

0055

35-23



THE  
 BIRTHRIGHT OF BRITONS:  
 OR THE  
 BRITISH CONSTITUTION,  
 WITH A SKETCH OF ITS  
 HISTORY,  
 AND  
 INCIDENTAL REMARKS:

IN WHICH ARE TRACED

The Origin of our Liberties, their successive Growth,  
 and Improvements from *Magna Charta*, the *Bill of Rights*, &c. &c. and the various Innovations that  
 have been adopted to subvert the Constitution, and  
 which account for its present Abuses and Defects.

"If there were a Constitution, it certainly could be referred to;  
 and the debate on any constitutional point would terminate by pro-  
 ducing the Constitution."

*Rights of Man.*

L O N D O N :

Printed for L. WAYLAND, No. 2, *Middle-Row, Holborn.*

1 7 9 2.

Price Two Shillings and Sixpence.

## C O N T E N T S.

INTRODUCTION	—	—	Page 1
The origin of government	—	—	ib.
SECT. I. The government of the BRITONS and SAXONS	—	—	7
SECT. II. From the CONQUEST to the REFORMATION			16
Judge <i>Blackstone's</i> account of Norman innovations			17
<i>Magna Charta</i>	—	—	23
Lord <i>Coke's</i> notes on the 29th Chapter of ditto			31
Statutum <i>de tallagio non concedendo</i>	—	—	43
Ancient Coronation Oath	—	—	47
Statute 25 Edw. III. on Treason, with Judge <i>Blackstone's</i> comment	—	—	50
Act restraining the <i>Right of Elections</i>	—	—	63
Parliamentary <i>Misrepresentation</i>	—	—	68
SECT. III. From the REFORMATION to the REVOLUTION	—	—	73
The Petition of Rights	—	—	75
Habeas Corpus Act	—	—	91
SECT. IV. From the REVOLUTION to the PRESENT time	—	—	109
Bill of Rights	—	—	ib.
Act of Settlement	—	—	115
Coronation Oath	—	—	118
Toleration Act	—	—	126
Septennial ditto	—	—	ib.
Review of Laws since the Revolution	—	—	128
CONCLUSION	—	—	131

[Faint, illegible text on the left page]

T H E

# BRITISH CONSTITUTION, &c.

## INTRODUCTION.

**T**HE origin of civil government and kingly power has been accounted for by a variety of ingenious hypotheses, neither of which, perhaps, is wholly true, or univerfally false.

*Adam* has been challenged as the first *Prince*, as well as parent of mankind, and his government esteemed divine. It is true that he had dominion given him over "the birds of the air, the beasts of the field, and the fishes of the sea;" but under which class his posterity were reckoned is not so clear. Granting, however, that *Adam* was an absolute Monarch, and his kingdom hereditary, how shall we ascertain his rightful heir through so many generations? Let the man who makes this pretension, produce the authentic history of his pedigree, and all the ho-

B  
nors

nors due to the lineal descent of *Cain the murderer* shall be paid him.

There is no doubt but the ancient Patriarchs possessed a kind of absolute authority among their domestics, and this by a gradual encrease of servants and descendants, has been supposed the rise of monarchy; while others, such is the perverseness of human wit, have found its origin in *Nimrod*, the first hunter, the first tyrant, and the first king, say they, on record.

A certain class of writers have fought a perfect model of both civil and ecclesiastical government among the Hebrews. They have flattered themselves with finding a divine exemplar for the Christian hierarchy in Aaron's priesthood, and for monarchy in the kings of Israel. But it must be confessed that Saul their first king was given in divine anger, and was but too just a type of many of his successors.

But the most popular writers on this subject, (as Sidney, Locke, &c.) derive all the power of princes from a supposed contract with the people, in which one party stipulate to govern, and the other to obey, under certain conditions and restrictions; the notorious breach of which, on the ruler's part, dissolves the allegiance of subjects. Some modern governments have been known to originate in this manner; but it is  
not

not easy to prove the same of those in early times. It must indeed be confessed, that the very short account we have of those ages in great measure obviates this objection.

It is probable that different governments have originated in all these ways. The Jews had their laws and governments immediately from heaven. Some sprang from parental authority, —many, it is likely, were formed on contract, —but more perhaps originated in usurpation and violence.

It is, however, of less consequence to trace the origin of government, when it is considered that, like other sciences, it must have begun in *infancy*; but this is no reason it always should remain so.

If the first government was *absolute*, we have seen enough to dread it; —and if we may judge from the spirit of the age, the next generation may talk of absolute monarchies as of things that are no more. If, on the other hand, it could be proved to have originated in mutual *contract*, and the first supreme magistrate was chosen to guard and execute the laws; —still we prefer this constitution, not because it was the *first*, but because it appears to us the *best*.

Not only the uncontrolled power of kings, but even *monarchy* itself, has of late met with

very powerful enemies. The question, however, is not with us, what form of government to adopt, supposing the present were dissolved, or none had yet been formed; but our present enquiry is into the nature and merits of the BRITISH CONSTITUTION.

It may be proper to notice the objection of a popular author, who insists that we have properly *no* constitution at all\*. If, indeed, this term must necessarily mean a system of government, constructed and completed before the existence of government itself, we have none; but if we have any form of civil government at all—any natural rights, and fundamental laws, on which that government is founded, and by which it is *constituted*—these form our civil *constitution*; and to deny it, is to deny our political existence; it making no material difference, whether this constitution was formed at once, as those of America and France, or by a long succession of improvements, incorporating the political wisdom of a dozen centuries. To these fundamental maxims our future enquiries shall be directed; and we will endeavour to produce those authentic documents which have been called for, and on which every Briton may lay his finger, and say, “this is our *constitution*.”

\* Rights of Man, Part. II. Chap. 4.

There

There is another sense, however, in which the term *constitution* is sometimes used by good writers, namely for the *constituent* parts of government, King, Lords and Commons, whose business it is to guard those fundamental principles, on which they are *constituted* governors or legislators.

Before we proceed, it will be convenient to define a few other terms which will frequently occur, and which it is of importance to have rightly understood.

First, when we speak of RIGHTS, we would be understood to mean such as the God of Nature has conferred: as life, the use of limbs, and personal liberty; these are called *natural* rights, and cannot, or at least ought not, to be forfeited, but by crimes against society. These rights may be restricted or infringed by laws and governments, and by the same, be enlarged or restored again; but cannot be augmented beyond their original state. No man can have more life, more limbs, or more liberty than God gives him. There are other rights which belong to a state of society, such as private property, which, when honestly acquired, is guaranteed by all civilized governments.

LIBERTY is freedom from control. Civil or political liberty is the freedom of a state or people;

people; in which every man has a right to so much liberty, as is consistent with the liberty of the whole; or every man has a right to do as he pleases, so that he does not infringe the same right in others. For it is very obvious that every one who enjoys the blessings of society must sacrifice to it some portion of his natural liberty, when it interferes with that of his neighbours; and that every one who reaps the advantages of government, ought to contribute some part of his private property to its support. But in neither case ought it to be more than is needful for the good of the whole.

SECT.

## SECTION I.

*Of the Government of the Britons and Saxons.*

THE origin of our British ancestors is very doubtful, and of little consequence. Whether they emigrated from France or Germany—, from which of Noah's sons they descended—or in what age our island was first peopled—are subjects not worth *our* enquiry. It is enough if they were children of Adam, and entitled to the Rights of man.

These men, it is to be remembered, were *barbarians*, and it may be proper to inform some gentlemen and ladies, that their British ancestors went mostly naked; only the *macaronies* of that age carved and painted their skins in very pretty figures of flowers and animals, and ornamented themselves with iron collars and girdles, for want of velvet and richer materials.

We must not look among this people for a formal constitution, like those of France and America. Whether they came over with some mighty Nimrod and were his vassals—or whether every man did at first what was right in his  
own

own eyes—a little time must convince them of the necessity of some order and subordination; and this would produce some rude essay of government, and might, perhaps, lay the first stone of the British Constitution.

Certain it is when the Romans found us out, Britain was under the control of several petty leaders who, though in some respects independent of each other, united under a common chief in times of war and invasion. The Romans, who were equally remarkable for defending their own liberties and destroying those of other nations, spared no means to oppress and weary the brave, but undisciplined Britons, under the glorious pretence of extending their empire; and when their power declined, and they were glad to withdraw the poor remains of their armies, the Scots and Picts thought they had an equal right to plunder the country and enslave the inhabitants, and these proved greater tyrants, if possible, than the Romans.

Oppression from without is often the cause of internal union. These foreign enemies induced the several states to unite under one prince, and *Vortigern*, about the middle of the fifth century, was the first king on record after their union. By his advice, and the consent of the national assembly, the *Saxons* were called in from Germany

many to assist in expelling the Picts and Scots, which they did, and, as might have been expected, took possession of their power. Between these and the Angles, who came from Germany afterwards, the poor Britons were driven into the Welch mountains, where their descendants remain to this day.

One of the most memorable events during the times of the Saxons, was the introduction of Popery, by *Austin* the monk, and the erection of an hierarchy, in imitation of the Roman, with that zealous monk at the head of it. Nor is this either the first or the last time that our country has been subjected to priests. Witness for the former, the *Druids*—for the latter the intelligent reader will require no witness.

But the civil government of the Saxons is the more immediate subject of our enquiry.

Mr. *Burke* admits there is ground enough for the opinion, that “all the kingdoms of Europe were, at a remote period, *elective*.\*” This was certainly the case as to the *Saxons*, and a great law author tells us that “their election was qualified under a stipulation or covenant, wherein both prince and people were bound to each other; the people to defend their king—and the

\* *Reflections on the Revolution of France*, p. 19. 10th Edition.

prince to the people, to be no other than the influence of law. Kings, furthermore, bound themselves (at their entrance into the throne) hereunto by an oath\*." And when this oath was violated, our ancestors made no scruple to withdraw their allegiance, and set up another who made the same promises. Instances of both these facts will repeatedly occur as we proceed.

The *Mickle-gemote*, *Wittena-gemote*, or assembly of wise-men, was a kind of Parliament, composed of Lords and Freemen; and, after the country became Christian, the Clergy for their supposed wisdom, were added to the others. Something of this institution is to be traced in all the northern nations, and this certainly was the origin of our Parliaments. Their business was to make laws in conjunction with the prince, who commonly presided, and was always supposed present, as he still is in our courts of law.

That it was composed of the different estates of the kingdom, and not of Lords *only*, appears, exclusive of other evidence, from the laws of *Ina*, king of Wessex, which begin thus:—"I *Ina*, by the grace of God, king of the West Saxons, with the advice of *Cenred* my father, *Hedda*, my bishop, with all my EALDORMEN,

\* N. Bacon's Historical Discourse of the English Government, Part I. Chap. 12.

SENIORS,

SENIORS, and WISE MEN of my nation, have ordained, &c.\*" Nor is there any way of evading this, but by saying, that all the Wise-men of the country were then Nobles, which is very different from what has been observed in latter times.

The Saxons divided the country into seven states, in some respects independent, having separate princes, much in the manner of the ancient Britons; but in cases where it was necessary to be united, the most powerful of these was chosen generallissimo; and at length the gallant *Egbert*, after having subdued his competitors, procured himself to be crowned over all the country, about A. D. 828, and is reckoned the first king of all England. He is not, however, to be considered merely as a conqueror, for we are told, that "the Saxons having put an end to the heptarchy, by reason of the continual wars that attended the reigning of so many kings, in so narrow a compass of land, they chose themselves one king, to maintain and defend their persons and goods in peace, by rules of law, and made him swear, that he should be obedient to suffer right as well as his people†."

\* Rapin's Hist. of Eng. by Tindal, Vol. I. p. 153. 2d Ed. Folio.

† The Mirror of Justice.. Cap. I.

C 2

One



One of the greatest blessings derived from the Saxon government is the use of *Juries*, who at first were to be men of superior wisdom, rank, and consequence; but these finding the privilege rather troublesome than otherwise, any twelve honest and uninterested freemen, of the rank of the prisoner, were judged sufficient. Hence the right of every man to be tried by his *peers* or equal.—The pride and glory of Englishmen!

During this period we date the rise of *franchises*, *exemptions* or *privileges*, which were granted from the crown to particular places, persons or bodies corporate. Though they were originally, and many of them still are, considered as important branches of our liberties, yet they were no part of our natural rights, for *they* can be conferred only by God. Indeed they tended rather to take away rights than to bestow them, and were privileges granted to a few at the expense of many. For instance, every man has a natural right to live by the labour of his hands; now a *franchise* confirms, or rather *confines* this to a few persons, whom it forms into a corporation, and excludes every other person from that right, within a certain district. Again, the community have a natural right to bring criminals to justice; but a franchise draws a magic circle round a certain spot, and says, “here the villain

villain shall be secure.” This is the origin of privileged places among us.—All franchises, however, against the law of the land are illegal and void; and so it should seem they ought to be when against the law of nature and common sense. Corporate bodies have procured royal charters for certain exclusive privileges, twenty or thirty miles beyond the limits of their jurisdiction; which are of as much validity as a grant of lands in the moon.

Among the Saxon kings, *Alfred* the great is celebrated as one of the wisest and best men that ever wore a crown. Among other great actions, he revived the *Wittena-gemote*, which had been some time neglected; and ordained for a perpetual usage “that *twice* in the year or *oftner*, if need were, in times of peace, they should assemble at London to speak their minds, for the guiding the people of God, how they should keep themselves from offences, live in quiet, and have right done them, by certain usages and sound judgments\*.”

He formed the ancient British and Saxon laws into a compact system, regulated the administration of justice, and put to death those who dared to punish even delinquents, without

\* Lord Somers's Judgment of whole Kingdoms, &c. p. 54.

due process of law. And in his last will he left this testimony as a legacy to his people "that he owed his crown to the bounty of the princes, and of the elders of the people."

Edgar is esteemed the founder of the British navy; and began a new synopsis of the laws, (probably an improvement only of Alfred's work) which was completed by his grandson, Edward the Confessor, of famous memory. In these laws it was written, that "the king ought to do all things in his kingdom, according to law, and by the judgment of his peers." St. Edward's law goes farther, that "unless the king perform his duty, and answer the end for which he was constituted, not so much as the name of a king shall remain in him\*."

The titles of Saint and Confessor were conferred on this king, about two hundred years after his death, by Pope Alexander III, partly for his good-natured piety to the monks, and partly for the fame of his miracles, the principal of which, and the only one supposed to be derived to his successors, is that of touching for the king's evil; though some people have suspected that in latter times, the royal hand has conferred more evils than it has removed.

\* Lord Somers's Judgment of whole Kingdoms, &c. p. 54.

Near

Near the end of the Saxon line, four Danish kings are inserted between Edmund Ironside and the Confessor. In those times when might was reckoned the best right, and every invader esteemed success a title to government, the Danes continually harassed this country, and at length Canute, commonly called the Great, obtained the crown; not, however, without the sanction of the general assembly, who swore fealty to him, and he to govern them "according to the laws of God and the Nation." The Saxon race was however soon restored, and kept their seat till they met with a more powerful competitor in William the Conqueror.

SECT.

