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L E T T E R
T O
D E L E G A T E S,

30th June 1792.

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NISI DIGNUS VINDICE.
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L E T T E R
 FROM
 AN HERITOR
 TO
 HIS FELLOWS,
 THE
 LANDED INTEREST
 OF
 SCOTLAND,

TO MEET IN
 DELEGATION AT EDINBURGH,
 ON MONDAY, JULY 2. 1792.

Si bonum quicquid accipite, rejicite quod cativum.

EDINBURGH:
 PRINTED FOR THE AUTHOR.

M, DCC, XCII.

A D V E R T I S E M E N T.

THE Editor throws out to his Country the following thoughts, on a subject of no small importance, viz. The settling the Right of Franchise or voting in County Elections upon a more enlarged and permanent footing than at present, yet consistent with the established Constitution of this part of the united kingdom. Not afraid to handle a subject involving in part the great question of Parliamentary Reform, in so far as seems safe, but protesting that he has not been the mover. It was started by gentlemen whose names he does not know, with, he is persuaded, pure intentions, and convinced, that had the justly-condemned Association been first formed, their patriotism would have checked their zeal for the present; and pointing out the danger of doing harm where good was intended, would have suggested, that it is better to submit to known inconvenience, than lose a good improvement by untimely attempt.

JUNE 30th 1792.

T O

SIR ALEXANDER RAMSAY

OF BALMAIN, Bart,

PRESES OF THE LATE MEETING OF GENTLEMEN OF PROPERTY IN SCOTLAND, AT EDINBURGH, APRIL 1792.

S I R,

TO none with so much propriety as to you can the following Letter be inscribed, the Gentlemen with whom you met at Edinburgh on the 24th of April last, having placed you in the chair of a meeting, respectable, as I am informed, for independent property, and principles the most constitutional, yet distinguished by no party-attachment, but assembled by that active zeal for the real good of their country, which, called forth on urgent occasions, moving with steady pace, equally firm and circumspect, proves a beneficent stream, enriching as it flows, not a torrent overwhelming in its course, removing obstruction by violence, and bringing destruction on the land it ought to benefit.

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That

That the approaching meeting of Delegates of the Heritors of the Counties of Scotland may prove the beneficent stream, is my earnest prayer, for the good of our country, in which I have some interest; my love for which, and my attachment to its excellent constitution, induce me to address this letter to you, to the Delegates, to my Country, and to the Public at large, and which is a hazardous step for the first time to appear in print.

This Letter comes anonymous, not that I am ashamed of the name I bear, but because a good or bad plan should be received or rejected on its own merits, not on the supposed merit or demerit of

The AUTHOR.

L E T T E R

T O

The COURT of DELEGATES to meet at EDINBURGH, July 2. 1792.

GENTLEMEN,

DELEGATED by the heritors of Scotland to consider of the present state of their representation in Parliament, and of the best means of remedying the acknowledged defects in it, so far as relates to the Right of Voting at the Election of the Representatives for Shires in Scotland, commonly styled County Members, admit an address from an Heritor of no inconsiderable property;—of what extent, is immaterial to the present question;—of what class or name, is equally unimportant. The magnitude of the object of discussion, no less than the confirming, strengthening, and rendering more durable the Constitution of this country, which we have so recently in county-meetings resolved anew to maintain against all insidious and seditious attempts tending to undermine or destroy, sealed with our names, and carried in our addresses to the foot of the Throne; thus most solemnly ratifying, swearing to maintain for ourselves, and hand down to posterity unimpaired, that excellent constitution established by our ancestors at the glorious Revolution in 1688, bought by and sealed with their blood, at the expence of a race of Kings who had worn the Crown of this

this kingdom 318 years, a period long enough to have established hereditary right, if such could exist in a free kingdom without the consent and approbation of the people: but they had rendered their own expulsion necessary, for *salus populi suprema lex est*. This I hold to be the first Revolution principle, and the only one on which it can be justified. A nation is bound by fealty to its Sovereign; a people must suffer long, must bear much, before they think of changing, which can be warranted by necessity alone, and the supreme law of public safety. This warrant James VII. * gave our forefathers, and this they executed against him and his descendants, by excluding him from returning, and his son (who had been acknowledged as such in England) from the succession, and by choosing others to occupy the throne declared vacant. Whether James abdicated, whether he renounced for himself and his sons, whether he was driven, expelled, or vacated the Crown, is immaterial. The doctrine laid down then, and maintained ever since by the nation, is, "That a King on whom the Crown has devolved by inheritance, holding it by the law of the land, can, by violating that law, forfeit the Crown for himself and descendants: then and then only it reverts to the people, to dispose of as they judge most for the public good, taking the next in succession qualified to wear it, with power to annex to it what conditions and limitations they see expedient for the public safety." This they did, and this we maintain they did of right every time we take the oaths of fidelity, allegiance, and abjuration. The record of Parliament, the statute-book, preserves in it acts of security and succession. In those very acts which placed that Crown, so happily for this nation, on the heads of the Brunswick line, which had, so unhappily for them, fallen from the heads of the House of Stuart, there it is written, there it may be seen,

* I speak as a Scotfman.

