With the Authors Compts

CONSIDERATIONS

ON

THE GAME LAWS.

BY

EDWARD, LORD SUFFIELD.

PRINTED FOR J. HATCHARD AND SON, PICCADILLY,
BY BURKS AND KINNEBROOK, NORWICH.

ERRATA.

Page 22 *line* 5, read unjust *and* slavish.
— 31 — 6 from the bottom of the page (in the note) for the word *or*, read *and* bound them, &c.
— 41 — 19, for it is therefore a benefit, read it is *not* therefore a benefit.
— 105 — 7 and 8, read thus—for it? To render it more perfect or more secure, numerous acts of parliament have been contrived.

PREFACE.

Conversant as I have been from my infancy with Game-Preserving, called upon frequently as a Magistrate in Norfolk to administer the laws enacted for the protection of game, and marking the short & easy progress made by poachers from their earliest transgressions against these laws to crimes of the greatest enormity, I have long since been led to entertain the belief that a system so exclusive and arbitrary in its principle, so corruptive and demoralizing in its practice, and so feebly supported as it is positively proved to be by the existing laws, must soon yield to the more just, liberal, and enlightened policy of modern times. At length a necessity seems to have arisen and to be generally felt throughout the country for such an alteration of the game laws, as may afford a check to the present alarming increase of crime, attributed in great measure to their instrumentality. A petition to the House of Lords, praying for such an alteration of the game laws, has been voted unanimously by the Magistrates for the county of Norfolk, assembled at their quarter sessions, in two successive

years, viz. 1824 *and* 1825. *I have had the honour to be entrusted with both these petitions, and with a view to discharge a public duty, I have been led to examine and inquire, with more than ordinary care, into the justice, the expediency, and the efficiency of these laws. The result of this investigation, and of my experience as a game-preserver, and as a Magistrate, I now venture to lay before the public. If by tracing an evil through all its various channels to the fountain head—if by exposing the fallacy of any doctrine at present held, or the unconstitutional and improvident tendency of any law that has been acted upon, I should be enabled to pave the way to its amendment, and thus to detract from the sum of human misery, the sole object of my present undertaking will be accomplished.*

GUNTON, FEB. 10, 1825.

CONTENTS.

CHAPTER I.

THE INEVITABLE TENDENCY OF THE PRESENT GAME LAWS TO DEMORALIZE SOCIETY.

TRADE and commerce in a free country, cannot fail to create considerable wealth distinct from land, and history will not justify us in expecting, that the virtue of mankind in general will be proof against the temptations which attend an increase of fortune, or that it will suppress the natural desire on the part of its possessors, to avail themselves to the utmost of their affluent circumstances.

The prohibition of the sale of game makes it a rarity; from being a rarity it becomes a luxury which cannot be dispensed with at the table of the rich man, and must at all hazards, at any expence, and by any means, be obtained.* Hence the origin

* The Secretary of State for the Home Department is reported to have said last year in the House of Commons, speaking on the sale of game, "In point of fact game is already sold as openly as it could be if the law were repealed;" and again, "Is it conceivable, Sir, that the head of a corporation, '*animal propter convivia natum*,' could be restrained by any penal enactment from the indulgence of his appetite for game."—*Parl. Deb. from 3d February to 25th March, page* 916.

of poaching and of the illicit trade in game; but before we can approach the poacher, the miserable wretch by whose immediate and active agency the poison is chiefly gathered, we must trace his inducement through the various corrupted channels of its circulation: and here I shall refer to the printed evidence taken by a committee of the House of Commons on the subject of the game laws, for my authority, supplying some facts that have fallen within my own knowledge in corroboration of those already published. Mr. A. B. a poultry salesman, states, that "game is supplied to an extent beyond any thing the gentlemen, he dares say, can conceive. We get it," says he, "from higglers. Poulterers who attend Leadenhall market, buy it of course, game being an article with which they are constantly in the habit of supplying their customers. He believes that the parties who send game to him get it from a second or third hand. He also gets game from porters at inns in London, and he has no doubt they obtain it from coachmen and guards. He believes that a great quantity of game is sold, besides that which passes through the hands of salesmen. The supply of game is beyond the demand. He thinks if the sale of game was licenced, salesmen, would procure it through more respectable channels, and that no greater quantity would come to the market than at present. He believes it is not a common thing to have game from France."

Mr. C. D. poulterer, states, "he would engage to supply the whole House of Commons with game twice a week for the whole season." In answer to a question, whether it is the common habit of poulterers to deal in game, the witness replies, *Oh, certainly.* He thinks one-third of the game that comes to London is not consumed. The witness once saw, in a salesman's possession, 2000 partridges, that were thrown into the Thames. The country receivers of game are chiefly publicans; a great part of the game sent to London is stolen by the gentlemen's own keepers,* and the guards and the persons connected with the coaches, take it up to Lon-

* Within a few weeks of the present time, a Noble Earl appointed a gamekeeper to some part of his property not before preserved. A gentleman (an esquire) an acquaintance of his, living in the neighbourhood, desired some of his dependents to assist the gamekeeper in the rearing and protection of game over this new preserve.—A respectable man, either the servant or a tenant of the friendly squire, soon after observed some snares, of a most ingenious description, set for partridges, of which he immediately apprized the gamekeeper, who thanked him much for his information. Shortly afterwards more snares were found by the same person, who thinking it very strange that no means had been taken to apprehend the poacher on the former occasion, enquired of his master or landlord whether he might presume to officiate for a day or two in the capacity of gamekeeper on this newly preserved property, in order most effectually to serve the Noble Earl, his master's or his landlord's friend. Having received the Squire's permission, he sought the assistance of a man in the neighbourhood, who had the character of a most adroit poacher. For the bribe of a guinea, the (no doubt falsely accused) individual alluded to, undertook to catch the real poacher. He soon found some more snares—he watched them all night, and the next morning at day break he detected the Noble Earl's own gamekeeper in the act of taking the birds from these well-set engines.

don. The witness receives about one-third of his supply from gentlemen themselves. The gentlemen send up a certain quantity of game in a year, and the account is squared by taking an equal amount in poultry. I shall recapitulate the evidence no further at present. What I have cited exhibits the extent to which game is supplied, contrary to law, and some of the various channels, through which it passes; as many of them probably, as the honest salesman and poulterer were acquainted with.

We have seen—

1st, That it is the common habit of poulterers to deal in game;

2dly, That they purchase it from salesmen;

3dly, From gentlemen;

4thly, That the salesmen procure it from higglers;

5thly, That it is supplied in a bye way to customers for consumption;

6thly, By porters at inns in London. The porters obtain it

7thly, From guards and coachmen;

8thly, That these last receive the game from gentlemen's keepers;

9thly, From publicans; and the higglers spoken of by the salesman procure it from sources unknown to him, the salesman, but which, as a country magistrate, I may perhaps be able in some degree, to describe. I am warranted, by the fre-

quent conviction of common carriers for conveying game of which they can give no good account, in asserting that they, the carriers, form a tenth class of persons engaged in this unlawful trade. The carrier very frequently receives game direct from the poacher, and by meeting him in the public road, affords a facility for the removal of his illicit commodity, to the nearest town or place through which a coach or caravan may pass to London, without the risk of retaining it at any house in the neighbourhood in which it is taken, where it might be detected by means of a search warrant. Although the number of other receivers is almost infinite, admitting of as great a variety as there is of trades and occupations, not even excepting the petty officers employed by government, I think there is no other class of regular and accustomed receivers of game. I may be thought to exaggerate, when I speak so generally of the multiplied diversity of receivers, as to include even the petty officers of government; but I am authorized to make the charge by the following fact, which will serve in other respects, to illustrate this part of the subject. A gentleman of my acquaintance, resident near a town in a distant part of the kingdom, had information that part of some game taken from his woods in the night by a gang of poachers, was removed to the house of a custom-house officer, in a neighbouring town—and part of it to the house of another respectable man living

in the same place. Having obtained a search-warrant from a county magistrate, backed by a magistrate in the town, the gentleman ordered his servant and the constable to search the house of the custom-house officer, and there the game was found. In the mean time, the gentleman being left alone with the magistrate, while he was waiting the result of the search, he learned, to his surprise, from the magistrate himself, that he (the magistrate) thought it probable game might be found in this man's house, because he himself had dealt with this individual for the article occasionally. The worthy magistrate alluded to was the same, be it observed, who had backed the search-warrant, and at that time he was a member of parliament!

We will now turn to the higgler, and if it be inquired how he gets the game which he sends to the salesman, I would reply generally, from every source existing throughout the country in which he traffics—from the poacher by profession, from the day-labourer who poaches occasionally, from dishonest gamekeepers with whom he ostensibly deals for rabbits, and if he finds the supply from these several quarters insufficient, he sometimes exercises his talents for instruction by explaining to young and ignorant persons the methods of taking game, while he at the same time allures them to the practice of poaching, by promises of a rich reward in the price to be paid for the game with which they may furnish him. An instance

of this sort came very recently to my knowledge. The son of one of my tenants, about 14 years of age, was standing idle near a wood, in a field wherein there were many pheasants at feed.—While observing the pheasants, a higgler accosted him, and remarked the quantity of game—he then asked the boy if he never got any of it? the boy replied no—how should I get any of it? the higgler immediately said, O that is easy enough, I will shew you how to catch it, and I will give you a handsome price for as much as you will supply me with. The boy very soon afterwards repeated this conversation to his father, from whom I heard the circumstance.