## SECT. II.

*From the CONQUEST to the REFORMATION. Magna Charta—Charta de Foresta—Statute de Tallageo non concedendo—Laws of Treason—of Elections, &c.*

**W**ILLIAM the Norman, commonly called the *Conqueror*, in consequence of the will of Edward the Confessor, and a pretended relation to the Royal Family, though he was in fact a bastard, invaded the country, and, Harold being slain in the battle of Hastings, procured an easy accession to the Crown. This event has generally been called the *Conquest*, but William never dared openly to claim the crown under that title; but rather by *election* of the people; though it is true that election sprang rather from fear than love.—Certain it is that at his coronation he covenanted with the people to maintain “the good, approved, and *ancient laws* of the kingdom.” Previous to the crown being placed on his head, the question was put both to the English and Normans, whether *William* should be their king, and both answered in the affirmative with the loudest acclamations. After this he took the oath usually administered

administered to the Saxon kings, which was in effect, “to protect the church and its ministers; to govern the nation with equity; to enact just laws and cause them to be duly observed, and to forbid all rapines and unjust judgments.\*”

*R. Hoveden* says, that “he commanded the laws of king Edward to be observed in all things: and that in the 4th year of his reign, by the counsel of his barons, he made the *noble* and *wise* men of England to be summoned through all the provinces of England, that he might hear from them who were skilled in their law, their *rights* and *customs*; and, that twelve men were chosen out of every county, who swore to their power to tread in a right path, neither turning to the right hand or to the left, and to make known to him the custom and the establishment of their *laws*.”

Kings are apt, however, to be troubled with short memories; and William, though improperly dubbed *the Conqueror*, was as much a tyrant as most conquerors of former or later times; and when he got possession of the kingdom, introduced several mischiefs, which shall be enumerated in the words of the judicious Sir *W. Blackstone*.

“Among the *first* of these alterations (introduced by William) we may reckon the *separation*

\* Rapin.

of the ecclesiastical courts from the civil: effected in order to ingratiate the new king with the popish clergy, who for some time before had been endeavouring all over Europe to exempt themselves from the secular power; and whose demands the conqueror, like a politic prince, thought it prudent to comply with, by reason that their reputed sanctity had a great influence over the minds of the people; and because all the little learning of the times was engrossed in their hands, which made them necessary men, and by all means to be gained over to his interests.

“Another violent alteration of the English constitution consisted in the depopulation of whole counties for the purposes of the king’s royal diversion; and subjecting both them, and all the ancient forests of the kingdom, to the unreasonable severities of *forest laws* imported from the continent, whereby the slaughter of a beast was made as penal as the death of a man. In the Saxon times, though no man was allowed to kill or chase the king’s deer, yet he might start any game, pursue, and kill it, upon his own estate. But the rigour of these new constitutions vested the sole property of all the game in England in the king alone; and no man was entitled to disturb any fowl of the air, or any beast of the field, of such kinds as were specially reserved

reserved for the royal amusement of the sovereign, without express licence of the king, by a grant of a chase or free warren.

“From a similar principle to which, though the forest laws are now mitigated, and by degrees grown intirely obsolete, yet from this root has sprung a bastard slip, known by the name of the *game law*, now arrived to, and wantoning in, its highest vigour: both founded upon the same unreasonable notions of permanent property in wild creatures; and both productive of the same tyranny to the commons; but with this difference, that the forest laws established only *one* mighty hunter throughout the land, the game laws have raised a little *Nimrod* in every manor.

“A *third* alteration in the English laws was by narrowing the remedial influence of the *county courts*, the great seats of Saxon justice, and extending the original jurisdiction of the king’s justiciars to all kinds of causes, arising in all parts of the kingdom: and the consequence naturally was, the ordaining that all proceedings in the king’s court should be carried on in the Norman, instead of the English, language: as evident a badge of slavery as ever was imposed upon a conquered people. This lasted till king *Edward III.* obtained a double victory over the armies of France in their own country, and their language in our courts here at home.

“ A fourth innovation was the introduction of the trial by combat, for the decision of all civil and criminal questions of fact in the last resort.

“ But the last and most important alteration, both in our civil and military polity, was the engrafting on all landed estates, a few only excepted, the fiction of *feodal tenure*, which drew after it a numerous and oppressive train of servile fruits and appendages; aids, reliefs, primer seifins, wardships, marriages, escheats, and fines for alienations; the genuine consequences of the maxim then adopted, that all the lands in England were derived from, and holden, mediately or immediately, of the crown \*.”

The above account, at the same time as it furnishes a view of the evils brought in at this period, gives us an insight to the Saxon liberties. If the ecclesiastical courts, forest laws, Norman judges, and feodal tenure, were *now* introduced, before this our ancestors must have been strangers to these oppressions; to which if we add the custom of frequent parliaments and trial by jury, it will give us a very favourable idea of the Saxon constitution; and shews that we do not owe the origin of our liberties to *Magna Charta*, or any subsequent laws, or charters of our princes.

\* Blackstone's Commentaries, vol. iv. p. 415. & seq. 8vo.

William

*William Rufus* rather encreased than lightened the weight of royal oppression; but Henry I. his brother, made an attempt this way, granted the people some privileges by charter, and revived the laws of Edward the Confessor, with such alterations and additions as he thought proper. This king wrote to pope Pascal thus: “ Let your Holiness know, that, by the help of God while I live, the dignities and customs of the kingdom of England shall not be diminished; and if I (which God forbid!) should so far deject myself, my nobles, and all the people of England would never suffer them to be altered \*.” *Stephen*, called the Usurper, promised much and performed little; except the introduction of the *civil* and *canon* law into this country, with which was established the doctrine of *appeals* to Rome. The *civil* law is the ancient law of the Roman empire, and the *canon* law, the ecclesiastical law of the Romish church; the former is still observed in a few cases; and the latter in too many, though its authority was greatly shaken at the reformation, and cannot stand either in opposition to common or statute law. It is indeed a matter of surprize and regret to many, that it should stand at all, as it has an evident tendency to perpetuate the old slavish principles of popery, and

\* See Coke's Instit. lib. 2.

give

give into the hands of the clergy an inordinate degree of power.

The early Norman princes, notwithstanding their tyranny, regularly kept parliaments, and the reign of Henry II. was remarkable for a parliament or general assembly held at Clarendon; wherein were passed several statutes or constitutions limiting the growing power of the clergy, and forbidding appeals to Rome, which occasioned the memorable dispute between him and archbishop Becket. During the same reign were instituted the Judges circuits, and the practice of pecuniary commutation for personal military services, which produced, in process of time, parliamentary subsidies and the land-tax.

John, it is well known, was compelled by his Barons to sign and swear to two famous charters, restoring and confirming the liberties of his subjects, namely, the Charter of Liberties (or *Magna Charta*) and the *Charter of the Forests*, of which more hereafter. This memorable event took place in *Runnemede*, between Staines and Windsor—a spot that will ever be dear to Englishmen. But this arbitrary and perfidious prince repented soon of the best action of his life, and procured the Pope's absolution from all his engagements. This, in consequence, embroiled the nation in war, and is thought to have hastened his end. Yet was not this a warning to his son Henry III. who soon

soon as he came of age pursued the foolish steps of his father, and was influenced by evil counsellors. Want of money, however, to carry on his wars, brought him, as it has many a king since, to his right mind; and the parliament having the purses of the people in their custody, compelled him to confirm their great Charter, of which the following is an *abstract*, with some explanatory Notes, chiefly from the great Chief Justice *Coke*.

#### MAGNA CHARTA.

CHAP. I. “First, we have granted to God, and by this our charter have confirmed for us and our heirs for us, That the CHURCH OF ENGLAND SHALL BE FREE, and shall have all her whole Rights and Liberties inviolable. (2.) We have granted also, and given to ALL THE FREEMEN of our realm, for us and our heirs for ever, these liberties under-written, to have and to hold to them and their heirs for ever.”

II. Of the relief of the King's tenant of full age.

III. Of the wardship of an heir within age—  
The heir of a Knight.

IV. That no waste shall be made by a guardian in ward lands.

V. That guardians shall maintain the inheritance of their wards; and of bishoprics.

VI.

VI. "Heirs shall be married without disparagement."

VII. That a widow shall have her marriage, inheritance, dower, &c.

VIII. "We, or our bailiffs, shall not feize any lands or rents for any debt, as long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefore. (2.) Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. (3.) And if the principal debtor fail in the payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for his debt. (4.) And if they will, they shall have the lands and rents of the debtor until they be satisfied of that which they before paid for him, except that the debtor can shew himself to be acquitted against the said sureties.

IX. "The city of London shall have all the old liberties and customs which it hath been used to have. Moreover, we will and grant, that all other cities and boroughs, towns and the Barons of the five ports, and all other ports, shall have all their liberties and free customs.

X. "No man shall be distrained to do more service for a knight's fee, nor for any freehold, than therefore is due."

XI. "Common-Pleas shall not follow our court, but shall be holden in some place certain.

XII. "Affizes of Novel Disseisin and of Mortd'ancestor\*, shall not be taken but in the shires, and after this manner: if we be out of this realm, our Chief Justiciars shall send our Justiciars through every county once in the year; which, with the Knights of the Shire, shall take the affizes in those counties. (2.) And those things that at the coming of our aforesaid Justiciars, being sent to take those affizes in the counties, cannot be determined, shall be ended by them in some other place in their circuit. (3.) And those things which for difficulty of some articles cannot be determined by them, shall be referred to our Justiciars of the Bench, and there shall be ended.

XIII. "Affizes of Darrein Presentment†, shall be always taken before our Justiciars of the Bench, and there shall be determined.

XIV. "A Freeman shall not be amerced for a small fault, but after the manner of the fault. And for a great fault after the greatness thereof, saving to him his contenment. (2.) And a merchant likewise, saving to him his merchandize. (3.) And any others villain than ours shall

\* Species of action relative to estates.

† Action relative to Presentation to a living.

be likewise amerced, saving his wainage, if he fall into our mercy. (4.) And none of the said amerciements shall be affeſſed, but by the oath of honeſt and lawful men of the vicinage. (5.) Earls and Barons ſhall not be amerced, but by their Peers, and after the manner of their offence. (6.) No man of the church ſhall be amerced after the quantity of his ſpiritual benefice; but after his lay-tenement, and after the quantity of his offence.

XV. "No Town nor Freeman ſhall be diſtrained to make bridges nor banks, but ſuch as of old, &c.

XVI. "No banks ſhall be defended from henceforth, but ſuch as were in defence in the time of king Henry our grandfather. . . .

XVII. "No Sheriff, Conſtable, Eſcheator, Coroner, nor any other our Bailiffs, ſhall hold pleas of our crown."

XVIII. That the king's debtor dying, the king ſhall be firſt paid.

XIX. "No Conſtable, nor his Bailiff ſhall take corn or other chattels of any man, if the man be not of the town where the caſtle is, but he ſhall forthwith pay for the ſame; unleſs that the will of the ſeller was to reſpite the payment."

XX. Of doing of Caſtle Ward.

XXI. "No Sheriff nor Bailiff of ours, nor any

any other, ſhall take the horſes or carts of any man to make carriage, except he pay the old price limited, &c.

XXII. "We will not hold the lands of them that be convict of felony but one year and one day, and then thoſe lands ſhall be delivered to the Lords of the Fee.

XXIII. "All wears from henceforth ſhall be utterly put down by the Thames and Medway, and through all England, but only by the ſea-coaſts.

XXIV. "The writ that is called *Præcipe in Capite*, ſhall be from henceforth granted to no perſon of any freehold, whereby any freeman may loſe his court.

XXV. "One meaſure of wine ſhall be thro' our realm, and one meaſure of ale, and one meaſure of corn, that is to ſay, the quarter of London. (2.) And one breadth of dyed cloth, ruſſets, and haberjects, that is to ſay, two yards within the liſts. (3.) And it ſhall be of weights as it is of meaſures."

XXVI. "Nothing from henceforth ſhall be given for a writ of inquiſition, nor taken of him that prayeth inquiſition of life or of member; but it ſhall be granted freely, and not denied.

XXVII. "Of the tenure of the king, in focage, and of another by knights ſervice.---Of Petit Serjeantry.



XXVIII. "No bailiff from henceforth shall put any man to his open law, nor to an oath, upon his own bare saying, without faithful witnesses brought in for the same.

XXIX. "No Freeman shall be taken or imprisoned, or be disseised of his freehold or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; and we will not pass upon him, nor condemn him, but by the LAWFUL JUDGMENT OF HIS PEERS, or by the LAW OF THE LAND. (2.) WE WILL SELL TO NO MAN, WE WILL NOT DENY, OR DEFER, TO ANY MAN EITHER JUSTICE OR RIGHT."

XXX. That Merchants, Strangers, coming into this realm, shall be well used.

XXXI. Of the tenure of a barony, coming into the king's hand by escheat.

XXXII. That lands shall not be aliened to the prejudice of the Lord's service.

XXXIII. That Patrons of Abbeys shall have the custody of them in the time of vacation.

XXXIV. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than of her husband.

XXXV. At what time shall be kept a county court Sheriff's turn, and a Leet.

XXXVI. "That no land shall be given in mortmain.

XXXVII.

XXXVII. "*Escuage*\* from henceforth shall be taken, like as it was wont to be in the time of king Henry our grandfather; reserving to all Archbishops, Bishops, Abbots, Priors, Templers, Hospitallers, Earls, Barons, and all persons as well spiritual as temporal, all their free liberties and free customs which they have had in time passed; (2.) And all these customs and liberties aforesaid, which we have granted to be holden within this our realm, as much as appertaineth to us and our heirs, we shall observe. (3.) And all men of this our realm, as well spiritual as temporal (as much as in them is) shall observe the same against all persons in like wise. (4.) And for this our gift and grant of these liberties, and of other contained in our charter of liberties of our *forest*, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and *other* our subjects, have given unto us the *fifteenth* part of all their movables. (5) And we have granted unto them on the other part, that neither we nor our heirs shall procure or do any thing, whereby the liberties in this charter contained, shall be infringed or broken. (6) And if any thing be procured, by any person, contrary to the premisses, it shall be had of no force nor effect. These being witnesses, Lord *B.* Arch-bishop of *Canterbury*, *E.* Bishop of *London*," &c.

\* Commutation for personal military service.

OBSERVATIONS.

This excellent law holds the first place in our statute books, for though there were no doubt many acts of parliament long before this, yet they are not now extant: it is called *Magna Charta*, or the great charter, not in respect of its bulk, but in regard of the great importance and weight of the matters therein contained; it is also styled the charter of the liberties of the kingdom, because it makes and preserves the people free.

Though it run in the style of the king *as a charter*, yet (as Lord Coke well observes) it appears to have passed in parliament; for there was then a fifteenth granted to the king, by the bishops, earls, barons, free-tenants and people, which could not be but in parliament, nor was it unusual in those times to have acts of parliament in form of a charter.

Likewise though it be said here, that the king hath given and granted these liberties, yet they must not be understood as mere emanations of royal favour, or new bounties granted, which the people could not justly challenge, or had not a right unto before; for Lord Coke at divers places asserts, and all lawyers know, that this charter

charter is for the most part only *declaratory* of the principal grounds of the fundamental laws and liberties of England; no new freedom is hereby granted, but a restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any power whatsoever; and therefore you may see this charter often mentions *their rights*, and *their liberties*, which shews they had them before, and that the same now were confirmed.

Besides if the words "we have granted" must be strained to imply that the people had no just claim to these liberties, the same words in the preceding clause will equally prove that God Almighty had no right to the liberties of his Church. For the expression is the same in respect of both.

The 29th chapter is by far the most important of the charter, and deserves to be written in letters of gold on all our courts of judicature. On this we shall add the great chief justice *Coke's* annotations.

This chapter contains nine several branches.