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how the transfer was made, and by what unpredictable steps Providence brought about the wonderful change: While we admire let us also bless the invisible hand which thus strengthened and confirmed the rights and privileges of these nations, and secured to us our happy constitution, the blessing of these, the admiration and envy of surrounding nations, the ultimate inheritance, I most devoutly hope, of all the world; for it is no bad wish surely to others, to pray that they may be as blessed as we, with a constitution conferring security and happiness exceeding example, and surpassing all human wisdom to contrive.

This love of and zeal in support of our happy constitution, does not blind me so far as to make me think it above all improvement, or to preclude all amendment or reform. There is no absolute perfection upon earth. It is presumption to say that we may not approach nearer to it. But there is no hazard in warning ourselves to beware of innovations, to move cautiously in reform, and even to amend with discretion, after the most mature deliberation. In some cases, there is a danger in experiment: but there is as much weakness, on the other hand, in rejecting all amendment, and every reform. Of these we have had multiplied instances, and felt many good effects: they have operated improvement, they have led towards perfection; but as for innovation, destruction lies in the way; let us beware, let us avoid it.

After thus premising, what I have to offer on the subject of Freehold Qualifications may appear bold, and tending to hazardous innovation. In that I should possibly agree, were the idea new, were it now first broached, and had it not been actually proposed by the Freeholders of some counties at their Michaelmas head-courts.

Let it however be remembered, that the qualification of Freeholders

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holders is but, *A legal declaration of the right of franchise*, and not an alteration of the constitution, inconsistent with which, it is contended, no alteration ought, or can be made agreeable to public safety; yet without endangering either, and possibly with advantage to both, some change may probably be effected. This appears, from their resolutions, and from your appointment, Gentlemen, to be the opinion of the Landholders of most of the counties in Scotland.

Such shires as have not sent Delegates seem to have considered the importance of this subject too lightly, or (what I am averse to suppose) rest contented with the generally acknowledged ill state of this thing, indolently submitting to grievances felt by all, and which may with perfect safety be removed, was the public mind sufficiently well informed to fix upon a prudent and practicable plan of reform, neither inconsistent with, nor adverse to our justly-esteemed constitution.

It is not my business to guess at, or animadvert on the views of particular classes of men, or of individuals; they may have their views: it is enough for me that the public is concerned, and that that public is my country. If the plan produced does not correspond with their good, reject; if it promises benefit, why not adopt it?

* A most illustrious authority lately, in a solemn protestation in the highest assembly in the nation, laid down this truly constitutional principle, "*That all reform not sanctioned by the people is wrong.*" It follows, we may fairly infer, "That reforms may with safety be made, when so sanctioned." And the late royal proclamation, considered as a ministerial appeal to the people, with the consequent addresses, confirm and sanction the inference.

* His Royal Highness the Prince of Wales.

We

We come now to the point. You Gentlemen Delegates are deputed by the heritors of Scotland * to meet at Edinburgh, to form a court to consider the laws of election for shires; And no more! What would be the use of that? You may consider those laws more at leisure, and study *Wight on Elections* more coolly, at your own homes in the country; (for I presume you all have homes in those counties whence you come), than in the metropolis in the month of July, when our legislature has wisely thought it better to send our lawyers and judges into the country for refreshment, than to detain them later in the inner-house; when our Chief Magistrate finds it time to send his counsellors into the country; and when none chuse to do business in towns who can get out of them.

Why then should you be sent to study our election-code in town in the heats, which too often excites ferment in autumn, but that the collective judgement of the wisest men † of this kingdom may be obtained on a subject so extensively important; and that you may, from such collection of judgement and full information, form some plan to be laid before your constituents in your report, which you can propose to them as practicable, safe, and useful, upon which they may form the heads of a bill for a new law, and instruct their members to bring into Parliament, if generally approved of.