Having now enumerated some of the principal modes among the multitude that exist, by which game travels between the poacher and the consumer, this may seem to be the fit opportunity for saying a few words relative to the former and his course of life. But as part of my present undertaking is to exhibit all the known resources of the game-consumer, and as honorable mention is made in the evidence of the poulterer of another source of supply—a source equally respectable with the poacher himself, and to the amount of one-third as productive, this, which will form the eleventh class of persons illegally dealing in game, shall receive due notice and consideration. The poulterer declares that he receives one-third of his supply from GENTLEMEN!! The honest part

of the public upon hearing the assertion from a poulterer without a name, (as the evidence is printed) will probably exclaim, this is impossible, the nameless poulterer is not to be believed! I will therefore afford the public the means of judging the credibility of the poulterer's statement. I have heard from a friend, on whose veracity I can place the most perfect reliance, of a nobleman who did send his game to a poulterer. The poulterer returned him in exchange a certain quantity of poultry, for which, without this set off, he would most unquestionably have been paid in cash.—From another friend, equally entitled to credit, I have heard of another nobleman who actually did sell his game to a London dealer, and was annually paid for it in money. From a third friend, whom I believe as implicitly as the two former, I have heard of a county magistrate who now annually pockets from three to five hundred pounds by the sale of his game. I have also the strongest reason to believe that young sportsmen very frequently pay for guns and shooting tackle by sending up game of all descriptions. If the cautious and irresponsible tone in which I have thought it right to speak respecting this description of law-breakers, should fail to make the proper impression, I have still another case to submit to the public, which will put beyond all question the probability of the poulterer's averment. An example has fallen within my own knowledge of a

proposal made by a London dealer to take all the game a gentleman possessing a large estate, well furnished, might choose to send him. And what renders the matter still more singular and still more illustrative of the fact, that such contracts are common—the party applied to was a gentleman, whose character was of a kind to render his entering upon such a traffic utterly improbable, and the dealer had not the slightest knowledge of him, either personally or by intercourse of business.

I ask then, I confidently ask—is it reasonable to suppose that such a proposal as this could be made to a gentleman unless the professed dealer in game had some reason to think it would be accepted? And what reason could he have for thinking it would be accepted in this instance, but the positive knowledge of similar transactions? On this, as it appears to me, almost indescribably disgraceful practice, I need at present hazard no comment of my own. I have recently met with some observations better than any I can make upon this part of the subject. "It seems (says the writer I quote) that all sense of moral wrong is lost, and even noblemen and gentlemen, the proprietors of large manors, do not hesitate to make a profit by this illicit traffic, in which in truth all classes are, more or less, engaged either as sellers or buyers. Here then is the strong ground for all those to take who believe that the happiness and the wealth of a state depend upon the moral character and labour of its subjects. And when we

see the depravation beginning at the two extremities of society, and meeting in the middle to corrupt also that order, the proofs of the demoralizing influence of the laws as they now stand, can hardly be carried further. But look at the case of the two principals in these breaches of the statutes! Which is the most an object of pity or contempt, the nobleman and gentleman who, trusting to the honour of the tradesman whom he corrupts, brings his game to market for a paltry profit, and stands above and secure from conviction, or the poor wretched labourer, who, yielding to a temptation that solicits him on every side, sells his morals, his character, and his peace, often to the sacrifice of his life, always to that of his innocency and his sober habits—and not unfrequently the curse descends to the third and fourth generation? We say these men meet together in the commission of the same crime, the nobleman and the poacher, the gentleman and the porter, and although one steals what the other only sells because he possesses it, that moralist will seem a severe and perhaps be thought an unjust judge, who shall pronounce that the greater man is the lesser criminal."

Having surrendered certain noblemen and gentlemen to the hands of others, only however, I beg to observe, because I felt I could not do them justice, I shall next refer to the evidence given by Mr. John Stafford, chief clerk at Bow-street Police Office, respecting their companion in crime,

(though not, alas! in punishment) the poacher. Questioning him as to his knowledge of offences against the game laws, the committee asks:

"Are there any particular cases which you can mention, which have come within your knowledge, of particular atrocity?—*A.* I think one of the worst cases that I recollect, and that was a pretty early one (in the year 1816,) was the case in Gloucestershire, where there was a large gang thoroughly organized, and bound together by secret oaths, that attacked the keepers belonging to the Berkeley estate, near Berkeley castle. Vickery, who was a very intelligent officer, was sent down upon that occasion, and from his exertions, and the assistance he met with in the neighbourhood, he was enabled to bring the whole gang, or pretty nearly so, to justice; it consisted of about twenty; there were thirteen or fourteen of them I think tried and convicted of the murder. A man of the name of William Ingram, one of the principal keepers, was shot dead upon the spot; another of the keepers had an eye shot out; another was shot through the knee, and several of them were dangerously wounded; a man of the name of Allen, who was a farmer, and also a collector of rates or taxes in the parish, and looked upon as a respectable man, was at the head of that gang; and Allen was executed with a man of the name of Penny, who was a labourer, and was supposed to be the man that actually shot the gamekeeper who was killed; the

other offenders were all transported for life: and after that, a young man who was a lawyer, or a lawyer's clerk, in some village adjoining, and who had administered the oath to those people to bind them together, was also tried and transported ; it turned out that he swore them upon a Ready Reckoner, but the court took that as sufficient, it having the effect to bind them."

"From the result of your information, has it appeared to you that thieves and poachers are frequently connected together in the country, and that they are frequently the same persons? *A.*—I think that very soon after men become poachers, they either become thieves, or are led into connection with them; I think that many men perhaps would not have been thieves, if they had not previously become poachers."

"In the case of the Berkeley gang, which was united in so very particular a manner, by secret oaths, you said that their object was poaching; was that poaching for profit? *A.*—Poaching for profit certainly ; and I heard confidentially, that some very respectable people in the neighbourhood encouraged them; that it was even carried to that length, that a gentleman who was in the commission of the peace had frequently franked their game in large quantities to London; and that it was supposed he could not have done that without

some knowledge of the manner in which it was obtained."

In corroboration of Mr. Stafford's opinion that poachers soon become thieves, it will be necessary to urge but little—1st, because this fact is well known and generally admitted, and 2dly, because it is sufficiently obvious, that men once having contracted habits of idleness, and being reduced by these habits to seek predatory and precarious means of subsistence, gradually lose that sense of shame, and that fear of punishment, which operate powerfully on those who are yet uninitiated in crime. I believe that no one commits a first offence against the laws of his country, without some feeling of remorse. The degree of this feeling is probably greater or less, according to his knowledge of right and wrong ; but it is most important to my argument to observe, that this moral sensibility is materially lessened or increased by the opinion of others—that is to say, by the opinion generally entertained concerning the particular offence of which he is guilty. What then, I ask, is the common amount of education among the lower orders? With what degree of attention are they instructed in the first religious and moral principles of right and wrong? What is the general sense entertained of the moral turpitude of

poaching?* It is true that here and there parish schools are now established, at which, among an agricultural population, boys may remain till they are fit for service, viz. till about ten years of age; and among a manufacturing population, till they reach the age of six or seven. After this time they are almost universally left to exercise their contemplation as much or as little as they choose on the truths they have heard, and the doctrine they have received. Those who please, go to church once in the week, and there they are reminded, if they listen to the service, of the lessons they were once taught. As to the general feeling in regard to an infraction of the game laws—so far from its operating as a check to the propensities of a poor man, under circumstances of strong temptation, it has a directly opposite tendency. A few game preservers and sportsmen declare that they will not live in the country if the game laws undergo any alteration, and that their vested rights and exclusive privileges cannot consist-

* It is stated in a report from a committee of the House of Commons, "That the laws which prohibit the sale of game are constantly and systematically evaded, or set at defiance; that the practice of purchasing game is not confined to any one class, but is habitual to persons of every class, who have not the means of being sufficiently supplied with that article from their own manors or land, and in consequence a breach of these particular laws appears not to be considered as any moral offence whatever."