I. "That no man be taken or imprisoned, but *per legem terræ*, that is by the common law, statute-law, or custom of *England*: for these words, *per legem terræ*, being towards the end of this chapter, do refer to all the precedent matters in this chapter; and

and this hath the first place, because the *liberty of a man's person* is more precious to him than all the rest that follow. . . .

II. " *No man shall be disseised*, that is, put out of feisin, or dispossessed of his free-hold; that is, lands or livelihood, or of his liberties or free customs; that is, of such franchises and freedoms, and free customs as belong to him, by his free birth-right, unless it be by the *lawful judgment*, that is, *verdict* of his equals, (that is, of men of his own condition) or by the *law of the land*; that is (to speak it once for all) by the due course and process of law. . . .

" A custom was alledged in the town of C. that if the tenant cease by two years, that the lord should enter into the freehold of the tenant, and hold the same until he were satisfied of the arrearages: it was adjudged a custom against the law of the land, to enter into a man's freehold in that case, without action or answer.

King Henry VI. granted to the corporation of *Diers* within *London*, power to search, &c. And if they found any cloth dyed with *log-wood*, that the cloth should be forfeit: and it was adjudged, that this charter concerning the forfeiture was against the laws of the land, and this statute; for no forfeiture can grow by letters patents.

No

" No man ought to be put from his livelihood without answer.

" III. *No man outlawed*, that is, barred to have the benefit of the law. And note, to this word *outlawed*, these words, *unless by the law of the land*, do refer.

*Of his liberties*. This word has three significations:

" 1. As it has been said, it signifieth the laws of the realm, in which respect this charter is called *charta libertatum*, as aforesaid.

" 2. It signifies the *freedom the subjects of England* have: for example, the company of *Merchant Taylors of England*, having power by the charter to make ordinances, made an ordinance that every brother of the same society should put the one half of his cloths to be dressed by some cloth-workers free of the same company, upon pain to forfeit 10s. &c. And it was adjudged that this ordinance was against law, because it was against the liberty of the subject; for every subject has freedom to put his cloths to be dressed by whom he will, *& sic de similibus*. And so it is, if such or the like grant had been made by his letters patents.

" 3. *Liberties* signify the *franchises and privileges* which the subjects have of the gift of the king, as the goods and chattels of *felons, outlaws*, and

F

the

the like ; or which the subject claims by prescription, as *wreck, waifs, stray*, and the like.

“So likewise and for the same reason, if a grant be made to any man to have the sole making of *cards*, or the sole dealing with any other trade, that grant is against the liberty and freedom of the subject, that before did or lawfully might have used that trade, and consequently against this great charter.

“Generally *all monopolies* are against this great charter, because they are against the liberty and freedom of the subject, and against the law of the land.

“IV. *No man exiled*, that is banished, or forced to depart or stay out of *England* without his consent. By the law of the land, no man can be *exiled* or banished out of his native country, but either by *authority of Parliament*, or in case of abjuration for felony by the common law ; and so when our books, or any record, speak of *exile*, or banishment, other than in case of abjuration, it is to be intended to be done by *authority of Parliament*, as *Belknap* and other judges, &c. banished into *Ireland*, in the reign of *Richard* the second.

“This is a beneficial law, and is construed benignly ; and therefore the king cannot send any subject of *England* against his will to serve him out

out of this realm, for that should be an exile, and he should *perdere patriam* : No, he cannot be sent against his will into *Ireland*, to serve the king or his deputy there, because it is out of the realm of *England* : For if the king might send him out of this realm to any place, then under pretence of service, as ambassador or the like, he might send him into the farthest part of the world, which being an exile, is prohibited by this act.

“V. *No man destroyed*. That is, forejudged of life or limb, or put to torture or death, every oppression against law by colour of any usurped authority is a kind of destruction. And the words *aliquo modo* (any otherwise) are added to the verb *destroyed*, and to no other verb in this chapter, and therefore all things by any manner of means tending to destruction are prohibited ; as if a man be accused or indicted of treason or felony, his lands or goods cannot be granted to any, no not so much as by promise, nor any of his lands or goods seized into the kings hands before he be attainted ; for when a subject obtaineth a promise of the forfeiture, many times undue means and more violent prosecution is used for private lucre, tending to destruction, than the quiet and just proceeding of the law would permit, and the party ought to live of his own until attainder.

F 2

VI. By

“ VI. By lawful judgment of his Peers, that is by his equals, men of his own rank and condition. The general division of persons by the law of England, is, either *one that is noble*, and in respect of his nobility of the lords house of Parliament, or *one of the commons*, and in respect thereof, of the house of commons in Parliament. And as there be divers degrees of nobility, as Dukes, Marquesses, Earls, Viscounts, and Barons, and yet all of them are comprehended under this word *Peers*, and are Peers of the realm; so of the commons, there be Knights, Esquires, Gentlemen, citizens, and yeomen, and yet all of them the commons of the realm. And as every one of the nobles is a Peer to another, though he be of a several degree, so it is of the commons; and as it has been said of men, so doth it hold of noble women, either by birth or marriage.

“ And forasmuch, as this judgment by peers is called *lawful*, it shews the antiquity of this manner of trial: it was, the ancient, accustomed, legal course long before this charter.

“ Or by the law of the land. That is by due process of law, for so the words are expressly expounded by the stat. of 37 *Edw. 3. c. 8*. And these words are specially to be referred to those foregoing, to whom they relate. As none shall be condemned without a lawful trial by his peers,  
so

so shall none be taken, imprisoned, or put out of his freehold, without due process of the law, that is by the indictment or presentment of good and lawful men of the place, in due manner, or by writ original of the common law.

“ Now, seeing that no man can be taken, arrested, attached, or imprisoned, but by due process of law, and according to the law of the land, these conclusions hereupon do follow.

“ 1. That the person or persons who commit any, must have lawful authority.

“ 2. It is necessary when the warrant or mittimus be lawful, and that must be in writing under his hand and seal.

“ 3. The cause must be contained in the warrant, as for treason, felony, &c. Suspensions of treason, or felony, or the like particular crime; for if it does not thus specify the cause, if the prisoner brings his *habeas corpus*, he must be discharged, because no crime appears on the return; nor is it in such case any offence at all, if the prisoner make his escape; whereas if the mittimus contain the cause, the escape would respectively be treason or felony, though in truth he were not guilty of the first offence. And this mentioning the cause, is agreeable to Scripture, *Acts V.*

“ 4. The

“4. The warrant or mittimus containing a lawful cause, ought to have a lawful conclusion, &c. And him safely to keep until he be delivered by law, &c. and not until the party committing shall further order.

“If any man by colour of any authority, where he hath not any in that particular case, shall presume to arrest or imprison any man, or cause him to be arrested or imprisoned, this is against this act; and it is most hateful, when it is done by countenance of justice. King Edward VI. did incorporate the town of Saint Albans, and granted to them to make ordinances, &c. They made a by-law upon pain of imprisonment; and it was judged to be against this statute of Magna Charta; so it had been, if such an ordinance had been contained in the patent itself.

“We will sell to no man, deny to no man, &c. This is spoken in the person of the king, who in judgment of law in all his courts of justice is present; and therefore every subject of this realm, for injury done to him, in person, lands, or goods, by any other subject, ecclesiastical or temporal, whatever he be without exception, may take his remedy by the course of the law, and have justice and right for the injury done him, freely without sale, fully without any denial, and speedily without delay;

delay; for justice must have three qualities; it must be free, for nothing is more odious than justice set to sale; full, for justice ought not to limp, or be granted piece-meal; and speedy, because delay is a kind of denial; and when all these meet, it is both justice and right.

“We will not deny nor delay any man, &c. These words have been excellently expounded by latter acts of Parliament, that by no means common rights or common law should be disturbed or delayed; no, though it be commanded under the great seal, or privy seal, order, writ, letters, message, or commandment whatsoever, either from the king or any other; and that the justices shall proceed, as if no such writs, letters, order, message, or other commandment were come to them: all our judges swear to this; for it is part of their oaths, so that if any shall be found wresting the law to serve a court turn, they are perjured as well as unjust. The common laws of the realm should by no means be delayed, for the law is the surest sanctuary that a man can take, and the strongest fortress to protect the weakest of all; *lex est tutissima cassis*, the law is a most safe head-piece, and *sub clipeo legis nemo decipitur*, no man is deceived whilst the law is his buckler: but the king may stay his own suit, as a *capias pro fine*, for the king may respit his fine, and the like.

“All protections that are not legal, which appear not in the register, nor warranted by our books, are expressly against this branch, *nulli differemus*, we will not delay any man: as a protection under the great seal granted to any man, directed to the sheriff, &c. and commanding them that they shall not arrest him during a certain time at any other man's suit, which has words in it, *by our prerogative, which we will not have disputed*; yet such protections have been argued by the judges, according to their oath and duty, and adjudged to be void. As *Mich. 11 Hen. 7. Rot. 124.* a protection granted to *Holmes*, a vintner of *London*, his factors, servants and deputies, &c. resolved to be against law. *Pasch. 7 Hen. 8. Rot. 66.* such a protection disallowed, and the sheriff amerced for not executing the writ, *Mich. 13. and 14 Eliz.* in *Hitchcock's* case, and many other of latter time: and there is a notable record of ancient time in *22 E. 1. John de Marshals* case; *non pertinet ad vicecomitem de protectione regis judicare imo ad curiam.*

“*Justice or right.* We shall not sell, deny or delay justice and right, neither the *end*, which is *justice*; nor the *mean* whereby we may attain to the end, and that is the *law*: right is taken here for *law*, in the same sense that justice often is so called

called. 1. Because it is the *right line*, whereby justice distributive is guided and directed; and therefore all the commissioners of *oyer and terminer*, of gaol delivery, of the peace, &c. have this clause, *facturi quod ad justitiam pertinet, secundum legem & consuetudinem Angliæ*; that is, to do *justice and right*, according to the rule of the *law and custom of England*: and that which is called *common right* in *2 Ed. 3.* is called *common law*, in *14 Ed. 3.* &c. and in this sense it is taken, where it is said, *Ita quod stat rectus in curia, id est legi in curia.*

2. “The law is called *rectum*, [right] because it discovereth that which is tort, *crooked* or *wrong*; for as right signifieth law, so tort, crooked or wrong, signifieth injuries; and *injuria est contra jus*, injury is against right: *recta linea est index sui & obliqui*, a right line is both *declaratory of itself* and *the oblique*. Hereby the crooked cord of that which is called *discretion* appeareth to be unlawful; unless you take it as it ought to be, —*discretion is to discern by the law what is just.*

3. “It is called *right*, because it is the best *birth-right* the subject has, for thereby his goods, lands, wife and children, his body, life, honour and estimation are protected from injury and wrong: *a greater inheritance descends to us from the laws, than from our progenitors.*”

Thus far the learned Chief Justice Coke.

In the close of the above charter mention is made of another, called the *Charter of the Forests*, granted at the same time, and intended to remedy certain encroachments which the crown had made upon the liberties of the people, by severe and arbitrary forest laws. In this was allowed *common herbage* as afore-time—every freeman was admitted to keep aviaries of hawks, &c.—to erect mills, or dig pits in his own ground, and the like. Both these charters were confirmed by this king, in the most solemn manner conceivable, in full parliament, a most dreadful curse being imprecated by the archbishop, on all who in any manner of way should infringe the said charters; the prelates and clergy, in particular, holding lighted tapers in their hands during the recitation of the said curse, at the close of it threw down all their tapers to extinguish them, and said, “So let all that shall go against this curse be extinct and *slink in hell*.” The king standing with his right hand on his breast during the whole time, said, “So help me God, I will observe all these things sincerely and faithfully, as I am a *Man*, as I am a *Christian*, as I am a *Knight*, as I am a *King*, crowned and anointed.\*”

The year 1266, being the 49th of *Henry III.* is remarkable for ascertaining the antiquity of

\* N. Bacon, Part I. p. 210.

the present form of Parliaments, there being still extant writs of that date to summon *knights, citizens* and *burgesses*. There are good proofs, however, some of which have been produced, that this was not the first time that the commons were admitted into the legislature, as some have supposed; but that they formed an essential part of it from the earliest period\*.

The next reign, that of *Edward I.* furnishes a solemn ratification of *Magna Charta*, with another dreadful curse against the breakers of it. Besides which, the law is said, by Sir *M. Hale*, to have received more improvement in his reign than in all the ages since. The following important extract is from an act passed in 34th of this reign entitled

DE TALLGIO NON CONCEDENDO.

CHAP. I. “No *tallage* or aid shall be taken or levied by us or our heirs in our realm, without the good-will and assent of the arch-bishops, bishops, earls, barons, *knights, burgesses*, and other *freemen* of the land.

II. “No officer of ours, or of our heirs, shall take corn, leather, cattle, or any other goods of any manner of person, without the good-will and assent of the party to whom the goods belonged.

\* See N. Bacon of English Government, Preface to second Part.



III. " Nothing from henceforth shall be taken of sacks of wool by colour, or occasion, of *maletot*.

IV. " We will and grant for us and our heirs, that all clerks and laymen of our land, shall have their laws, liberties and customs as largely and wholly, as they have used to have the same at any time when they had them best. (2.) And if any statutes have been made by us and our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present charter: We will and grant that such manner of statutes and customs shall be void and frustrate for evermore.

V. " *Pardon granted to certain offenders, viz.* Humphrey, Earl of Hereford, &c.—Roger, Earl of Norfolk, and John de Ferrariis, and their adherents.

VI. " That the curse of the church shall be pronounced against the breakers of this charter."

*Note,* The word *tallage* is derived from the French *tailler*, to share or cut out a part, and is metaphorically used for any charge, when the king or any other cuts out or takes away any part or share of a person's estate; and being a general word, it includes all subsidies, taxes, tenths, aids, impositions or other charges whatsoever.

The

The word *maletot* signifies an *evil* (that is, an unjust) *toll*, custom, imposition or sum of money.

The occasion of making this statute was this: king Edward being injured by the French king, resolved to make war against him, and in order thereunto required of Humphrey le Bohun Earl of Hereford and Essex, and Constable of England, and of Roger Bigot Earl of Norfolk and Suffolk, and Marshal of England, and of all the Earls, Barons, Knights, Esquires and Freeholders of 20l. land, whether they held of him *in capite*, or of others, either to go in person on this expedition, or else to find sufficient men in their places in his army; which the Constable and Marshal, and many of the Knights and Esquires, (especially this John Ferrers) taking part with them and all the freemen, stoutly denied, unless it was so ordained and determined by common consent in parliament, according to law. And it seems the contest grew so hot, that when the Earl Marshal told the King\*, *That if his Majesty pleased to go in person, he would then go with him, and march before him in the vanguard, as by right of inheritance he ought to do; but otherwise he would not stir;* the King told him plainly, *he should go with any other, though he went*

\* Baker's Chron. fol. 99.

not

not in person. I am not so bound (said the Earl) neither will I take the journey without you. The King swore *By God, Sir Earl, you shall either go or hang: And I swear by the same oath* (said the Earl) *I will neither go nor hang.* And so the king was forced to dispatch his expedition without them. And yet (saith my Lord Coke) although the king had conceived a deep displeasure against the Constable, Marshal, and others of the nobility, gentry, and Commons of the realm, for denying that which he so much desired; yet, *for that they stood in defence of their laws, liberties, and free customs,* the said King Edward the First, who (as Sir William Herle Chief Justice of the Common-Pleas, who lived in his time and served him, said in the time of king Edward the Third) *was the wisest king that ever was; did after his return from beyond the seas, not only consent to this statute, whereby all such tallages and impositions are forbidden for the future; but also passed a pardon to the said nobles, &c. of all rancour, ill-will and transgressions, if any they have committed; which last words were added, lest by acceptance of a pardon of transgression, they should implicitly confess that they had transgressed: so careful were the Lords and Commons in former times to preserve the ancient laws, liberties, and free customs of their country.*

In

In the commencement of Edward II's reign we have the first perfect copy of the ancient coronation oath, as it was tendered by the Bishop of Winchester; which, though it was soon broken, is well worth reciting for the light it gives into the antient laws and rights of the country.