I shall presume to hint, that the form of resolutions, to be adopted, altered, or rejected by the county-meetings, may be pre-

* It is not now debated, whether Peers may be received as Delegates or not, or how far they are concerned in the county-representation. But if any are sent, it shews the sense of those counties who delegated them.

† It is presumed, the wisest would be delegated from each shire,

ferable.

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ferable to heads drawn up, who may then renew their commiffion of delegates, with powers to prepare the heads of a bill digefted on thofe principles moft generally approved; for to wait till an unanimous approbation can be obtained, would be as abfurd as to expect a plan to be formed without concert, or carried into effect without agreement. It would defeat every good purpofe, and ferve the end of thofe only who find, or delufively think they fee, their intereft in confufion.

You may perceive, Gentlemen, I do not write as a lawyer; a character to which I have no pretentions; I do not affume it: that of a plain honeft countryman is all I afpire to; a fair ambition furely to every man in a free ftate: neither pretending to be a man of letters, or profound politician; they are often fwerved by prejudices of education and practice: much lefs a modern philofopher; they overturn every thing old, to fet up new fyftems equally abfurd and inapplicable, (to our fituation at leaft), upon new-fangled and unintelligible doctrines, fpecioufly misleading the unwary and well-intentioned with descriptions of unattainable perfection. It is enough for me to have a little confidered this fubject on which I venture to address you; and that my fellows, the landed intereft of Scotland, are deeply interefted in it; happy if any propofition from fo weak a pen can tend to utility, and amply rewarded fhould it produce fome falutary effect.

If no reform is needed, then the only ufe of the Delegation is to exprefs it as their opinion. But that fome reform is become neceffary, from the degenerate ftate of things, and that the conftitution of Scotland has in this refpect fo * far *flid from its basis*,

* Speech of Chancellor Thurlow upon a Scotch election caufe, 1789.

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as to need a parliamentary repair, your nomination fhews it to be the general fenfe, and that fome propofition towards its repair is expected from you: Therefore I may prophetically foretel, that fhould you feperate without forming fome plan, difappointment will follow; but fhould that plan be made on a contracted fcale, difapprobation will enfue. Thefe are not times to narrow privileges. Any fuch attempt muft produce difcontent; whence would flow murmur, commotion, and eventually fubverfion.

Had no fuch queftion been ftarted, perhaps I might have been led, from fome late events, to think it fhould not now be agitated; but the complaint is not new in Scotland, it is of long ftanding; the inconvenience is not fmall, the grievance has been loudly complained of. Thefe, and the circumftances of the times, with the reafonablenefs of the thing itfelf, in a country advancing faft in liberality, improvements, and cultivation, by induftry to wealth, indicate that no narrowing fyftem will be well received; but that we muft, inftead of retrograding, look forward, and provide for farther improvement, by approaching nearer to the fyftem of our more advanced neighbours the Englifh, with whom we are now indiffolubly connected.

The only way, then, to get rid of the inconveniences felt and complained of — to repair and ftrengthen the Conftitution, and to fet it up again erect, firm, and permanent upon its basis, feems to be, *By lowering the qualification, and attaching the right of franchise to the actual poffeffion of the property, fuch proprietor being the vaffal of the Crown.*

Thus the Conftitution will be preferved and ftrengthened, while the grievance will be removed, as no *parchment* Freeholder could then claim to vote at Elections for our fhires: Neither could the fubject-fuperior, by fplitting his valuation, extend an

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undue influence over the possessors of the property of the county, or place on the roll a phalanx of confidential voters, frequently unconnected with the county, and always accused, often falsely indeed, of being devoted to the will, and obedient to the mandates of their creator: — A practice sufficiently known in Scotland to have excited much discord, though possibly little experienced to the south of the Tweed.

To see how such a measure may be adopted without injury to, nay, with the safety and improvement of the Constitution, let us consider what the Constitution is in this particular. I take it to be, "That the vassal of the Crown, infest in lands to a certain extent, shall have right to vote." Now possession is presumed to follow infestment; the eye of the law hath no other contemplation; and as vassalage is a feudal tenure, it sees no other but the immediate vassal of the Crown. This is termed *freehold*, but admits of sub-vassalage; so that the holding of the Crown, with the infestment, constitute the right of voting — not the actual possession of the estate. *Hinc origo mali*, because I can buy an estate holding of the Crown; I can feu it out at full value blanch, and I, not the possessor, am the voter. — This is good in law, though the purpose is direct.

Again, I can purchase a superiority of a blanch holding, and I, not the proprietor of the estate, am the voter.