ently with justice be invaded. Against them are arrayed almost all the rest of the world—all the best and most useful, all the worst and most worthless, and as great a proportion of the middling order as trouble themselves to think upon the subject. Some theorists contend that all game laws are an undue restraint upon the natural liberties of mankind—others very eloquently, and with a very notable display of historical knowledge, (as I shall hereafter make it appear) represent the game laws as a remnant of slavery, first introduced with the feudal government, the policy of which was to render the condition of the people as low and as abject as possible. Game is sold in every great town in the kingdom, and nobody, or at all events very few, are found to inform against the sellers; whole multitudes carry on the trade and every species of facility is provided for the nefarious traffic. Customers and consumers abound in every class of society interdicted from the enjoyment of game as a luxury at the table, though not the less capable or desirous of indulging their appetite for it. Noblemen and Esquires, and Members of both Houses of Parliament, and magistrates, are said to violate those laws, for the sake of money, which it is to be presumed they cannot want, and the poor man, surrounded by temptation, has to procure for himself,

and perhaps a starving family dependant upon his support, neither more nor less than the means of subsistence! What must be the general feeling in regard to an infraction of laws, which some hold to be unjust, slavish, and which all agree in violating? What sense of moral turpitude can attach to an offence in the mind of the poor man under inducements so strong, which make him only a partner in guilt with his landlord, the esquire of his parish, and the justice of peace, who is to take legal cognizance of his crime if detected? Granting all the effect that the undisputed justice and policy of the game laws is likely to have upon the poor man, granting him all the advantage of knowing how secretly, and with what difficulty the illicit trade is carried on, how frequently, how severely, and how certainly every breach of these laws is punished, and give him above all the benefit of example among those to whom he should look up with reverence, it is not hazarding too much to say, perhaps, that neither the awful threat of the mere sportsman as to his absence from the country, or the regard that he (the poor man) must have for the game-preservers' vested rights and exclusive privileges, will have the effect of deterring him from stealing game. The receipt to make a poacher therefore will be found to contain a very few and simple in-

gredients, which may be met with in every game county in England. Search out (and you need not go far) a poor man with a large family, or a poor man single, having his natural sense of right and wrong, and as much more as he was taught before he was 7 or 10 years old; let him absent himself from church, or go to sleep when he is there, give him little more than a natural disinclination to work, let him exist in the midst of lands where the game is preserved, keep him cool in the winter by allowing him insufficient wages to purchase fuel, let him feel hunger upon the small spare pittance of parish relief, and if he be not a poacher, it will only be by the blessing of God. In the poacher thus easily concocted, my experience justifies me in asserting, that we have at least a fair promise, if not the absolute certainty, of an ultimately accomplished villain.

Poaching is usually practised in the night, and the barrier of repugnance to a first offence once passed, men become strangers to the light of day, to the light of their own conscience, and to the light which the declared opinion of society sheds upon crime, exhibiting it in all its natural deformity. They are even allured by an innate love of the sport which is the common property of our nature—they are inspirited by the adventurous character of the enterprize. Their associates in the night are

necessarily men of their own profession, or worse; their scruples at the commission of more heinous offences are soon expelled by ridicule or drowned by drink; they become suspected, and if warned by any punishment for snaring a hare or shooting a pheasant, and led by that means to a desire a return to their originally honest and industrious habits, they find a difficulty in obtaining a service, and perhaps even of procuring daily employment. There is a superabundance of labourers, says the farmer, and I ought to prefer those who are honest; besides I shall perhaps lose the grain out of the manger in my stable, my turkeys' eggs, or the fowls from their perch. The squire will of course take care to avoid having a poacher upon any part of his premises; he thinks it would be madness to trust one in the neighbourhood of his preserves. The result is, that the poor wretch is all but compelled, and certainly very strongly tempted, to resort to his former profitable course of life, and when he resumes it the feelings which actuate him are of a ten-fold more dangerous kind than those which first allured him from the path of honesty—1st. The certain loss of character, of which he is conscious, removes one of the best moral preservatives of honesty, viz. the fear of disgrace, while his dissolute and irregular habits have weakened his natural af-

fections. 2dly. He no longer values the world's estimation of himself; and he becomes less sensible to, or more regardless of the consequences which his infamy and guilt may entail upon a once beloved wife, a formerly dear and endearing offspring, or a reputable family connection; in fact he feels himself an outcast of society; he apprehends that every man's hand is lifted against him, and he becomes prepared to lift his hand against every man. All the bad passions of his nature assume uncontrolled dominion over him; his conduct is ruled now perhaps by an inordinate desire of gain (as it strikes me more nearly approaching to an equality with the higher class of offenders already spoken of) by malice, by revenge; all in their turn. He escapes the commission of the most atrocious crimes only by the absence of temptation, opportunity, or the fear of punishment: the first depending upon circumstances, the second measured by the extent of his own genius, and the third by the amount of his fortitude and intrepidity. But it will perhaps be asked, is this the only description of poacher with which I am acquainted? In truth and candour can I assert that my experience furnishes no instances of men becoming poachers who are not incited to a first offence by the solicitations of hunger? Have I never known poachers who, like the nobleman,

the wealthy esquire, and respectable magistrate fellow-traders in game, have no better reason to assign for their criminality than their inordinate love of money? Without hesitation I answer, there certainly is such a class of poachers, a very considerable class, but as certainly bearing a very small proportion in number to that already noticed. The class of poachers now to be described consists of men generally less indigent, better informed, and originally more desperate—men who incited to a first breach of the law by some temptation other than that before represented, and led step by step to a maturity of guilt, resolve to live by crime; these men, as I shall presently make it appear, are highly instrumental in adding to the number of poachers generally, multitudes of poor men, such as have been already described, and subsequently in impelling them forward to the consummation of their miserable career. These are men who habitually thieve; their progress needs not be marked out in these pages; it is sufficiently known through those of the Newgate Calendar, and it is my province to shew, not the transition from crimes of a more heinous nature to poaching, but the progress from poaching to the perpetration of more heinous crimes. The thieves who become poachers, united with the poachers who have become thieves, are usually those who lead the gangs, whose bloody and ferocious deeds are so frequently recorded, during the winter

months, in all the newspapers of the day. These desperadoes provide guns and other instruments, the *materiel* for poaching, they hire (the fact falls within my own immediate knowledge) poor men, generally upon the same wages, or very little more, than are paid by the game-preserver to his night-watchers, they discipline these unhappy mercenaries in the exercise of their calling—they sometimes claim the whole of the booty, offer their mighty protection, and often actually do pay the penalties if any novice should "get into trouble," by detection in a trivial offence on some other occasion; and finally, they undertake to dispose of the game with safety and profit, whenever it suits the convenience of the young beginner to produce any.—The circumstance just mentioned will serve to account for the extraordinary advantages gained occasionally by the gamekeepers, comparatively few in number, over a much larger number of poachers, in the tremendous nightly conflicts which so frequently occur. One instance within my own recollection will suffice to exemplify this system.—Thirty-six poachers visited the woods of a Norfolk game-preserver, and were met by twenty-five gamekeepers and their assistants, about the hour of midnight. Gamekeepers who know their business generally reserve their attack for an opportunity, when it appears that most of the guns of the poachers have been discharged at their feathered prey; but in this instance it happened that the

headlong impetuosity of the watch defied all control, and the poachers received the charge with loaded guns. Within ten yards of the approaching enemy the poachers fired—three of the watch were wounded, one mortally, as it was for a long time supposed, and the remaining twenty-two continued to advance. Such were the odds against the keepers, in point of number, that the poachers, had they all been actuated by the same spirit, must have been morally certain of victory; but by far the greater number fled as soon as they came into actual conflict with their stout and determined adversaries. The engagement lasted more than an hour; five poachers were made prisoners on the spot, two afterwards were taken in London by a gentleman, assisted by a police officer. All the seven were subsequently tried, and capitally convicted of the offence; their lives were saved with the greatest difficulty, by the humane prosecutor, and they all were finally transported for life. It appeared that among the thirty-six poachers only ten had guns, and the remaining twenty-six were mere mercenaries—poor fellows who were seduced from their homes, to swell the ranks of the marauders, by the very moderate pay of 2s. 6d. each, and quite ready to take to their heels the first instant an opportunity offered for their escape from the danger of a broken head, the probability of subsequent prosecution, and the almost certainty of entire and inevitable ruin, if known in their neighbourhood to be addicted to poaching. Undertaking to characterize poachers generally, I have thought it necessary to say so much of this superior class of them, but they scarcely belong to my subject, because their existence cannot fairly be attributed exclusively to the nature of the game laws. It will be observed, that a portion of this class, comparatively small in itself, consists of thieves and common depredators, who, if there were no game laws and no game, would still exist a nuisance to the public. To them, and to them only, will apply the stale and good for nothing argument, that so long as we have any thing to steal, there will be found persons to steal it; ergo, no amendment of the game laws will prevent poaching. By pursuing this doctrine at present, however, by an attempt further to expose its fallacy and complete its refutation, I shall be led more into the general discussion of the subject than is consistent with the scheme of my undertaking, but I shall not omit to notice it again at a more fit opportunity. When I revert to my description of the receipt for poacher-making, and the progress of the poor man from the first offence to crimes of deep enormity, I have no doubt some persons will enquire, is this a portrait sketched from real life, or a picture that the imagination has supplied? A very few cases, out of many that have occurred upon my own property, are a reply to this question.

Robert Barber, taken in the act of poaching,

apprehended afterwards for fowl stealing, and transported.