*Bishop of Winchester.* "Sir, will you keep and confirm by your oath to the people of England, the laws established by the pious kings your predecessors; and particularly, the laws, customs, and liberties granted to the clergy and people by the glorious St. Edward your predecessor?"

*King.* "I will and promise it."

*Bp.* "Sir, will you preserve to God, to holy church, to the clergy and people, the peace of God fully, and to the utmost of your power?"

*King.* "I will."

*Bp.* "Sir, will you cause to be observed in all your judgments, right and justice with discretion, in mercy and in truth, as far as you are able?"

*King.* "I will."

*Bp.* "Sir, will you promise to keep and cause to be kept the laws and statutes that the community of your kingdom shall judge fit to enact, and will you defend and protect them to the utmost of your power?"

*King.* "I do promise it \*."

\* Rapin.

One

One of the strongest objections to hereditary succession is the impossibility of making virtue and abilities hereditary: of this a remarkable instance occurs in the reign before us; and we have as clear a precedent for the legal remedy in such cases: after the people had been teized by the king's weakness, and tormented with the wickedness of his ministers near twenty years, they were hanged and he was deposed. The Barons having raised an army, got the king into their hands; and the parliament unanimously resolved, that the king should be deposed, and his son (a youth of great hopes) crowned in his stead. The substance of the charge exhibited against him was, that he had not governed according to the laws of the land; that he had made use of evil counsellors and had rejected the advice of his faithful subjects; in short, that he was incapable of governing, and that he was found incorrigible, and without hopes of amendment. Accordingly proper persons were sent to degrade him, and he having delivered the *insignia* of royalty into their hands, Judge *Trussel* addressed the king in these memorable words. "I *William Trussel*, Procurator of the Prelates, Earls, Barons and People, in my procuracy named, having for this full and sufficient power, do surrender unto *Edward*, late king of England, the

the homage and fealty of the persons aforesaid; and do acquit the same in the best manner the law and custom can give it; and do make this protestation in the name of all those that will not be in your fealty or allegiance for the future, nor claim or hold any thing of you as king; but account you as a private person, without any manner of royal dignity." Upon this *Sir Thomas Blunt*, the High Steward, broke his staff and declared all the king's officers discharged\*.—What a lesson this for kings!—may the people of England *never* have occasion to repeat it!

Upon this king's rejection, his son (*Edward III.*) as already hinted, was chosen by the general consent of parliament and people, the archbishop exclaiming *vox populi, vox Dei*, and exhorting all to pray for the young prince.

In the reign of *Edward III.* two acts were passed in favour of annual parliaments. By 4 *Ed. III.* cap. 14. "It is accorded that a parliament shall be holden *every year once*, and *more often* if need be." And in the 36th of the same reign it is appointed (cap. 14.) that for the "redress of divers mischiefs and grievances, which daily happen, a parliament shall be holden *every year*, as another time was ordained by statute."

\* Rapin.

In this reign, we are told, the houses of Lords and Commons were separated, as they remain at this day; and the following important act concerning *treasons*, passed in the 25th of this reign, is said to have been one of the first fruits of this new regulation. We give it with Judge BLACKSTONE'S elegant and learned comment.

“This statute (says he) comprehends all kinds of high treason under seven distinct branches.

1. “When a man doth compass or imagine the death of our Lord the King, of our Lady his Queen, or of their eldest son and heir.” Under this description it is held that a queen *regnant* (such as queen Elizabeth and queen Anne) is within the words of the act, being invested with royal power, and intitled to the allegiance of her subjects: but the husband of such a queen is not comprised within these words, and therefore no treason can be committed against him. The king here intended is the king in possession, without any respect to his title; for it is held, that a king *de facto* and not *de jure*, or in other words an usurper that hath got possession of the throne, is a king within the meaning of the statute; as there is a temporary allegiance due to him, for his administration of the government and temporary protection of the public.—But the  
most

most rightful heir of the crown, or king *de jure* and not *de facto*, who hath never had plenary possession of the throne, is not a king within this statute against whom treasons may be committed.—Lastly, a king who has resigned his crown, such resignation being admitted and ratified in parliament, is according to Sir Matthew Hale no longer the object of treason. And the same reason holds, in case a king abdicates the government, or, by actions subversive of the constitution, virtually renounces the authority which he claims by that very constitution: since, when the fact of abdication is once established and determined by the proper judges, the consequence necessary follows, that the throne is thereby vacant, and he is no longer king.

“Let us next see, what is a *compassing* or *imagining* the death of the king, &c. These are synonymous terms; the word *compass* signifying the purpose or design of the mind or will, and not, as in common speech, the carrying such design to effect. And therefore an accidental stroke, which may mortally wound the sovereign, *per infortunium*, without any traitorous intent, is no treason: as was the case of Sir *Walter Tyrrel*, who, by the command of king *William Rufus*, shooting at a hart, the arrow glanced against a tree, and killed the king upon the spot.

But as this *compassing* or imagination is an act of the mind, it cannot possibly fall under any judicial cognizance, unless it be demonstrated by some open, or overt, act.—The statute expressly requires, that the accused “be thereof upon sufficient proof attainted of some open act by men of his own condition.” Thus, to provide weapons or ammunition for the purpose of killing the king, is held to be a palpable overt act of treason in imagining his death. To conspire to imprison the king by force, and move towards it by assembling company, is an overt act of compassing the king’s death; for all force, used to the person of the king, in its consequence may tend to his death, and is a strong presumption of something worse intended than the present force, by such as have so far thrown off their bounden duty to their sovereign: it being an old observation, that there is generally but a short interval between the prisons and the graves of princes. There is no question also, but that taking any measures to render such treasonable purposes effectual, as assembling and consulting on the means to kill the king, is a sufficient overt act of high treason.

“How far *mere words* spoken by an individual, and not relative to any treasonable act or design then in agitation, shall amount to treason, has been

been formerly matter of doubt. We have two instances in the reign of *Edward IV.* of persons executed for treasonable words: the one a citizen of London, who said he would make his son heir of the *crowns*, being the sign of the house in which he lived; the other a gentleman, whose favourite buck the king killed in hunting, whereon he wished it, horns and all in the king’s belly. These were esteemed hard cases; and the Chief Justice *Markham* rather chose to leave his place than assent to the latter judgment. But now it seems clearly to be agreed, that, by the common law and the statute of *Edward III.* *words spoken* amount only to a high misdemeanor, and no treason. For they may be spoken in heat, without any intention, or be mistaken, perverted, or mis-remembered by the hearers; their meaning depends always on their connection with other words and things; they may signify differently even according to the tone of voice with which they are delivered; and sometimes silence itself is more expressive than any discourse. As therefore there can be nothing more equivocal and ambiguous than words, it would indeed be unreasonable to make them amount to high treason. And accordingly in 4 Car. 1. on a reference to all the Judges, concerning some very atrocious words spoken by one *Pyne* they certified

fied to the king, "that though the words were as wicked as might be, yet they were no treason: for, unless it be by some particular statute, no words will be treason." If the words be set down in writing, it argues more deliberate intention; and it has been held that writing is an overt act of treason; for *scribere est agere*. But even in this case the bare words are not the treason, but the deliberate act of writing them. And such writing, though unpublished, has in some arbitrary reigns convicted its author of treason: particularly in the cases of one *Peacham* a clergyman, for treasonable passages in a sermon never preached; and of *Algernon Sidney*, for some papers found in his closet; which had they been plainly relative to any previous formed design of dethroning or murdering the king, might doubtless have been properly read in evidence as overt acts of that treason, which was specially laid in the indictment. But being merely speculative, without any intention (so far as appeared) of making any public use of them, the convicting the authors of treason upon such an insufficient foundation has been universally disapproved. *Peacham* therefore was pardoned; and, though *Sidney* was executed, yet it was to the general discontent of the nation; and his attainder was afterwards reversed by parliament.

There

There was then no manner of doubt, but that the publication of such a treasonable writing was a sufficient overt act of treason at the common law; though of late even that has been questioned.

2. "The second species of treason is, "if a man violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir." By the king's companion is meant his wife; and by violation is understood carnal knowledge, as well without force as with it: and this is high treason in both parties, if both be consenting; as some of the wives of *Henry VIII.* by fatal experience evinced. The plain intention of this law is to guard the blood-royal from any suspicions of *bastardy*, whereby the succession to the crown might be rendered dubious.

3. "The third species of treason is, "if a man do levy war against our Lord the King in his realm." And this may be done by taking *arms*, not only to dethrone the king, but under pretence to reform religion, or the laws, or to remove evil counsellors, or other grievances, whether real or pretended. For the law does not, neither can it, permit any private man, or set of men, to interfere forcibly in matters of such high importance; especially as it has established a sufficient power, for these purposes, in the high court

court of parliament: neither does the constitution justify any private or particular resistance for private or particular grievances; though in cases of national oppression the nation has very justifiably risen as one man, to vindicate the original contract subsisting between the king and his people. To resist the king's forces by defending a castle against them, is a levying of war: and so is an insurrection with an avowed design to pull down *all* inclosures, *all* brothels, and the like; the universality of the design making it a rebellion against the state, and usurpation of the powers of government, and an insolent invasion of the king's authority. But a tumult with a view to pull down a particular house, or lay open a particular inclosure, amounts at most to a riot; this being no general defiance of public government.—A bare *conspiracy* to levy war does not amount to this species of treason; but (if particularly pointed at the person of the king or his government) it falls within the first, of compassing or imagining the king's death.

4. "If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere," he is also declared guilty of high treason. This must likewise be proved by some overt act, as by giving them intelligence, by sending them provisions, by selling them

them arms, by treacherously surrendering a fortress, or the like. By enemies are here understood the subjects of foreign powers with whom we are at open war. As to foreign pirates or robbers, who may happen to invade our coasts, without any open hostilities between their nation and our own, and without any commission from any prince or state at enmity with the crown of Great Britain, the giving them any assistance is also clearly treason; either in the light of adhering to the public enemies of the king and kingdom, or else in that of levying war against his majesty. And, most indisputably, the same acts of adherence or aid, which (when applied to foreign enemies) will constitute treason under this branch of the statute, will (when afforded to our own fellow-subjects in actual rebellion at home) amount to high treason under the description of levying war against the king. But to relieve a rebel, fled out of the kingdom, is no treason; for the statute is taken strictly, and a rebel is not an enemy; an enemy being always the subject of some foreign prince, and one who owes no allegiance to the crown of England. And if a person be under circumstances of actual force and constraint, through a well-grounded apprehension of injury to his life or person, this fear or compulsion will excuse his even joining with

either rebels or enemies in the kingdom, provided he leaves them whenever he hath a safe opportunity.

5. "If a man counterfeit the king's great or privy seal," this is also high treason. But if a man takes wax bearing the impression of the great seal off from one patent, and fixes it to another, this is held only to be an abuse of the seal, and not a counterfeiting of it.—

6. "The sixth species of treason under this statute is, "if a man counterfeit the king's money, "and if a man bring false money into the realm, "counterfeit to the money of England, knowing the money to be false, to merchandize and "make payment withal."—

7. "The last species of treason ascertained by statute is, "if a man slay the chancellor, treasurer, "or the king's justices of the one bench or the "other, justices in eyre, or justices of assize, "and all other justices assigned to hear and determine, being in their places doing their "offices."—

"Thus careful was the legislature, in the reign of Edward III. to specify and reduce to a certainty the vague notions of treason, that had formerly prevailed in our courts. But the act does not stop here, but goes on. "Because "other like cases of treason may happen in time  
" to

"to come, which cannot be thought of, nor declared at present, it is accorded, that if any "other case supposed to be treason, which is "not above specified, doth happen before any "judge; the judge shall tarry without going to "judgment of the treason, till the cause be "shewed and declared before the king and his "parliament, whether it ought to be judged "treason, or other felony." Sir *Matthew Hale* is very high in his encomiums on the great wisdom and care of the parliament, in thus keeping judges within the proper bounds and limits of this act, by not suffering them to run out (upon their own opinions) into constructive treason, though in cases that seemed to them to have a like parity of reason; but reserving them to the decision of parliament. This is a great security to the public, the judges, and even this sacred act itself.—

"In consequence of this power, not indeed originally granted by the statute of Edward III. but constitutionally inherent in every subsequent parliament; the legislature was extremely liberal in declaring new treasons in the unfortunate reign of Richard II.—and yet so little effect have over-violent laws to prevent any crime, that within two years afterwards this very prince was both deposed and murdered. And, in the first year



of his successor's reign, an act was passed, reciting, "that no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of treason: and therefore it was accorded that in no time to come any treason be judged, otherwise than was ordained by the statute of king Edward III." This at once swept away the whole load of extravagant treasons introduced in the time of Richard III.

"But afterwards, between the reign of Henry IV. and queen Mary, and particularly in the bloody reign of Henry VIII, the spirit of inventing new and strange treasons was revived.—All which were totally abrogated, by the statute 1 Mar. c. 1. which once more reduced all treasons to the standard of the statute 25 Edw. III. since which time, though the legislature has been more cautious in creating new offences of this kind, yet the number is very considerably increased, as we shall find upon a short review.

"These new treasons I shall comprise under three heads.

1. "The first species, relating to *papists*, was considered in a preceding chapter, wherein we have only to remember, that by statute 5 Eliz. c. 1. to defend the Pope's jurisdiction in this realm is, for the first time, a heavy misdemeanor; and, if the offence be repeated, it is high treason.

treason. Also by 27 Eliz. c. 2. if any popish priest, born in the dominions of the crown of England, shall come over hither from beyond the seas, unless driven by stress of weather, and departing in reasonable time; or shall tarry here three days without conforming to the church, he is guilty of high treason. And by stat. 3 Jac. 1. c. 4. if any natural born subject be withdrawn from his allegiance, and reconciled to the pope or see of Rome, or any other prince or state, both he and all such as procure such reconciliation shall incur the guilt of high treason. For every popish priest of course renounces his allegiance to his temporal sovereign upon taking orders; *that* being inconsistent with his new engagements of canonical obedience to the pope.

2. "With regard to treasons relative to the *coin* or other royal signatures, [the provisions of the above act] not being found sufficient to restrain the evil practices of coiners and false moneyers, other statutes have been since made for that purpose.

[These, however, being foreign to our purpose, need not be recited.]

3. "The other new species of high treason is such as is created for the security of the *protestant succession*. [Beside those acts which relate immediately to the family of the *pretender*] By the statute 1 Ann. stat.

stat. 2. c. 17. if any person shall endeavour to hinder—the next in succession from succeeding to the crown, and shall maliciously and directly attempt the same by any overt act, such offence shall be high treason. And by statute 6 Ann. c. 7. if any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that any other person hath any right or title to the crown of this realm, otherwise than according to the act of settlement; or that the kings of this realm with the authority of Parliament are not able to make laws and statutes to bind the crown and the descent thereof; such person shall be guilty of high treason.”

Thus far the judicious *Blackstone*\*, and it is hoped the great importance of this extract will be a sufficient apology for its length.

