subsequent acts, except that of the last session, which will be considered hereafter.

It appears then that the validity of returns has been determined by the *Court of Exchequer*, the *County Court*, the *Quarter-Sessions*, the *King in Council*, the *House of Lords*, the *judges at the assizes* (if I am right in my construction of the 8 Hen. VI.), the *Lord Chancellor*, and the *House of Commons*—by *Committees of varying numbers*, or by *open Committees*—by a *Committee of privileges and elections*—by a *Committee* of the

* See Lord Lyndhurst's speech on the Catholic Emancipation Bill.

House, *in conference with the king and judges*—and finally, as at present, by a *Select Committee*, whose constitution is too well known to need a particular explanation.

How completely the objects of the Grenville act have been frustrated, must be manifest from the view previously given of the present state of election law, and from the complaints and censures cited from the most learned and unbiassed writers upon it.

How little reason too, from history, there appears for the House of Commons to pretend that its monopoly of election-judicature to the exclusion of other judicial tribunals, merits the distinction of being esteemed a constitutional right, must strike all who read over the names just repeated of those which have at various times exercised a similar authority. At all events, the jealousy which the Commons, in other times, under other circumstances, entertained with regard to the interference of other courts, that derived their commissions from the crown, and were suspected of being too dependent upon it, must now have ceased to exist. And whilst we cannot fail to observe, that, during more than two centuries of parliamentary judicature, the short period of Serjeant Glanville's distinguished committee is the only



one to which we can refer with satisfaction and pride, for impartial decisions, sound reasons, and constitutional principles; it would be unjust and ridiculous to imagine that the House of Commons can longer regard with any prepossession, its own jurisdiction or that of its Committees.

Next, therefore, the causes of the mischiefs, complaints, and censures, as far as they are connected with the Select Committees, shall be traced through the principal steps in the practical operation of the present system.

## VII.—Grenville Act Committees.

There are *three steps* in the choice of the *select committee:—First*, The assembly of the members of the House, to a number not less than one hundred. *Secondly*, The choice of forty-nine of them by lot (not ballot as it is called). *Thirdly*, The choice of fifteen of those forty-nine by the contending parties.

The effect of the *second* step is not such as to exempt the whole process from being described as the method of *packing* a select committee.

*The first step is to pack the House.* There is, indeed, an order of the House (anno 1772) against packing:—"That no person do presume to solicit the attendance of members of this

House, when the matter of any petition, complaining of an undue election or return, is ordered to be taken into consideration;" but, in defiance of this order, it is notorious that the interested persons do actually solicit and canvass members to attend the ballot, and that in general the government candidate is the most successful in this first part of the process.

After the House has been packed—(I use this term because it would be affectation to use any other)—*the ballot or second step occurs*, by which forty-nine of the members present are chosen by lot. I need not particularize the method—it is perfectly fair—but the result is for the most part not fair, and is the election of a body of forty-nine persons, being, in most cases, a virtual representative of the previously packed House.

*The third step is an endeavour to pack thirteen out of the forty-nine.*—This is an important process.—The rival parties retire with their counsel, agents, and friends to a private room, for the purpose of each alternately striking off a name from the list till it is reduced to thirteen, who, together with the nominees make fifteen for the committee.

It is an affair of skill and judgment; and requires great knowledge of the members of



the House —of their characters, connections, politics, partialities, and crotchets; and the parties are generally assisted in the work by one or two members celebrated for that kind of learning. These celebrated members know how almost all the members of the House have voted on former occasions, and also how they will vote on future ones; and their skill in prophecy is such, that they will, as soon as the select committee is struck, generally add a vote to their list of the friends of government, or add one to their roll of the ranks of opposition; without suspending their hopes and fears for the disclosures of the evidence on which the committee are sworn to decide, or waiting for the judgment of the tribunal, which may not pronounce sentence for days or weeks afterwards. The dominant party, which, of course, is almost always the government, preserves its advantage also in the last step.

All those who have attended on such occasions will admit the correctness of this representation, and will confess that the Grenville Act has scarcely done more than screen the party in power from the odium of open influence, and veil from public view the operation of those partial or corrupt motives, which, before that time, could not escape notice. By the 9th of

Geo. IV., the number to be chosen by lot is thirty-three, and the number for the committee is to be reduced to eleven.

*Procedure of Committees.*—And now let us see how the selected committee proceeds. Most of the future objections will be applicable also to the most impartial committee that can chance to be chosen from a body of men who have not made a peculiar study of the law. If it be a partial committee, the unfavoured party and his counsel are at the mercy of its sinister motives. If it be an impartial one, the committee may be said to be very much at the mercy of the lawyers.

*This judicial tribunal* is, in the first place, *ignorant of the law and the practice*, on both of which it has to decide, and, of course, yields its judgment more to authority than reason.

I have heard an old member of the House, who must have sat on many committees, ask if Glanville's Reports contained cases decided before the Grenville Act; and whenever I have heard Mr. Harrison or Mr. Adam, the two counsel who are most distinguished by peculiar experience and learning in this branch of the law, cite cases from those reports, they have always prefaced the citation by a history



of Mr. Glanville, of his reports, and an account of the celebrated persons who formed the committee whose decisions are contained in those reports; so that the work of the greatest authority on election law, is introduced to the acquaintance of the judges, for the first time, by the advocates in the cause; and, in like manner, every other work, or case, referred to, is offered to their notice, with such an account as may enable them to conjecture its value, or may induce them to appreciate it according to the interest or object of the party citing it.