Robert Harmer and William Riches, taken in the act of poaching, apprehended afterwards for felony, and transported.

George Ives, of Trunch, taken in the act of poaching, apprehended afterwards for stealing ducks, and transported.

Jonathan Green, when about 18 years of age, was taken in the act of poaching on a Sunday evening; he afterwards commenced thieving, and finally, was executed for a burglary.

Some particulars of Green's history may be thought interesting, although they are irrelevant to the subject at present under discussion. I shall therefore subjoin them in a note. It may be fit, however, to observe here, that Green, and all the persons whose cases are before cited, were very poor men when they committed their first offence, viz. that of poaching.*

* Green was born of poor parents, and had little or no means of education.—He was of tall stature, very great bodily strength, of surprising ingenuity, and of undaunted courage. At a very early age he commenced the business of a poacher, tempted on the one hand by his wants, and on the other by the "wages of iniquity"—the price offered for game, the abundance in his neighbourhood, and the facility of taking and disposing of it without detection. By snaring, which he for some little time practised with success, eluding the vigilance of the gamekeepers by his activity and skill, he acquired sufficient means to provide himself with a gun. This gun was soon afterwards heard at night in one of the woods near Gunton.—One of the principal keepers instantly proceeded to the spot as usual, for the purpose of

Thus then I have proved my first allegation. After such an exposition of facts and consequences,

reconnoitring the enemy, and finding only one man he did not summon his assistants, but advanced upon Green alone.—As it happened, in this keeper Green found a man of equal prowess and of maturer nerve, which may easily be imagined when the fact is stated that some years afterwards (at the age of sixty-five) this same keeper in single combat, which lasted nearly an hour, with a very desperate character and a powerful man only half his own age, finally overpowered his antagonist and made him prisoner. A similar fate attended Green. He was taken with his gun and a pheasant in his possession, and committed for a short term of imprisonment to the house of correction at Aylsham. There he remained a very few days before his ingenuity suggested some means of escape, of which he availed himself, but he was very soon re-taken, and he remained in safe confinement till the term expired. The conflict which he had maintained so manfully with a veteran, and the circumstance of his breaking prison, made him in some degree notorious, and it is to be presumed that he did not afterwards find it easy to obtain employment. He associated with other idle and dissolute persons, and whether he resumed his habits of poaching or not, he committed another offence, viz. that of breaking open a watchmaker's shop. He was tried for the burglary, convicted, and condemned to be hanged, but the sentence was commuted for transportation. While he was awaiting the execution of his sentence he twice made his escape from the Castle at Norwich. He effected it the first time in the following extraordinary manner. Between his apprehension and commitment he contrived to have an iron skewer tied up within a tail which he wore, similar to that still frequently worn by sailors. With this skewer he picked a hole through the wall of his cell, which was one of those furthest from the ground in that lofty building. The hole was four feet below the roof of the Castle, and as I am informed by Mr. Johnson, the present keeper of that prison, from his own observation, the size of the aperture measured only twelve inches by nine. He cut his bedding into shreds, or bound them round his body; he was then heavily ironed, yet he crept through this small space, and contrived to reach the roof four feet above him, probably as it is supposed pulling himself up to it by means of one of the shreds of the bedding, which he must have previously thrown round one of the battlements

if any doubt can still remain of the tendency of the present system of game laws as a cause to demoralize society by an infinite variety of means, such as those pointed out in the foregoing pages,

upon the edge of the roof. This place of egress was immediately over a paved court yard, and to use the keeper's own words, from whom I received the account, had Green missed stays, he must have fallen upon the pavement and have been dashed to pieces. Having traversed the roof to the opposite side of the Castle, he lowered himself down to the ground; he had then to climb over some very high railing covered with tenter hooks; but he escaped, and finally found his way to a comrade in the city of Norwich as it has been believed, who filed off his irons, and thus he was set at complete liberty. Whether he was re-taken or not before he had committed a fresh offence I do not remember, but he was certainly again in Norwich Castle about two years afterwards, and again escaped. This second escape was effected by means of a key, with which another prisoner had been furnished. On this occasion he relieved himself from his irons by the good luck as he termed it, of finding the back spring of a knife in his cell or in the airing yard, and of this he contrived to make a saw. Having once more reached a part of the roof of the Castle, by the help of a rope made as before of some shreds of his blanket, he lowered himself down upon the roof of the shire-hall, (a building less elevated) and from thence he descended safely to the ground by clinging to a leaden water pipe in a corner of the building. He not long afterwards broke open a dwelling-house and robbed the premises; how many more heinous crimes he committed I do not undertake to relate, because they were not proved against him, but I have reason to think a very interesting romance might he constructed upon the tradition of Green's exploits, his deeds of daring and subtle contrivances, his hair-breadth scapes from detection, as well as from punishment even when detected. For the burglary last mentioned he was however apprehended and brought to justice—he was tried, convicted, condemned, and executed at Norwich. Thus terminated the career of Green the poacher—in the full bloom and vigour of manhood—a career more remarkable for its long duration and continuance than for its commencement and consummation, or the connection between them.

and quite obvious upon the surface of the subject, we may refer to the effect, upon which no doubt can be entertained. It has been repeatedly asserted in public, without contradiction, that a fourth part of those who crowd our prisons, is composed of men committed for a breach of these laws; and if we refer to the speech of the Secretary of State on the game laws, during the last Session of Parliament, as reported in the parliamentary debates, it will be found that he authorizes us to believe the number of commitments throughout England for offences against the game laws to have amounted, in six or seven years, to upwards of 9000—that is, about 1200 per annum. Can any one contemplate so much evil arising from one single source without feeling a desire to eradicate it? Can any individual or set of individuals pay too high a price, or can they make too great a sacrifice for the removal of so enormous a weight of public calamity? But it appears to me that no great price is to be paid or sacrifice offered for the accomplishment of the desired object. I believe that a very simple alteration of the present laws for the protection of game will have the effect of diminishing the crime of poaching in a very great degree, if not of entirely annihilating it, a result upon which no one can reasonably compute, so long as there are thieves in the country and plunder for them to prey upon. All that a re-

former of the game laws can hope for, and I would appeal to the world if this be not an object worth some trouble in the attainment is,—1st, to lessen the temptation to violate the law among a class of persons the most numerous in this and every other country, viz. the poor—2dly, thereby to prevent the increase of crime generally—and 3dly, to arrest the progress of corruption through all classes of society, by allowing that to be done legally which is notoriously done by many of all classes in defiance of the law. I contend, and with the greatest confidence, that this alteration may be most legitimately effected—not by depriving any man of his present rights, but on the contrary, by restoring to men rights of which they have been improperly deprived—not by imposing any new restraints upon man's natural liberty, but by removing those modern instruments of tyranny and oppression, which are incompatible with the boasted freedom of Englishmen, and directly at variance with the acknowledged principle and practice of our law, from the earliest periods of our history. Finally, it is not proposed to curtail the liberty of the subject or even to abridge his amusements by a law that is new, but it is proposed to extend the one and secure the innocent enjoyment of the other, by the restoration of the law of the land, which is old. As this is a distinct branch of the subject, and one in the due

consideration of which it will be necessary for me to refer to very old times and high authorities for the opinion which I have formed and shall endeavour to circulate, I shall appropriate to it one short chapter exclusively.

CHAPTER II.

SOME OF THE RESTRAINTS UPON THE RIGHT TO KILL AND SELL GAME UNCONSTITUTIONAL, IMPOLITIC, AND INCONSISTENT WITH THE FUNDAMENTAL PRINCIPLES OF JUSTICE AND CIVIL LIBERTY. GAME, THE PROPERTY OF THE PERSONS ON WHOSE LAND IT IS FOUND BY NATURAL RIGHT, AND BY ANCIENT LAWS WHICH HAVE NEVER BEEN REPEALED, THEREFORE THE RIGHT TO GAME, AS PROPERTY, STILL SUBSISTS IN THE OWNER OF THE SOIL, WITH AUTHORITIES FOR THESE CONCLUSIONS.

Mr. Justice Blackstone has laid it down, that "natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; but every man when he enters into society gives up a part of his natural liberty as the price of so valuable a purchase. Political, therefore, or civil liberty, which is that of a member of society, is no other than natural liberty, so far restrained by human laws, (and no further) as is necessary and expedient for the general advantage of the public. Hence we may collect that the law which restrains a man from doing

mischief to his fellow citizens, though it diminishes the natural, increases the civil liberty of mankind; but that every wanton and causeless restraint of the will of the subject, whether practised by a monarch, by a nobility, or a popular assembly, is a degree of tyranny."*

"Civil liberty, (says Dr. Paley) is the not being restrained by any law but what conduces, in a greater degree, to the public welfare." To arrive at the object with which I have made the foregoing quotations describing natural and civil liberty, we have only to suppose a man in his natural state possessed of twenty acres of land, of which he could make only one shilling per acre annual profit, (and nothing else in the world) upon which there shall be a quantity of game, as well as other productions, animal or vegetable, reared upon the soil. Nobody will dispute the right of this small proprietor to cut his trees and sell them, or to kill pheasants and sell them, if he can find a market. But he becomes a member of society, he is subjected to the restraint of laws, and is entitled to their benefit. Thus he acquires his portion of civil liberty. He is subjected to such restraint only, that is, the State is authorized to deprive him of so much only of his natural liberty as will conduce to the public

* Vide Blackstone's Commentaries, vol. i. p. 125.

advantage. He cannot consistently with justice or civil liberty, indeed, according to the authority of Mr. Justice Blackstone, he cannot, by means of a monarch, or a nobility, or a popular assembly, (ergo by an English act of parliament) without exercising a degree of tyranny, be restrained from killing his pheasants and selling them, as he cuts his trees and sells them, unless it can first be proved that in so doing he does mischief to his fellow citizens, or that the restraint is necessary and expedient for the general advantage of the public.