By statute of the 12th of *Richard II.* it was enacted, that “if the king, through a foolish obstinacy, and contempt of his people, or perverse froward will, or by any other irregular way, shall alienate himself from his people, and will not be *governed* and *regulated* by the *rights* of the kingdom, and laudable ordinances made by the council of the lords, and great men of the realm; but shall headily in his mad councils,

\* Comment. vol. IV. p. 76—92.

exercise

exercise his own *arbitrary* will: from thenceforth it is lawful for them, with the common assent and consent of the *people* of the realm, to abrogate or depose him from the throne; and set up in his stead, somebody of kin, or near of kin to the king of the royal stock.”

We now pass on to the reign of *Henry VI.* early in whose reign the following act was passed for limiting the number, and ascertaining the qualifications of voters for members of parliament. The act recites, that

“Whereas the elections of knights of shires  
 “to come to the parliaments of our lord the  
 “king, in many counties of the realm of *Eng-*  
 “*land*, have now of late been made by very  
 “great, outrageous and *excessive numbers* of peo-  
 “ple, dwelling within the same counties of the  
 “realm of *England*, of the which most part was  
 “of people of *small substance*, and of no value,  
 “whereof *every one of them* pretended a voice  
 “equivalent, as to such elections to be made,  
 “with the most worthy knights and esquires,  
 “dwelling within the same counties, whereby  
 “manslaughter, riots, batteries, and divisions  
 “among the gentlemen, and other people of  
 “the same counties shall *very likely* rise, and  
 “be, unless convenient and due remedy be pro-  
 “vided in this behalf: (2.) our lord the king con-  
 “sidering

“ sidering the premises, hath provided, ordained  
 “ and stablished by authority of this present  
 “ Parliament, that the *Knights* of the shires to be  
 “ chosen within the said realm of *England* to come  
 “ to the Parliament of our Lord the King, here-  
 “ after to be holden, shall be chosen in every  
 “ county of the realm of *England*, by people  
 “ dwelling and resident in the same counties,  
 “ whereof every one of them shall have land or  
 “ tenement, to the value of *forty shillings by the*  
 “ *year*, at the least, above all charges; (3) and  
 “ that they which shall be so chosen shall be  
 “ dwelling and resident within the same coun-  
 “ ties; (4) and such as have the greatest number  
 “ of them that may expend forty shillings by  
 “ the year and above, as afore is said, shall be  
 “ returned by the sheriffs of every county,  
 “ knights for parliament, by indentures seal-  
 “ ed betwixt the said sheriffs and the said  
 “ chusers so to be made: (5) and every sheriff  
 “ of the realm of *England*, shall have power by  
 “ the said authority to examine upon the Evan-  
 “ gelists every such chuser, how much he may  
 “ expend by the year: (6) and if any sheriff  
 “ return knights to come to the parliament,  
 “ contrary to the said ordinance, the justices of  
 “ assizes in their session of assizes shall have power,  
 “ by the authority afore said, therefore to enquire,

“ quest the same be found before the justices  
 “ and the sheriffs thereof be duly attained, that  
 “ then the said sheriff shall incur the pain of an  
 “ hundred pounds, to be paid to our lord the  
 “ king, and also that he have imprisonment by  
 “ a year, without being let to mainpraise or  
 “ bail; (8) and that the knights for the par-  
 “ liament returned contrary to the said ordi-  
 “ nance shall lose their *wages*.

“ Provided always, that he who cannot ex-  
 “ pend forty shillings by year, as afore said, shall  
 “ in no wise be chuser of the knights for the  
 “ parliament; (2) and that in every writ that  
 “ shall hereafter go forth to the sheriff to chuse  
 “ knights for the parliament, mention be made  
 “ of the said ordinances.”

Whatever might be the pretence or design  
 under which this law was made, it certainly laid  
 the axe to the root of our liberties, which can  
 never be properly recovered, while this and  
 the *septennial* act (of which hereafter) continue  
 in their present force and form. The reader  
 will, therefore, indulge an observation or two  
 before we proceed.

1. This act happily recites the ancient consti-  
 tution while it supercedes it; and thus contains  
 in its own bowels, what it is hoped may one day  
 be the cause of its political death. For it recites

that elections were till then made by "very great numbers of people, dwelling within the same counties—of which the most part was of people of small substance—whereof every one pretended to a voice equivalent to the most worthy knights and squires."—Now all these circumstances, though mentioned as grievances, are obviously necessary to a proper representation of the country.

2. The same act hints at the original nature and intent of representatives, namely to be servants of the people; for it is said, that in case of their being illegally chosen, they shall "lose their wages." This receipt of wages so strongly expressed their dependence on their constituents, that, in order to avoid the latter, it has been judged expedient to drop the former. Indeed the case is reversed; for though the representatives do not properly pay wages to the people, yet many of them certainly purchase their seats, with as little scruple as they do their estates. And as every man presumes a right to make the most of his bargain, the member who buys his seat, very naturally infers a right to sell his vote.

3. The evident design of this act, which was to confine election votes to people of some considerable property, is compleatly defeated by the

the change of time and circumstances. For if forty shillings then, was equal to twenty pounds at present (as Blackstone states it \*) the spirit of the act is quite evaporated. And if forty shillings per annum is now a suitable qualification, then the sum at first ought not to have exceeded two shillings.

4. The inconveniences resulting from general liberty have been ever made use of as a pretence for the necessity of restraining it; but the only infallible remedy for these is to establish the blessings of slavery at once. It will be granted that in this case, however, the remedy would be worse than the disease; for certainly the temporary evils of election-squabbles are not to be compared with the misery of perpetual bondage. And it reflects no great honor on the wisdom that framed this act, that it could devise no better way to secure the freedom of election, than by taking away the rights of the electors. Exclude patronage and bribery from elections, and there would be little danger of riots and confusion: and even that little might be removed by a few alterations in the method of conducting them. For riots are not occasioned by the concurrence of electors; but by the violence of ruffians expressly hired for the purpose.

\* Comment. I. p. 173.

5. But a grand evil in the present representation of this country is its *inequality*; and this is in a great measure occasioned by the fluctuation of trade, and other accidental circumstances. Many boroughs which were formerly considerable for trade, and population, and were judged of sufficient consequence to send two members to parliament, are now reduced to a few disconsolate cottages; and yet still preserve the same proportion in chusing the national representatives. Others, which are not reduced quite so low in population, become no less contemptible, by the right of voting being restricted to the members of a decayed corporation. Thus the rights of election are confined to a few, or perhaps to a single individual. A late "History of boroughs" has thoroughly investigated this subject, and I refer the inquisitive reader with pleasure to that work; begging leave however just to enumerate a few of the most striking instances of the political depravity of boroughs.

Boroughs.	Voters.	Patrons and Owners.
Buckingham	- 13	Marq. of Buckingham
Gatton	- 2	{ R. Ladbroke, Esq. W. Currie, Esq.
Saltafh	- 38	Mr. Buller

St.

Boroughs.	Voters.	Patrons or Owners.
St. Michael	- 42	{ Ld Falmouth Sir F. Bassett
Helston	- 36	Duke of Leeds
Castle-Rising	- 2	{ Countess of Suffolk E. of Orford
Old Sarum	- 7	Ld Camelford
Boffiney	- 5	{ E. of Bute E. of Mount Edgcum.
Leftwithiel	- 24	E. of Mount Edgcum.
St. Mawe's	- 22	Marq. of Buckingham
Camelford	- 19	A Clergyman
East Looe	- 50	Mr. J. Buller
Launceston	- 20	D. of Northumberland
Grampound	- 25	Ld Eliot
St. Germans	- 20	Ib.
Liskard	- 50	Ib.
Midhurst	- 1	E. of Egremont
Newport	- 24	D. of Northumberland
Tiverton	- 24	{ Ld Harrowby Sir J. Duntze
Dartmouth	- 20	{ Treasury Admiralty
Totnefs	- 34	{ D. of Bolton F.B. Yarde, Esq.
Lyme Regis	- 31	E. of Westmoreland
Corfe Castle	- 44	{ H. Bankes, Esq. J. Bond, Esq.

The

The same author enumerates 71 boroughs that formerly sent members to parliament, which are now disfranchised; and observes, that from the reign of Edward I. to that of Charles II. boroughs were created or annihilated at the whim of the monarch.

As a contrast, it may be observed that some obscure villages which have grown to towns, and those towns in wealth and population become almost able to vie with the metropolis itself, have no representatives.

That the state of representation bears no greater proportion to the contribution of taxes, than to the degree of population, may be seen by the following comparison of the counties, including the cities and boroughs within them.

<i>Counties.</i>	}	<i>Parts of Land-Tax. Subsidy. Members.</i> Pay 103—88—Send 216
Cornwall		
Cumberland		
Devon		
Dorset		
Durham		
Lancaster		
Northumberland		
Southampton		
Westmoreland		
Wilts		
York		

Middlesex

<i>Parts of Land-Tax. Subsidy. Members.</i>	}	Pay 104—198—Send 16
Middlesex		
Essex		

Cornwall sends 44 members—Middlesex only 8, including the city of London.

Thus much for the present state of our representation, which it is hoped will not be judged an impertinent digression.

In the 39th year of Henry VI. Richard Duke of York laid his claim to the crown before parliament; who, after many debates, agreed that Henry should continue to wear the crown during the remainder of his life, and Richard succeed him; unless he (Henry) forfeited the same by infringing any point of the agreement: this forfeiture he incurred, and, in consequence, Richard being dead, Edward IV. his son was chosen and proclaimed king in his stead. This extraordinary election was made by a great multitude of people assembled in St. John's Fields, and afterwards confirmed by parliament\*.

Richard III. tyrant as he was, affected to be the object of the people's choice, "whom no earthly man (says he) can govern against their wills." After mentioning his hereditary right he adds, "to which is now joined your election, the

\* Speed, Stow, &c.

nobles

nobles and commons of this realm, which we, of all title possible, take for the most effectual \*.”

Henry VII. was a miser; and the great business of his reign was to collect money into the royal treasury; to effect which he scrupled no species of oppression. In particular, obsolete acts of parliament were revived, for the sake of the penalty annexed to them; and new ones formed of the same tendency. By one means or other he is said to have scraped together 1,800,000l. sterling, which in those days was reckoned an immense sum! Indeed several of our kings have been charged with avarice; and the enormous expence of monarchy has been considered by many as an important argument in favour of commonwealths. It must be confessed however that this vice is not peculiar to kings, and that the public money is very apt to stick to the fingers that count it. Perhaps, if a fair calculation could be made, England has lost more by treasurers and paymasters than either by the extravagance or covetousness of princes. The proper remedy in these cases is a free and honest representation of the people, who should be properly interested in the contribution of the public money, and *that* would make them careful of its expenditure.

\* Speed.

### SECTION

### SECTION III.

*From the REFORMATION to the REVOLUTION.  
Petition of Rights—Habeas Corpus Act, &c.*

THE next reign introduced the Reformation; and it is observable that Providence made use of one of the greatest tyrants that ever filled a throne (for such was Henry VIII.) in order to pull down the ecclesiastical tyranny of the Pope and his creatures. This event deserves our gratitude, not only for its introducing evangelical doctrines and a purer mode of worship; but also for ascertaining and establishing the rights of private judgment and the liberty of conscience in matters of religion; though unhappily it was long before even the friends of this principle understood its practical extent.

This reign is remarkable, no less for the tameness of the parliament than the tyranny of the prince; they being ever ready to change their principles to gratify their versatility. What is worse than all, they were so abject as to make the king's *proclamation* in some cases of equal authority with the laws; an act that makes a complete ridicule of parliaments, and renders the British crown as absolute as the Spanish. This pre-

precedent was of very ill consequence in the reigns of the Stuarts. But "these proclamations (say Coke and Blackstone \*) have then (and then only) a binding force, when they are grounded upon and enforce the laws of the realm." In all other cases they are waste paper, or something worse; for, in many instances, they tend to raise an alarm rather than compose it. Such in particular, as were sometimes issued to stop the circulation of political pamphlets, under the pretence of their being seditious, have more increased that circulation than an 100 pounds spent in advertising by the bookfellers; for such is the curiosity of Englishmen, that every one supposes there must be something very extraordinary in a work that so far excites the fears of a ministry as to produce a proclamation.

Edward VI. was a prince of admirable virtue and ability, and bid fair, had the government devolved into his own hands, to have eclipsed the glory of his predecessors; but providence deprived us of him in his minority; and his bigotted sister, Mary, in three years reduced the country to an *Aceldama*, a field of blood; some very salutary laws were however made in this reign, but they are all forgot, through her attempt to re-establish religious slavery.

\* Comment. vol. I. 270.

Elizabeth

Elizabeth's reign was rendered glorious by the wisdom and integrity of her ministers, and the success of her affairs; but she had very high notions of prerogative and kept her parliaments at an awful distance. And though she had the wisdom not to oppress her subjects, yet it is well observed by Blackstone, that "the true liberty of the subject consists not so much in the gracious behaviour as in the limited power of the sovereign."

The pedantic reign of James I. neither added to the glory, or the liberties, of this country. His wife courtiers indeed called him a second Solomon, and this is said to have reached the ears of the French king. "Yes," said Louis, "he is a Solomon, the son of David the Fiddler."

The unfortunate reign of Charles I. contains a series of events highly interesting to English freedom. The very dawn of this reign was obscured with a cloud of grievances; the most authentic account of which is contained in the following petition presented to him by both Houses of Parliament, in the third year of his reign.

The PETITION of RIGHTS:

To the King's most excellent Majesty.  
 "The Lords Spiritual and Temporal and Commons in parliament assembled, humbly shew  
 L 2 unto



unto our Sovereign Lord the King—That whereas it is declared and enacted by a statute made and in the time of the reign of king Edward the First, commonly called *Statutum de Tallagio non concedendo*, that no tallage or aid shall be laid or levied by the king, or his heirs, in this realm, without the good-will and assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Commonalty of this realm; (2.) and by authority of parliament holden in the five and twentieth year of the reign of king Edward the Third, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason, and the *Franchise of the Land*; (3.) And by other laws of the realm it is provided, that none should be charged by any charges or imposition called a *Benevolence*, nor by such like charge. (4.) By which the statute before-mentioned, and other the good laws and statutes of this realm, your subjects have *inherited this freedom*, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge, *not set by common consent in parliament.*

2. “ Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued, by means whereof

whereof your people have been in divers places assembled and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had *an oath* administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and attendance before your Privy Council, and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; (2) and divers other charges have been laid and levied upon your people in several counties by Lord Lieutenants and Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by command or direction from your Majesty to your Privy Council, against the law and free customs of this realm.

3. “ And whereas also by the statute called the *great charter* of the liberties of England, it is declared and enacted, that no freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or of his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

4. “ And in the eight and twentieth year of the reign of king Edward the Third, it was declared

clared and enacted by authority of parliament, that no man of what estate or condition that he be, should be put out of his *land or tenements*, nor taken, nor *imprisoned*, nor disinherited, nor put to death, without being brought to answer, by due process of law.

5. "Nevertheless, against the tenor of the said statutes and other the good laws and statutes of your realm to that end provided, diverse of your subjects of late have been *imprisoned* without any cause shewed; (2.) and when for their deliverance they were brought before Justices by your Majesty's writs of *Habeas Corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's *special command*, signified by the Lords of your Privy Council; and yet were returned back to several prisons without being charged with any thing, to which they might make answer according to the law.