Besides the obvious inconvenience and danger of this mode of instructing the tribunal, another consequence is an enormous loss of time. In other courts of justice the judges know at least as much as the counsel do, and do not need to be informed of the history, nor to be assisted to estimate the weight or authority of the works, authors, or cases cited.

Moreover, numberless points of law and of practice arise hourly before committees, and take up hours in argument of counsel, and debate of the members, which, by judges accomplished in the requisite learning and experience, would not occupy minutes in

argument, and would never become a subject of controversy a second time before them.

I have no over-weening conceit of the superiority of lawyers generally, on subjects of constitutional law and history—quite the contrary. They are, for the most part, no better informed on such subjects than unprofessional gentlemen of good education—and if that reason, which should be the foundation of election rights, and the guide of an election judicature, were allowed to have more weight with committees, than the precedents and sophistries of lawyers, I should be well content—and, indeed, more content—with a tribunal, whose members were not hackneyed in agonistic habits—in whom the love of truth had not been cankered by the lust of victory,—and in whom reason had not been dwarfed and perverted by dwelling among the subtleties and quirks of hourly litigation. But while lawyers are permitted or invited to plead before the election tribunal; and while the counsel of one party can find no equal match for knowledge and experience, but in the counsel of the other party; and while the subjects of controversy shall be allowed to remain dependent upon the right understanding of one of the most confused, and difficult,



and various branches of the law; no tribunal, but one distinguished by equal and appropriate learning, can discover truth and protect reason against such fearful odds; nor surmount the obstacles which they present to the establishment of sound principles, and the acquisition of due respect from the public.

*Secret Deliberations.*—The next objection to the procedure of the committees is, that their own *discussions*—whether to conceal ignorance, or protect faction, or for some foolish notion of parliamentary dignity, I am unable to conjecture—are *in secret*. The inconvenience of the practice of "clearing the room" is great to the committees, and greater to the public; and the loss of time to both would appear astonishing if it could be calculated.

The *interlocutory and final judgments* of committees thus formed in secret are usually communicated to the parties and the public without any statement of reasons. To parody a neat observation of the Duke of Wellington's on the Catholic Question,—the counsel on one side have one reason, the counsel on the other side have a contrary reason—and the committees, who should have the best reason of the three, appear, by this system, to have no reason at all.

The difficulty of ascertaining the grounds of

their decisions is notorious, and even ludicrous. In the session of 1827, there were two questions considered in the committee on the return for the *Stirling Burghs*. One was, whether the taking the oaths referred to by an act of the 16th of George II. was essential to the validity of the election; and the other was, whether the oaths had in fact been taken. All the lawyers were of opinion, that the committee in their decision had proceeded on a conviction, that the oaths were not essential; but in truth they proceeded (as we were privately informed,) on an opinion that the oaths had been taken—the only point on which the lawyers privately agreed in having no doubt to the contrary.—In the *Haslemere Case*, in 1775, the petitioner insisted on four propositions, on the "monstrous absurdity" of two of which Mr. Serjeant Heywood forcibly comments. The committee decided in favour of the sitting member; and yet Mr. Serjeant Heywood observes, "it does not necessarily follow that the committee did not adopt some one of the propositions insisted on by the petitioner."

Such are the consequences of NO REASONS BEING GIVEN FOR THE DETERMINATIONS OF COMMITTEES:—or of there being NO SUMMING UP OF A JUDGE, FURNISHING A KEY TO THE MO-



TIVES OF THE COURT OR JURY, AND A GUIDE TOO WHICH THE JUDGES AND LAWYERS, AND THE PUBLIC *might follow in other cases*. Hence there are no rules nor system of decision or practice growing out of daily convenience and experience. The principles and practice vary the more too on account of that anomaly in the administration of justice—the appointment of *new judges for* the trial of *every new suit*.

These causes of confusion and ignorance operate also on the advocates before this tribunal, to produce injurious consequences in a manner and to a degree which can be understood and appreciated only by some of those professional gentlemen whose great practice before committees has furnished them with so much peculiar knowledge of this department of the law, as leads to their being preferred before all competitors by the parties who seek justice or triumph at the hands of the only tribunal to which they can resort. The rarity of a general election and its consequent litigations make it worth while for but very few counsel to study peculiarly this branch of the law, and devote themselves to its practice; but the multiplicity of committees on the meeting of a new parliament sitting at the same time, renders it necessary

for the parties to employ counsel not well qualified in this department. The committee therefore receive the law misrepresented and confounded from ill-informed lawyers; and the suitors or their agents are so sensible of it, that they are ready to draw and quarter the distinguished leaders, in order to have the benefit of their knowledge and authority at the same moment in the several committee-rooms: and these leaders fly from room to room to make hurried orations, which they stay not to hear answered, or to make ingenious, but not always applicable replies to arguments they have not heard; or to insinuate notice of new cases on points which the committee has already decided, and to trespass on its good nature with renewed discussions on topics which the parties, or the lawyers, or the committees have not deemed sufficiently understood, illustrated, or enforced by their juniors:—and sometimes even to force upon a disunited committee an actual rehearing of a cause in which they have already perhaps given judgment. Every man will easily conjecture the extravagant waste of time which results from such proceedings; to which may also be ascribed not a little of the confusion and absurdity of the multifarious law.