That the snaring a pheasant and selling it would do any species of mischief to this man's fellow citizens I presume will not be contended, and it may perhaps be as difficult to prove that any restraint upon this his natural right can promote the general advantage of the public. A few game-preservers may urge that my small proprietor may appear in the shape of a poulterer, may attract the game from their extensive territory to his twenty acres by alluring food, kill it and sell it in their despite, and thus injure them by diminishing the amount of slaughter in their battues. That they would be more liable to such injury than at present I deny; but I shall find occasion to speak of this again hereafter: in the mean time, for the sake of argument only, let it be granted that their sport would be

lessened, and that insofar they would suffer injury. Is the general advantage of the public concerned in their desired excess of sport and exclusive privilege of killing hundreds of heads of game in a single day; for unless the general advantage of the public renders necessary or expedient the exclusive right of slaughter claimed by the gentlemen in question, to restrain others from participation in these privileges, amounts, according to Mr. Justice Blackstone, to nothing less than absolute tyranny.

Now let us consider how the privileged order can make out that the restraint, the unjust and arbitrary restraint alluded to, promotes the general advantage of the public. Will this privileged order assume that the natural right to preserve, or the taste for eating game, can be abrogated by mere enactment of law? If they are prepared to go such a length, it follows of course, that after this law has been enacted, no one will buy game, no one will sell it—no one certainly of their own order—no gamekeepers, no salesmen, poulterers, porters at inns, coachmen and guards, bookkeepers, higglers, or carriers, will presume to carry on a trade in game; and the rich merchant or banker, who has no land, will find his appetite so checked by the operation of their law, that he will never offer a price for game, which, if offered, must infallibly put all this

machinery in motion, and induce thousands of poor men to commence a course of crime wherein, without this temptation, they might never have engaged. It will be greatly to the general advantage of the public, say they, that no traffic in game should exist, (and this law will effectually prevent it) because it is thought the demand for it, if legally sold, (there being no demand or supply at present) would be such as to diminish the quantity; and if the quantity of game be diminished one half, what then? they will be enabled to book up only five hundred, instead of a thousand, killed in one day, at their several battues. But such a subject will probably be thought too serious to be thus treated.

Here then rests the case. A man's indisputable natural right is restrained by law, not only for no good purpose, and upon no reasonable pretence, but to the positive injury of the public, and the general repugnance to the law, from its own nature, induces its daily and hourly violation, among almost every class of the community. What is the description Mr. Justice Blackstone gives of such a law as this? I firmly believe, if he had written his commentaries in the present state of society, he would have exemplified his notion of a tyrannous and unjustifiable law, by instancing the prohibition by statute of the sale of game, and the qua-

ification acts. But is this the only point in which game laws invade natural rights unreasonably, and without conformity to the wholesome condition on which many natural rights are very properly restrained.

Let us turn to the disqualification act, for that is its real title. The last restraining or qualifying act, as it is called, is the 22d and 23d Chas. II. c. xxv. by which it is made unlawful for every person not circumstanced in the manner specified, to sport or have any game in his possession; this is surely unqualifying every person who happens not to come within the specification of the act of parliament—it is an act therefore for their disqualification, not for the qualification of others. The estates and conditions of men are made the test not of their being qualified, but of their being unqualified; it is therefore a benefit or exemption from penalties created on their behalf, but a punishment or exclusion imposed on others. I would not insist however upon terms, if something of importance were not connected with the point in dispute that may not at first be obvious. The first disqualifying act that I am acquainted with is the 13th of Richard II. c. xiii, and this will probably be referred to as a sort of precedent and authority for the more extended disqualifications inflicted by more modern law. The preamble sets forth the evil it

was designed to remedy, viz. to disqualify only the lower orders of people, whose conditions and avocations, in the opinions of the legislators of that day, rendered them unfit persons to exercise such privileges; and I can afford the advocates for disqualification in this our day the full benefit of such an authority. For what avails it? Could there have been a necessity for restraining the exercise of a privilege that did not exist, and that had not been enjoyed?—It is by this statute unquestionably proved, that previous to the13th year of Richard the Second's reign, all orders of men might legally kill game; when I come therefore to speak of the ancient law of the land, I shall have only to refer to the laws in existence in reigns previous to that of Richard II. In the mean time I shall beg leave to question the necessity and the expediency, as well as the good sense and justice of the present existing law for the disqualification of the mass of the people, leaving certain individuals exempt from the penalties imposed generally on persons who kill game or have it in their possession.

1st—Let us see who they are and who they are not. I shall here avail myself of the Right Honourable the Secretary of State's humourous description of the persons qualified and unqualified as reported in the debates of the last Session of Parliament (page 113.) "The Hon.

Gentleman," said Mr. Peel, "thinks that the qualification ought to be limited to rank, to science, and to talent; but does the present law admit science and talent to the privilege of killing game? How does the present law deal with the clergy? A Doctor of Divinity does not possess the privilege of killing game; he may indeed procreate a qualified person, but he himself is not a qualified person. The eldest son of an esquire or person of higher degree is a qualified person, and as a Doctor of Divinity is a person of higher degree than an esquire, he may beget a qualified man, but he has not himself the privilege of killing game. Men of science and talent therefore are not favoured by the present law—they are merely left to the melancholy privilege of begetting game killers, who may be men of no talents at all. And what is the state of the law as to qualification founded on property? The second son of a man of £20,000 per annum is not by law qualified to kill game; the younger children of a man possessing the largest property in the kingdom are not by law qualified to kill game on their father's own estates. Is it not a most absurd and anomalous state of things to see men acting in the capacity of magistrates, and enforcing the game laws against others, when their own sons are every day violating them."—

Enough has now been quoted, I think, and from such high authority, to prove that the present unqualifying law is extremely absurd; how therefore such a restraint on the natural liberties of mankind, formerly enjoyed and admitted in a civilized state of society, that is existing under a form of governmeut, can be justified in conformity with Mr. Justice Blackstone's Theory, without incurring the imputation of being "tyrannical," it remains for the advocates of the decayed and rapidly decaying system of the present game laws, to demonstrate. The confining the right to kill game to a privileged class of persons, even if done with greater skill, equally with the prohibition of the sale of game by law, I think is proved to be a means of inflicting mischief on our fellow citizens, instead of being a means of preventing the infliction of such mischief, and both these restraints amount to tyrannical invasion of natural rights, because they are neither necessary nor expedient to the general advantage of the public, but they are on the contrary highly instrumental and actively operative to the disadvantage of the public, inasmuch as they tend to increase the number of criminals.

I shall now endeavour to prove, that according to ancient law, game was the property of the person on whose land it was found, and

that (whatever restraints may have been laid upon the exercise of the rights men have to dispose of that property, or deal with it as they might think fit) it has been virtually property from the earliest period of our history to the present time, excepting only during the interruption occasioned by Norman tyranny. Amongst our Saxon ancestors every man might, by the existing law of the land, hunt and take game on his own estate. In the report of the game laws to the House of Commons, which was made in the year 1817, it is stated, that "Your committee finds concurrent and undisturbed authorities for contemplating game as the exclusive right of the proprietor of the land, *ratione soli*. In a law of Canute, vide 4th Institutes, p. 320, he thus expresses himself. Præterea autem concedo, ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetque feras.—And in Blackstone, v. 2, p. 414, "sit quilibet homo dignus venatione suâ in sylvâ, et in agris sitû propriis, et in dominio suo." Mr. Justice Blackstone will be found in the passage referred to by the committee to give these words not only as the law of Canute, but of Edward the Confessor. After the Norman Conquest one proof of the servitude of the people was the interdict they were subject to with respect to sporting. But such were the

