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LETTER,

&c. &c. &c.

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LETTER

ON THE

CONTINUATION

OF

IMPEACHMENTS

AFTER A

DISSOLUTION

OF

PARLIAMENT.

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M.DCC.XCI.

LETTER, &c.

DEAR SIR,

IN converſation the other day on the continuation of Mr. H——'s Impeachment in a new Parliament, I happened to remark, that the lawyers in the Houſe of Commons ſeemed to make a worſe figure in a late debate on that queſtion even than they uſually do on conſtitutional points. You then mentioned a Pamphlet written by one of their Body* as having given general ſatisfaction on

* "An Examination of Precedents and Principles, from which it clearly appears, that an Impeachment determines by a Diſſolution of Parliament. By a Barriſter."

the ſubject.—I return you that Pamphlet which you were ſo good to lend me, accompanied with a few obſervations upon it.

The Author begins by endeavouring to prove with great gravity, that proceedings in Impeachments ought to be carried on according to the Law of Impeachments, and ſeems to pique himſelf upon this diſcovery.

He then proceeds to ſhew (and that is not quite ſo eaſy) what the Law of Impeachments is.

The only part of the law of the land on which proceedings in Impeachments can depend, is confeſſedly the Law of Parliament; and the Law of Parliament being founded chiefly on ancient uſage and precedent, he very properly produces

duces all the caſes in any way relevant to the abatement or continuation of Impeachments; and the reſult is, that this Writer (though he afterwards endeavours to make a caſe), is himſelf obliged to allow, that no *material caſe* could be diſcovered after forty years ſerious attention. In fact, theſe caſes and precedents are ſo contradictory and inconcluſive, that no ſeries of precedents, nor even one ſtrong-directing precedent can be drawn from them. Such however as they are, they clearly tend to favour the continuance of all Proceſſes in the Lords after a Diſſolution. Writs of Error are fully determined to continue over to the next Parliament, and this goes a great way to eſtabliſh *the principle*. On the 19th of March 1678,

the Houſe reſolved (as it ſhould ſeem unanimouſly) " That the Diſſolution of " the laſt Parliament doth not alter the " ſtate of the Impeachment brought up " by the Commons in that Parliament."

On the 22d of March, 1685, this order was reverſed upon a diviſion and a proteſt. Notwithſtanding which, in 1690, the Earl of Peterborough was kept priſoner in the Tower after a Diſſolution had intervened; and was bailed at the bar of the Houſe upon the opinion of the Judges (not that the proceedings had abated by the Diſſolution), but that he came within the general act of pardon, which he pleaded accordingly.

This Author not finding precedents much to his purpoſe, is reduced to endeavour " *to fortify precedents by principles*;" and

and his chief argument is undoubtedly a very curious one.—Anciently at common law all actions abated by the demiſe of the King; but this being found injurious to public juſtice, even in caſe of that rare event, was remedied by 1 Ed. VI. c. 7. where it is enacted, that no proceſs ſhall be diſcontinued by the grant of a new commiſſion; therefore, ſays the learned gentleman, that rule of proceeding which was found ſo inconvenient in the common law as to call for the remedy of a ſtatute, ought by all means to be adopted in Impeachments (where no ſuch rule has ever been eſtabliſhed), becauſe this rule is analogous to a law which it has long ſince been found neceſſary to abrogate!

He would then endeavour to perſuade us,

us, that the two Houſes of Parliament are *Commiſſioners*, deriving their ſole authority under the *King's commiſſion*; and obſerves, that the power which *creates* can at any time deſtroy. What can he mean by this jeſuitical ſophiſtry? Would not one ſuppoſe that the King could take away as well as *create* peerages! Does he not know, that the King is obliged by law to call a Parliament within a determined time, and to ſummon to it every Peer of the realm? And that he does not *create*, but aſſemble the two Houſes? In another place he has recourſe to the poor expedient of arguing to *generals* from extreme caſes, which may be pleaded as exceptions, but can never be ſtated as examples. He ſuppoſes the Houſe of Lords

Lords meeting after a Diſſolution to conſiſt wholly of new perſons, becauſe a plague or an earthquake are phyſically poſſible. Is this ſatisfactory? Is it even ingenious?

What does he mean by attemping to invalidate the authority of a Parliament becauſe it was contended in the Houſe of Commons that the King had no power to pardon a perſon impeached; and that Biſhops could not vote in capital caſes? Would not one ſuppoſe that theſe were illegal and unconſtitutional doctrines? Could any perſon unacquainted with the fact poſſibly conceive, that the law has been declared to be (12 & 13 W. III. c. ii.) that no pardon under the great ſeal ſhall be pleaded to an Impeachment by the Commons

mons of Great Britain in Parliament? and that it is an acknowledged fact that Biſhops in no inſtance have ever *ſhown their mitred fronts* on trials for capital offences, or *even upon impeachments* or indictments in full Parliament*.

No, Sir; ſo far from ſhaking my opinion on the abatement of the preſent Impeachment, this Pamphlet has tended much to confirm it. I thought the caſe againſt it a very ſtrong one, but till now I was not aware of all the weakneſs of the oppoſite opinion.

This Writer ſays that where precedents are not ſufficient they muſt be fortified by recurring to principles. I ſhould rather have conſidered precedents, which may be variable and con-

* Blackſtone's Comment. B. IV. C. 19. 2.

tradictory,

tradictory, as ſubordinate to principles, which are fixed and unalterable. For principles derive from the nature of the object to be operated according to the rules of reaſon and ſenſe; and not from feeble analogies or quaint technical opinions. Of the nature and object of Impeachments, he has wholly neglected to enquire; though this is in fact the only enquiry which could lead to any principle at all.