*Expenses*—To estimate the full magnitude of



the last grievance of the system which it seems worth while at present to notice, the members of the House would do well to calculate their expense of time, and the parties to this litigation, their expense of money. The last expense is grievous to all—ruinous to many—and operates as a denial of justice, to the majority of the electors of the empire, and to a very great number of candidates. The first is grievous to the members of the House, and operates as a serious impediment to its public business of legislation.

The House might throw valuable light on this subject, by appointing a committee to enquire into the expenses of the present system. Such a committee would ascertain how many committees had been appointed during several parliaments back—how many members were employed—how many days and hours were occupied by each committee—and by the House in respect of each election—how many counsel and solicitors or agents were employed—how many witnesses were summoned, and how many examined;—and on the expenses on the several heads in regard to which they could not obtain returns and calculations from the officers of the House, they might request information of the members and others.—It would be going far-

ther—but usefully so—if they were also to obtain information of the expenses of the sitting members *during the election* — of the petitioning candidates and of others—of those neither returned nor petitioning—of the electors during the election, and during the sitting of the committee;—and much more, which will readily suggest itself to any members who shall think it worth while to give their attention to these matters, which sooner or later must engage much public interest.

Having now sufficiently shewn the material grievances of the present state of *election law* —and of the present constitution, and procedure of the *election judicature,* it may be fairly required that an attempt should be made to suggest some remedies for their removal—and especially for the improvement of the judicature from whose unfortunate constitution, both before and since the Grenville Act, so much of the grievance has sprung.

## VIII. Remedies.

In so nice, difficult, and important a matter, I have not the presumption to propose, confidently, any plan for the adoption of the House; nor have I had the good fortune to



satisfy myself of the perfection of any of the schemes which have occurred to me; but I shall suggest one or two for its consideration, in the hope thereby to excite others to inquire and deliberate on the means of redressing those evils, which, I flatter myself, have been presented to their notice with sufficient particularity to demonstrate to all their nature and magnitude. I shall not at present support the suggestions by any arguments, and shall humbly state them in the doubting way of question. I desire then, with deference to the opinions of lawyers and honourable members of more experience than myself, to submit the following questions for consideration:—

1. Why should not the House—or a committee or a commission from the Crown, determine the rights of voting in every place in England, *prospectively*—at the place, or in London—but if in London, issuing commissions to take evidence; that the expence of the attendance of witnesses there, may be saved?

2. Why not recur to a *standing parliamentary committee?* The decisions of the Glanville committee are far superior to those of the Grenville committees. It should not, however, be so numerous as the Glanville committee

was. It does not appear to me that such a committee would be so subject to party or a predominant influence as the present committees are,—and it would certainly be composed, in great part, of members distinguished for knowledge of constitutional law and history.

3. Why should not controverted elections be determined by the *King's courts*? the jealousy of them is, with reason, obsolete.—The first trial is by the sheriff, or mayor, or other petty returning officer, *i. e.* the election. There is a second often, by the same persons, *i. e.* a scrutiny. Why should not the third, or the appeal be to a similar, but higher jurisdiction?—No officer of the House attends the election, or the scrutiny; and yet the House does not hold it beneath its dignity to receive among them members whose election has been by such persons determined.

4. Why should not some such *King's court* be *ambulatory*, or go a circuit of all the places in which elections were to be controverted? If the expenses of the judges and lawyers were not more than compensated for, by the saving of the expense of witnesses; yet there would be a great saving of time and trouble to the parties and their witnesses, and a much greater



likelihood of full information and just decision. There is almost always time enough, when a new parliament is chosen, in such way to decide all controverted elections between the period of the returns, and that of the meeting of parliament. Of course, distinct courts would in this case be necessary for Scotland and Ireland.

5. Why should not *a judge, or two or three judges* be taken from among the *members of the House* of Commons to form a *permanent court* for trial of elections? There are some members of the House peculiarly qualified, by knowledge of constitutional history and law, and by experience of parliamentary practice, for such office and dignity. If it should be apprehended that such judges, being members of the House, and irremoveable as long as they continued members, would be too subservient to their first patrons or party, or their new party or patrons—or might grow too powerful, and exercise a dangerous influence over members of the House, I would suggest the formation of *a court of three judges—one*, only *being a member of the House*, and for the dignity of the House, to be the *Chief Judge*—and the other two, puisne judges, to be lawyers, and to

hold their offices during good behaviour. They should all, of course, have salaries, as other judges have. Altogether this seems to me the most likely to reconcile all interests and feelings—afford the most satisfaction—the most likely to render justice to all parties, and to establish better principles and practice than has hitherto prevailed, or to preserve them, if they should otherwise be introduced.

The most important and efficient measure, for the alleviation of the present grievances, which does not savour too much of parliamentary reform, is, undoubtedly, an improvement of the tribunal of last resort. There is, however, another measure which would be very beneficial, and is not an unfashionable one—*a consolidation of the statutes.*

There are not less than *one hundred and fifty* statutes on elections which are necessary to be consulted by lawyers and cited to committees, and of these about *twenty* only are previous to the Revolution.