This is termed a freehold, and rightly; because holding of the Crown is holding of no body, for the Crown has no restraining authority over the holder.

It does not appear, then, that adding an estate in real possession to this holding can weaken that independence essential to constitute a freehold. I think it is strengthening it.

Why

Why then lower the qualifications?—Because the times and the progress of things require it.—An estate of L. 100 of valued rent is now often of more value than one of L. 400 was one hundred years ago; and the proprietor generally a man of greater respectability, and no less ancient descent.—But be it remembered, that possession, not descent, is the requisite—else where are your parchment Barons?—In this particular our ancestors, attached as they were to family brieves, never spoke of descent, but of possession.—Have we narrowed that doctrine?

If, then, this can be adopted with safety, let us see the expediency. But first look how the law stands. Go back to James I. parliament 3. act 52. *Item*, it is ordained, &c.

"That all Prelates, Bishes, Barones, and *Freeholders of the King*, be halden to compeir in person, and not be a procurator; but gif (unless) the procurator alleage there and prove a lauchful cause of their absence."

1425. act 52

Here appears to have been a practice of voting by proxy, as the personal attendance on the King's parliament was often inconvenient; which practice by that statute is restrained, and personal presence insisted on.

This being found so burdensome as not to be exigible by law, or compellable by force, it was ordained by statute James I. parl. 3. act 101.

"That small barones and free tenentes need not cum to parliaments, but are to send two representatives from each shire, called *Commiffaries* or *Commiffioners of Shires*."

Perfor 1427. act 10

So here we have that representation established which obtains to

to this day, as an indulgence to the King's lesser vassals, the great ones (or greater Barons) being bound in personal presence on the King's summons.

13. A distinction is drawn by exempting freeholders under L. 20 Scots.

13. That all freeholders under 100 merks of extent send their procurators to parliament.

11. " Act of James I: ratified.—Precepts from the King for choosing commissioners of shires.—Men of gude rent, indwellers of the shire; and that all freeholders of the King, under the degree of Prelates and Lords of Parliament, to be present at the choosing of the said commissioners; and none to have voice in their election but such as has forty-shilling land in free tenementry holden of the King, and has their actual dwelling and residence within the same shire. These commissioners to be elected annually at the Michaelmas head-court."

15. " Barons send to parliament commissioners with sufficient commissions."

Thus far the way is clear, the line of representation is distinct from James the I. to VI. " That the real freeholders, vassals of the Crown, possessing their own lands, shall vote upon the estates they hold." And if any deviation was afterwards made, they, in so far, departed from the original principle of the Constitution, viz. *The representation of the Estates, as well as of the persons of the Barons*; a principle never to be lost sight of, and to which, if it has by law or practice been deviated from, a new law should recall the practice, short of which, nothing effectually salutary can be done. Palliatives would be tampering with the

the Constitution, and by weakening, endanger it. Why then should we not repair it? why leave to others, at so imminent a risk, to do that which, by applying the remedy ourselves, we may do, and leave it to our successors in a more improved state than we received it?

The right of voting extended to " all heritors, liferenters, and wadsetters, holding of the King or Prince, of ten chalders, or L. 1000 Scots of valued rent."

1661. act 3.

It is to be observed, that by this law the right of franchise was communicated to many who did not before enjoy it, particularly to such as formerly held of bishops or abbots. But in twenty years after a farther extension was made, at which it has continued to this day; for thereby it is statuted and ordained, " That none shall have vote in the election of commissioners of shires, but those who at that time shall be publicly infeft in property or superiority, and in possession of a forty-shilling land of old extent, holden of the King or Prince, distinct from the feudal duties in feu lands; or where the said old extent appears not, shall be infeft in lands liable in public burden for his Majesty's supplies, for four hundred pounds of valued rent, whether kirkward, or blanch of his Majesty, as King or Prince of Scotland."

1681. act 2.

Proper wadsetters, heirs apparent in possession, liferenters, husbands in right of their wives, and fiars, have right to vote.

Not taking the test a sufficient objection.

Here the principle of possession is departed from; the superior is allowed to vote, and may be a wadsetter, liferenter, or fiar

of a forty-shilling land, or L. 400 Scots of valued rent, holden blanch. Can there be a more aerial property, *no residence, no domicil, no property!* A mere possession of *nothing*, acquired without *purchase*, except the fees of the seal of the charter, completed by form of investment, constitutes a franchise, and legally creates a *parchment baron*. What absurdity! That persons having no actual property, not contributing to the expences of the State, shall have power to bind those who do. The reign in which this was done, in which the abominable test was enacted in Scotland, (afterwards happily repealed), and subsequent to it, sufficiently demonstrates the arbitrary design to disqualify *all non-conforming Freeholders*, to the plan of cramming Episcopacy down the throats of the Scotch. But that stubborn people, as history informs us, attached to their rights, resisted, and would not be dragooned into forms they detested.

