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A
FREE DISQUISITION
CONCERNING THE
LAW of ENTAILS
IN
SCOTLAND.

Occasioned by some late Proposals for
amending that Law.

*The Laws of God; as well as of the Land
Abhor, a perpetuity should stand.*

Pope's Imit. of Hor.

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A
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FREE DISQUISITION

CONCERNING THE

Law of Entails in *Scotland*.

THE alteration lately proposed in the Law of Entails in *Scotland*, having engaged the attention of many people, a conversation arose accidentally upon that subject, among three Gentlemen intimate friends. Who they were, or what interest they had in Entails, is not material. The first was a favourer of Entails. The second who was of the profession of the law, and the third a considerable merchant, were of a contrary opinion. One of the company thought the substance of the debate worth being committed to writing. Their discourse arose, and was carried on in the following manner.

Mr *A*. Were you present, my good friend, at the meeting of the faculty of

A

Advocates

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Advocates in autumn last, when the subject of Entails was under their consideration?

Mr B. I was present at that meeting.

Mr A. We have had different accounts of what passed there; will you be so obliging as to let us know what were the resolutions of that learned body?

Mr B. They have proposed some heads of a Bill for regulating Entails.

Mr A. Then they were not for destroying them altogether.

Mr B. No; they were for allowing every man to nominate what series of heirs he may think fit; but they were against limiting any of the heirs, other than those existing at the time of making the Entail, from alienating for a valuable consideration, or from charging with debt.

Mr C. That is in effect destroying perpetuities, by allowing no man to entail further than he sees.

Mr B. It is really so.

Mr A. Were they unanimous in that matter?

Mr B. Very near. Some few objected. I think, of those that were present when it was voted, there were 43 for abolishing perpetuities,

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perpetuities, to 4 who were for continuing them*.

Mr C. What did they propose to do with Entails already made under the authority of the present Law?

Mr B. To let them stand as they are during the lives of the present possessors, and of all the substitutes now alive; so that none can complain that any injury is proposed to be done them.

Mr A. Pray inform us, what interest your faculty has in this matter; were ye afraid that the practisers of the Law would suffer, should Entails become more general? Are all the questions settled?

Mr B. We have little reason to object to them on that account: for, not to mention that oft-times unskilful conveyancers are intrusted with the framing of Entails, I may observe, that tho' the ingenuity of the ablest Lawyers has been employed, for above a century, in settling the doctrine of Entails, yet we have proportionably as many questions upon the import of them, as upon that of other settlements. We have questions upon their effects as to debts and incumbrances, which cannot

not

* See the minutes of the faculty, dated 4th August 1764.

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not occur in other settlements. The expence too in the making up the titles of heirs of Entail, generally exceeds the expence of other methods of transmission from ancestor to heir. Then, tradesmen and others, who dare not venture to give long credit to possessors of entailed estates, bring many suits and sequestrations against them, which would not otherwise have been brought. There are also great sums often expended in applications to Parliament, for relief against the restrictions of Entails in certain cases. These are all articles of much gain to the business of the Law; and, in my opinion, do greatly exceed that which might arise by sales, mortgages, and the consequential suits upon the same lands, were they not entailed. So that upon the whole, the practisers of the Law are rather obliged to Entails than otherwise.

Mr *A.* If your interest then, as Lawyers, is not concerned, what business have the faculty with the making or amending of Laws? Would it not be as proper to leave that to Parliament; or, as this matter regards the landed interest, should it not take its rise rather from the Gentlemen of land-estates?

Mr

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Mr *B.* The Lawyers do not pretend to dictate in this matter. I understand, that all the subjects of this kingdom have a right to propose or suggest the making of a Law, whether they have any particular interest in it or not; or if land gives any right, we are also not without some share of land among us. I apprehend besides, my friend the Merchant here, will not allow that the landed interest alone is concerned in this matter.

Mr *C.* I think our body, the merchants, are as much concerned as the landed interest, if not more. 'Tis a matter of so much importance, that every class of men seem to me deeply interested in it.

Mr *B.* But be easy upon this score; we do not, as Lawyers, propose to make any application to Parliament; we have no such intention; but as the Entails in this part of the kingdom, for many years past, have been very generally considered as detrimental both to public and private interest, and that too by men of the greatest eminence, we thought it not only a thing praise-worthy, but also, that it might even be expected from our body, to obviate, as much as possible, objections arising upon matters of Law, by drawing up, and making public, such heads for a new act,

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act, as to us seemed the most proper for that purpose, leaving others to judge of them, and to apply to Parliament or not, as they shall think fit. Would you have me say more in our defence? We have the example of our brethren of the Law in *England*: Among them, the abolishing of perpetuities took its rise, for they first devised the method of breaking Entails by *recovery*.

Mr C. I observe, a Lawyer is never without a precedent; but I wish, Gentlemen, you would leave preliminaries, and let me hear something upon the question itself. 'Tis a very important one, and I perceive you are of contrary opinions.

Mr A. I have no objection.

Mr B. But I have; for I am not at all a match for my friend here, in political questions.

Mr C. But you must comply with us.

Mr B. So far as the matter is connected with Law, I am ready to answer any questions, and even to give you my reasons against Entails; but my friend must begin with his reasons for them.

Mr A. No, I am in possession, as you Lawyers say: It lies on you first to give the reasons, why a law now in force should

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should be altered. I hold my right. Do you try to turn me out of it; and begin with informing us what are your objections to the Entails now allowed by Law.

Mr B. By the word *Entail*, in general, we mean every substitution of heirs, other than those that would succeed *ab intestato*. But the Entail I disapprove of, is, that which creates a perpetuity of succession, or at least intends to create such a perpetuity, disabling the several heirs from alienating, for an adequate price, the lands entailed, or from charging them with any debt or incumbrance whatever. These Entails are authorized by the Act of the Parliament of *Scotland*, in the year 1685, and they reduce the several heirs of Entail to the state of mere *tenants for life*. My friend talked just now of a right: Does he think, that, upon the principles of reason, any man has a right to make such an Entail?

Mr A. I do, most certainly. I think it is founded in the nature of property, that a man may do with his own what he pleases. It was a principle of the *Roman Law*, that every man was *rei sue moderator et arbiter*. The *libera testamenti factio* was a favourite of that Law; and I have heard that

that their substitutions and *fidei-commissa*, or trusts, were no other than Entails, and could be so settled as exactly to resemble those perpetuities which your learned body have fallen out with.

Mr B. You do well to appeal to the *Roman Law*, from which, as from a pure source of right reason, the principles of all Law are best derived. But first let me ask, Do you think one's right of property can remain in a person after he ceases to exist?

Mr A. No, surely; for after a man is dead, he can have no right or interest in any thing whatever.

Mr B. Do you think then, that any man can be *moderator et arbiter*, can give away or dispose of any thing after it ceases to be his?

Mr A. This I admit follows of course: He cannot.

Mr B. By what rule then of natural reason, can any man give away a thing, the gift not to take place till after he has no more right or property in the thing given?

Mr A. This, if allowed, would prove too much; for it would prove, that the power of making a testament is not founded

founded in the nature of property, but is the mere effect of positive law.

Mr B. That is just what I mean*, and was clearly the principle of the *Roman Law*. By the Laws of the XII Tables, the succession was given to the nearest Agnat; and tho' the Decemvirs enacted *pater familias uti legasset super familia, pecunie, tutelave sue rei, ita jus esto*, yet how was that Testament made? It was made in the *Comitia calata*, the assembly of the people; it was considered as a Law made by the people. The Testator's own deed was not considered as of force to give away what was held not to be his, without the consent and deed of the whole people. The same principle appears also from the other ancient method practised among the *Romans*, namely the *testamentum per as et libram*, which was no other than an imaginary sale, that it might seem to be an act *inter vivos*. More simple forms were afterwards admitted; yet these which I have described, serve to show the original principle of the *Roman Law*; and that the right of making a testament was not inherent in the property, but the

B mere

* See Considerations on the Law of forfeiture, where this doctrine is fully established, page 13. et seq.

mere effect of a positive Law; a Law indeed, which was well calculated for promoting the benefit of civil society.

Mr *A.* In what respects?

Mr *B.* In very obvious ones: The indulgence of natural affection and of friendship, which are the first bonds of civil society; and the encouragement of industry, which is the support of it.

But it was a fixed maxim, that the heir named should be a person *certain*; and *qui morienti eo de cujus hereditate queritur in rerum natura fuit**, who was alive, and in existence, at the death of the testator. Perpetuities are inconsistent with these maxims. What predilection for those we don't know; *ignoti nulla cupido*. Motives for preferring such, must be too weak or too whimsical, to be the object of Law. It cannot even be maintained, that the right of children is the chief source of legal descent. For, were it so, it would follow, that the parent ought to have no power of alienating in any manner; and, in most Laws known to us, *aliens*, how ever allied by blood, are not allowed to succeed. To a right arising from
nature,

* L. 6. ff. de suis et legit. hered. L. 1. ff. § 8. unde cogn.

nature, or from our ideas of property, perpetuities have no pretensions; and it will lie upon you to show, for what good ends of society they may be permitted.

Mr *A.* That will not be difficult; but you take no notice of the *fideicommissum*.

Mr *B.* For a very good reason: When we go to the *Roman* Law for principles, we must go to it when it was the Law of *Romans*, not the decrees of an absolute Prince. Before the time of *Augustus*, the *fideicommissum* was literally what the words import, *quod nullo juris vinculo continebatur, sed pudori cujusque relinquebatur*.* It implied no other compulsion but that of honour, and was originally introduced for the sake of such heirs, who were disqualified to take directly. But *Augustus* first ordered the Consuls to interpose their authority to these trusts; and afterwards two *senatus-consulta*, the *Trebellianum* and *Pegasianum* made them actionable, giving the trustee a right to retain a fourth share to himself. In process of time, provisions were grafted upon them *ne hereditas exeat familia*; and by a series of trusts, they were made something like perpetuities; but still they were very different from ours: They did not
prevent

* Cic. de fin. Quinct. decl.

prevent provisions* for children, or marriage settlements; and they were in general limited not to go beyond the fourth generation †. This limitation of perpetuities is imitated in *Holland* and *Frizeland*: But, in *Brabant* and other places of the *Spanish Netherlands*, they do not go beyond the third generation ‡.

If we consider the feudal Law, nothing will appear more contrary to its original principles than an Entail. 'Tis well known, that feus were at first granted during the pleasure of the Lord or superior: They were next given for life; and even, when succession in feus was admitted, it was not at first extended beyond the son of the vassal ||: It did not descend to grand-children, or to brothers. The vassal had no power to give the feu to his heirs general, far less to make an Entail; and *Craig* informs us, *imo in ipso jure feudali, si verba spectemus, nisi quod feudum dicatur masculinum et femininum,*
quid

* Nov. 39, cap. 1. *Ea enim, quæ communiter omnibus profunt, iis quæ specialiter quibusdam utilia sunt, præponimus.*

† Nov. 159.