But when I consider also that there are about *fifty* volumes besides on election law, with which a good election lawyer must be familiar, I cannot resist the temptation of hinting the incalculable advantage that would result



from *the reduction of the multifarious rights of voting to some one or two uniform principles.*—Such a project, it is scarcely known I believe, engaged the interest of parliament for near twenty years before the revolution of 1688; and from the year 1669 to 1679 and 1680, occupied the attention and was the subject of the labours of the most distinguished members of the House of Commons. The names of those members to whom the duty of preparing a bill was in those times successively referred, are—

| | |
|---|---|
| Sir Charles Harbord, | Sir Robert Carr, |
| Sir Thomas Lee, | Mr. Morice, |
| Sir Robert Howard, | Sir Joseph Moreton, |
| Mr. Joseph Fowell, | Mr. Bertu, |
| Sir Henry Finch, | Mr. Crouch, |
| Mr. Seymour, | Sir Philip Musgrave, |
| Sir Anthony Irby, | Sir John Birkenhead, |
| Sir Thomas Meeres, | Sir William Lowther. |
| Mr. Garraway, | Mr. Waller, |
| Sir Walter Young, | Sir Francis Goodrick, |
| Mr. Buscawen, | Colonel Wyndham, |
| Colonel Sands, | Sir Joseph Talbot, |
| Mr. Coleman, | Lord Allington, |
| Sir Joseph Newton, | Sir Richard Slaning, |
| Sir Robert Atkyns, | Sir Jonathan Trelawney. |
| Mr. Clarke, | Sir Job Charlton, |

Sir Thomas Atkyns,
Sir Thomas Allen,
Sir Joseph Knight,
Sir Adam Browne,
Dr. Burrell,
Colonel Reames,
Sir Joseph Northcote,
Lord Fanshaw,
Mr. Pleydall,
Mr. Lovelace,
Sir Thomas Gower,
Sir Charles Wheeler,
Sir Michael Cary,
Sir Winston Churchill,
Colonel Phillips,
Sir William Lewis,
Mr. Hambden,
Colonel Gilby,
Mr. Milwerd,
Mr. Chetwin,
Sir Eliab Harvey,
Mr. Cheyne,
Sir Thomas Dolman,
Mr. Williamson,
Colonel Birch,
Colonel Legg,
Colonel Kirkby,
Mr. Vaughan,
Mr. Bridgman
Sir William Lowther,

Sir James Smith,
Sir John Covert,
Sir Richard Everard,
Sir Edward Massey,
Sir Edward Masters,
Sir Richard Franklyn,
Sir John Barnaby,
Mr. King,
Sir Trevor Williams,
Sir John Holland,
Mr. Otway,
Mr. Hobby,
Sir Edward Deering,
Mr. Reeves,
Sir Gilbert Talbot,
Sir Thomas Bludworth,
Sir John Mallett,
Mr. Newport,
Mr. Rigby,
Sir John Elwages,
Sir Solomon Swale,
Mr. Devereux,
Mr. Ashburnham,
Lord Ashley,
Mr. Johnson,
Sir Joseph Tredinham,
Mr. Onslow,
Sir Edmund Jennings,
Mr. Swinfen,
Lord Cornbury,



Sir John Bramston,
Sir William Hickman,
Mr. Whorwood,
Mr. Finch,
Serjeant Maynard,
Sir Thomas Higgons,
Mr. Sacheverell,
Sir William Coventry,
Sir Thomas Clergis,
Lord Castleton,
Sir Lancelot Lake,
Mr. Culliford,
Mr. Stockdale,
Mr. Trelawney,
Mr. Sigi,
Mr. Morris,
Sir John Otway,
Sir John Hotham,
Lord Fitzharding,
Sir John Coriton,
Sir William Doyley,
Mr. Palmer,
Sir Robert Dillington,
Mr. Wharton,
Lord Ancram,
Mr. Jones,
Mr. Attorney Mountague,
Sir John Hanmer,
Mr. Powle,
Sir Philip Harcourt,
Sir Richard Pedley,

Colonel Strode,
Sir John Trevor,
Lord Aungier,
Sir Thomas Littleton,
Sir Robert Southwell,
Mr. Hall,
Mr. Dalmahoy,
Sir William Strode,
Mr. Westphaling,
Sir George Downing,
Mr. Secretary Williamson,
Sir Richard Temple,
Sir George Reeves,
Sir Cyrill Wych,
Sir Christopher Musgrave,
Mr. Garraway,
Sir Denny Ashburnham,
Mr. Sawyer,
Mr. Serjeant Rigby,
Colonel Titus,
Lord O'Brian,
Mr. Ayres,
Sir Roger Norwich,
Sir Robert Peyton,
Sir Francis Winnington,
Sir John Wynn,
Mr. Freake,
Sir William Poultney,
Serjeant Ellis,
Mr. Savage,
Mr. P. Foley,