rigours exercised under feudal tenure and under colour of the forest law, as to occasion insurrection and resistance, which ended in obtaining for the people of England Magna Charta and Charta de Forestâ. Sir Walter Raleigh says, (See Prerogatives of Parliament, p. 172,) "While the Normans and others of the French that followed the Conqueror made spoil of the English, they would not endure any thing but that the will of the Conqueror should stand for law; but after a descent or two, when themselves were become English and found themselves beaten by their own rods, they then began to savour the difference between subjection and slavery, and insist upon the law of *meum* and *tuum*." It is not however from the charters that British subjects derive their claim to freedom. It was their birth-right, of which they had been unjustly deprived, and the charters contain a renunciation on the part of the crown, of all power and authority which had been assumed and were found to be incompatible with the ancient rights and liberties of the people. Mr. Justice Blackstone observes, (Com. vol. i. p. 127,) "The absolute rights of Englishmen (which taken in a political and extensive sense) are usually called their liberties, as they are founded on nature and reason, so they are coeval with our form of government, though subject at times to fluctuate and change; at some times we have seen them depressed by overbearing and tyrannical princes," &c. Viewing

then the right in question—1st, as founded on the law of nature and reason; 2dly, as being part of the old law of the realm; 3dly, as essential to the liberty of the subject; 4thly, as one of the usurpations at the Norman conquest; and 5thly, as an usurped right, virtually renounced by the two great charters, it surely cannot be denied that this right again devolved upon the people at large. Not that the people were very anxious, probably, and much in a situation to avail themselves of it at that time, being then in a state of dependence upon the barons and great men, who for many reasons (which still have their operation in the minds of some) would exert their power in preventing the idea of a free liberty and licence to sport, each man on his own land, and to claim the game found thereon as his own exclusive property. If the Saxon constitution ever was restored, (which we are warranted by the Commentaries of Mr. Justice Blackstone & by other authorities in believing,) this law of Canute and Edward the Confessor, already quoted, may fairly be supposed to have been restored among them; and there has been no act of the legislature, that I am aware of, to abrogate that law, although there have been many to modify, and virtually to confirm it. It is further observed in the Commentaries, vol. iv. p. 420, "That it has been the work of generations of our ancestors to redeem themselves into that state of liberty which we now enjoy, and which is therefore not to be

looked upon as consisting of mere encroachments on the crown, and infringements on the prerogative, but as a gradual restoration of that ancient constitution whereof our Saxon forefathers had been unjustly deprived."

William Rufus proceeded on his father's plan, and in some points extended it, particularly with regard to the forest laws; but his brother and successor, Henry the First, found it expedient, when first he came to the crown, to ingratiate himself with the people, by restoring (as our Monkish historians tell us) the laws of King Edward the Confessor.

"William the Norman," says Bolingbroke, in his Remarks on History, pages 53, 54, 55, 56, and 59, "imposed many new laws and customs, and made very great alterations in the whole model of Government. He and his two sons ruled, upon many occasions, like absolute not limited monarchs.—Yet neither he nor they could destroy the old constitution, because neither he nor they could extinguish the old spirit of liberty. On the contrary, the Normans, and other strangers who settled here, were soon seized with it themselves, instead of inspiriting slavery into the Saxons. Stephen being the fourth of this race, was indebted for his crown to the good will of the nation, and he owed this good will to the concessions he made in favour of liberty. John succeeded after the death of his father, Henry II. and his brother, Richard I. by the elec-

tion of the people. His electors, indeed found themselves deceived in their expectations, but they soon made him feel whose creature he was. The King submitted, and Magna Charta was signed. It was signed again by his son and successor, Henry III.* The long reign of this prince was one continued struggle between him and them. The issue of this struggle was favourable to the latter; by exerting their strength, they increased it under Henry III. They lost no ground under Edward I. and they gained a great deal under Edward II. Thus was the present constitution of our government forming itself for about two centuries and a half, a rough building raised out of the demolitions which the Normans had made, and upon the solid foundations laid by the Saxons. The whole fabric was cemented by the blood of our fathers, for the British liberties are not the gifts of princes—they are original rights, conditions of original contracts, coequal with prerogative, and coeval with our government." In a subsequent page Bolingbroke has the following remarks:—"Old Froissart says, that the English had an opinion, grounded on observations made from the days of good King Arthur, that between two valiant and able princes in this

* The learned commentator on Blackstone informs us, in a note to his book on the game laws, p. 30, that the Charta de Forestâ, which was granted and renewed with Magna Charta, and of which it may be considered one great division, took away the power of preserving game for the King's use, without the consent of the owner of the soil.

nation, there always intervenes a King of less sense and courage. Certainly Edward the Third, whose story gave occasion to Froissart to broach this anecdote, stands between his father, Edward the second, and his grandson, Richard the Second—a bright instance of this truth, that great and good princes are favourers of liberty, and find their account in promoting the spirit of it, whilst the weakest and the worst princes chiefly affect absolute power, and often meet the fate they deserve for such attempts." During the reign of Edward the Third, a reign undoubtedly favourable to the liberties of the people, there is no reason to suppose that any restraints were laid on the right each man had to kill game on his own estate, and that such a right then existed, the 13th of Richard II. c. 13 (as it has been before observed), affords sufficient proof. It is the first restraining statute upon record, and the character of that reign and the probable tendency of the statutes then made have been so well defined by Bolingbroke, that I shall not presume to make any additional comment either upon the one or the other. It has, I hope, been satisfactorily established that there was a right of property in game vested in the owner of the soil whereon it is found, from the time of the Saxons down to the reign of Richard II. interrupted only by usurpation. I contend, with submission, that the law made in that reign, and all subsequent laws relative to game, have

been either mere restraints on the exercise of that right, thus indirectly confirmatory of it, or directly confirmatory of it by specific enactment; but it remains for me to shew some authorities for my conclusion that the right still subsists. In the mean time it will be observed how little relation our game laws have to the feudal system. In feudal times, when a superior granted lands to hold of himself upon condition of following him to war, or of doing suit and service in his court, the animals were part of the produce of the land as at present, and the maxim attached upon that grant, Mr. Christian informs us, was "*cujus est solum. ejus est usque ad cœlum et ad centrum,*" or sometimes, to use a stronger word in opposition to *cœlum*, the maxim concludes with *usque ad inferos.* The authorities which have satisfied my mind upon the subject were found in the third chapter of the Professor's book on the game laws, from which I shall take the liberty of transcribing them, together with his introductory remark :—

"Lord Erskine, when he was at the Bar, had a case laid before him, requesting his opinion, whether the lord of a manor could prevent a land-owner from killing game upon a common, where he had a right of common of pasture; and not having answered before he was promoted to the Great Seal, and a reference being made to Mr. Christian's Notes to Blackstone's Commentaries, he sent it to Mr. Christian, who in consequence collected the

following authorities upon the subject. He sent them to the Lord Chancellor, who expressed his approbation of them.

" It appears both from principles and authorities that a land-owner within a manor, who has nothing more than a right of common upon the waste, although he may have a qualification to kill game, has no right to kill game upon the waste or common; but that where the commoners have only common of pasture, the lord of the manor has the exclusive right to the game upon the commons and waste within the manor.

" A tenant of a manor or a landholder may have a right of hunting or fishing upon the waste, as he has a right of pasturage; but they are distinct and independent rights; they must each be proved and supported, either by an existing grant, or by prescription, which presumes an original grant from the lord to whom the soil and the whole interest attached to it still belongs, except what has been so granted to the commoners.

" Fleta makes the distinction in lib. iv. c. 23, 24, and 26. In c. 23 *de admens. past.* he he says: 'Illis autem, qui communiam tantùm habent in fundo alicujus, aliud remedium non competit nisi admensuratio,' sect. 2. In c. 24, he calls communia pasturæ, 'jus pascendi.' In c. 26, he says: 'Item poterit quis

communiam cum alio et jus fodiendi, sicut jus pascendi et jus *venandi, piscendi*, potandi, hauriendi, et alia plura, quæ infinita sunt, faciendi cum libero accessu et recessu secundùm quod ad dictam communiam pasturæ pertinet.' The tenant may have *jus venandi et piscendi;* but these rights are not necessarily annexed to the *jus pascendi* or common of pasture, any more than the *jus fodiendi* or the right of digging turf or of opening mines.

" The right of common of pasture can only be enjoyed, according to the words of Lord Coke, *by the mouths of the cattle* of him who has that right.

That the commoner has no right to kill or to take the game upon the common, seems to be fully established in Coney's case. *Godbolt,* 122. 29 *Eliz.* An action of trespass was brought against John Coney, for digging of the plaintiff's close, and killing eighteen conies there. The defendant pleaded, as to all the trespass but killing of two conies, not guilty; and as to them he said, that the place, where the trespass is supposed, is a heath, in which he hath a common of pasture; and that he found them eating of the grass; and that he killed them and carried them away, as it was lawful for him to do.

" This case was argued by Lord Coke, and his argument equally applies to every species

of game as to rabbits. He made two points: the first was, 'Whether a commoner having common of pasture may kill the conies which are upon the ground; and he said, he might not. And first he said, it is to be considered what interest he who hath the freehold may have in such things as are *feræ naturæ*. Secondly, what authority a commoner hath in the ground in which he hath common.—To the first he said, although such beasts are *feræ naturæ*, yet they are reduced to such property when they are in my ground by reason of my possession, which I there have in them, that I may have an action of trespass against him who takes them. But it is said, that he hath common there: What then?—yet he cannot meddle with the sand, wood, or grass, but by taking of the same *with the mouths of his cattle.*

"If he who hath the freehold bring an action against the commoner for entering into his land; if he plead not guilty, he cannot give in evidence, that he hath common there. It is doubted whether a man can have property in things which are *feræ naturæ;* but in 10 Hen. VII. fo. 6, it is holden, that an account lieth for things *feræ naturæ*.* Vide 14 Hen. VIII.