‡ *Mathæus de succession.* *Wissenbachius ad pand.* vol. 2. disp. 2. *Edict. perpet.* 1611. *Stockman's decis.* 32.

|| *Craig, lib. 1. tit. 4.*

quid feudum talliatum, quid ipsa tallia, non reperitur.*

The Law of *England* is as little favourable to Entails. By that Law all the lands were originally fee-simple till the 13th of *Edward* the 1st, when the Statute *de donis* was made, allowing the donor to annex a clause *de non alienando*. It is commonly thought that this Statute was planned by the Barons of those days. They found, that when their great estates were forfeited for treason, and fell into the King's hands, he divided the lands into small parts, and gave them in gift; and thereby broke the power of the great Lords. This Statute, they conceived, would not only support their power by preventing alienation, but would also constructively prevent the forfeiture of their estates, upon this maxim, that what is not alienable may not be forfeited. As this Statute was a favourite with these Lords, it was not an easy matter, in the days of their power, to attempt in Parliament an alteration of it; but in the time of *Edward* the 4th, the Lawyers invented the method of breaking Entails by a form called *recovery*, which is a judgment

* *Craig, lib. 2. tit. 16.*

judgment in a feigned suit. The judges favoured the device: And in *Henry* the 7th's time, an express Act of Parliament was made, which allowed a *fine*, with *proclamations*, to be a bar to the issue in tail, and so repealed that clause in the Statute *de donis, quod finis ipso jure sit nullus*. This *fine* is a final agreement or transaction made *coram judice*, in a cause depending in Court, and bars the issue in tail. By other Acts in the time of *Henry* the 8th, estates entailed are expressly made liable to forfeiture for treason*, and tenants in tail are allowed to make leases good against their heirs for 21 years, or three lives. So that the footing Entails now stand upon in *England* is, that they may be made binding and effectual as far as the granter sees, that is, so far as the heirs called, exist and are in being at the time of making the Entail; and though these heirs cannot alienate or charge the estate with debt, yet they may let leases for the time I have mentioned, and they may forfeit for treason. The *English* having thus, after a long struggle, emancipated their lands from the fetters of perpetuities, we took them upon us.

The

* 26th and 32d, *Hen. VIII.*

The irritant and resolute clauses, which annul the deed of contravention, and forfeit the contraveener's right, seem first to have been made use of in Sir *Thomas Hope's* time, and the Act of 1685 riveted the chain.

Lord *Stair*, in his Institutes of our Law, says, the first time these clauses came to be debated with us, was in the case of *Stormont* in 1662*, in which they were sustained, tho' with great difficulty, the Court being near equally divided†; and he gives his own opinion, that they are *against the common course of Law, and therefore are odious, &c.* ‡.

From this general account of the Laws of other countries and of our own, it is very evident, that Entails are not original to any of them, and can as little derive right from them as from the principles of reason, or the nature of property. You must therefore betake yourself to utility and expediency. Were perpetuities to take place, and become general, the rule you set out with, that *unusquisque est rei suæ moderator et arbiter*, may

* See Historical Law-tracts, vol. 1. p. 183. *et seq.*

† Lib. 2. tit. 3. § 58.

‡ Lib. 4. tit. 18. § 6. and 7.

may be blotted from our Law-books; for Entails in perpetuity, leave neither power nor disposal of property to any man.

Mr C. I am glad you are come to this part of the argument, for I am tired of your discussions upon subtilties of Law. I want to hear of the utility and expediency of Entails. How do they affect public liberty? How commerce? How the interest and convenience of families and of individuals? Perhaps I may put in a word myself upon the subject of commerce.

Mr A. I maintain Entails to be beneficial in all these lights; I still also insist upon the point of right; for surely every man has a right to do that which is beneficial to society. And first of all, I must distinguish between an *Entail* and the *restraints* of an Entail, which merit very different considerations. An Entail is an establishment of a series of heirs, and it is erroneous to call this a *perpetuity*, for it ends as soon as the series of heirs is at an end, and the lands again become fee-simple. The restraints of an Entail are the conditions of it, and may be reasonable or unreasonable; for instance, the conditions

conditions restraining an heir from giving a jointure to his wife, or from granting leases, and the like, are unreasonable: and in many cases, the Legislature, upon application by private bills, has given relief against these most unreasonable restraints. Every body will admit this, and that Entails ought to be so far reformed, and such conditions prohibited by law. But that is no reason for destroying Entails altogether.

Mr B. Here I must be so unmannerly as to interrupt you. In the very outset, you lay down your premises so as to elude the argument. Were it another than you, I should call this a piece of art, very common with us; when we have a weak cause, we defend what is not attacked, and we state distinctions without a difference. Entails, in a general sense of the word, that is, settlements of succession, are not the present subject of debate: The Gentlemen of the Law do not propose that Entails should be prohibited altogether; but only, that no Entail shall be made to bind any of the heirs from selling the lands, or contracting debt, except those whom the donor sees. What they propose to abolish, are *Entails*

tails of perpetuity, which I maintain are properly so called. They are certainly such in intention as well as possibility. What we find fault with, is the taking of land out of commerce for ever, by means of those irritant and resolute clauses; the first of which annuls the deed of contravention, and the second forfeits the contraveener's right. If you give up these, we need have no more dispute. Between such Entails of perpetuity, and the restraints in them from alienating or charging with debt, I cannot distinguish. These clauses are the very essence of our *Scottish* Entails, the very thing which makes what I call a perpetuity. In talking of our Entails, if I wanted to be understood by an *English* Lawyer, I should always make use of the word *perpetuity*; and in place of *heir of Entail*, which improperly enough we apply to denote the person in possession, as well as the expectant, I should always substitute the words *tenant for life*. For the owner of an entailed estate with us, in my apprehension, is much more similar to the *English* tenant for life, than to their tenant in tail. But we understand best our own law-terms; and therefore, I shall

shall proceed to observe, that I am very well pleased you give up Entails, so far as to say, that they ought not to be allowed to prevent leases, jointures to wives, or provisions to younger children. But is not this passing from the first favourite maxim you set out with, the *libera testamenti factio*, the inherent right that every man has to dispose of his property, under such conditions as he shall think proper?

I shall make another observation on this your concession, which is at least an *argumentum ad hominem*. If you allow jointures and portions to children to be laid upon Entails, these very burdens must, in time, eat them out altogether; for no man, tied to the stake of an Entail, cares to improve, or to add to the entailed subjects. He is, on the contrary, anxious to keep up all debts, and, so far as he has power, to add to them. This very regulation you propose, is in the end destructive of your own system of perpetuity.

But leaving that, I must next observe upon what you say of the relief granted in particular cases by Parliament. 'Tis true, that, in a very few particular cases, Parliament has granted relief as to the making of
leases,

leases, and the providing reasonable portions for younger children ; but in a very late instance, even that was refused. A Gentleman, in possession of a large entailed estate, upon the death of his sons, applied to Parliament, for liberty to provide a sum less than two years rent of the estate for his daughter or daughters, and also to make reasonable leases. There were about 30 substitutes in the Entail, then alive, scattered in different places of *Britain*, and some of them abroad. He took the pains to solicit, and he obtained deeds of consent from all of them, which cost him much time, trouble, and expence. His bill was referred to the Judges ; and altho' the allegations therein were proved, and the inconveniencies of the Entail appeared to be very great, yet they reported, that as the bill was a direct contravention of the deed of Entail made by the donor of the estate, it was their opinion, That it ought not to pass into a law ; upon which his bill was rejected. This was a hard case. No demand could be more reasonable than this Gentleman's, more especially as I am well assured, he had laid out, upon improvement of the estate, greater sums than what he wanted to charge it with.

This

This instance gives me reason to conclude, that whatever may have been done upon any former occasion, it seems now to be the sense of Parliament, that, for the future, no family-relief should be granted upon application in any particular cases. And tho' this instance was hard upon one Gentleman, after having been at so great an expence, yet it was happy for this part of the kingdom in general ; for had there been a few more precedents of such relief, they might have established a sort of law, which would have had a general bad tendency in two respects ; 1st, the putting the heirs in possession to a certain and very great expence, in order to obtain relief under the forms of Parliament. 2^{dly}, It would be a heavy tax upon the landed interest in *Scotland*, and would rather tend to enlarge the practice of entailing.

'Tis the consideration of some of these things, doubtless, which makes you, and the other partizans of Entails, so ready to yield, that the restraints in them need some rectification by a public Law ; but shall I not call this concession a piece of art, which, by endeavouring to soften and bring down Entails as low as possible,

would

would avoid many weighty arguments, which you foresee lie against them in their present state, on the topics of improvement of land, the injustice of not providing younger children, and of being disabled to make marriage-settlements? There is, however, enough behind, and it will lie upon you to shew the good policy of taking land out of commerce, in all other respects, by preventing the heirs, to the most remote generations, from alienating or charging with debts.

Mr *A.* I shall not dispute about words with you. We understand one another very well. And first of all, I am to maintain, that Entails are a great security to public liberty. I believe it will be admitted, that men of ancient and respectable families are the best bulwark of the constitution. The imitation of our forefathers, the desire of continuing and delivering that liberty which we have received from them to our posterity, are natural and noble incentives. These are the passions to which orators apply in the cause of liberty. These are the men to whom the common people look upon times of danger. It has been the politic of tyrants in all ages,

ages, to destroy men of noble families; that nothing might stand in their way to extinguish liberty. The families of *Britain* have constantly defended the *British* constitution; and the only time it was ever destroyed, was by a set of men who wished to bring all mankind down to the mean level with most of themselves. It is a curious fact, with regard to *Cromwell*, that the same person, who got the House of Lords voted to be no necessary part of the constitution, got a Committee named to destroy the Entails of *England*, even limited in their duration as they are. The Eastern Empires have, almost, in all ages, been both easily enslaved and easily conquered. *Turky*, for want of families, is the only compleat despotism in *Europe*. Mercantile considerations enter often too much into the scale of political consideration. Traders and artizans have their province, which is trade and industry. They ought to be encouraged, but let them be kept to their province. Their ideas and sentiments are perfectly opposite to that of the gentry. Both classes of men deserve to be encouraged; they are useful to the State, but in different ways. Men of rank

rank and family are the barrier of liberty against all invaders.

Mr B. What connection has all this with Entails?

Mr A. A very plain one: Ancient families are only to be kept up by Entails. Destroy Entails, or let them die out, "ancient families would immediately sink, and, together with them, all those honourable ideas which attend respect for family." This position is argued at large, and maintained in a late publication, which no doubt you have seen, and which, upon this head, I think unanswerable. I mean the *considerations upon the policy of Entails*.