Mr. Reynell,
Sir John Dawney,
Sir William Escourt,
Sir John Cloberry,
Mr. Tempest,
Mr. Bennet,
Sir Robert Markham,
Mr. Hopkins,
Sir John Hewley,
Sir Henry Capell,
Alderman Love,
Mr. Woogan,
Sir Gilbert Gerard,
Sir Walter Young,
Mr. Barker,
Mr. Papillon,
Sir Thomas Stringer,
Master of the Rolls,
Mr. Withers,
Mr. Upton,
Sir — Duke,
Mr. Mildmay,
Sir Thomas Player,
Sir James Oxenden,
Sir Richard Corbet,
Sir Samuel Bernardiston,
Sir H. Ford,
Sir R. Dutton,
Mr. Colt,
Sir Philip Egerton,
Sir Thomas Middleton
Sir Philip Skippon,
Sir Richard Graham,
All the Members of the Long Robe,
Mr. Trenchard,
Sir Francis Russell,
Sir John Hostress,
Mr. Thompson,
Mr. Wentworth,
Mr. White,
Mr. Andrews,
Sir William Jones,
Mr. Bremen,
Mr. Hord,
Mr. Wright,
Sir William Roberts,
Lord Colraine,
Sir William Bastard,
Sir William Yorke,
Mr. Owen,
Mr. Burdett,
Mr. Darrell,
Sir Gervase Elwes,
Mr. Slater,
Mr. Cooper,
Mr. Coningsby,
Sir Rowland Gwynne,
Sir Edward Harley,
Sir Robert Henley,
Sir Francis Rolls.



The House of Commons appears by the Journals to have taken the matter in hand, in every sessions of parliament, on the first day of their meeting; and to have introduced a bill which they were never able to prosecute to a third reading, before they were interrupted by a prorogation. The bill, which seems to have been the result of so many years consideration, deserves to be here given at length:—

"*The Bill for Regulating Abuses in Elections of Members to serve in Parliament: as it was read a second time, and committed, by the House of Commons, upon Saturday the 5th of April,* 1679: *And now offered as Advice to the consideration of the whole Kingdom.*

For the remedying the many and great disorders, miscarriages, disputes and contests, arising about the elections and returns of Knights, Citizens, and Burgesses, to sit in Parliament: Be it enacted, by the King's most Excellent Majesty, Lords Spiritual and Temporal, and Commons assembled, That for the time to come, every person, that at the time of any Election of Knights of any Shire or County at large, is, and by the space of *one year* next before such election, hath been a

*householder and inhabitant in* the same *county*, and within the same by all that time hath been (without fraud or design, thereby to enable himself to give voice) charged, rated, taxed to, *and* have *paid and born* his *scot and lot* towards the maintenance and defraying the poor, and other public charges and payments, and who is not under one and twenty years of age; and is *worth two hundred pounds in fee*, clear estate of his own, over and besides his debts, charges and engagements by him owing and payable, or engaged in; and none other shall have vote, voice, and be *elector of Knights of* the County or *Shire*, wherein he so inhabits or dwells. That in every in-shire, city, or town, that is both city and county, and in every other city, town, borough, or place, that now do, or hereafter shall send Members to the Parliament, (except the cities of *London*, *York*, *Norwich*, *Exeter*, and *Bristol*), every person at the time of such election of Members for to sit in Parliament for any such place, that at the time of such respective election, and by the like space of *one year* before, hath been a *householder and inhabitant* within such respective city, town, borough, or place, (except before excepted), and by all that time hath been there charged, rated, taxed, and paid *scot and lot*,



without fraud, as aforesaid; and not under one and twenty years of age: And none others shall have vote and voice, and be *elector in* such respective city, borough, *town*, or place, any law, charter, or *non obstante*, in any charter to the contrary notwithstanding. And that the respective sheriffs, and other officers, to whose care and management the elections are committed, have hereby power and authority to administer unto, and to examine upon oath, the parties themselves, concerning the qualifications and matters aforesaid; That for the future no person by himself, or others, by, or with his consent and approbation, shall by feasting, treating, entertaining with meat, drink, or otherwise; or by bribes, presents, rewards, or gifts, given, spent, promised, or engaged to, upon or amongst the electors, or to, or for their use or benefit, or to, or for the only benefit or advantage of any county, city, town, or place, sending members to parliament, or the inhabitants thereof, or under any pretended charity for the poor of any such town, or place, directly, or indirectly, labour or endeavour to obtain, or procure elections of any person, or persons, to be members, or representatives to sit in Parliament, under the pains and penalties ensuing, (to wit) that every such person so labouring,

or endeavouring by any such undue and illegal ways and means, shall be hereby disabled and incapable of being or sitting as a member of that parliament, and also shall forfeit the sum of five hundred pounds: And that the *city*, town, *or place, where* any such *feasting, treating, or entertaining*, shall be *manifestly and notoriously admitted or suffered*, shall from that time *forfeit* their *privilege of sending Members to Parliament: And in lieu thereof*, an *election* to be made of members *in* their *stead in some other town, or place, within* the *same county, or* else *in* the *county at large, as* the *House* of Commons in the next ensuing Parliament, that *shall* have or take notice of such forfeiture, shall appoint and *direct*: And it is hereby further enacted, that all and every justice of the peace, mayor, bailiff, and constables, having jurisdiction or authority in any such town, or place, for the suppressing and preventing the misdemeanours and evil practises aforesaid, are hereby commanded and required not to permit any such feastings, treatings, or entertainments, for, or in order to the end aforesaid; but upon oath and examination (which they are hereby empowered to administer), or upon their own view, to arrest and apprehend all such misdoers, and then to commit