* "This argument, made by Lord Coke when he was at the Bar, contains the most important authorities that game, or all wild animals, are the property of the land-owner; and these

fo. 1, the Bishop of London's case. As long as they are in his ground they are in his posses-

two great cases I have not seen referred to in any other book.

"The first was a writ of account against the bailiff of the plaintiff's park, who had the care of a hundred head of deer. The defendant demurred to the declaration; and, after a long argument, the court conceded thus to the argument of *Keble*, which is worth repeating. 'And thus, as to heron-sews, sparrow-hawks, and other such things, if there be any, every servant who hath any thing of his master's in governance shall render an account. So a man shall have a writ of account for the profits of a park, notwithstanding it has not been in use before; and also of a close, and of a river, as well as of a manor, *quod fuit concessum.* An account, also, shall lie for deer, notwithstanding the property is in no one; and the reason is, because he had the sole interest in the soil. And if I grant to a man in any year to take a deer, a hare, or a rabbit, within my land, without a warrant, it is good: because, when such wild beasts are on my land, I have the interest in taking them, and no one else: and if I grant to my park-keeper the shoulders and the haunches of any deer which shall be killed, the grant is good; and yet I have no more property in the deer, than I have in the fish in a river. But yet they are casual profits, which he to whom the soil belongs hath authority to take with engines, or otherwise, on account of his interest in the soil, and no other person. And it is clear that a guardian in socage shall render an account of deer; and Magna Charta wills *quòd custos, &c. sustentet parcos, vivaria,* &c. which means not the inclosure only, but the profit; to wit, the deer. And before Westm. the 1st. an action of trespass lay for taking deer in my ground; yet he should not say, *quòd cepit damas suas ad valentiam tantùm*, but the damages in this case should be inquired into, and should be larger, and, as in trespass, should be in the discretion of the jury. *Quòd omnes justiciarii concesserant quoad hoc.*'

"This is a great authority, that in an action of trespass for taking deer, or any valuable animal, on another's ground, the damages should be inquired into, and should be larger, and, as in trespass, should be in the discretion of the jury.

"So also if a man should, with his dogs, drive all the game out of a preserve, the jury may give damages, not merely for the injury done to the grass, but for the injury done to the estate by frightening away the game. I had drawn this clear

sion, and he shall have an action of trespass for the taking of them; and the writ shall be *damas suas.* And in the Register, 102, it is *Quare ducentos cuniculos suos pretii, &c. cepit.* After hearing the argument on the other side, Gaudy, Chief Justice, observed, he cannot kill the conies; and the Court gave judgment for the plaintiff.

"This doctrine is not confined to rabbits or deer, but comprehends every species of game, and also every other species of animal which is profitable and saleable, and not of that noxious

conclusion from the above ancient case; but I am informed that the Court of King's Bench have lately so decided. The case is not yet printed.

"Or if a man had a river, where at any time he could take many valuable fish, and a person came and walked along the bank and drove them with a cart-whip, or a fishing-rod, up or down the stream into another's ground, where they were taken, or from which they never returned; the jury, both in moral and legal justice, ought to give the owner of the river the full value of the fish, in damages against such a trespasser.

"If a trustee in possession, or a guardian in socage, should kill game upon the estate entrusted to his care, and consume them in his family; would he not be bound to account in equity to the *cestuique trust*, or to his ward? It may be said, that the game cannot be sold, and therefore they cannot be valued. I should think that that objection would not avail, for they might be valued as ducks, woodcocks, geese, and turkies, or other delicious food, which can be bought.

"Or it might be inquired, what would any qualified gentleman have given for the privilege of killing and consuming so much game.

"For we learn from the above important case, and more important from its antiquity, that every owner of the soil had the same exclusive right to the animals upon the soil, as he had to the soil itself; and that he could grant to any one, that is, sell to any one, the right of taking these animals, without a deed.

"All this is the law of the present day."

nature which the public benefit justifies every subject in destroying. In the case of Sutton *v.* Moody, 2 Salk. 556, and in 1 Ld. Raym. 251, Lord Holt and the Court expressly declared, 'that a man has no more property in conies in a warren than any man has in his own land. If A. starts a hare in my close, and kills her there, it is my hare. The property continues all the while in me; but if he hunts it into the ground of a third person, then it is the hunter's. And this he took upon the authority of 12 Hen. VIII. c. 9.

"The right of a commoner is well described in Bridgman's Reports, p. 10, in these words. 'And as the commoner may not meddle with the soil, so he cannot meddle with any thing arising out of the land, or that doth grow or is nourished by the same, otherwise than to have his cattle fed there; and therefore it is adjudged, Mich. 5 Jac. that a commoner cannot kill conies there, but may bring his action on the case.' Though this was only the argument of Bridgman when he was counsel, yet this is adopted with approbation by Lord Kenyon, 6 *T. R.* 486.

"I have been favoured by the late Mr. Nares with a case from his father's notes, in which it was not only decided, that a commoner has no right to kill game upon the common, but that after notice to refrain, the trespass must be cer-

tified to be wilful and malicious, so as to entitle the lord, the plaintiff, to full costs. It is the case of Swinnerton *v.* Jarvis, tried before Mr. Justice Nares, Stafford spring assizes, 1782. It was an action of trespass for breaking and entering, &c. It was proved that the plaintiff was lord of the manor, and that the defendant was shooting on the waste, a heath where there was black game. The defendant had notice from the plaintiff to go off; but he continued shooting two hours afterwards. It was proved the defendant had a large estate, and a right of common upon the heath.—Verdict for the plaintiff: damages, one penny.

"Then follows this entry in the Judge's note-book. 'I refused a certificate, not thinking it a wilful trespass, he never having been there before nor since, and thinking he had a right on account of his estate. However, the Court of Common Pleas held, that his staying one moment after notice, made it wilful, and that I was bound to certify; and therefore entered one, *nunc pro tunc.*'

"This case must have been decided upon the principle, that the lord of the manor is the owner of the soil upon the waste, and therefore has a right to the whole produce except the grass, which may be taken *by the mouths of the cattle of the commoners.* It is a consequence of that general rule, '*Cujus est*

solum, ejus est usque ad cœlum et ad inferos.' The right to the soil does not give the owner merely a right to those animals which are denominated Game, but to every other species of animal, which is of value to an individual, and not noxious or hurtful to the public.

"The law is even more extensive than the maxim '*Cujus est solum, ejus est usque ad cœlum et ad inferos;*' for where there is a right of property of any kind, the owner is entitled to all the produce of that property, both natural and adventitious. As where one has the soil, and another a tree growing upon it, the owner of the tree has not only the exclusive right to the fruit, but to every animal production, whilst it remains in or upon that tree. That is expressly decided in the Bishop of London's case, cited by Lord Coke in his argument from the Year Book, 14 Hen. VIII. fo. 1.

"It is frequently said that game ought to be made the property of the owner of the ground. The ancient common law of England has made it such, as far as a property can exist in animals, which no fence can confine, and which have a power of conveying themselves at any time from one owner to another. That right, in the case of pheasants and partridges, was expressly declared by Parliament in the preamble of 11 Hen. VII. c. 17, in these words: 'Forasmuch as

divers persons, having little substance to live upon, use many times to take and destroy pheasants and partridges upon the lands and tenements of divers owners of the same, by the which the same owners lose not only their pleasure that they should have about hunting and taking the same, but also lose the profit and avail that by that occasion should grow to their household.' The statute then enacts that if any person should take any pheasants or partridges upon the freehold of another without the consent of the owner of the ground, he shall forfeit ten pounds; one half to the prosecutor, and one half to the owner. This statute is still in force, and it protects the profit and avail of two animals only by a penalty. But the profit and avail of every other innoxious animal is secured to the owner by the common law in an action of trespass, not merely for an injury to the soil and herbage, but for taking and carrying away *sua animalia*.*

"If every man's house is his castle, so every man's field is his garden; and no one has a better right to take a pheasant, woodcock, lark, or butterfly, out of another's field, than he has out of his garden or out of his house."

So much having been said to prove that

* "This statute is certainly still in force; there is no subsequent statute which expressly repeals it; nor can I find one, that by inference or implication repeals it."

game was, and is at this day a species of property belonging to the owner of the land on which it is found, I shall next proceed to examine some of the objections made to its being so considered and protected as other property by specific enactments, but as this consideration will necessarily lead into a more general discussion of the subject, I shall here close this chapter, which has been confined almost entirely to historical and legal proofs of my proposition.

CHAPTER III.