Mr B. Perpetuities have many able Advocates, and warm partizans. They must not however take it amiss, that they have not been able to convince me. They also differ in opinion from very great authorities. I will not at present undertake a particular answer to any of these Gentlemen; but I shall very freely give you my sentiments upon any arguments which you shall advance. What you have said upon the topic of families is very plausible; and, in my opinion, wears the best appearance of any argument upon your side of the question;

question; for which reason, you did well to begin with it. I dare say, it is this opinion, of making or continuing a family, that is the chief, if not the only motive with most men for entailing their estates. Motives for public good, or for the preservation of liberty, do seldom, in my opinion, enter into their consideration; we shall, however, view it in every light. And first of all, I must agree with you in thinking, that the notion of family is upon the side of liberty, and a near ally to the love of one's country; but I cannot admit that that notion is favoured by Entails: I rather think the contrary.

Mr A. By what, is it possible to preserve a family without them?

Mr B. By fame and reputation! The Romans, while the spirit of freedom remained, had the idea of family, the desire of preserving the paternal estate, stronger perhaps than any other nation in the world ever had. As connected with the idea of family, it was reckoned a disgrace among them, to sell a paternal inheritance. No doubt you will remember a passage preserved by Cicero, from a speech of Lucius Crassus, in defence of
D Plancus,

*Plancus**. He was answering *Marcus Brutus*, the accuser, a profligate man, who had spent all his fortune, and who, in the trial, had made a personal attack upon him. He quoted three books, which *Brutus's* father had wrote upon the civil Law. The first began, *Fortē evenit ut in Privernati essemus*. The second, *In Albano eram ego et Marcus filius*. The third, *In Tiburti forte assedimus ego et Marcus filius*. Then turning to the accuser, Where, says he, are those three estates? *Ubi sunt ii fundi, Brute, quos tibi pater publicis commentariis consignatos reliquit?* It happened by accident, that while he was speaking, the funeral of *Junia*, an old woman related to *Brutus*, passed through the forum with all the statues of the family, as was the custom, in the procession. The Orator laid hold of the incident; and again suddenly adressing *Brutus*, cried out, *Brute, quid sedes? quid illam animum patri nunciare vis tuo? quid illis omnibus, quorum imagines duci vides? quid majoribus tuis? quid L. Bruto qui hunc populum dominatu regio liberavit? quid te facere? cui rei, cui gloria, cui virtuti studere? patrimonione augendo? at id non est nobilitatis. Sed fac esse, nihil superest: libidines totum dissipaverunt,*

* De orat. lib. 2do.

sipaverunt, &c. And again, *Tu illam mortuam, tu imagines ipsas non perhorrescis? quibus non modo imitandis, sed ne collocandis quidem tibi ullum locum reliquisti.* I ask pardon for so long a quotation.

Mr *A.* This instance is of my side. Had these estates been entailed, *Craſſus* would not have had an opportunity of reproaching *Brutus* with the sale of them.

Mr *B.* And if they had been entailed, where would have been the merit of his having preserved them? Would his merit have been more than that of the *Servi*, the *Glebae Ascriptitii*, who had lived upon them from father to son, perhaps for centuries? Can there, think you, be any merit in doing what one is compelled to do, or in leaving undone what we have no power to do? When we hear that a family has subsisted for some time in a place, a presumption immediately arises, that some of the ancestors of that family have been remarkable and meritorious; and that the memory of their virtue has descended to their posterity, and induced them to preserve with frugality what belonged to their honourable progenitors. But the moment you make this a matter of necessity, you destroy altogether

ther the idea of merit, and reduce the heirs of Entail to the same foundations of respect, that might be due to the *Ascriptitii Glebae*, among the *Romans*; or among us in *Scotland*, to a like species of hereditary slaves, who live under ground in our coal-mines.

Thus, by the example of that great nation, we see respect for family depends not upon Entails, which, if we consider their real nature, rather tend to weaken the foundation of that respect.

Observe next, the account which your author has given of the owners of entailed estates, "That most of them are in
" straitened circumstances; because, in
" these days of general extravagance, most
" of them live above their income. That
" ideas of superiority in most landed men,
" make excess and expence, even graceful
" in their eyes." Their strong desire of dissipating, is a principle assumed, and runs through the whole book. I would now candidly ask you, Sir, whether these are the men who ought to be solely intrusted with the defence of liberty? *Rich* and *poor*, are terms often misapplied. That man is rich, who can lay something up at the year's end, be his income ever so little,

little. That man is poor, who spends more than he has, be his income ever so great. These are certain truths in a moral light: They are no less such in a political one. The men who spend more than they have, are poor, and must be dependent. Are these the men of the birth and indigence, which (as the *Considerations* have well expressed it) always "croud the anti-chambers of Ministers." Do they go there to be the barrier of liberty, or for some other reason? It is rather fit, that when men fall into straitened circumstances, they should have leave to dispose of their land to others, who are not in that situation. Which of these classes of men do you think will be most independent of Ministers? Which of them the best barrier of liberty? Add to this also, that the last have surely more to lose; they have a real property. The first have, at most, only a pension for life.

Mr *A*. You draw your argument from the account the *Considerations* give of owners of entailed estates, which will not always hold; but you ought to balance advantages against disadvantages. A man who has an annual pension, as you are pleased to call it, still has something; that man will be

be less dependent than one who has nothing at all. Consider, Sir, there is one class of owners of entailed estates, who, by their birth, in one part of the kingdom, are members; and in another, have a right to be chosen members of the Upper House of Parliament. You can see the consequence, I suppose, of a Peer's being without any estate to support his rank, and maintain his independence.

Mr. B. I wonder you have so long deferred this argument in favour of Entails, for preserving the estates of a Nobility, who are hereditary legislators. It is at first sight plausible, but upon examination, will not be found strong enough to make an exception from the general rule. In the Lower House of Parliament, every member must have a qualification of land to a certain value: This has not been thought necessary to be extended to the Upper House. With noble minds, ideas of family, a sense of honour, and the love of public liberty, have been thought sufficient motives, by frugality to preserve the means of independence.

Fabricii melius fortes! augere paternam

Rem prohibet virtus, attenuare, pudor.

Were it even otherwise, it would be a
less

less dangerous innovation upon our Laws and constitution to extend the principle of qualification, than to enlarge the distinction between the Nobility and Commons, by allowing the first to entail their lands, and the others not.

You brought in *Oliver Cromwell's* dislike to Entails, as connected with his getting the House of Lords voted to be no necessary part of the constitution; you might have added, So did he get the King voted to be no necessary part of the constitution. What connection have these things? Altho' *Oliver* was an usurper, and a tyrant, yet, during his usurpation, many excellent Laws were made, which were adopted, and re-enacted after the Restoration; but this has nothing to do in the argument. The principle I maintain is, That land, as well as all other property, should be free. When a man loses the notions of frugality, and of independence, when he becomes a prodigal in his mind, he should be allowed to dispose of his land. *Detur digniori.* It will soon find a master more worthy of it. Distrust and compulsion, instead of making men better, most frequently make them worse. There are no pro-
per

per restraints, from real ill, but what proceed from one's own reason and free choice. If you must have Entails, put them only on the mind.

Mr A. If that could be done!

Mr B. But let us now proceed to another consideration upon the same topic of public liberty. What quantity of the lands of *Scotland* do you think is now under Entail?

Mr A. The *Considerations* say, one fifth.

Mr B. Very intelligent men have told me, that, in their opinion, there is much more. But I have no *data* for making the calculation myself, so as to come at any certain conclusion. We can judge better of the progress of Entails. Between the year 1685, and this present year 1765, there have been put in the Register 485 Entails. I have not examined their dates; but I presume, many of the earliest of them, are those made soon after the Restoration; so that the whole number may be the produce of about a century. If a medium were to be taken by an equal division, this would allow 97 Entails for each period of 20 years. But that is not a proper method of calculation,

tion, for the number of Entails ought annually to decrease, in proportion as the quantity of free land is annually diminished by entailing: That seems undeniable. But what is the fact? Have they decreased in that manner? Quite the contrary. In the first 20 years after the act past, the number of Entails put in the Register, is 74. In these last 20 years, it is near double; being no less than 137. Take this along too, that the first 20 years of the Record ought to contain (for I have not examined the dates of the deeds) most of the old Entails, made long before the act passed. This clearly proves, that the fashion of making Entails grows more and more prevalent: Their progress increases, and their number multiplies. If you doubt these facts, look into our long Records, those Bills of Mortality of the lands of *Scotland*. We have reason therefore to fear, that if the practice of entailing do not receive some check, we may soon see our whole lands put into this sort of *mort-mains*. I mean not by this the smallest reflection against any of the Gentlemen whose names are upon this list, as if any consideration whatever could induce them to follow a practice
E. disadvantageous

disadvantageous to their country. Far otherwise! for they think with you, that they do right; and the present question is, whether their opinion be well or ill founded? The Gentlemen who chiefly entail, are the proprietors of great estates; and as fast as they acquire more land, they put it into the same situation. Others again, who have smaller fortunes, altho' they disapprove of Entails in general, yet they are led to follow the same measure, from a principle of self-defence. They foresee, that their posterity may be tempted for a high price, or influenced under circumstances, to sell their estates. They entail therefore, to prevent their ancient, tho' small inheritances, from being swallowed up, and sunk in the opulent estates of their neighbours. To stop this mischief of engrossing of land, I have heard a remedy proposed, which I acknowledge to be a desperate one, namely, to have an Act of Parliament, at once entailing in perpetuity the whole lands of *Scotland*, to the present possessors and their heirs. This would, at least, have the effect to prevent a great many small estates from being engrossed, and would in some sort, preserve from annihilation, that

that class of people, which I maintain to be the true strength, and real support of liberty; I mean the middling gentry, and the proprietors of small portions of land. But this remedy, as I said, is a desperate one, and only not quite so bad as the disease.

Mr *A.* That is a measure I should never be for adopting. But the principles you argue upon, would seem to lead to an *Agrarian Law*.

Mr *B.* An *Agrarian Law* is not the present question. In a well regulated government, there seems to be little need of such a Law. Leave property of every kind to itself, and it will always in due time divide itself. 'Tis your system that would land us in an *Agrarian Law* of a most absurd kind; for it would divide all the lands very unequally, preferring a few without regard to merit, in exclusion of all their fellow-subjects; you have computed one fifth of the lands of *Scotland*, to be entailed. To how many owners may these lands belong?

Mr *A.* The Considerations reckon about 300.