to gaol, there to remain, till they give good and sufficient security not to offend in that kind for the future, and appear at the next assizes, or general sessions of the peace for the county, or place, where the offence shall be committed, there to be proceeded against, and punished for his said offence, according to law: And that, if any of the officers, or ministers, aforesaid, having information upon oath, or other sufficient evidence of the fact, shall refuse or neglect to do his duty herein, he shall forfeit the sum of one hundred pounds for every such neglect or refusal: And that, if any mayor, recorder, alderman, town-clerk, burgess, portreeve, bayliff, magistrate, or officer, shall permit or suffer himself to be feasted, treated, or entertained, or shall directly or indirectly accept, take, or receive, any bribe, gift, present, or reward, to the intent and end aforesaid, he is hereby disabled to give any vote, or to be elector, and moreover shall, for every such offence forfeit the sum of one hundred pounds: And it is hereby likewise enacted, that no writ or suit shall be hereafter sewed, prosecuted, or proceeded for wages, by any knights, citizens, or burgesses, for, or in respect of their services in parliament; but all such wages are, and from henceforth stand released and discharged; and, for the avoiding of the abuses and undue

means too often used by sheriffs, under-sheriffs, mayors, bailiffs, and officers, about such election and returns, and that there may be just, fair, and legal elections and returns hereafter made; Be it further enacted, by the authority aforesaid, That no sheriff, portreeve, bayliff, magistrate, or officer (except only when need requires, from the evening to the morning of the next day succeeding, till election be determined, or to some convenient place within two miles of the town, or place appointed, or set, for such election) shall adjourn the said election from that day or place appointed, or set for the same, but shall fairly and indifferently proceed to finish the election, as soon as conveniently he can, at the time and place appointed, without any other adjournment there, as aforesaid: And, if any adjournment, *de facto*, be made, contrary to this act, the proceeding afterwards shall be void, and the person that had the majority of voices at the time of such unlawful adjournment, shall be the person duly elected, and shall be returned so to be: And if any person shall hereafter be, for consideration of money, bribes, presents, gifts, or rewards, directly or indirectly, given or promised, or engaged to be given, or for fear or favour, by any sheriff, under-sheriff, their clerks, or ministers, or any mayor, recorder, town-clerk,



portreeve, bayliffs, or officer, wrongfully and unduly returned to be the persons elected, which in truth and reality was not; or if any sheriff, under-sheriff, their clerks or ministers, or any mayor, recorder, town-clerk, portreeve, bayliffs, or other officer or magistrate, intrusted with the ordering or making such election, or returns, shall not fairly, justly, honestly, and impartially, according to the best of his skill and diligence, act and do his duty in the premises; in every such case the party offending shall forfeit, if a sheriff, the sum of five hundred pounds; if a mayor, or other officer, or minister, two hundred pounds, and treble damages to the party grieved; and that all securities, promises, and engagements, made or given to any officer, for the indemnifying or saving harmless, concerning the premises, shall be absolutely void, and of no effect; and every party, giving or making such securities, promises, or engagements, to forfeit five hundred pounds for his offence, in so doing: And further, for the avoiding all exactions, extortions, and briberies, under the pretence of gratuities, presents, or recompence, for dispatch, or towards charges, or otherwise, by any sheriff, under-sheriff, sheriff's-clerk, or minister, or by any mayor, portreeve, bayliff, or other officer,

or minister, hereafter to be taken, be it enacted, that none of the said officers, or ministers shall, directly or indirectly, take, have, or receive, or agree, or contract to have or receive, for any warrant, or present, upon, or by virtue of any writ for election for parliament, or for any return of any writ, mandate, or precept, above the sum of two shillings and six-pence, under the pain of forfeiting ten times as much as he shall in such case take, over and besides the sum of two shillings and six-pence, together with costs in every such suit to be recovered; all and every the penalties and forfeitures aforesaid (except the said forfeiture of treble damages), to be recovered by him or them that shall and will sue for the same, in any court of record, within the space of one year next ensuing such cause of action accrued; in which suit there shall be no allowance of or admission of any priviledge of parliament, or other priviledges, or of any protection, or injunction; nor of any plea of another action, or information for the same offence depending (except oaths be made in the court, where such plea shall be pleaded by both the defendant and plaintiff, and real prosecutor therein, that the same is really and *bona fide* brought for recovery of the forfeiture herein, without any fraud or design to excuse or defend the offender from the forfeiture by



the statute imposed) which the court where such pleas shall be pleaded, are hereby enabled to examine, and according to the truth and realty thereof, to allow the said plea, or not; And for the better observation of this act, all sheriffs of counties at large, shall in the place where the election is to be made, immediately before they proceed to take the votes of the electors, cause this statute to be audibly read in the presence of the electors: And that all sheriffs of inn-shires, or citys, or towns that are counties of themselves, mayors, portreeves, bayliffs, and other officers, and ministers respectively, shall immediately after the receipt of any writ, or precept, for such election, or certain knowledge of a parliament to be chosen, set up this act in their respective halls, or other publick places, to be read and viewed; and also on the next Lord's day after such certain notice of such parliament to be chosen, or after receipt of such writ, precept, or mandate for such election, and before the time of the election, cause and procure this statute to be publickly and audibly read in the churches of their counties, cities, towns, or boroughs, where such respective elections are to be, immediately after divine service ended, and before the people assembled are departed: And further, *for* the *prevention of* the *long continuance of any parliament* for