At the glorious Revolution in 1688, they established their rights, civil and religious; but, satisfied with the repeal of the Test, and not perceiving the extent of the evil of the act 1681, left it in force.

At the Union in 1707, they confirmed those rights, but neglected so favourable an opportunity to replace the Constitution, which had thus *slid from its basis*, on its ancient solid foundation of property, from whence it has been farther sliding ever since; and considering the ineffectual attempts made, and so frequently repeated, to restrain the evil consequences which have produced the grievances now complained of, of which we have had but too much experience.

It seems evident, that no other method is left to restore the Constitution, but to place it again upon the original basis of *property held of the Crown*; and in so doing, not to narrow, but extend

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tend the privilege, by lowering the qualification *below Four hundred pounds Scots of valued-rent*; how far is matter of deliberation and discretion.

I think I have now shown, that in so doing, the Constitution will neither be departed from nor impaired, but restored, strengthened, and replaced where it stood at first in ancient times, and where alone it ought to stand in all future ages.

That the old acts were constitutional has been shown. That the act 1681 was violently aristocratical, and ought not to be reverted to, is evident: For, however aristocratical, and severely felt so, the government of Scotland formerly was; yet in these last 100 years, that aristocracy, under which a free and commercial nation cannot thrive, has been so wisely limited, so well tempered and intermixed with democratical ingredients, that they are nearly as well blended now in Scotland as they have long been in England, and sufficiently for the public good; for we have a mixed government suited to our interest and habits, and happily interwoven, so as to form a whole, more perfect than in other countries. Thence, under the blessings of Divine Providence, flows that happiness we feel, and exult in enjoying. Let us then hold it sacred, let us not depart from it, let us not put to our hands to pull our own good house down! but join in its support.

Were this plan of *conjoining the actual property with the superiority* in the person of the freeholder to be adopted, who could suffer?

1st, The subject superior fiar.—Let him hold what he has, let him transmit it to his heirs, but let him not transfer it to another except to his vassal the possessor.

2d, The subject superior liferenter.—Life is short, let him hold it for life.

3d, The subject husband in right of his wife superior.—So slippery a right seems scarce worth holding; let him keep it who can.

4th, The subject superior proper wadsetter.—This slender holding is hardly perceptible; where it exists let it remain, but suffer it not to be transferred or renewed.

5th, And perhaps the greatest injury is the privation of the possessed power in proprietors of considerable estates, and the great families of the kingdom of Scotland.

Here I confess difficulty occurs, but not unfurmountable, where the greater good of the country is at stake.

The great men of the kingdom, like the officers of a regiment, are commissioned for its good order and support. They are always to sacrifice their private interests, nay their lives, to the good of the State. They are to set example, as they are to watch over it. The Nobility of Scotland have ever been distinguished for this patriotic loyalty. And no doubt can be entertained, but they of our day will prove themselves worthy of their ancient honours, by cheerfully complying with the good of their country. What reward have they? The reward of all honest men, the praise of their country, and the consciousness of having done it service. That honest influence, which follows property, family, and personal worth, in public esteem. What other can they desire? Perhaps you may think it just to add, the eligibility to Parliament of the eldest sons of Peers, a privilege of which they seem to have been deprived in Scotland, by the not ill-founded jealousy of the Commons.

6th, And

6th, And least, The diminution of the individual importance of the lesser Barons. This will be found to be in so small a degree, as not to be sensibly felt by gentlemen of property, who, relieved by this new operation from that oppression they have for many years laboured under, will, by the admission of their smaller neighbours and friends to the roll of freeholders, clear it of those they reluctantly admit and wish to exclude; get rid of the grievance; and gaining on one hand more than they lose on the other, will find their account in it, as splitting of valuation will thereby be abolished in Scotland.

Si quid novisti rectius istis, candidus imperti, si non, his utere

With,

Gentlemen,

Your most Obedient,

Devoted, and Faithful Servant,

AN HERITOR.

30th JUNE, }
1792.

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[The text in this block is extremely faint and illegible, appearing as a series of light gray smudges and noise on a white background. It is contained within a rectangular frame.]