6. "Whereas of late great *companies of soldiers* and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills, have been compelled to receive them into *their houses*, and there to suffer them to sojourn against the laws and customs of this realm,  
and

and to the great grievance and vexation of the people.

7. "And whereas also by authority of parliament, and in the five and twentieth year of the reign of king Edward the Third, it is declared and enacted, that no man shall be forejudged of life and limb against the form of the great charter and law of the land; (2.) and by the said great charter and other the laws and statutes of this your realm, no man ought to be judged to death, but by the laws established in this your realm, either by the customs of the realm, or by acts of parliament; (3.) And whereas no offender of what kind soever; is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless, of late divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to proceed within the land, according to the justice of *martial law*, against such soldiers and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed

ceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

8. " By pretext whereof some of your Majesty's subjects have been by some of the said commissioners *put to death*, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

9. " And also fundry grievous offenders, by colour thereof, claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable *only by martial law*, and by authority of such commission as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

10. " They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any *gift, loan, benevolence, tax*, or such like charge, without common consent by act of parliament; (2.) and

that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; (3.) and that no freeman in any such manner as is before-mentioned be imprisoned or detained; (4.) And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; (5.) and that the foresaid commissions for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them, any of your Majesty's subjects be destroyed, or put to death contrary to the laws and franchise of the land.

11. " All which they most humbly pray of your most excellent Majesty, *as their rights and liberties*, according to the laws and statutes of this realm, and that your Majesty would also vouchsafe to declare, that the awards, doings and proceedings to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; (2.) and that your Majesty would be also graciously pleased for the further comfort and safety of your people, to declare your royal will and pleasure, that in the

things aforesaid, all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty and the prosperity of this kingdom."

Which petition being read, June 2, 1682, the King's answer was thus delivered unto it.

"The king willeth, that right be done, according to the laws and customs of the realm; and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong, or oppressions, contrary to their just rights and liberties. To the preservation whereof, he holds himself in conscience as well obliged, as of his prerogative."

But this answer not giving satisfaction, the king was again petitioned, that he would give a full and satisfactory answer to their petition in full parliament.—Whereupon the king in person, June 7, made this second answer.

"My Lords and Gentlemen,

"The answer I have already given you, was made with so good deliberation, and approved by the judgment of so many wise men, that I could not have imagined, but that it should have given you full satisfaction; but to avoid all ambiguous interpretations, and to shew you that there is no doubleness in my meaning, I am willing to please you in words, as well as in substance; read your petition, and you shall have an answer that I am sure will please you."

And

And then causing the petition to be read distinctly by the clerk of the crown, the clerk of the parliament read the king's answer thereto in these words, *Soit droit fait, comme est desire, i. e. Let right be done, as is desired.*

How these promises were kept, and the mischiefs which followed the breach of them, need not be recited. When once a king has lost the confidence of his people, or a people the goodwill of their prince, without prospect of recovery, the sooner they separate, the better for both parties.

To balance the evils of Charles's government, some writers have extolled his domestic virtues; but whatever may be urged in favor of his private character, he certainly was a bad prince. Indeed some of those qualities that pass for virtues, in private individuals, may produce the most unhappy effects in civil governors. That same spirit of ambition, which in the patriot seeks popularity, urges the prince to arbitrary prerogative: that principle of independance which leads the one to scorn an obligation to the crown, influences the other to act independant of his parliament and people; and that inflexibility which constitutes steadiness in the patriot, is esteemed obstinacy in the prince. So nearly allied, or at least so easily mistaken for

M 2

each

each other, are certain virtues and vices. But neither inflexibility nor independency is properly a virtue, but integrity. It is not ambition, but generosity or disinterestedness, that merits our applause. The same motives which influenced the king to impose ship-money, would have led him as a subject to resist it. The vulgar often suppose that the most zealous patriot would make the best king; but this is a grand mistake. There was a time that Cromwell was considered as one of the greatest patriots of the age, yet who ever proved a greater tyrant? In such cases it is common to complain the man is changed—has altered his principles; but he might reply (as the Vicar of Bray did) that he has but one invariable principle—*ambition*.

It was this inspired Cromwell in the senate, the army, and (if I may so call it) on the throne. This made the patriot, the foldier, and the tyrant. Piety and patriotism, it is much to be feared, were only the visors under which he acted. Cromwell, however, had virtues as well as Charles, and in respect of abilities, he had greatly the advantage of him.

After all, it is as impossible to justify the death of Charles as his conduct. He was neither tried by the army, the parliament, nor the country; but by a faction of his enemies: and the charge under

under which he was condemned was *not pleading* in a court that had no right to try him. His death may therefore be considered as a murder; but how it should be a martyrdom, or why we, who were then unborn, and our fathers likewise, should still once a year implore forgiveness for the fact, is what I am unable to account for. Also that we should still annually give thanks to Almighty God for the restoration of a family, which we have long since deservedly exiled, and have even made it a high crime publicly to pray for, is an other fact no less extraordinary and unaccountable.

The House of *Lords* having refused *their* consent to the king's death, the Commons resolved to do without them: having therefore voted them useless and dangerous, they passed an act for their abolition; allowing them only the privilege of being elected commoners. At the same time they excluded such as they judged friendly to monarchy among themselves; and the remainder, about eighty in number, but men of great abilities, considering themselves as the representatives of the people, undertook to institute a new form of government: accordingly they resolved that, as the office of *King* in this nation had been found to be unnecessary, burdensome and dangerous to the liberties of the people,

it

it should, therefore, be utterly abolished; and that the nation should be governed by the representatives of the people, under the form of a *commonwealth*, which was therefore immediately adopted.

These alterations afford a variety of reflections. In the first place, the authority by which they were effected, was as unconstitutional as that of *absolute* monarchy. Though the commons had been chosen by the people, they had long sat by their own authority; nor were they ever elected to model the new constitution, but to preserve it. Had a new form of government been found necessary, they should have appealed to the people at large, and have given them an opportunity, at least, of filling up the house. But the abolition of the Lords was a bold step, and as illegal, in this case, as if the Lords had abolished the Commons.

The dissolution of the French nobility has lately revived this subject. The excess of aristocratic influence, may in some cases, render its abolition necessary; and it may be wise for us to guard against that excess. Without this necessity, however, such a step would be dangerous and unjust. Instead of reforming the constitution it might overturn it, and instead of securing  
our

our liberties, at once create to them a host of powerful enemies.

Were the orders of nobility to be now formed, a variety of powerful arguments might be alleged against such distinctions; but those arguments have not the same force when urged against the probable evils of their abolition. A mean, a foolish, or a profligate peer, is a fine subject for satire; and too many such there are; it must at the same time be confessed, that we have some who would be noblemen without their stars. Should a majority of these at any time rise to such an elevation of mind, as to despise these distinctions, or be ashamed of their company, and so renounce them, it would be a happy day for England. But admitting coronets and their wearers to be as futile and childish, as their bitterest enemies assert, it is certainly better to let children amuse themselves with toys than put swords into their hands, which might destroy both them and us.

Nearly related to this subject is the right of *primogeniture*, on which the existence of nobility depends. This does not appear to have been a part of the ancient constitution, but was imported from Normandy, along with some other innovations, and afterwards somewhat moderated by Henry I. who directed the eldest son to have  
the

the principal estate, and the others to be divided among the rest of the children\*. This custom, though it has not been carried so far in this as in some other countries, is yet considered by many as a weighty grievance: and the abolition of the privilege in France, has led some persons to wish it the same end in this country. There are others, however, not only fearful of such great and sudden alterations; but who think this distinction among the children of noble families necessary, in order to promote exertion among the younger branches, and keep up a proper supply of soldiers, lawyers, and churchmen of the higher classes!

Now we speak of *church-men*, there are some who plead strongly in favour of the House of Lords, who yet cannot see the propriety of *Bishops* sitting in it. The term *Spiritual Lords* they consider as profane and contradictory, because spiritual men, ministers of Jesus Christ, are expressly commanded not to be *Lords* over God's heritage †. And when our Saxon ancestors introduced them first into their Wittenagemote, it was rather for the assistance to be hoped from the piety, wisdom and learning, (they being almost the only persons then able

\* Blackstone's Com. IV. 421. † I. Peter v. 3.

to write or read) than as a matter of right; nor do they appear ever to have formed an *essential* branch of the legislature, some parliaments having been summoned without them, and many acts passed, the authority of which cannot be called in question\*.

Beside, if ancient prescription were sufficient to entitle them to seats in parliament, the same might be urged by other orders of ecclesiastics which were excluded at the reformation; and are not allowed to vote there, because they have seats in convocation; and it is difficult to say why the same arguments should not operate against Bishops, as against the inferior clergy.

Part of these above remarks may be extended to *monarchy* itself. New-formed states often begin with a common-wealth, till perhaps some active spirit, some exalted genius, partly by the force of extraordinary services, and partly through the deference paid to his merits, rises above the rest, is formed into a president, or a protector, if not into a king. And it is worthy our remark, that even in America the convenience of a visible head or chief magistrate, has introduced a president, with perhaps all the power *necessary* to be intrusted with a king,

\* Blackstone Com. I. 156, and note Y.

though without the name; and with less pomp and expence than kings generally affect.

But it may be proper in speaking of monarchy to distinguish between the thing itself and certain appendages with which it is usually associated. The respect formerly paid to high titles, gilded coaches, and gay trappings of state, is now lost. The divinity ascribed to indefeasible hereditary right, and holy unction, is no more. The curtain is withdrawn, and kings, to be respectable now, must appear and act like men.

Great abilities and extraordinary virtues cannot be expected to descend in a right line through many generations. Nor are they necessary to a monarch guided by the wisdom of a nation. Common sense and common honesty are the only essential requisites; and where these fail, in the course of a lineal succession, the people, or, if you please, the parliament have constitutional authority to look farther.

Nothing, but the confusion which followed from a collision of different interests and parties, could have reconciled the people so soon to have received the ancient yoke of monarchy in the person of Charles II. and that without those stipulations and that security for liberty, which he would have been glad to have given to come at the

the crown. One excellent law, however, was passed in the first year in this reign, which placed our liberties in some respect in a better situation than they had been since the conquest. I mean the act for taking away the *Court of Wards and Liveries*; together with *Tenure in capite*, *Knights Service*, and *Purveyances*, and for settling a *Revenue* on his Majesty in lieu thereof.

In 1662, *Bartholomew* day was a second time\* rendered infamous by the ejection of 2000 ministers, (many of them according to Mr. *Locke*, of great piety and learning) and this for not subscribing *ex animo* a Common Prayer Book, which many of them had no opportunity of seeing, and few of properly considering.

In 1679 was passed a famous *act*, for better securing the liberty of the subject (of which the following is a copy) commonly called

The Habeas Corpus Act.

I. "Whereas great delays have been used by sheriffs, gaolers, and other officers, to whose custody any of the king's subjects have been committed for criminal, or supposed criminal matters, in making returns of writs of *habeas corpus* to them directed, by standing out an *alias*,

\* The first time was by the Paris Massacre 1572.



and *pluries*, *habeas corpus*, and sometimes more, and by other shifts, to avoid their yielding obedience to such writs, contrary to their duty, and the known law of the land; whereby many of the king's subjects have been, and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation.

II. "For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal, or supposed criminal matters. (2.) Be it enacted,—That whensoever any person or persons shall bring any *Habeas Corpus* directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody; and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers; that the said officer or officers, his or their under-officers or keepers or deputies shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner to be ascertained by the Judges or Court that awarded the same, and endorsed upon the said

said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded, by the Court or Judge, to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, *make return* of such writ. (3.) And bring or cause to be brought the body of the party so committed or restrained, unto, or before, the Lord Chancellor, or Lord Keeper of the Great Seal of England for the time being, or the Judges or Barons of the said Court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof. (4.) And shall then likewise certify the true causes of his detainer, or imprisonment; unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places, where such Court or person is or shall be residing: and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of twenty days after such the delivery aforesaid, and not longer.

III. "And to the intent that no sheriff, gaoler, or other officer may pretend ignorance of the import of any such writ. (2.) Be it enacted by the authority

authority aforesaid, That all such writs shall be marked in this manner, *per statutum tricesimo primo Caroli Secundi Regis*, and shall be signed by the person that awards the same. (3.) And if any person or persons shall be, or stand committed or detained as aforesaid, for any crime, unless, for felony, or treason, plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict, or in execution) by legal process, or any one on his or their behalf, to appeal, or complain to the Lord Chancellor, or Lord Keeper, or any one of his Majesty's Justices either of the one bench, or of the other, or the Barons of the Exchequer of the degree of the coif. (4.) And the said Lord Chancellor, Lord Keeper, Justices, or Barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy or copies were denied to be given by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, to award and grant an *Habeas Corpus* under the seal of such court whereof he shall then be one of the Judges. (5.) To be directed to the officer

or

or officers in whose custody the party so committed or detained, shall be returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice, or Baron of the degree of the coif of any of the said courts. (6.) And upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, to whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer. (7.) And thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such Justice or Baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum, according to their discretion, having regard to the quality of the prisoner, and nature of the offence, for his or their appearance in the court of King's

2

Bench

Bench the term following, or at the next assizes, sessions, or general gaol-delivery of and for such county, city, or place, where the commitment was, or where the offence was committed, or in such other court where the said offence is properly recognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court, where such appearance is to be made. (6.) Unless it shall appear, unto the said Lord Chancellor, or Lord Keeper, or Justice or Justices, Baron or Barons, that the party so committed is detained upon a legal process, order, or warrant out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences for the which by the law the prisoner is not bailable.

IV. "Provided always, and be it enacted, That if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a *Habeas Corpus* for his enlargement, such person so wilfully neglecting, shall not have any *Habeas Corpus* to be granted in vacation time in pursuance of this act.

V. "Be it further enacted by the authority aforesaid,

said, That if any officer or officers, his or their under-officer, under-officers, under-keeper, or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner, or person in his behalf; shall refuse to deliver, or within the space of six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he or they are hereby required to deliver accordingly, all and every the head gaolers, and keepers of such prisons, and such other person, in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved, the sum of one hundred pounds; (2.) And for the second offence, the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office; (3.) the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offenders, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at Westminster, wherein no effoign, protection, privilege, injunction,

junction, wager of law, or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance. (4.) And any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

6. "And for the prevention of unjust vexation by reiterated commitments for the same; (2.) Be it enacted by the authority aforesaid, That no person or persons which shall be delivered or set at large upon any *Habeas Corpus*, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order, and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; (3.) And if any other person or persons shall knowingly contrary to this act re-commit, or imprison, or knowingly procure or cause to be re-committed or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds

pounds, any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

7. "Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, *plainly* and *specially expressed* in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of *Oyer* and *Terminer*, or general gaol-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of *Oyer* and *Terminer*, or general gaol-delivery after such commitment, It shall and may be lawful to and for the Judges of the Court of King's Bench, and Justices of *Oyer* and *Terminer*, or general gaol-delivery, and they are hereby required upon motion to them made in open court the last day of the term, sessions, or gaol-delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the Judges and Justices upon oath made, that the witnesses for the king could not be produced the same term, sessions or gaol-delivery; (2.) And if any person or persons committed as aforesaid, upon his prayer or petition in open court, the first week of the term, or first day of the session of *Oyer* and *Terminer*, and general gaol-delivery, to be brought to his trial,

shall not be indicted and tried the second term, sessions of *Oyer and Terminer*, or general gaol-delivery after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

8. " Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to law for such other suit.