Mr *B.* I never calculated the number; but let us suppose it to be as you say, it must follow, that the 485 Entails above mentioned,

mentioned, (excepting such as have expired, which I believe are very few,) must be in the hands of 300 owners. Some of these are yearly adding more. If there shall be no stop, what may be the number of land-holders in the course of a very few years? This presents no very agreeable prospect. Besides, power always follows property. Would not the power of these few, these hereditary favourites, be dangerous to public liberty? Past experience proves the truth of what I am saying. In what situation was *England* during the Barons wars, when the lands were engrossed by the great Lords in that kingdom? In what situation was *Scotland* during the reigns of the *James's*, when our great Chieftains were like petty sovereigns, and hardly owned subjection to their King? Their vassals were their slaves, and their tenants were like their cattle; all bound to obey their commands, and submit to their yoke. A renewal of such times, is not desirable to those who have lived in days of liberty, and tasted the sweets of independence. *Henry* the 7th, that wise and politic Prince, by his Law above mentioned for the division of lands, cut the root of that unconstitutional

constitutional power by which the Barons had so much disturbed the peace of his kingdom: And, as this was his great object, he made many other Laws tending to work the same effect. Particularly he made laws against unlawful retainers; and much difficulty he had to carry his point, and get his Laws put in execution; for, when subjects are too powerful, even the Law is hardly strong enough to bind them. Lord *Bacon* relates a story of him which is very apposite to the present argument, “ That, being on a time
 “ entertained by the Earl of *Oxford*, his
 “ principal servant both for war and
 “ peace, nobly and sumptuously at his
 “ castle of *Henningham*; when the King
 “ was going away, the Earl’s servants
 “ stood (in a seemly manner) in their
 “ livery-coats, with cognizances, ranged
 “ on both sides, and made the King a
 “ lane. The King called the Earl to
 “ him, and said, My Lord, I have heard
 “ much of your hospitality, but I see it
 “ is greater than the speech; these hand-
 “ some Gentlemen and Yeomen, which
 “ I see on both sides of me, are sure
 “ your menial servants. The Earl finished, and said, May it please your
 “ Grace,

“ Grace, that were not for mine ease ;
 “ they are most of them my retainers ;
 “ they are come to do me service at such
 “ a time as this, and chiefly to see your
 “ Grace. The King started a little, and
 “ said, By my faith, my Lord, I thank
 “ you for your good cheer, but I may
 “ not endure to have my Laws broken
 “ in my fight. My Attorney must speak
 “ with you : And it is part of the story,
 “ that the Earl compounded for no less
 “ than 15000 merks.”

From this King's reign we may date
 the æra of *English* liberty, and of *English*
 riches: And shall we in *Scotland*, intituled
 by the Union to the same blessings, be
 deprived of them, by fixing upon our
 own necks a yoke from which the *Eng-*
lish have been so happily delivered?

Mr *A.* I do admit there is a political
 period of dissolving Entails ; and that is
 when the nation comes into the situa-
 tion which you have been describing,
 and from which they were delivered by
Henry the 7th.

Mr *B.* And, by admitting this, you
 make a concession from which you will not
 easily disentangle yourself. What would
 you say of a Physician who should en-
 courage

courage the growth of a disease, intending
 to cure it so soon as it should come to the
 extremity? It might grow then too strong
 for him, and death or dissolution in-
 terveen? I see a lion at the door, Mr
 Speaker, says *Silas Titus*, (in the debate
 upon the exclusion Bill,) Shall we shut
 him out ; or let him in, and then turn
 him out?

Mr *A.* But I do not see your lion.

Mr *B.* No more did the House of Com-
 mons see *Silas Titus's* lion, till he came in,
 and then they felt him most severely.
 But come, I will not take advantages.
 You shall retract the concession you made.

Mr *A.* Sir, I want none of your gene-
 rosity, I mean to argue fairly and with
 candour ; I do not apprehend any dan-
 ger, either from your lions or your bug-
 bears. The old Barons, those great men,
 had strong powers, other than those which
 arose merely from weight of property.
 They had the escheats of their vassals,
 the wardship of their heirs. The vassal
 was bound to attend the standard of his
 Lord in arms, and, according to his de-
 gree, to furnish a proportion of men and
 horses. These rights of feignory are
 now abolished in both parts of the king-
 dom,

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dom, and I do not propose a revival of them.

Mr B. I dare say you do not, but powerful Barons might. Give them once an unconstitutional sway, no body knows what old powers they may ask to be revived, or what new powers they may desire, or rather command to be given them? This leads me to consider the argument in a farther light, and to suggest to you a danger from the engrossing of lands, which may probably seem more striking in our present times, because more immediate than the apprehension of armed vassalage or warlike force. What I mean, is the influence of the possessors of great estates in the elections of our Commons. To say nothing of the many nominal and fictitious votes which any great proprietor in a county can create, without diminishing his own property, and which, I hope, the wisdom of the Legislature will one day take under consideration; what say you to the influence which an over-grown estate has over real votes? This influence in the hands of persons, such as you have described the Gentlemen of entailed estates, men of spirit, idle, living above their incomes, and by consequence

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consequence dependent, might prove dangerous to liberty and the constitution, whether these Gentlemen chuse to serve Ministers who gratify their demands, or to oppose Ministers who will not, or can not gratify their demands. Over-grown estates do surely give an unconstitutional influence to persons, who, by your own account of them, are not fit to be trusted. True it is, that by the noble system of Laws, which have passed since the year 1746, for abolishing heretable jurisdictions, ward-holdings and liferent-escheat, unconstitutional powers have received a great blow in *Scotland*. One of these very Laws* permits the superiors of entailed superiorities, to sell such superiorities to their vassals, notwithstanding the Entail. This the favourers of your side of the question, have proposed to alter. How do you think such an attempt will be relished, when we have already so strongly felt the benefit of that system of Laws? Shall we ever make any alteration upon them? Shall we ever willingly surrender any one clause of them, in contradiction to the very principle upon which they are all founded?

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* 20mo Geo. II. cap. 50.

Mr A. That relates to another thing. 'Tis to rectify some of the inconveniences of Entails, that it has been proposed to allow the owners of entailed lands to feu them, or let them out in feu-farm, with reservation of the rent paid at that time. If that is thought a proper amendment, it will be necessary to alter the clause which you mentioned, and to provide, that, altho' the superiority may be sold to the vassal, yet the rent or duty should be reserved to the original superior.

Mr B. 'Tis a very anomalous sort of right these Gentlemen of entailed estates would have, who should follow this system. You propose, that they should sell the land, reserving a rent-charge equal to the rent for the time being; you propose also, that they may sell the superiority to their vassal, so as to make that vassal hold of the Crown. Let me ask you, Of whom do you propose your tenant in tail should hold his rent-charge? Who is to be his superior, if he sells both the property and superiority?

Mr A. Lawyers must devise methods to obviate that difficulty; but I take it for granted, that owners of entailed lands would

would reserve both the superiority and the rent-charge, and would alienate the property only to be held of them by the purchaser, for payment of a feu-duty equal to the rent.

Mr B. I dare say this would be the common method; for the other would create a right altogether anomalous in our Law, and inextricable. Every man who holds lands, or any right in lands, must, by our Law, hold them of some superior. But, by your position, he would hold his rent-charge of nobody; this therefore would never answer. It is true, that, by the Act 14th Charles 1st, cap. 14. which declares,—That the superiority of the church-lands erected into temporal Lordships, and the whole casualties of such superiorities, (including the feu-duties,) should belong to the Crown, reserves at the same time to the Lords of erection, the possession of these feu-duties, till they should receive a compensation of ten years purchase for them.—But this was intended only as a temporary security, a pledge to these particular Lords, till the compensation should be paid them. The reversion was indeed afterwards discharged by another Act of

1707,

1707, *cap.* 11th, with the intention of allowing these Lords to transact with the feuars themselves. But neither of these Acts intended to introduce an allodial system, that might extend to all land-property, in subversion of our feudal system. This method therefore would never answer, without a total alteration of Law. Your plan then must be, that the owner of entailed lands who sells, must reserve the superiority as well as the rent; and it would be a consequence, that, if he should reserve a feu-duty equal to the rent, he would have nothing to sell, unless where the lands were at a very low rent, so that the purchaser might have room for improvement of the lands.

Mr *A.* And that is the only reason, which, in my opinion, can be given for allowing entailed lands to be sold at all.

Mr *B.* I perceive it is a favourite part of your plan, to allow the owners of entailed estates to let out the lands in feu, which you consider to be very beneficial in itself, and a full remedy for all the evils of perpetuities. For my share, I have observed, that the feuing of small portions of land, especially at a low rent, to tradesmen, manufacturers, and others, for erecting

erecting to themselves convenient habitations, has been attended with considerable advantages, both to the superior and to the vassals, and even to the Public, as it tends to encourage manufactures and increase the number of the people: But, from any observations I have made, I am of a very different opinion with regard to large portions let out in feu at the full rent, to people who are to live by cultivating the land itself. I could give instances to justify this observation. It is not, however, necessary, nor does it belong to this part of the argument. I shall only observe, that there seems to be no need for it; for, *first*, We all agree, that the owners of entailed estates shall have power to let leases, of a reasonable endurance, for the improvement of the land. But *secondly*, Admit feuing to be a system ever so advantageous; if Entails are put upon the footing whereon they stand in *England*, they will every now and then be at an end; the land will become fee-simple, and the owner may let it out in feu, or may, if he please, alien it altogether. Now, I have not the least objection to the granting of feus, when the grant is made by one who has the full ownership

ship of the lands, and can sell them. Such a person has no temptation to let out his lands in feu, for any reason other than the real benefit of his estate; but my objection lies against allowing the owner of an entailed estate to feu his lands. For, first of all, the chief reason which, in my apprehension, subsists for permitting any man to entail his estate at all, namely, the doubt of his heir's good sense and frugality, stands also against permitting such an heir to feu. When a man finds himself tied up from exercising every power but one, he has a strong bent to make use of that one, reason or none, merely for the sake of using all the liberty left to him. If he has a turn for profusion, the chief reason why the donor of the estate tied him up by the Entail, a very small sum will tempt him to feu his whole family-estate; and 'tis no harsh supposition to imagine, that an heir of such a temper, may, once in three or four generations, arise in every family; and by consequence, if any sort of Entails are permitted, and, at the same time, a liberty given to the heirs of Entail to let out the lands in feu, it is morally certain, that in a very short period of years, all entailed

tailed lands whatever would be let out in feu-farm. You will not be contented with allowing the full owners of land to feu: Let us therefore consider the several effects of allowing heirs of Entail to feu; and please to inform me, after lands are feued, or alienated in the manner you propose, if the vassal should improve them, would you hinder him from entailing his improved rent?

Mr *A.* By no means.

Mr *B.* And I suppose you would not limit this feuar's heirs of Entail from subfeuing, and so on *in infinitum*.

Mr *A.* I see no reason for limiting or restraining them from entailing their improved rents, and subfeuing the lands still for further improvement, until improvements could go no further.

Mr *B.* This is a very pretty plan; and pray, Sir, you intend sure that these pensioners should marry.

Mr *A.* A strange question indeed! The chief end of the regulation is to preserve families.

Mr *B.* And how many children would you allow each of them to have?

Mr *A.* A stranger question still! What do you mean?

Mr

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Mr B. That, if you allow them to have more than one child, (whom I suppose they would chuse to be a male,) I do not see a proper fund for portions. A man who has only an annual pension, especially if he lives, as you say most Gentlemen of entailed estates do, beyond his income, has no fund to provide for his younger children.

Mr A. I have already proposed, that owners of entailed estates should be allowed to burden the entailed subject with portions to younger children, or they may give such children pensions.