the future, *and* thereby *depriving* the *king and kingdom of* the *benefits of successive parliaments*, It is hereby *enacted, that no parliament shall* hereafter *have continuance* in any manner, *by prorogation*, or *adjournment, or session, or partly by one and partly by the other*, or otherwise howsoever, *for above* the space of *two years* from the day of the return of the writ of summons next ensuing, *but at* the *end of* the said *two years* shall be *ipso facto* dissolved: *And* that *in* every *indenture* hereafter to be made or sealed by any electors, there be *a clause* therein inserted, that the person or persons are hereby authorized to serve in parliament *for* the space of *two years*. from the day of the return of such writ of summons next ensuing, if the said parliament shall so long continue, *and no longer*."

It is not necessary to the object of this pamphlet at present to examine the propriety of *the qualification* in this bill *for counties*, which seems to be but little different from the present one, or the other topics of the bill. It is chiefly valuable for its provision for the duration of parliaments, and for—(which is the special motive of its introduction here,) its admission of the great *importance of an uniform, universal qualification*, or one single definition of the right of voting.



When I contrast the principle of this bill with those of all the acts of parliament on the subject since the revolution,—and when I remember that Col. Lilburn wrote ably in 1646, against *imprisonment for debt* and indefinite imprisonment for contempts of court; that the celebrated Sir Robert Filmer, before the revolution, wrote against the policy of our *usury-laws;* that Roger Coke, in 1671, and some others, wrote against the *navigation act*—against our *jealousy of Irish trade*, in favour of *free ports, low customs, and free trade*, and free trade even in money; and that the same Coke, together with Henry Neville, Sir Wm. Petty, and some others, wrote in favour of repealing the *penal laws against catholics*, and for unambiguous freedom of religion,—I am very much inclined to apprehend that we are not entitled to take so much credit for the "MARCH OF INTELLECT," as we of these times so complacently and vain-boastingly assume to ourselves: and I feel, instead, an humiliating conviction,—that the *human* road to every great truth is the longest possible maze of aberrations, which man's errant wit can invent,—and that every possible false theory or doctrine must be discovered and adopted in turn, before men can be convinced of, and be brought to acknowledge and adhere to the true one.

The manufactories of truth and error, indeed vary in different ages and countries, as to the proportions of these two kinds of produce; according to the constitution, principles, and machinery of the manufactories; and that nation is in a miserable and shameful condition in which the people can depend less on those sources of prosperity and power, than on the prowess and wisdom of an individual:—yet I own, I look with less hope to the "march of intellect," than to the march of the Duke of Wellington, for whom there remains but one more grand national work to accomplish, and he may then leave the world with the certainty—that no future warrior or legislator will ever attain to the glory of being compared with him.

I might have very much multiplied the topics, and extended the discussions connected with the subject, of which I have endeavoured to give in the foregoing pages only a sketch—but to have done so, would have been premature, and beyond my present purpose: I wish only, in the circumstances of the present juncture, to furnish materials, to promote and aid the inquiry of others, to excite to calm and impartial discussion and consideration, but not to induce hasty conclusions, nor stimulate to crude, blind, or microscopic legislation.



Too much devotion to minute parts, and to much disregard of the general system, is almost every session the source of vain endeavours at amendment and accumulated inconveniences in practice. I am afraid that the 7 and 8 Geo. IV. c. 37, is an instance of the first, and that it will with ease be evaded. The 9 Geo. IV. c. 59, is certainly an instance of the last. Two objections to it may merit notice—the provision for the *determination of contested votes*, and that regarding the *expences of* the *hustings*. Both provisions are unconstitutional.

The returning officer, *or his assessor*, is to decide the contested votes, in some place adjacent to the polling place. By the three words in italics, a concurrent or deputed jurisdiction is given to an assessor, and an authority is thus smuggled into election law, which the House has several times opposed the establishment of, when it was attempted to be introduced by a bill for that special purpose.

The assessor is but the creature of agreement between the rival candidates; the voter is entitled to have the decision and the reasons from the returning officer himself; and a sound constitutional view is more likely to be taken in these particular cases, and justice, in general, more likely to be done by the judgment of a

plain man of good sense, than by a lawyer; and the submission, by the returning officer, of his judgment to that of an assessor, has been the source of much pernicious confusion in the law, many unconstitutional decisions, and enormous injustice to electors. This is well understood in the House of Commons, where, in selecting an election committee, all parties generally agree to strike lawyers, i. e. strike them off.