9. " Provided always, and be it enacted by the authority aforesaid, That if any person or persons subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal, or supposed criminal matter, That the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers, (2.) unless it be by *Habeas Corpus*, or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer to carry such prisoner to some common gaol; (3.) or where any person is sent by order of any Judge of assize, or Justice of the Peace to any common workhouse, or house of correction; (4.) or where the prisoner is removed  
from

from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; (5) or in case of sudden fire or infection, or other necessity; (6.) And if any person or persons shall after such commitment aforesaid, make out and sign, or counter-sign any warrant or warrants for such removal aforesaid, contrary to this act, as well he that makes or signs or counter-signs such warrant or warrants as the officer or officers, that obey or execute the same, shall suffer, and incur the pains and forfeitures in this act before-mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

10. " Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move, and obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery, or Court of Exchequer, as out of the courts of King's Bench or Common Pleas, or either of them; (2.) And if the said Lord Chancellor, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the degree of the Coif of any of the courts aforesaid in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or  
detainer,

detainer, or upon oath made, that such copy or copies were denied as aforesaid, shall deny any writ of *Habeas Corpus* by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of five hundred pounds, to be recovered in manner aforesaid.

11. "And be it enacted, and declared by the authority aforesaid, That an *Habeas Corpus* according to the true intent and meaning of this act, may be directed, and run into any county *palatine*, the Cinque Ports, or other privileged places within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the isles of Jersey and Guernsey; any law or usage to the contrary notwithstanding

12. "And for preventing *illegal* imprisonments in prisons beyond seas, (2.) Be it further enacted by the authority aforesaid, that no subject of this realm that now is, or hereafter shall be an inhabitant or resident of this kingdom of England, dominion of Wales, or Town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into any parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter, shall be within or without the dominions of his Majesty, his heirs and successors, (3.)

And

And that every such imprisonment is hereby enacted and adjudged to be *illegal*; (4.) and that, if any of the said subjects now is, or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment, maintain by virtue of this act, an action or actions of false imprisonment, in any of his Majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner, or transported contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal, or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding or assisting in the same, or any of them; (5.) And the plaintiff in every such action shall have judgment to recover his treble costs, besides damages; which damages so to be given, shall not be less than five hundred pounds; (6.) in which action, no delay, stay or stop of proceeding, by rule, order, or command, nor no injunction, protection, or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought in justice necessary, for special cause to be

be expressed in the said rule; (7.) And the person or persons who shall knowingly frame, contrive, write, seal or counterfeign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or Town of Berwick upon Tweed, or any of the islands, territories or dominions thereunto belonging. (8.) And shall incur and sustain the pains, penalties and forfeitures limited, ordained, and provided in and by the statute of provision and premunire, made in the sixteenth year of king Richard the Second. (9.) And be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses, or disabilities, or any of them.—

21. "And because many times persons charged with petty treason or felony, or as accessaries thereunto are committed upon suspicion only, whereupon they areailable or not according as the circumstances making out that suspicion are more or less weighty, which are best known to the Justices of Peace that committed the persons, and have the examinations before them, or to other

other Justices of the Peace in the county: (2.) Be it therefore enacted, That where any person shall appear to be committed by any Judge or Justice of the Peace, and charged as accessary before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act."

The writ of *Habeas Corpus* is a remedy given by the common law for such as were unjustly detained in custody, to procure their liberty: but before this statute, was rendered far less useful than it ought to be, partly by the Judges, pretending a power to grant, or deny the said writ at their pleasure, in many cases; and especially by the ill practices of sheriffs and gaolers, by putting the prisoner to the charge and trouble of an *alias* and *pluries* (that is, a second and third writ, before they would obey the first, for there was no penalty till the third) and then at last the Judges would oft-times alledge, That they could not take bail, because the party was a *prisoner of the state*, &c. to remedy which mischiefs, this most wholesome law was provided.

P

At

At this period (1679) Judge *Blackstone* thinks our constitution was at its "full vigour;" but this, from the improvements it has since received, particularly at the Revolution, appears to be a mistake; and it is hoped, the present generation will give a fuller demonstration of it. It is confessed that many laws passed in this reign, beside those above enumerated, were friendly to public liberty; but that the *Test* and *Corporation* acts are to be reckoned among that number, as they are by his Lordship, will not be unanimously granted.<sup>1</sup>

It seems also not a little paradoxical to assert, that the constitution was at its perfection in a reign doubly infamous for licentiousness and tyranny: and implies, if true, a radical defect in that constitution which was so inadequate to the preservation, not only of the people's liberties and morals, but even of their *lives*; for this reign produced several illustrious martyrs in the cause of Freedom, among whom Lord *Ruffel* and *Algernon Sidney* hold the most distinguished rank.

These illustrious patriots suffered for the very principles which, a few years after, produced the glorious Revolution. Among the accusations against the latter a principal one was the *publishing* a certain *treasonable* paper found in his *private* closet. As we have reason to thank God times are not quite

quite so dangerous at present, we shall give part of an extract that was read to criminate him on the trial.

—" *Bracton* \* saith, that the king hath three superiors, to wit, *God*, the *Law*, and the *Parliament*; that is, the power, originally in the people of England, is delegated unto the parliament. He is subject unto the law of God as he is a man; to the people, that makes him a king, inasmuch as he is a king; the law sets a measure unto that subjection, and the parliament judges of the particular cases thereupon arising: he must be content to submit his interest unto theirs, since he is no more than any one of them, in any other respect, than that he is, by the consent of all, raised above any other.

" If he doth not like this condition, he may renounce the crown; but if he receive it upon *that condition*, (as all magistrates do the power they receive) and swear to perform it, he must expect that the performance will be *exacted*, or *revenge taken* by those that he hath betrayed."

The character of Algernon Sidney was justly, if not poetically, given in the following Epitaph on his memory.

\* An eminent English Law Author in the thirteenth century.



" ALGERNON SIDNEY fills this tomb,  
 " An Atheist for disdaining Rome,  
 " A rebel bold for striving still  
 " To keep the law above the will :  
 " Crimes, damn'd by church and government.  
 " Alas ! where must his ghost be sent ?  
 " Of Heav'n it cannot but despair,  
 " If holy Pope be turn-key there ;  
 " And Hell it ne'er must entertain,  
 " For there is all tyrannic reign.  
 " Where goes it then ?—Where't ought to go,  
 " Where Pope nor Devil have to do.

The integrity of these worthies has however been attacked in the present century on the authority of some letters published by Sir *J. Dalrymple* ; admitting, however, the whole of his evidence, it amounts to no more than that Charles II. scandalously intrigued with France to enslave his people ; and the patriotic party, knowing this, thought themselves justified in intriguing with the same power to counteract his designs. And there appears no greater criminality in their conduct than in that of those great men who took similar measures to bring about the Revolution ; only the former did not so happily succeed\*.—This comparison leads us to the next section.

\* See Dr. *Touers's* examination of the charges against Lord Ruffel, &c.

## SECTION

## SECTION IV.

From the REVOLUTION to the PRESENT TIME.—  
 Of the Bill of Rights,—Act of Settlement,—  
 Coronation Oath, &c.

THE Revolution of 1688 forms an æra in our history that ought ever to be dear to Englishmen ; not only as it excluded the tyrannical *Stuart* race, but also as it distinctly marked the principles of our Constitution, on which it was effected.

The most unquestionable evidence respecting this event is to be derived from the celebrated BILL OF RIGHTS, passed in the close of the following year.

This act recites a declaration of rights violated by James II. (which declaration had been presented by the parliament to the Prince and Princess of *Orange* on their arrival in this country) and of which this act was intended as a public and perpetual recognition. After declaring the throne vacant by the forfeiture and abdication of the late king, the act declares, " That the pretended power of *suspending* of [or dispensing

pening with] laws, or the execution of laws, by regal authority, without consent of parliament is illegal.

“ That the commission for erecting the late Court of Commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

“ That the levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament for longer time or in other manner than the same is, or shall be granted, is illegal.

“ That it is the right of the subjects to petition the king, and that all commitments and prosecutions for such petitioning are illegal.

“ That the raising or keeping a standing army, within the kingdom in time of peace, unless it be with consent of parliament, is against law.

“ That the subjects which are protestants may have arms for their defence suitable to their conditions, and as allowed by law.

“ That election of members of parliament ought to be free.

“ That the freedom of speech, and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.

“ That excessive bail ought not to be required,  
nor

nor excessive fines imposed, nor cruel and unusual punishments inflicted.

“ That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

“ That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

“ And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently.

“ And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

“ To which demand of their rights, they are particularly encouraged by the declaration of his Highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

“ Having therefore an entire confidence, that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their  
their

their rights, which they have here asserted, and from all other attempts upon their religion, rights and liberties.

“ The said Lords Spiritual and Temporal, and Commons assembled at Westminster do resolve, That *William and Mary*, Prince and Princess of Orange be, and be declared; *King and Queen* of England, France, and Ireland, and the dominions thereunto belonging; to hold the crown and royal dignity of the said kingdoms and dominions, to them the said Prince and Princess, during their lives, and the life of the survivor of them.

“ And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.”

[Here follow the new oaths of allegiance and supremacy in these words, *viz.*]

“ I *A. B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance to their Majesties King *William* and Queen *Mary*;  
So help me God.”

“ I *A. B.* do swear, that I do from my heart abhor, detest and abjure, as impious and heretical this damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever.

“ And

“ And I do declare, that no foreign prince, person, or prelate, state or potentate, hath, or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual within this realm;

So help me God.”

[Here is inserted their said highnesses acceptance of the crown, according to the aforesaid declaration.]

“ And therefore their majesties were pleased, that the said — two houses of parliament, should continue to sit, and with their majesties royal concurrence, make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted.—

“ Now in pursuance of the premises, the said lords spiritual and temporal, and commons in parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, that *all and singular the RIGHTS AND LIBERTIES ASSERTED AND CLAIMED* in the said declaration, are the TRUE,

Q

ANCIENT,

ANCIENT, and INDUBITABLE RIGHTS and LIBERTIES of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be; and that all and every the particulars aforesaid, shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever, shall serve their majesties and their successors, according to the same, in all times to come."

Here follows a recognition of the election of William and Mary, with certain provisions for the succession of the crown. Then the proceeds.—

"And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this protestant kingdom, to be governed by a *popish prince*, or by any king or queen *marrying a papist*, the said lords spiritual and temporal, and commons, do further pray that it may be enacted, that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be *excluded*, and be forever *incapable* to inherit, possess or enjoy the crown and government of this realm."

After

After reciting several provisions for establishing the crown and regulating the succession, it is added—"And thereunto the said Lords Spiritual and Temporal and Commons, do in the name of the people aforesaid, *most humbly and faithfully submit themselves, their HEIRS and POSTERITY FOR EVER*; and do faithfully promise, That they will stand to, maintain and defend their said Majesties; and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates against all persons whatsoever, that shall attempt any thing to the contrary "

Next follows a provision for the Coronation Oath, &c. after which it is enacted that the several provisions of this act shall stand, remain, and the law of the land *for ever*."

A few years after (on the death of Queen Mary) it was judged necessary to make some farther provisions for the succession in the ACT of SETTLEMENT, from the following extracts are taken.

"That whosoever shall hereafter come to the possession of the crown, shall join in communion with the church of England as by law established.

"That in case the crown and imperial dignity of this realm shall hereafter come to any  
Q 2 person,

person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

“ That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well-governing of this kingdom, which are properly cognizable in the Privy-council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy-council as shall advise and consent to the same.

“ That after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents) shall be capable to be of the Privy-council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the crown to himself, or to any other, or others, in trust for him.

“ That no person who has an office or place of profit under the king, or receives a pension  
from

from the crown, shall be capable of serving as a member of the House of Commons.

“ That after the said limitation shall take effect as aforesaid, Judges commissions be made *quoadiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of parliament, it may be lawful to remove them.

“ That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.”

“ And whereas the laws of England are the *birth-right* of the people thereof, and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: the said Lords Spiritual and Temporal, and Commons do therefore further pray, that all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same, now in force may be *ratified* and *confirmed*; and the same are by his Majesty, by and with the advice and consent of the said Lords Spiritual and Temporal, and Commons, and by authority of the same *ratified* and *confirmed* accordingly.”

Before

Before we proceed to any remarks on the preceding it will be proper to subjoin (as it is above referred to)

THE CORONATION OATH.

To be tendered publicly to every king or queen, by one of the Archbishops or Bishops of the realm.

*Abp.* "Will you solemnly promise and swear to govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?"

*King.* "I solemnly promise so to do."

*Abp.* "Will you to your power cause law and justice, in mercy to be executed in all your judgments?"

*King.* "I will."

*Abp.* "Will you to the utmost of your power maintain the laws of God, the true profession of the gospel, and the protestant reformed religion established by law? and will you preserve unto the Bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them, or any of them?"

*King.* "All this I promise to do."

After

"After this the King or Queen, laying his or her hand upon the holy gospels, shall say, "The things which I have here before promised I will perform and keep: so help me God." And then shall kiss the book.

The above laws, and the event which occasioned them, furnish several important particulars for reflection, of which we select the following.

1. They state the true reason for *rejecting* King *James*; namely, his endeavouring to subvert the religion, laws and liberties of the kingdom, by certain illegal acts enumerated in the declaration of rights. Remarkably expresses to the same point was the vote passed by the Commons, Jan. 28, 1689, and by the Lords a few days after.

"Resolved, That King *James II.* having endeavoured to *subvert* the *constitution* of this kingdom by breaking the *original contract* between the king and people, and by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of the kingdom, hath *abdicated* the government; and that the throne is thereby become vacant."—"The word *abdicated*, says the great Lord *Sommers*, (who certainly knew) relates to all the clauses foregoing, as well as to his

his deserting the kingdom,—the meaning is, that King *James* by violating the original contract, &c. *did abdicate* the government\*.”

2. The Bill of Rights contains the express condition on which *William* and *Mary* received, and the present family still hold the crown; namely, the preservation of the protestant religion, and of the fundamental rights and liberties of the kingdom. And from the acknowledged propriety of this, has been very naturally inferred the lawfulness of future revolutions in cases of like necessity: this, however, Mr. *Burke* positively denies †, because Lords and Commons did at that period, in the name of the people, “submit themselves, their heirs and posterities for ever.” And thus the doctrines of passive obedience and non-resistance become essential to the constitution!

This, if true, would be very extraordinary, that the very same act which established the right of resistance, should resign it up again for ever; and would convert the Bill of *Rights* into what Mr. *Paine* calls it, “a Bill of *Wrongs*.” But before this is granted, one may be permitted to ask, Whether that parliament had authority to

\* Judgm. of whole kingdoms, &c. § 143.

† Reflections on the French Revolution, p. 26, &c.

deliver

deliver up the people's natural rights? If so, former parliaments must be supposed to have possessed the same, and they having given up our rights long before, left none for the convention parliament to resign. If it be said, that the rights which one parliament betrayed and gave up, another recovered and restored; this gives room to hope that our case is not yet desperate.

But not to trifle, as Mr. *Burke* has done, with notions which, had they come from a less popular writer, would hardly have attracted public notice, nothing can be more clear or certain than—that parliaments possess only a *delegated* power—that this power is delegated for the *good*, and not the destruction, of the people, from whom it originates,—and therefore it is their province to ascertain and defend our liberties; but in no case to resign them. They cannot possess the *right* of doing *wrong*.