Mr B. If they sell the lands, and keep only an annual-rent charge, or pension to themselves, they cannot burden the lands; they can only burden their annual pension with other annual pensions to their younger children: the tendency of which is destructive of your great object, the support of family. I see, therefore, no remedy to this objection, but to provide by the statute, "*that from and after the day of*
no Gentleman of an entailed estate, nor no
Heir of Entail, shall presume to beget any
children more than one; any thing contained
in any law, usage, or custom to the contrary
notwithstanding." But, in the next place,
 supposing

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supposing we lay out of view this difficulty, your system of perpetuity within perpetuity, vassalage within vassalage, pension within pension, removes none of the objections I have hitherto been making, but rather increases them, as it multiplies the number of those idle vassals and dependents, who have ever been esteemed dangerous to liberty; and would, in some measure, bring us back to that very situation from which our late Laws have so happily delivered us. But of this I have already taken notice, and would have you consider more particularly, what would be the effects of this plan of your's, in our elections of members for the House of Commons.

It is a principle of common sense, as well as part of our constitution, that none but actual proprietors of land should be representatives for our counties, and partake of legislation. Unless men have property themselves, they are not sufficiently interested to have any share in making Laws to bind the property of others. According to your plan, the House of Commons would be filled, not with actual proprietors of land, but with those who have only a rent-charge, or pension out of land; by which means,
 G altho'

altho' they would have an interest in land, yet it would be made extremely remote; nor would it concern them what taxes, what burdens were imposed upon land, mediately or immediately, as they would, no doubt, take care that their pension should not be affected. Notwithstanding all the pains taken by the legislature, by sundry wholesome Laws, do we not at present complain, and with great reason, of the number of nominal and fictitious votes, which, by means of reserved superiorities, have got upon our rolls, and, in some counties, almost equal the number of real property votes? This evil is constantly increasing, so that we may soon be represented in the House of Commons, by men who have no real property, or who are elected by voters, who have no real property. This is such a dismal prospect for liberty, and so contrary to the original principles of our constitution, that, it is to be hoped, the wisdom of Parliament will put a stop to such a growing evil. But your system tends to increase it, to encourage the practice, to fill our rolls, not perhaps with electors merely nominal, but at least with such as are less interested

interested in the public, than actual proprietors of land.

When I speak of proprietors of land, I mean those only, who are immediate vassals of the Crown; for if the superiors, those pensioners I have described, would be improper members of Parliament, or electors, their vassals must be still more improper. If the first would be dependent, the last would be still more so, *servi servorum*, burdened with a feu duty, near equal to the yearly worth of the land. But be their property ever so great, such a scheme would be a total subversion of our constitution; according to which, crown-vassals only, are intitled to represent in Parliament the land-property of *Scotland*.

I may here also make a general remark, that the values of different interests, in different persons, in the same lands, are not so great, even when all taken together, as the whole interest in those lands would be in one person; and consequently, every new interest created in any land, is a loss of so much value to the Public, as the whole value of that land is lessened thereby.

Mr *A*. You have urged a great many arguments against perpetuities, as you are

are pleased to call them; but do not these arguments conclude equally against Entails of all sorts, even such as are permitted in *England*? Now, if in *Scotland* there is one fifth part of the land entailed, there is at least one half of the land in *England*, as I am informed, locked up, either by Entails, or by Trusts. And tho' these are of limited duration, yet, while they continue, they have the same effect as perpetuities; and, by the manners and practice of the people, they are no sooner at an end, than they are constantly repeated and renewed; if so, while they subsist, have they not the same effects as perpetuities?

Mr B, I should not have expected this observation from you, who are such a friend to Entails of all sorts. Do you object, that I should leave you the liberty of even entailing, as far as you can see, in the same manner as the *English* are? There are reasons why entails may be allowed to that extent. If a man is satisfied, that his next heir is a prodigal, and will squander his estate, there may be some reason why he should be allowed to tie up the hands of such an heir, by making him a tenant for life. This reason cannot

cannot subsist against heirs unborn, persons not then in existence. Even limited Entails are liable to abuse. But that is of no consideration, in comparison with the ill consequences of perpetuities: for, although limited entails are allowed, every now and then every second generation the lands come again into commerce, and become property. Perpetuities put lands altogether out of commerce. Besides, if there are reasons, particularly if those, which you urge, avail to make us submit to the lesser evil, it will not follow, that we ought therefore also to suffer the far greater one. Further, it is not a proper state of the question to consider, Whether one half of the land under Entail of limited duration, or one fifth under perpetuity, is the worst? Were there a law restricting the people of *Scotland* from entailing, in any shape, more than one fifth, and obliging the *English* always to have one half entailed in their manner, we might enter upon the discussion, Which of the two is the worst? But abolish perpetuities in *Scotland*, and you have one fifth only under limited Entail. Permit them to go on, and you will soon see the whole
lands

lands under perpetuity. It does not appear to me, that the abolishing perpetuities will induce more people to make Entails of limited duration, than would do so at any rate. I think it would rather have a contrary effect; for, as I have already observed, the entailing of one great estate is often the cause of entailing a dozen of small ones round it. Gentlemen become alarmed, and against their opinion, I may say against their reason, think themselves obliged to entail in self-defence.

Mr *A.* You seem to avoid speaking of *English* Trusts, a fashion which I should be very sorry to see introduced into marriage-settlements among us. If you destroy our Entails, of course you make way for them; and, Are not they much worse than Entails?

Mr *B.* Of that I really am not a sufficient judge; for, tho' I hear Gentlemen in this part of the kingdom declaiming much against them upon this occasion, and from thence perhaps have conceived prejudices myself; yet none of these objectors ever could explain to me the nature of these *English* Trusts; nor indeed could they state their objections against them,

them, so as to make me perfectly understand what they meant. I should be glad to learn from you what is the nature and effect of these Trusts.

Mr *A.* That is more than I am able to do, with any degree of certainty; but I understand they are very bad, and I should be heartily sorry to see any such fashion introduced among us. We have learnt many good lessons from our brethren in *England*; but this I hope we shall never learn from them. I have heard that Trusts are commonly put into marriage-settlements, and I have conceived them to be of the nature of our voluntary interdiction, by which prodigals name certain curators, and tie themselves up from making any deed that may affect their estates without the consent of these curators. By Trusts I conceive, the husband in like manner, for the love and affection he bears to his spouse, and that he may not have it in his power to disappoint the issue of the marriage, divests himself of all power over his estate, without the consent of certain trustees.

Mr *B.* What! are you going to change sides with me, and to argue upon my principles? In the light you state these Trusts,

cessity, which, but for the Entail, would not have existed.

But, after all, I suspect that your notion of *English* Trusts is erroneous. It is true that an estate-tail cannot be charged with a Trust, that is, it cannot have any thing, trust or not trust, charged upon it: nevertheless, most of the entailed estates in *England* are charged with Trusts created at the time of making the Entail. Their temporary Entails make so many substitutes tenants for life, and divest them of all powers over the estate. As many inconveniencies arise by this sort of settlement, such as want of power in the tenant for life to make provision for wives or younger children, and other unforeseen emergencies; Trusts are created at the time of creating the Entail for remedying these inconveniencies, and for preserving, at the same time, the entailed estate, and preventing the undue alienation of it. Of these kinds are almost all the *English* Trusts; and, instead of being further or worse restraints than Entails, they are a remedy for some of those restraints, and have been very properly introduced into

England

England for that purpose. I own I do not see how they can be said to make the owner or possessor of the estate dependent upon the Trustee; for I understand that if the Trustee refuses to answer the end of the Trust in any respect, the owner may compel him to perform it by a suit for that purpose; and altho' the suit may be attended with expence, yet I have been told, that the Court always gives costs where the trustee is found to have refused acting reasonably, or otherways misbehaved himself in the Trust.

Before I leave the *English* Law, one word more, and I conclude: You remember the reason I assigned why the *English* Lawyers contrived the methods of fine and recovery for breaking Entails, was, that an express Law was not to be attempted in Parliament at that time. But now, God be praised, our Legislature is of a very different character from what it then was; and if the measure is, as I think it is, in itself a right one, a Law will be made, allowing every man to exercise by deed, all reasonable powers over his property, without having recourse to the subtilities or expence of *fin*es and *recoveries*.

Here

Here the company ended their conversation, with a resolution to resume the subject next day; and Mr C. was desired to remember he had undertaken to give his sentiments upon the commercial part of the argument.

P A R T

P A R T II.

THE same company having again met, according to appointment, they resumed their conversation upon Entails; and Mr C. was desired to give his sentiments. He endeavoured to make some apologies; but the other two insisted upon his promise; and he began.

Mr C. We Merchants, are in general enemies to Entails. We look upon them as an invasion upon the common and natural rights of mankind. When the earth was first given to man, he was bid to replenish and subdue it. No distinctions were made in the great original charter: It was not there said, that a man, whose name, five or six thousand years hence, shall happen to be composed of such or such letters, shall have a particular spot appropriated to him, and to those of his appointing, for ever, whether they be good citizens or bad, whether they be a credit or a disgrace to human kind. On the

the contrary, all were equally invited to be industrious, and the earth was given them as the subject of their industry, and the reward of it.

Could I see a race of men distinguished from their brethren, by superior abilities of mind, superior excellence in their manners, or even by superior strength, or beauty in their persons; I might perhaps grant, that nature had intended them some privileges, some preference to all others: But I see no such excellencies, either of the mind, or of the body, peculiar to one race, more than to another. I can see a *Brutus* degenerate, and a *Cicero* rise in modern, as well as in ancient times. Until there is a distinction established betwixt one race of men and another, I shall never agree to give to a few, a very few, the possession and inheritance of the whole earth, in exclusion of millions of people, equally strong, equally wise, and equally virtuous.

Property, and power which always follows property, are the prize and reward of industry. Land is of all property the most valuable, being the most real and permanent, and as it were the mother of all other kinds. In a commercial view, nothing surely can seem
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more absurd, than to take out of commerce that commodity, which is the parent of all others; and is therefore, of all others, the most valuable. In *Britain*, what is the great object of a Merchant's industry? Land. His great view, as soon as he shall have acquired a competency, is to invest his substance in land; and this is emphatically called realizing. But Entails destroy, they annihilate that object of industry.

In the next place, land is not only the great object of industry, but it is also the chief subject of it: The improvement of land is not only a trade, of itself beneficial to the owner, but also of the greatest importance to the public. The land-holder, who trades in the improvement of land, and raises his rent, adds to the real riches of the kingdom, much more effectually, than if he had imported the value of his improvements in money. Money is said to have wings, and fly away, but land is permanent. It cannot be sent out of the kingdom. It remains for ever.