The original jurisdiction was for counties in the *county court*,—for boroughs in the *court leet*, of which the returning officer, whether sheriff, mayor, bailiff, or steward, is only the president. The writ directs the election to be made in "full county," "distinctly and openly;" and therefore, I say, in place convenient for access and audience of all the electors. The principle applies to boroughs, but it would be tedious at present to argue that point. The 7th of Hen. IV. c. 15, complaining of undue elections by "affection of sheriffs," directs it to be in "full county," and *all* to attend to and proceed to election, *i. e.* it directs the county court, and not the sheriff only, to decide on votes. The 8th of Henry VI., the disfranchising act, gives the sheriff power to "examine upon the evangelists" how much the chooser may expend by



the year; but it does not take away the power of the choosers or county court to *decide* on that or any other part of the qualification to vote. The 7th and 8th William III. c. 25, against the "evil practices" of returning officers, directs the election to be at the "most public and usual place." The whole policy of the law is to controul the returning officers, (whom the law charges with being prone to act from favour "or affection" to the parties, or "for their singular avail and lucre,") by the presence of the public. *Three words* in the late Act of Parliament countenance, if they do not actually establish, a pernicious (while the system of election law continues in other respects as before) and unconstitutional subversion of the old policy and abrogation of the old law.

The provision respecting expences is, that the candidates shall be liable in equal portions; and that if any absent candidate do not before proclamation made of the return signify his assent to the nomination, then the person who nominated shall be liable. The liability of candidates is a new and unconstitutional principle—introduced at the counties of York and Chester by the 10th Anne, c. 23; as to counties generally by the 8th Geo. II. c. 18; as to the City of Westminster by the 53d Geo. III.; by seve-

ral other statutes as to various expences incidental to the candidate's insisting on the administering of oaths, or the attendance of certain persons, without whose presence it may be impossible to ascertain the rights of voters; and lastly, by this enormous act extending the new doctrine to all boroughs. All the acts I have referred to are full of ambiguities. The only thing clear in them is the unconstitutional principle of making candidates liable for expences. I am sustained in my arraignment of this new principle, (which Dean Swift reckons among "Public Absurdities in England,") by Mr. Serjeant Heywood in his county elections, and by the doctrine of the judges in the two cases of Morris *v.* Burdett, and in that of Wathen *v.* Sandys and Berkeley.

But all this is nothing in comparison with the still newer principle introduced into this act—the *making the nominator of an absent or unapproving candidate liable to expences*. This enactment is a gross violation of the freedom of elections, and the rights of all the voters in England. It is nothing less than a disfranchisement, as to an important privilege, of all voters, and of all candidates except the very wealthy: and the greatest restraint on the



freedom of election, conducing to the greatest monopoly of the representation which has taken place since the Revolution, and enforced by a most severe penalty which is sure to be inflicted.* The act may be evaded, however, for there is no necessity for nomination. The electors have a right to give their votes at the polling-place, for any person whom they please, whether he be a candidate or not. The counties ought to defray the expences of taking the poll, by a rate for that purpose; and the boroughs in like manner, though for the most part it would be convenient and just to inflict such expences on the corporate body or its funds. This is the proper principle.

## CONCLUSION.

The view here presented of the present state of election law, has been intended to establish chiefly the following positions:—

1. That time has introduced so many new and inconsistent principles, that the ancient and fundamental ones have been lost sight of; and that much folly and injustice characterize,

* It is founded too on the ignorant misapprehension of modern times, that the choice of a representative is a private, and not a public concern, and more interests the candidate and his friend, than the electors and the county or city.

therefore, the modern theory of our election laws.

2. That the statutes respecting qualifications for voting in counties, contain a mass of contradictory or inefficient provisions, which has been aggravated by the decisions of committees—and that much perplexity in legislation, and in practice, has proceeded from the adoption of erroneous elements, and tests of qualification.

3. That the multifarious nature of the present rights of voting in boroughs, together with the multitude of capricious and conflicting decisions of Committees, which, as some substances in nature "do putrify and corrupt into worms," have "putrified and dissolved into number of subtle, idle, unwholesome, and, as I may term them, vermiculate questions,"* has utterly subverted the only just and ancient principles of borough representation.

4. That the statutes against bribery have proved vain; and that the rules of committees, and the conduct of the House, with respect to charges of this nature, have, with very rare exceptions, secured impunity to all offenders.

5. That the constitution of the election-judi-

* Lord Bacon of the "degenerate learning" of the schoolmen.



cature has been a main source of all the foregoing evils; and that it has, in consequence, become impossible now to deduce from the prevailing principles and practice any general and satisfactory rules for the guidance of electors, candidates, lawyers, or members of parliament.

6. That ruinous expences of time and money to all concerned, attend the present system.

7. That there are several remedies of a legal nature which seem proper to be applied to these evils—viz., 1. An alteration of the tribunal for trial of controverted elections. 2. A consolidation of the statutes. 3. The adoption of a new qualification for county-votes, with a new method of attesting it at the poll, and the taking the poll in several places. 4. The disqualifying of all non-residents from voting for boroughs, and the reduction of the various rights to some uniformity.

There are other remedies which political reformers incline to, but I have not thought the discussion or consideration of them proper to my present design—which was to give such information, to those who are not lawyers, on the actual condition of the law, in some of its most important details, as might help to assist them in clearly understanding, not only

the absolute necessity of a revision of the law; but also the sound principles on which they must proceed who are impressed with an anxious desire to make effectual changes. Without such clear understanding of the state of the present law, and of the nature of the proper remedies, those who succeed in introducing new laws among the statutes of the land, or who attempt to obtain the concurrence of the legislature in useful ones, will fail of their purpose; will be disappointed themselves, will dishearten others; and will aggravate, as almost all their predecessors have done, all the grievances which it is desired to remove.

THE END.

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