He allows, that an Impeachment is a proceeding *ſui generis*; in many great points diſſimilar and unanalogous to every other kind of criminal procedure. But inſtead of deſcribing this peculiar *genus*, he runs off upon an expreſſion of Lord C. J. Hale, and contents himſelf with ſhewing, that the title of the *ſolemn*

Grand Inqueſt of the nation does not very accurately expreſs the functions of the Houſe of Commons when they impeach.

Impeachment is a right retained and aſſerted by the repreſentatives of the people to arraign in the higheſt court of judicature public delinquents, whoſe crimes and miſdemeanors are either not cognizable by the laws, or their perſons covered by the pardon and protection of the Crown. And here we are to obſerve this eſſential difference between Impeachments and every other criminal proceſs, that an Impeachment does not originate with the King; whereas every other criminal procedure ſtates the offence to have been committed againſt the King, his crown and dignity.

dignity. In all law proceedings the King is conſidered as the head and fountain of juſtice. In Impeachments he is not mentioned at all. This fundamental difference is alone ſufficient to preclude all analogy between proceedings derived from ſuch different ſources.

From this great leading circumſtance, the following conſequences may be drawn:

I. That Impeachments are confined to crimes and miſdemeanors of a *public nature*; by which the ſtate, the nation, the conſtitution are hurt or endangered; and their principle cannot be applied to crimes againſt the *executive power*; all which are or ought to be pro-

vided againſt by the common and ſtatute law.

II. That Impeachments, exiſting only in the two Houſes of Parliament, and ſubject to no ſuperior or external controul, muſt of neceſſity be directed and governed by ſuch reſolutions and orders (which in this caſe are laws) as the two Houſes ſhall think fit to conſtitute each for the regulation of its ſeparate part in the proceeding; and in framing theſe reſolutions they neither are or can be bound by any law but the general rules of wiſdom and equity.

III. That a new Parliament has therefore an undoubted right to conſider and determine whether an Impeachment proceeded upon in a former Parliament ſhall continue or abate, or be taken up *de novo*.

novo. To every one of theſe conſiderations their powers are aſſuredly competent; and their deliberation ſeems ſolely to be guided by the circumſtances of the caſe in queſtion before them, and not by what other Parliaments have thought fit to do at other times and under other circumſtances. This Author himſelf invalidates the precedent in Lord Danby's caſe from the violence of the times; and other precedents may be invalidated or diſregarded for other reaſons at the diſcretion of Parliament.

IV. That if Impeachments abated by a Diſſolution, the *efficacy* of Impeachment would be *ipſo facto* under the control of the Crown, and therefore in effect nugatory; but Impeachments have always made a part, and a valuable part of the con-

conſtitution; therefore Impeachments do not neceſſarily abate upon the diſſolution of Parliament.

V. That for the ſame reaſon, the King cannot pardon a perſon impeached. The 12 and 13 W. III. only *declare* what muſt upon the *principle* have always been the law; for, as has been before obſerved, the offence is ſtated not as committed againſt the King, but againſt the people.

Through the whole of this pamphlet, there appears an inclination to lower the dignity and conſequence of Parliament, and to exalt and magnify the prerogative of the Crown. For what other purpoſes are we told that the Houſe of Commons were no more than *humble petitioners* to the King and the Lords? or that the Parliament are no more than *Commiſſioners*, deriving

deriving all their power from *the King's Commiſſion?* &c. &c.

This I am ſorry for; not becauſe I think this pamphlet likely to give any force to ſuch doctrines, but becauſe I underſtood from you that the Author is employed in a great ſeminary, to inſtruct youth in the principles of our laws and conſtitution.

This Writer conſiders it as a *monſtrous doctrine* to aſſert that the proceedings in an Impeachment are not bound by the ſame rules of evidence which govern the inferior Courts; but if, as he allows, the whole proceſs of an Impeachment is *ſui generis*, diſſimilar and unanalogous to every other kind of criminal procedure, why may not the rules of evidence differ alſo? The rules of evidence in the civil law

law differ from thoſe of the common law; they differ in the Court of Chancery and the Court of King's Bench. In Impeachments they ought to be founded on principles the moſt likely to inveſtigate the truth; to aſcertain the innocence or guilt of the culprit; there is no reaſon that they ſhould be rigidly the ſame which have been adopted in any of the Courts of the King's Commiſſion, which have no connection, or any thing in common, with the proceeding upon Impeachment.

He has cautiouſly avoided drawing any argument from the great importance it may frequently be of to the well-being or ſafety of the nation that an Impeachment ſhould be able to proceed to effect. The happineſs of millions may be at ſtake;

ſtake; but of this lawyers think little, provided their *craft* is not in danger.

I could not read without ſmiling this gentleman's conciliatory aſſurances that he has received no fee from the delinquent whoſe cauſe he acknowledges to plead. Perhaps he has never heard how, a few years ago, a great ſuſpected character rewarded the ſpontaneous exertions of a moſt able advocate. Eminent ſervices, in critical circumſtances, are not likely to remain unpaid. If this learned gentleman could eſtabliſh his doctrine, that Impeachments are carried on under the *King's Commiſſion*, which *Commiſſion* the King can *revoke* or *vacate* whenever he pleaſes, and that the delinquent may afterwards plead *autrefois convict* to any renewal of the proceſs, he

would have completely drawn the ſting of this formidable enemy to oppreſſion and peculation.

I have troubled you with theſe obſervations, becauſe you ſeemed to ſay that this pamphlet was conſidered by the Public; which I ſhould not much wonder at, from a kind of technical gravity about it, under the cloak of which lawyers or phyſicians may ſmuggle any nonſenſe upon the people.

I am, Sir, &c.

F I N I S.

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