The improvements in agriculture, besides enriching the kingdom, have another tendency of no less importance: They increase

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crease the strength of the nation, by increasing the number of the people. To subdue the earth, and to replenish it, and to increase and multiply, were all connected parts of the original command; and we find, in experience, that the one is the consequence of the other. By improvements in agriculture, there is not only more room, as it were, made for population; but those employed in that business are more inclined to matrimony, than those employed in other trades. The issue of such marriages is more healthy, and more hardy; and of all others, the fittest and best to be soldiers, and to defend their country against all invaders.

But Entails have a tendency to discourage and prevent all improvements in agriculture; they disable the possessors from granting leases, longer than their own lives. This evil, you have indeed proposed to mitigate, by allowing all owners of entailed lands to grant profitable leases for a reasonable time: But that is not a sufficient remedy; for Entails also prevent Gentlemen from improving their own estates themselves: No man will chuse to sink his money upon land, which he does not look upon as his own. I have

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have ever considered the improvement of land by the proprietor, to be a matter of much more importance than is commonly thought. In the first place, agriculture is a kind of trade, not beneath men of the highest rank: It is an employment for them, when they are not engaged in public offices. Next, proprietors only, not tenants, have the taste and the ability to make substantial improvements: They raise the buildings, and the plantations, which adorn the face of the country; and their houses are the seats of social intercourse and hospitality. But your Gentlemen of entailed estates, have no temptation to live at home, for they have nothing to do. The hospitable seats of their ancestors are deserted, and the country becomes desolate.

*No rafter'd roofs with dance and tabor sound,
No noon-tide bell invites the country round:
Tenants with sighs the smoakless towers survey,
And turn the unwilling steeds another way*.*

Such are the effects of Entails. Let me suppose, (tho' God forbid it should ever happen!) that *Great Britain* were visited by a civil war, or by an invasion; her cultivated lands laid waste, and the beautiful country seats of the Nobility and Gentry burnt down or destroyed: these lands, if entailed,

* *Pope.*

tailed, could never be restored to their former state: the inclosures, the plantations, would not rise again in ages: the sumptuous palaces might remain in melancholy ruins; and the unhappy owners of ancient and respectable families, without money, and without credit, languish in a state of neglected and disreputable poverty.

In whatever light therefore, I consider land, whether merely as a commodity, which every man has an equal right to acquire, or whether I consider it as that sort of commodity, which, of all others, ought to be chiefly cultivated and improved, I must declare myself an enemy to Entails, as being contrary to the very first principles of commerce. All Merchants I ever conversed with upon the subject, are of the same sentiment. 'Tis a strange thing, if a set of men who are supposed to love and to understand their interest very well, should, in this particular, be all blind, and in an error. I shall now therefore be glad to hear, for what reasons you think Entails are advantageous to commerce.

Mr A. I am not to enter into the rights of men: The present question is, What is their interest; and particularly, what is the

the interest of trade: In that view, I am strongly convinced, that, if Entails in *Scotland* were allowed to die out, several consequences would ensue highly mischievous and detrimental to trade. The first and great one of all is, "That the land-property of *Scotland* would sink in its solid value; by which I mean, its value upon a sale." This is a fundamental position, and most of the other ill consequences depend upon it. The price of land is regulated by the quantum of it in the market, compounded with the quantum of the demand. Buyers of land are like buyers of any other subject of traffic: where there are many sellers, there will always be cheap bidders.

In the next place, money would be laid out upon land, and thereby withdrawn from commerce; and this leads to a second necessary consequence, "That money would rise in its value, or, in other words, the interest of money would be heightened." If one of the great vents for money, buying land, or borrowing upon the credit of land, were shut up, it would regorge in the possession of the money-lender, and he would be obliged to lend it to the merchant at a low interest to be employed in trade. In *Holland* there

there is no vent for money upon land: this makes the interest low: the *Dutch* can undersell all the world. Whatever nation has money cheap, can, *ceteris paribus*, always undersell that nation which has money dear.

And it is evidently a *third* consequence of making land cheap, "That money would be withdrawn from commerce to purchase land, and thereby commerce would be hurt." And there is a *fourth* and last consequence connected with all these, "That exportations would decrease, and home consumption and importation would increase." Luxury encourages the importation of foreign commodities, and destroys that industry which produces commodities for exportation. Suffer proprietors of land to dissipate their private fortunes, you encourage luxury, and by consequence you encourage importation and decrease exportation: prevent the dissipation of private fortunes, and you will discourage importation and increase exportation. A nation is like a family. If their income exceeds their expence, they grow rich; if otherwise, they become poor. National riches and private riches,
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national poverty and private poverty, arise from like causes, and fall under like rules. These are the substance of my objections to the abolishing of Entails.

Mr C. You have got very deep into trade, upon many topics which would require large discussion. What connexion they have with Entails, we shall shortly consider.

I think you said, that by destroying Entails, "Land would sink in its solid value, that is, its value upon a sale." That was your fundamental position, Was it not?

Mr A. It was.

Mr C. Reverse your proposition, and let me ask you, If all land were entailed, would it rise in its solid value, that is, its value upon a sale; for I agree with you in your definition of solid value, that it is the value which any thing will give upon a sale?

Mr A. If all land were entailed, the value of it upon a sale could not be known, because it would not be saleable.

Mr C. How then would you come at knowing its solid value?

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Mr *A.* My meaning is very plain, that the less land there is in the market, it will always give the higher price; and this I think a benefit, for the reasons I have given.

Mr *C.* Double the number of Entails, there will be still less land in the market, and by consequence the price of land will be the higher; and so go on entailing, the price will always rise till there is no more to be sold. And when we come to that period, there is clearly an end of all the advantages which arise from high prices, and from increasing the solid value; for then solid value, by your own definition, would be at an end.

In another light, see where your argument would lead us: Suppose one half of *Scotland* overflowed by some sudden inundation of the sea, the remaining land would, according to your doctrine, rise in its value like the Sybil's book, and it would become an improper measure to drain off the water, lest it should make the remaining land fall in its price.

In short, Sir, this appears to me to be an argument not designed for the merits of the question, but merely to catch a few people who have land to sell. It

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cannot concern Gentlemen of entailed estates, for their lands are not saleable. It is clearly against the interest of purchasers, of whom you have no consideration: and if it is for the interest of sellers, does it not contradict one of your favourite topics, as it would lead the owners of land to dissipate and to sell, and, by consequence, favour and encourage that luxury which you would wish to avoid? It is but a temporary argument.

Suppose I were to admit to you, that a little more land might for a while, by degrees fall into the market, it would have little or no effect upon the present price of land. You state the question, as if all the Entails were to drop at once; but that would not be the case. Perpetuities would fall by degrees, and those who love Entails would make limited ones in their place. By your own account of the matter, there is a greater proportion of land under limited Entail in *England*, than there is under perpetuity in *Scotland*. There is not the least hazard of any sudden glut in the market; and tho' there were, it could have no lasting effects, so as to have any weight in the scale of argument upon this question.

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I shall now take it up in another light, and give it all the effect you desire. You consider only the interest of *sellers*, but commerce considers chiefly the interest of *buyers*. Land you have justly compared to other commodities, and buyers of land to buyers of any other subject of traffic. But it is one of the first principles of commerce, to reduce every commodity to the lowest price possible. For what reason? Because cheap commodities bring buyers, and buyers bring money. How many instances do all of us know of many Gentlemen, who have gone abroad to the East or West Indies, made fortunes, brought all their money home with them, and purchased land in their own country? This is not all, for they have not only purchased the land, but added, perhaps, a third more value to it by improvement. Thus improved, the land is ready to be sold again for a greater sum brought in like manner from abroad. And, in a commercial view, we may be permitted to form a wish, that the Law should permit a more ready naturalization of foreigners, that they might be enabled to make purchases in this kingdom. The liberty of our constitution, and the great security of

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of our property, would doubtless bring numbers, and the advantage is evident, for we not only get the money, but the land also remains with us.

Mr *A*. You are supposing all along what I shall not admit, and which surely is not the common case. The chief traffic of land is among ourselves. And what effect has such traffic? It is like shifting money from one hand to another, as at a gaming table. Even the money which is acquired abroad and brought home, if it did not get a vent for land, might be employed to more advantage in trade.

Mr *C*. I have already given you my reasons why trade in land is, of all others, the most advantageous to the country, so that money cannot be better employed than in agriculture and the improvement of land. Raise the price of land beyond its intrinsic value, and you will not be troubled with shifting it, as you are pleased to say, from one hand to another. The ultimate view of every Merchant, as I have already observed, is to realize and to invest his substance in land, whether he has made his money abroad or at home. Land he must have; and if he cannot find it at home at a reasonable price,

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price, he will migrate to *America* and carry his money with him. By this means, you will not only prevent our *Indian* Merchant from bringing his money home, but you will tempt the *Scottish* Merchant to carry his money abroad; and, by this means, not only prevent money from coming in, but also open a new drain for carrying what money we have, out of this part of the kingdom.

Altho' it may be a truth, that the value of any thing depends upon quantity and demand, yet you do not consider, that by decreasing of quantity, you raise value so high that it destroys demand; and purchasers carry their money to another market. If these would be the effects of raising land too high in its price, what must be the consequences of taking land altogether out of commerce? Instead of increasing the quantity of money, 'tis plain such a system would greatly diminish it. Consider any other commodities in the same light we have done land; take wool, for instance; allow it neither to be bought nor sold; entail all the sheep upon the present possessors; let them only eat mutton and wear broad cloths: Other people may
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do without these delicacies; and all the money that finds a vent at present upon wool and mutton would regorge upon the money owner: he would be obliged to lend it, for that reason, at a lower interest, and it would be employed to great advantage in commerce. *Holland, Venice, Genoa*, have neither wool nor sheep to withdraw their traders from commerce: They are great trading nations: these commodities therefore should clearly be taken out of commerce. By the same rule proceed and take away commodity after commodity, that there may always be the more money left at a lower interest to be employed profitably in trade.

You must really forgive me, Sir, for treating your argument in this manner. It is the first principle of commerce, instead of decreasing the quantity of commodity, instead of annihilating the commodities which we have, to endeavour, if possible, to find out new ones; instead of raising the price, to endeavour always to bring it as low as possible. This, instead of decreasing, will always increase the quantity of money; for all commodities are purchased with money, and, in proportion as you
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take away or decrease them, money decreases of course, or disappears altogether.