But this parliament resigned to the crown not only themselves and their constituents, but their “heirs and posterity for ever.” It is the property of nations and bodies corporate to be immortal, and immutable. As in the human body, although the particles of which it is composed, are continually changing by perspiration and nutrition, yet is it the same body: so is a political

R

political body still the same, notwithstanding in a course of years every individual of it may be changed. Hence arises the right of binding posterity in certain cases, which all nations admit and practise. But if the parliament had no right to resign the liberties of their immediate constituents, they certainly had no right to give up ours. And even admitting the former, the latter does not follow; for we have not the same right over posterity in many cases as over ourselves. We bind them by leases and covenants; but it is at least supposed to be for their own advantage as well as ours; for we cannot legally bind them to slavery in any of its forms.

What then can be the meaning of the clause above cited?—Let common sense give the answer—"to submit themselves and children to the laws and constitution, and to the princes they had chosen, so long as they should govern agreeable thereto." But would Mr. *Burke* himself say, that if *William* or his successors had adopted the principles of popery and arbitrary power, they might not have been rejected, as well as *James*? They must have been so, according to the Bill of Rights and Act of Settlement. So far then are those acts from precluding all future revolutions; as has been pretended, that they establish their legality, and provide for their ac-

I

complishment,

complishment, whenever the contract between prince and people shall be broken; in that case the power delegated devolves to its original, the people, or their representatives; and they have the same right to remove, limit or restrict the crown in any manner they shall judge necessary, as they always had; and to deny it is express treason by the statute\*.

But 3. The revolution has been attacked from an opposite quarter. Admitting the lawfulness and necessity of such an event, whence the necessity of applying to a foreign prince? Was there not wisdom and virtue enough to make a king nearer home? And might not a better bargain have been made for the people? To all these I answer, very probably; but it is sufficient to say, that it would neither have been *constitutional, practicable, nor safe.*

We have seen the people never departing from the hereditary line without some necessity, and then no farther than that necessity required. The characters of *William* and *Mary*, and her relation to the throne, had long pointed them out to the hopes of the people: and had the crown been purely elective, no man in Europe would have stood so fair a chance for it as the Prince of *Orange*. He was a man of great mi-

\* Page 62. See *Ld Somers's Judgment of whole kingdoms, &c.* § 83.

R 2

litary



litary abilities, and many virtues. His enemies said he had but one vice. Perhaps he was "close-fisted," and valued his services somewhat too highly. The people, however, esteemed their liberty and peace of more worth than thousands of gold and silver; and what may appear to us on cool and distant reflection an enormous sum, might, in the hour of joy and gratitude, appear but just and reasonable to them.

*Mary*, abating sufficiently for the exaggeration of her panegyrics, was a pious and amiable woman; a greater ornament to her sex than the diadem was to her. And that very circumstance which is alledged to prove her *undutiful*; might with more propriety be urged as an evidence of her regard to the public good, and the protestant religion, to which she sacrificed her private feelings.

It is admitted that a monarchy purely elective, and personally responsible, possesses many advantages over an hereditary one: and that a native prince is much more eligible than a foreigner. But those advantages are not to be set against the *price of blood*, which they generally cost. In the present case it would have been impossible to have brought the nation to acquiesce in any other choice; and to recur on every vacancy to a new line, would be to expose the nation to dangers of which we have seen too much in the *Polish*, and some other constitutions.

This

This reign, though introduced with so much joy, was not so happy as might have been wished, or was expected. Whether the king's notions of government were not quite answerable to English freedom, or whether he had the ill-luck, which many a good king has met with, to have bad advisers, he did not fall in with some things that the parliament judged necessary to preserve the nation's liberties. In particular, at first he refused his assent to "a bill for the frequent calling and meeting of parliaments," which however passed in 1694, under the name of the Triennial Bill, and was considered as a bulwark to our constitution. This act might have been much improved by the method since adopted in the American assemblies of electing one *third* of the members *annually*; by which means a majority of the house would always be conversant in business—the people would have frequent opportunities of rejecting those whose conduct they disapproved—the parliament would always be in being—and the bustle and confusion of a general election avoided.

The grand event of the next reign (that of Queen *Anne*) was the *Union* of the two kingdoms, England and Scotland; the advantages or disadvantages of which we cannot stop to enquire into. The first parliament for Great Britain met in October 1707.

We

We should have remarked under the former reign that an act was passed, commonly called the *Toleration Act*, for the relief of Protestant Dissenters, and which was ratified and confirmed in the tenth year of this reign. This toleration was, however, very defective; Dissenting *Teachers* not having any benefit from it without subscribing to the doctrinal articles of the church of England; and the *lay-dissenters* being totally excluded from offices of trust and authority under government, however qualified by abilities or integrity. The former of these hardships has been remitted in the present reign; but the latter must remain till the people, or their representatives, acquire more political wisdom and virtue.

George I. ascended the throne with an express promise (besides his coronation oath) to "preserve the *religion*, laws and liberties of the people inviolable." But this reign was attended with many public commotions and tumults, which gave birth to some acts not very friendly to our constitution; particularly the *riot act*, and the act for *septennial* parliaments. The former may be justified, perhaps, on the principle of necessity; but the same plea can hardly be admitted for the other. For supposing the tumultuousness of the times might render an election at  
that

that juncture dangerous to the peace of the kingdom, and a plausible pretence for *one* septennial parliament, it could be no reason why all future parliaments should be so. But crowns and governments are too apt to catch at every opportunity for the enlargement of prerogative and power; and long parliaments have always been found of that tendency.

Some people have been bold enough to question the validity of this act, and of all subsequent ones which depend on it. If the very law, say they, by which an assembly sit, or continue sitting, be invalid, how can their decisions be valid? But it is dangerous to push speculative reasonings too far, especially in politics.—It cannot however be well denied, that if one parliament have a right to prolong their seats for seven years, a second may enlarge the period to fourteen, a third extend it to their natural lives, and a fourth make the representation *hereditary* like the peerage—and thus establish a complete aristocratic tyranny.

Mr. *Locke* says, however, "when the legislature acts against the trust reposed in them—when they endeavour to grasp at absolute power, &c. by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who  
have

have a right to *resume* their original liberty, and by the establishment of a new legislature (*such as they shall think fit*) provide for their own safety\*.”

We shall conclude this chapter with a summary of the improvements our constitution has received during the period it comprizes, from Sir *W. Blackstone*, to whom we have already acknowledged repeated obligations.

“ In this period many laws have passed; as the Bill of Rights, the Toleration Act, the Act of Settlement, with its conditions, the act for uniting England with Scotland, and some others, which have asserted our liberties in more clear and emphatical terms; have regulated the succession of the crown by parliament as the exigencies of religious and civil freedom required; have confirmed and exemplified the doctrine of resistance, when the executive magistrate endeavours to subvert the constitution: have maintained the superiority of the laws above the king, by pronouncing his dispensing power to be illegal; have indulged tender consciences with every religious liberty, consistent with the safety of the state; have established triennial, since turned into septennial, elections of members to serve in parliament; have excluded certain offi-

\* On government, pt. 2. ch. 19.

cers

cers from the House of Commons; have restrained the king's pardon from obstructing parliamentary impeachments: have imparted to all the Lords an equal right of trying their fellow peers; have regulated trials for high treason; have afforded our posterity a hope that corruption of blood may one day be abolished and forgotten; have (by the desire of his present Majesty) set bounds to the civil list, and placed the administration of that revenue in hands that are accountable to parliament; and have (by the like desire) made the judges completely independent of the king, his ministers and successors. Yet, though these provisions have in appearance and nominally reduced the strength of the executive power to a much lower ebb than in the preceding period; if on the other hand we throw into the opposite scale (what perhaps the immoderate reduction of the ancient prerogative may have rendered in some degree necessary) the vast acquisition of force, arising from the riot-act, and the annual expedience of a standing army; and the vast acquisition of personal attachment arising from the magnitude of the national debt, and the manner of levying those yearly millions that are appropriated to pay the interest; we shall find that the crown has gradually and imperceptibly, gained almost as  
S much

much in influence, as it has apparently lost in prerogative\*.”

The above account, though just in the main, must be taken with some abatements. Notwithstanding the rights of conscience have received some further indulgence since the above was written, yet am I so far from thinking that “every liberty consistent with the safety of the state,” is yet granted, that I am persuaded the permanent safety and prosperity of the state demand much more. It is not toleration, but restraint in religion, which is likely to endanger the public weal: as well by depriving government of many of the ablest heads and best hearts in the country; as by feeding those prejudices, and maintaining that spirit which occasions bickerings, tumults, and, in too many instances, fire and destruction. It has been wisely said that, the true secret to govern all sectaries is to tolerate them.

Neither am I convinced that the royal prerogative has suffered any *immoderate* reduction. It is indeed brought much below the standard of usurpation in the times of the *Stuarts*; but I even suspect it might be lowered yet more without injury to the constitution or the country. So

\* Blackstone's Com. iv. 440.

that

that there does not appear to me a necessity for any “vast acquisition” of influence to counterbalance the diminution of prerogative. Yet we all remember the memorable vote of a late House of Commons, which asserted that “the influence of the crown has encreased, is encreasing, and ought to be diminished.”

After these deductions, it is necessary to add to the above account, the advantage public freedom has just now received in the important act which ascertains and establishes the rights of juries to decide on matters of *law* as well as *fact*, without which, in the case of *libels* particularly, they are but a poor security to our liberties.

C O N C L U S I O N .

HAVING thus sketched the History of our Liberties and Constitution, we shall attempt to recollect the substance of the evidence above adduced.

First, It appears that we have a *Constitution*, or several important and fundamental maxims, on which our form of government is constituted. That authors differ on this subject does not disprove the fact, because there is scarcely any point in which all writers are agreed. And that

S 2

the

the origin of it should be attended with obscurity is no matter of surprize, since every thing respecting the times in which it originated is necessarily obscure from the darkness of the times themselves. These maxims, or general fundamental principles may be reduced to the following.

1. That the people are the source of power. This is demonstrable from the monarchy having been at first purely elective, and having continued partially so for several ages. And if the supreme magistrate was elective there can be no question as to the inferior ones.

Though the hereditary succession has long been followed, it was not so much on the principle of indefeasible right as of expediency. The next of blood has generally succeeded to the crown (except in cases of violence) till by tyranny and incapacity they forfeited that honour; and then the people made no scruple to remove them and take in some other, though commonly of the royal blood. And notwithstanding that by the Act of Settlement the crown is now vested in the present family, yet it is only as we have seen above, on certain conditions, the violation of which abdicates the throne.

2. Another grand maxim of our constitution is that the people have a right to be their *own* legislators.

legislators. This right was at first exercised in their own persons, every freeman having originally a vote in the making of laws. Afterwards it was found expedient to chuse delegates, and act by deputy; but still every man had a right to vote in that election, till the corruption of the times introduced restrictions injurious to the constitution, and produced in the issue what has been the properly called the present parliamentary *mis*-represented.

3. The third grand principle of our constitution is the right of every man to be tried by his *peers*; a privilege which is the peculiar boast of this country, and which has received new strength and vigour from the recent determination of both Houses of Parliament, relative to the power of juries, and the new act concerning libels. This institution, however, like every thing human, seems still capable of improvement, particularly in the method of summoning, or selecting jurors.

4. A fourth principle interwoven with our constitution is that of *religious* liberty. It is true that our principles and consciences were once under the yoke of the bishops of Rome; but his reign, though long and bloody, was as grand an usurpation as ever mankind suffered; and has happily long since been overturned.

But

But the misfortune is, that this was begun in the reign of as great a tyrant as the Pope himself, and who excluded him only to occupy his seat. The consequence was, that the popish authority was not so properly destroyed as transferred from the mitre to the crown.

It is clear enough from history that our British ancestors were christians, and had even bishops (though not Lord Bishops) and held ecclesiastical councils long before Austin and his monks invaded us. But the rights of conscience are derived from a higher source. They are not the gifts of bishops, popes, or kings; but spring from that supreme Benevolence which gives us life and all things liberally to enjoy. To abridge our religious liberties is therefore not only to deny the Rights of Man, but also to invade the prerogative of God, who claims for all his creatures the liberty to worship him according to the light he is pleased to communicate to them; and therefore *Magna Charta* says, "we have granted to God—that the church of England shall be free."

Secondly, Though we cannot boast a formal constitution drawn out with equal clearness and precision as some constructed in our own times; yet we may trace in the preceding outlines some attempts of that nature. What is *Magna Charta* but

but a declaration of rights, in which a correspondent plan of government is at least implied; and the authority of each branch of it in some measure limited? It must, however, be confessed that this is a very imperfect work; as in restricting some evils, it virtually establishes others, particularly *feodal* tenure, and the usurped and inordinate power of the Barons; who, as they drew it up, betrayed too much partiality to themselves. With these exceptions it recognizes, however, either directly or indirectly, most of the grand articles which form our constitution.

The *Petition of Rights* presented to and sanctioned by King Charles is partly of the same nature, it states the rights of the people, and says to the royal prerogative, "hitherto shalt thou go and no farther." The *declaration* and *Bill of Rights* is a farther improvement on this, and is chiefly defective in not being regularly sanctioned by the bulk of the people, though there is no doubt but it contained their general sentiments.

Thirdly, from the above review of our constitution we may learn to appreciate its *value*; which is certainly great, though below the estimation of its professed panegyrists. In a comparative view it is truly excellent, and much superior to most of the *old* constitutions of the surrounding nations. It has, indeed, its defects;

fects; but, happily those defects appear to be rather accidental than radical; and have been introduced partly by the change of times and circumstances, and partly by the successive encroachments of the prerogative and influence of the crown.

The principal grievance under which we labour, and to which all the others may be reduced, is the imperfect and depraved state of our representation, and there is the more reason to be alarmed at this from the well-known prediction of the great *Montesquieu*, that the ruin of this country is inevitable whenever the legislative power becomes more corrupt than the executive.

Give us a House of Commons which represents the nation at large, and while it is constantly dependent on the people, is wholly independent of the crown, and we ask no more. Their power is constitutionally sufficient to effect every other reformation that can be desired, and to them every thing may be safely trusted.

To ensure this most valuable blessing two enquiries claim our attention, What alteration is needful in the representative body itself? And how may that be certainly and best effected?

The grand *desideratum* is a general representation: in which every copyholder as well as freeholder

holder; every householder as well as privileged freeman; and, in fact, every settled inhabitant should have a voice in the choice of representatives.

But the more difficult enquiry is, how shall this restoration of general rights be brought about? The government are interested, or at least so conceive themselves to be, in its opposition; and the body of the people hardly know the value of such a blessing, much less their constitutional right to possess it.

Much indeed may be hoped for from the diffusion of political knowledge; and if the people once see the necessity of such a measure, and acquire the virtue of *uniting* to procure it, what can be able to withstand them?

In the mean time, however, every approach to this end should be encouraged. It is too much to be feared that those who possess the exclusive right of election at present, do not see the propriety, much less the necessity, even to their own interests, of its extension. Not to mention those who are base enough to sell their votes, and with it their country (which are not a few) those who are more properly called the independent electors, should consider that though they plume themselves of enjoying the privilege of voting exclusively, that privilege is of little service to  
 T their

their country, and of course to themselves, while the members they send are liable (however wise and good) to be over-balanced by the dupes of ministerial influence. And should they satisfy themselves with trusting to the wisdom and integrity of the *present* ministry, granting them all due praise, they are not immortal, and to-morrow may throw us into the hands of a set of men, at least as base and profligate as any of their predecessors: and then, what might now be procured by a little constitutional exertion, and steady perseverance, may then be only purchasable at the price of blood.

F I N I S.