Among the natives in our *America* there is little money; Why? Because there are few commodities. They have not industry, which is the great and chief commodity of all. They trade in furs and the like; the money in circulation among them is in proportion to their trade. Destroy the little trade they have, money would decrease proportionably, or disappear. By the common consent of mankind, money is the representative of commodity, at the same time that gold and silver are commodities themselves. Every thing is exchanged for them, and the quantity of money in circulation keeps an exact proportion to the things that are in commerce. For illustrating this, compare a nation to a great shop filled with various kinds of commodities. The circulation of money in that shop is in proportion to the various kinds of goods that are to be sold there; and in the great shops of any standing, the circulation comes to be a thing regular and certain. Put a prohibition upon one, two, three, or more kinds of commodities

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in that shop, the circulation of money there will immediately decrease in exact proportion, and buyers who use to come there, will go to some other shop for those commodities. Suppose the same prohibition were extended to every shop, What would be the consequence? Say you, They would employ their money upon some other branch of trade, that is, upon some other commodity: but, first, suppose they would do so, Why destroy one commodity upon the expectation only that another may arise in its place? Is it not as probable, that they would employ their money for the purpose of luxury, where it goes out without returning? It is more probable they would do so, because by taking land, that great commodity, out of commerce, you decrease the number of the industrious, and throw many into habits of luxury and idleness. For I observe, that at the same time you entail lands, you entail idleness upon the possessors; and thereby diminish the quantity of *industry* in the kingdom. Think of the effects of diminishing the quantity of that valuable commodity, which is the real riches of every nation whatever. That would decrease your
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quantity of money with a witness; and you may hold it as a fixed maxim, that in proportion as you decrease the quantity of commodity, you decrease, at the same time, the quantity of money. What now becomes of the effects which you attributed to the free commerce of land? What becomes of your conclusions about the decrease of money and the rise of interest, the effects which you attribute to the free commerce of land? The very reverse of them would happen.

There is an obvious and fundamental error which runs thro' your whole argument: you always proceed upon the supposition, that, when money is given for land, it is buried in the land. No such thing; both the money and the land continue subsisting. A thousand guineas after being paid for land, is just as fit, the very next moment to be paid away for a merchant's accompt, or to be bestowed in portion to a younger son. It may save the first from bankruptcy, and both the first and last from being idle burdens on their friends, and on the industry of others. By making them industrious, you add to the national stock industry, which is the national stock of riches.

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There is another strange position which you have maintained, namely, that it would be a benefit to trade that landed men had no credit. And, to prove this, you instance countries where there are no land, as *Holland, Venice*, and others. But, in the *first* place, is the commerce of these narrow commonwealths to be compared with the commerce of *Great Britain*? You won't pretend it. But trade flourishes there without land. What then? If your instance proves any thing, it proves too much: it would prove, not that we should entail, but that we should annihilate our land; that we should abandon our land to any other that pleased to occupy it; that we should destroy our *British* constitution, and, in place of it, set up the constitution of *Holland*. For it is absurd to adopt any one part of a constitution, and expect thereby to have the effects that arise from the whole of that constitution taken together. If you would have the whole effect, you must take the whole combined causes. How do you think a proposition to exchange *Great Britain* for *Holland*, would be relished? Where constitutions are so totally different; where situations and circumstances

ces are so totally different, as are those of these two nations; it is impossible to draw comparisons from one particular in the one state to any one particular in the other. We know still less of the constitution of the different kingdoms among the ancients. Analogy is a most dangerous kind of reasoning, unless the similitude be perfectly compleat: we must therefore consider our own constitution in itself, and our arguments must be supported by experience.

In *Britain* we find that land-credit is one of the great supports of trade. By credit our land is in a manner coined and goes into trade. Destroy land-credit, you limit proportionally the extent of trade, which depends as much, if not more, upon credit than upon money. Land has this advantage too over money, that it cannot be carried out of the kingdom as money may be. The man who gets it in exchange for any commodity, cannot carry it away. If he wants to keep it, he must come to the place where the land is, he cannot carry the land to him. For my share, I should look upon any system for taking land out of commerce, more particularly fatal to the trade

trade of *Scotland* at this juncture, than at any other. Our money is leaving the country, I may almost say has already left it, by means of that inundation of paper-credit. The chief real fund of credit left us, is our land. Take land out of commerce, and that fund of credit is gone also. A merchant is surely in a hopeful way when money and credit are both taken from him. In a word, Sir, dismiss these systems of theorists in their closets, and take your maxims from plain practice and experience.

As to your last effect, that the free commerce of land would promote luxury and dissipation; I cannot be of your opinion. For my share, I can see no reason, why the proprietor of land should be more extravagant than the proprietor of money. Where the land is entailed, the possessor is indeed liable to extravagance and to spend more than he has, for an obvious reason; his situation not only indisposes him, but disables him to follow any employment useful to the public. But, where the lands are not entailed, he has it in his power at least to be useful to commerce, as well as to himself; and the consideration that what

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he has is his own, will readily dispose him to make use of his power. In this also let us appeal to experience: Do we see the heirs of great land-estates more given to extravagance and luxury than the heirs of wealthy merchants? Is not the heir of a wealthy merchant as likely to spend a fortune left him in money as in land? Much more so. The money is ready at hand to be let fly on all occasions. But you say, he will lay it out on trade; What security have you for that? Is there any Act of Parliament obliging the son of a merchant to be a merchant? Look through the great cities in *Britain*, and see what vast fortunes, made by industrious merchants, are immediately dissipated by their prodigal heirs? How many men squander fortunes which they have, by some lucky hit, made themselves? What a pity is it, cry their friends and relations, that they did not realize and buy land with a part, that they might have saved something by putting ready money out of their hands. It seems therefore, that in this particular relative to the causes of luxury and extravagance, and to the encouragement of import and discouragement of export,

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your ground fails you; and that every one of your conclusions is erroneous.

I shall now mention another effect of Entails upon trade: 'Tis of less general importance, but is very hard upon particular traders. When the possessor of an entailed estate dies, his just and lawful creditors are not intitled to receive payment of a shilling of what is due to them, from his estate.

Mr *A.* There is an easy answer to that objection: All entailed estates are upon a public register, kept for that purpose, otherwise they are not good against creditors; and if men will be such fools as to trust owners of entailed lands, they deserve to suffer for their folly.

Mr *C.* This is not a sufficient answer. I do admit, that, if a man enters into a large commercial transaction with one whose lands are entailed, knowing that to be the case, such a man losing his money by the death of the debtor, suffers very deservedly for his folly; but state the case, that the lender was really ignorant of the Entail, and one cannot always go to look into records, would not the case be hard and unjust? For my share, I think it would be a right thing, that lists of all entailed estates should

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should be printed, that every shop-keeper and dealer might have a copy hung up in his shop or office.

And this leads me to say another thing, and to suppose it known that a Gentleman's estate is entailed; would it not be cruel, he should be interdicted from all manner of dealing, except for ready money only? If such a man's servant goes to the market for victuals, or to a shop for any little necessary, what butcher or shop-keeper could turn him away, and tell him, Your master is an heir of Entail, I wont deal with him but for ready money: his surgeon, his clothier, his taylor, Could they send him a like message? 'Tis in this manner heirs of Entail get into merchants and tradesmens books, by little and little, article after article, till, in process of time, these articles swell to large sums. All of us could give many instances of this kind: And yet, if such credit were not given, the wives and children of men of very great entailed estates must be frequently destitute of the most absolute necessaries of life. In other bankruptcies, creditors always get something, they divide some shillings in the pound; but

but in cases of Entails, creditors do not receive a single shilling of their whole claim. This is a cruel hardship upon particulars, and, in so far as it occasions other bankruptcies, affects also trade in general. It seems to be something mighty absurd, that a man should die a bankrupt, yet worth perhaps some thousands a-year.

In our last conversation you insisted much upon the honour and respect which belonged to old families: Do you think it tends to increase this honour and respect, when the head of the family dies indebted to the neighbourhood round, nay to his own servants, and not one of these debts to burden his son, tho' succeeding to an opulent estate? Next, with respect to the son, if he binds himself for these debts, he becomes dependent upon creditors, often, during life: He never gets up his head. On the other hand, if he refuses to pay them, he sets out in the world, with an action that must injure his reputation, hurt his own conscience, and make the ways of injustice familiar to him.

This leads to the third view of the effects of Entails in perpetuity: We have discoursed of them in the political and in the commercial view; the economical

mical remains. What effects do you think they have, with respect to the private families where they subsist?

Mr *A.* In this view they stand the clearest of all objections, for they undoubtedly preserve the family-estate.

Mr *C.* Whether do you think a man most interested in the happiness and welfare of his wife and children, who exist and live with him, or in providing for a single child, and the issue of that child, to the most remote generations.

Mr *A.* You mean to attack the right of primogeniture.

Mr *C.* I do not; for, tho' I confess, if I had the establishment and new modelling of a government, I should rather borrow from the laws of those nations who gave not so much pre-eminence to the eldest born as our Law does; yet I would by no means abolish primogeniture, which has its expediency and advantages even to the family itself. The eldest son is, or ought to be, a second father. All I mean to argue is, that there seems to be a great absurdity in that kind of settlement which takes notice only of the eldest child's issue, and their eldest issue, and so on for ever, without considering

considering younger children, or providing for them, as if these were of a different species, and unworthy of our attention.

Mr *A.* In this I agree with you, and admit it is a capital error in many Entails, that there is no power left by them, or at least not sufficient power, for providing younger children in suitable portions; but this we have already spoke to, and I proposed, that an Act of Parliament should interpose, and give reasonable liberties to all owners of entailed estates, even in these respects.

Mr *C.* You did so, and Mr *B.* shewed you very plainly, that, in every shape, provisions for younger children are inconsistent with perpetuities: I need say little therefore upon that head. You will readily admit, that the interest of the different members of a family presently existing, is greatly preferable to that of remote posterity. It is almost a solecism to state the competition. Our own children are the immediate objects of love and affection; they are the objects of duty: nothing surely can be more unnatural or more absurd, than to neglect them for the sake of distant posterity, a mere possibility

sibility which may never exist. How galling is it for a man to be tied up from giving them suitable marks of his affection, or from contributing the expence necessary for their welfare and advancement, when he sees them in all other respects qualified to serve their country in the highest situations? What must such a parent feel, particularly for his daughters? Sensible that their personal qualifications, could he bestow a suitable education upon them, and the fortunes of Gentlewomen, they would be intitled to marry into the greatest families in the kingdom, and would make these families happy; yet, that upon his death they may be obliged to go to service like slaves, or may be misled to vice by reason of their situation, or at best owe their subsistence to the charity of relations, and be doomed to pass their lives in a neglected celibacy.

But to proceed in the argument. It belongs again to our children, when they become parents, to provide for their children in their turn. But there is another and more important duty on parents, that is, to give them good culture

ture and education: You agree with me surely in this.

Mr A. Most certainly I do: 'Tis of more importance for a child to be well educated, to be trained up in the ways of virtue and religion, than to possess any worldly means that the parent can provide.

Mr C. The reciprocal duties which children, on the other hand, owe to parents, are reverential love, submission, and chiefly gratitude for that affectionate care which parents take of children, when, by reason of their tender age, they cannot take care of themselves. These duties of children are enjoined by the wise law of Nature, for childrens manifest advantage: For if their weakness in infancy requires the tender care of parents, so, when they advance in years, the heat and impetuosity of youth require that they should be under the direction of their parents, and be restrained by that very reverential awe and that submission which are their duty. Even these are not always sufficient to keep the follies of young people within due bounds. It is necessary for the same good purposes, that, in aid of the feelings of duty, there should be also a dependence in point of fortune. Every family is a

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little community within itself: The father is the head of it. That affection, by way of eminence, called natural affection, makes him a Law to himself to provide for his children, and to give them good education. This care demands love, reverence, and obedience on the part of children, which are equally their duty and advantage. These are the wise dispositions of nature: And as the happiness of families in themselves, depends intirely upon the due exercise of them, so they ought to be seconded by all civil institutions.

Let us consider now, what effect Entails in this view have upon the peace, comfort, and happiness of the different members of families; and how far they tend to promote those reciprocal duties between parents and children, which are so absolutely necessary for their mutual comfort and advantage. The possessor of an entailed estate, who, in his younger days, perhaps may have had the misfortune to contract a little debt, is kept in a state of miserable dependence by his creditors during life. Instead of reverencing his parents and forefathers, he is impious towards them in his heart, for the chains with which they have loaded him. He

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is led even to dislike his posterity, because they are to enjoy, without any deed of his, an estate, which he considers ought to have been his own, and at his disposal. He sees his own child independent of him; he supposes that independence will diminish filial respect, and even that supposition abates parental affection. If he has occasion to borrow money, either to pay his debts, or for the most necessary occasions; contrary to the course of nature the parent becomes dependent upon his own offspring. Consider the effect, which this unnatural situation must have upon the minds of both. Nay, the parent is often induced to flatter the child by indulgence in those follies and vices, for which, as a parent, he was bound to have punished him: And generally in the end, family-diffensions arise and unkind jars among kindred. Such are the inheritances which we bequeath to our posterity by Entails; and, for the vanity of preserving an estate and a name, we banish peace and harmony from that society, in which, of all others, Nature has most intended they should reign.

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And after all, what presumption is it to hope, that we can, by this method of Entails, perpetuate an estate and a family? “To have our inward thoughts, that “our houses shall continue for ever, and “our dwelling places to all generations? “To call our lands after our own names?” Vain thought indeed! *Buchanan*, our historian and countryman, speaking even of Princes who have endeavoured to establish *generis et nominis perpetuitatem*, calls the attempt, *vanum et fallax*; and adds, *adversus naturam rerum certamen sibi desumunt, et rem maxime fluxam et fragilem, omniumque casuum momentis obnoxiam, eternitate, quam ipsi nec habent, nec habere possunt, donare contendunt.*

I mean not by this, that we ought to discourage the desire of fame after death; for that is a noble passion, and among the great incentives to virtue; but I would not substitute a folly in the place of it: I would not have it rest satisfied with erecting monuments for our being remembered only, without our being also remembered for something that will merit the admiration of posterity.

I could say a great deal more upon this topic, in which I own myself warm; but

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I am afraid that I have already been tiresome.

Mr B. To me you have no reason to make any apology; and our friend here is a man of so much candour, that I am persuaded he has not only heard you with pleasure, but even with some degree of conviction. He will indulge me to make an observation, which I omitted yesterday. He mentioned some rectifications of Entails, respecting the “power “of making leases, providing jointures “to wives, and portions to children.” The partizans of perpetuities, loth to part altogether with these their favourites, have proposed several farther limitations upon them; such as, giving “power to “heirs of Entail to make excambion “of entailed lands for others, when the “former are situated near great towns, “and are convenient for public buildings, for making of ports and havens “for ships, and the like.” I have no objection to these amendments, even upon the limited Entails which we propose to admit of. I think them good, but the objects of them are of inferior consideration: They touch not the large principles of civil policy and of commerce, which,

which can only be satisfied with the abolition of those mischiefs called perpetuities. I shall not now trouble you with any more observations of my own ; but I hope it will not be disagreeable for my friend to hear better authorities. Lord *Bacon*, whom I have already quoted, in his history of the nature and proceedings of the Laws of *England*, after giving an account of the origin of *English* Entails, and of their establishment by the statute of *Edward* the first, says, " That the inconvenience thereof was great; for, by that means, the land being so sure tied up to the heir, that his father could not put it from him, it made the son disobedient, negligent, and wasteful, often marrying without the father's consent; to grow insolent in vice, knowing that there could be no check of disinheriting him. It also made the owners of the land less fearful to commit murders, felonies, treasons, and man-slaughters; as they knew none of these acts could hurt the heir of his inheritance. It hindered men who had entailed lands, that they could not make the best of their lands by fine and improvement; because

" because none, upon so uncertain an estate as for the term of his own life, would give him a fine of any value, or lay any great stock upon the land that might yield rent improved. Lastly, these Entails defrauded the Crown and many subjects of their debts, because the land was not liable any longer than his own lifetime; whence the King could not safely commit any office of account to such whose lands were entailed, nor other men trust them with loan of money." Then his Lordship takes notice of the several Acts of Parliament of *Henry*s VII. and VIII. by which these inconveniencies were remedied; and he adds, " That, since these notable statutes, and remedies provided by statutes, dock Entails, there is started up a device, called *perpetuity*, which is an Entail, with an addition of a proviso conditional tied to his estate, not to put away the land from his next heir; and if he do, to forfeit his own estate. Which perpetuities, if they should stand, would bring in all the former inconveniencies subject to Entails, that were cut off by the former statutes, and *far greater*," which he goes on to mention. Such

Such is the opinion of that great statesman, who, for natural abilities and extensive knowledge, has been the admiration of mankind.

Lord *Stair*, who may justly be called the founder of our Law in *Scotland*, in his *Institutes* observes, that the clauses irritant, and resolute, in Entails, did not become very ordinary earlier than his own time; and he gives it as his opinion, “that they do not well quadrate with the right of property.” For which cause he says*, “They are seldom put upon heirs of line, heirs-male, or heirs of provision by contract of marriage, as being heirs of blood, &c.” In another place his Lordship says †, “That such clauses are most unfavourable and inconvenient, especially when absolute; for first, commerce is thereby hindered, *which is the common interest of mankind*. Secondly, the natural obligations of providing wives and children, are thereby hindered, which cannot lawfully be omitted. Thirdly, it is unreasonable so to clog estates, descending from predecessors, and not to leave our successors in the same freedom that our predecessors left us; whereby, tho’ they have the

“ shadow

* Lord *Stair*, lib. 4. tit. 18.

† Lib 2. tit. 3.

“ shadow of an estate, yet they may become miserable, as if they shall happen to fall into captivity, or into any transgression that would infer a considerable fine; against which no clause can be secure, &c.” And his Lordship observes, “That these perpetuities in *England* are now easily made void, by a dissembled proceeding of fine and recovery, and by warrants to sell purchased in Parliament, which pass without much difficulty.” And he adds, “*That if they become frequent with us, it is likely we shall find the same remedy, &c.*”

Such are the opinions of great men in former times; and were it necessary, I could produce later authorities of no less weight. My brethren of the faculty have not therefore proposed any innovation upon our Law, but rather to bring it back nearer to its own original principles, as well as to those of all other law; and their conduct in this matter, instead of being liable to censure, will, I hope, ever do them honour. If nothing be more praise-worthy, than to make good Laws, to suggest and promulgate such, must stand in the next rank of praise. It was a chief merit in the character of *Hen-*

ry the VII. that he made many good laws; and Lord *Bacon*, his historian, mentions the act for defeating perpetuities as the chief. His Lordship, in the place where he gives an account of that Act of Parliament, among some other of King *Henry's* Laws, takes notice, that, if that Monarch laid heavy taxes upon the people, he “ always endeavoured to remunerate them
 “ with good laws, which ever more was
 “ his retribution for treasure; and that
 “ finding, by the insurrection in the
 “ North, there was discontentment a-
 “ broad, in respect of the subsidy, he
 “ thought it good to give his subjects yet
 “ farther contentment and comfort in
 “ that kind. Certainly his times for
 “ good commonwealths Laws did excel,
 “ so as he may justly be celebrated for
 “ the best lawgiver to this nation, after
 “ King *Edward* the I. For his Laws
 “ (who so marks them well) are deep,
 “ and not vulgar; not made upon the
 “ spur of a particular occasion, for the
 “ present; but out of providence for
 “ the future, to make the estate of his
 “ people still more and more happy, af-
 “ ter the manner of the legislators in an-
 “ cient and heroic times.”

Mr

Mr *A.* I must confess what you have urged against perpetuities has much weight; but if they are so very pernicious, how came Parliament to authorize them by the Statute of 1685? There were able men and great Lawyers in those times.

Mr *B.* God forbid that those times should ever be cited for principles of law or of government. It seems then to have been a measure to make *Scotland* rather a military than a commercial country, that it might be a constant nursery for soldiers, a resource for raising and keeping up a standing army, should there be occasion for humbling or overawing that spirit of liberty which already panted for a revolution. Nothing could more promote such a measure, than the Act concerning Entails. Take a view, Sir, of the set of Laws that were produced in the same year 1685; Statutes declaring, *That* the concealing the demand of a supply for a forfeited person, tho' such supply be not given, is treason: *That* the hearers at field-conventicles, should be punished with death and confiscation: *That* in matters of treason, judicial confessions, tho'

tho' not made in presence of the affize, should yet be legalevidence to the affize.— Which is a direct repeal of the Act of 1589, a *magna charta* of our liberties in *Scotland!* In that same year 1685, was passed also, the Act obliging all persons whatever to take the test under such penalty as the Privy Council should think fit.—The very Act for preserving the game, and enacting, *That* no man should be qualified to shoot a partridge, unless he had an estate of L. 1000 *Scots* a-year valued rent, manifests, that the intention was, to reduce despotism to a system, by extending it from rank to rank in a regular subordination.—Such are the Statutes of the year 1685, all of the same family, sisters-german, if I may be allowed the expression, of this notable Statute concerning Entails. The articles of grievances presented to King *William*, shortly and properly characterize the legislation of that time, “That most of the Laws enacted in “the Parliament *anno* 1685, are impious and “intolerable grievances.” And it may be observed, That, in order to give all these arbitrary penal laws their full effect in enlarging the power of the Crown, the Act

Act for Entails took care to provide, *that* nothing therein contained should prejudice his Majesty, as to confiscations and other fines.

Perpetuities, therefore, deserve no sort of favour in any respect, and it is worthy of the enlarged and liberal sentiments of these times, to abolish them by an express Law. We owe it to ourselves, to our families, to commerce, and to public liberty.

THE END.

ERRATA.

- Page 1. line 13. place a comma after *second*.
 7. line 7. for *that*, read *who*.
 8.—10. for *ones* read *a*.
 14.—17. for *their lands*, read *themselves*.
 15.—10. delete the *asterisk*, and place it in line 22d.
 22. line last, for *politic* read *policy*.
 29.—10. for *crouds* read *croud*.
 39.—20. delete the point after *Bugbears*, and place it after *Barons*.
 44.—9. read *our Law*.
 50.—13. after *rolls*, add *of freeholders*.
 65.—23. for *sleeds* read *slead*.
 66.—4. for *might* read *would*.
 72.—1. for *take it up* read *take up your proposition*.
 80.—last, after *commerce* add *to be*.

0501