OBJECTIONS TO GAME BEING PROTECTED BY LAW AS OTHER PRIVATE PROPERTY IS PROTECTED, AND ANSWERS TO THOSE OBJECTIONS—ONE OF THE PRESENT MODES OF PROTECTING GAME CRUEL AND ILLEGAL—PRETENDED NECESSITY NO JUSTIFICATION—OBJECTIONS TO GAME BEING MADE LEGALLY SALEABLE AND ANSWERS TO THEM.

THE object of the foregoing chapters has I trust been accomplished—viz. it has been proved that there is a tendency in the game laws to demoralize society, and that certain restrictions upon the right to kill and to sell game are unconstitutional, impolitic, and inconsistent with the fundamental principles of justice and of civil liberty. Next it has been established that game was the property of the person on whose land it was found by natural right, and that that right was confirmed by ancient laws, which have not been repealed, and that it still subsists in the owner of the soil. Such are the points which I trust I have satisfactorily proved. The question which naturally follows is then—why should it not be protected by law like other

property? The first learned argument opposed to any enactment of this nature is always, I think, game cannot be so protected, because it is *feræ naturæ*. To this argument, an authority already quoted in the preceding chapter, must be a sufficient reply—viz. that in 10 Hen. VII. fo. 6, it is holden that an account lieth for things *feræ naturæ;* vide 14 Hen. VIII. fo. 1,—the Bishop of London's case. As long as they are in his ground they are in his possession; and in the Register, 102, it is *quare ducentos cuniculos suos pretii, &c. cepit*—the Court gave judgment for the plaintiff. But the words *feræ naturæ* are sometimes used in argument by those (capable as they may be of translating them into English) who are nevertheless very little aware of their original application to this subject. These words were introduced into the Roman law respecting game, but the Roman law has not and never had any relation whatever to the game law of this country. In that law "*De occupatione Ferarum,*" "a wild animal is given to any one who can catch it, even upon another's land. The clause has been translated as follows:—Wild beasts, birds, fish, and all the animals which are bred either in the sea, the air, or upon the earth, do, as soon as they are taken, become instanty, by the law of nations, the property of the captor; for it is agreeable to natural reason, that those things which have no owner should become the property of the first occupant,

and it is not material whether they are taken by a man upon his own ground, or upon the ground of another. But it is certain that whoever hath entered into the ground of another for the sake of hunting or fowling, might have been prohibited from entering by the proprietor, if he had foreseen the intent."* Unless objectors to property in game are prepared therefore to enact an entirely new law in this country, founded on the Roman law, amounting to "catch who catch can," the very last thing in all the world I presume they would wish to see enacted—the words *feræ naturæ*, although they be Latin, can render them no possible service. But it is further urged that it would be unreasonable and even unjust to give to a small owner of land a property in game, which though found upon his land might not be bred there at his cost—game which but for the care bestowed upon it in adjoining lands of great extent, would have had no existence, and which might be seduced from the large proprietor's extensive territory to the small proprietor's spot of ground for the sole purpose of being destroyed. In reply to this argument I first confi-

* "*De Occupatione Ferarum.*—Feræ igitur bestiæ, et volucres, et pisces, et omnia animalia, quæ mari, cœlo, et terrâ nascuntur, simul atque ab alioque capta fuerint, jure gentium statim illius, esse incipiunt; quod enim ante nullius est, id naturali ratione occupanti conceditur: nec interest, feras bestias et volucres utrum in suo fundo quis capiat, an in alieno. Plane qui alienum fundum ingreditur venandi aut occupandi gratiâ, potest a domino, si is præviderit, prohiberi ne ingrediatur."

dently ask those conversant with the subject (for they only can form a well grounded opinion upon it) is the grievance which is stated to be a matter of apprehension possible? I affirm upon my own experience that if gamekeepers know and perform their duty, it is impossible; and if I should be supposed to be mistaken in my opinion, and that it is possible, I would further enquire, what is to prevent a small land-owner, through the means of a qualified friend, doing precisely this same possible thing under the present laws? In point of fact all game-preservers know that game in general, but especially pheasants, are easily attracted to and retained in any covert by food with which they are plentifully supplied. The supply must of course, in this case, be proportionate to the demand; and if a gentleman determines to have a large number of pheasants, he must afford them plenty of food.* A game-preserver, living upon good terms with his tenantry, will persuade the farmer to begin cutting his corn at that end of the field farthest from the covert into which he wishes his pheasants to be driven, and when there, if they find a good stack of barley, or buck wheat,

* *An Account of Corn delivered at* *for Pheasants.*

Year.	Loads of Barley	Amount.			Threshed Barley.		Amount.			Total Amount in the Year.		
		£.	s.	d.	c.	B.	£.	s.	d.	£.	s.	d.
To Jan. 31, 1822	4	5	8	0	79	2	24	13	6	30	1	6
Do. 1823	14	36	0	0	237	2½	108	18	0	144	18	0
Do. 1824	17	38	10	0	137	0½	102	16	10½	141	6	10½
14th Do. 1825					102	2	82	0	0			

and it is not material whether they are taken by a man upon his own ground, or upon the ground of another. But it is certain that whoever hath entered into the ground of another for the sake of hunting or fowling, might have been prohibited from entering by the proprietor, if he had foreseen the intent."* Unless objectors to property in game are prepared therefore to enact an entirely new law in this country, founded on the Roman law, amounting to "catch who catch can," the very last thing in all the world I presume they would wish to see enacted—the words *feræ naturæ*, although they be Latin, can render them no possible service. But it is further urged that it would be unreasonable and even unjust to give to a small owner of land a property in game, which though found upon his land might not be bred there at his cost—game which but for the care bestowed upon it in adjoining lands of great extent, would have had no existence, and which might be seduced from the large proprietor's extensive territory to the small proprietor's spot of ground for the sole purpose of being destroyed. In reply to this argument I first confi-

* "*De Occupatione Ferarum.*—Feræ igitur bestiæ, et volucres, et pisces, et omnia animalia, quæ mari, cœlo, et terrâ nascuntur, simul atque ab alioque capta fuerint, jure gentium statim illius, esse incipiunt; quod enim ante nullius est, id naturali ratione occupanti conceditur: nec interest, feras bestias et volucres utrum in suo fundo quis capiat, an in alieno. Plane qui alienum fundum ingreditur venandi aut occupandi gratiâ, potest a domino, si is præviderit, prohiberi ne ingrediatur."

dently ask those conversant with the subject (for they only can form a well grounded opinion upon it) is the grievance which is stated to be a matter of apprehension possible? I affirm upon my own experience that if gamekeepers know and perform their duty, it is impossible; and if I should be supposed to be mistaken in my opinion, and that it is possible, I would further enquire, what is to prevent a small land-owner, through the means of a qualified friend, doing precisely this same possible thing under the present laws? In point of fact all game-preservers know that game in general, but especially pheasants, are easily attracted to and retained in any covert by food with which they are plentifully supplied. The supply must of course, in this case, be proportionate to the demand; and if a gentleman determines to have a large number of pheasants, he must afford them plenty of food.* A game-preserver, living upon good terms with his tenantry, will persuade the farmer to begin cutting his corn at that end of the field farthest from the covert into which he wishes his pheasants to be driven, and when there, if they find a good stack of barley, or buck wheat,

* *An Account of Corn delivered at* *for Pheasants.*

Year.	Loads of Barley	Amount. £.	s.	d.	Threshed Barley. c.	b.	Amount. £.	s.	d.	Total Amount in the Year. £.	s.	d.
To Jan. 31, 1822	4	5	8	0	79	2	24	13	6	30	1	6
Do. 1823	14	36	0	0	237	2½	108	18	0	144	18	0
Do. 1824	17	38	10	0	137	0½	102	16	10½	141	6	10½
14th Do. 1825					102	2	82	0	0			

they will infallibly there fix their habitat. But it will be said, perhaps, that the small land-owner may also feed, and although he may have no authority to drive game to his land from another's field, yet if it accidentally harbour there, which is very probable if the land happens to be near the great man's covert, he may feed and retain it, and attract more, till he finally destroys the whole, availing himself, year after year, of a fresh supply from his neighbour's, the great game preserver's property. Admitting then that pheasants, where no gamekeepers, or ignorant or idle gamekeepers are employed, will sojourn in the place where the most and the best food is supplied, it surely is fair upon the objector's own shewing, that the person who is at the chief expence should reap the chief advantage? The worst that could happen would be that the great man would have a neighbouring rival or competitor in his efforts to attract game; and I at present know no great game preserver who has not many such to contend with. As to a poulterer's buying a small piece of land for the express purpose of this competition—1st. I answer, if he could, without the advantage of driving over a large extent of land, attract and keep by superior food (ergo at a greater cost) his neighbour's game, he would be the best entitled to it; game being legally saleable, and sold, as it would certainly be, at a cheap rate. 2dly. I suggest the improbability of any dealer in game being able to make a profit

of the game attracted and retained at so heavy an expence.* Lastly, I contend, that even supposing him to be entitled to it, or supposing him not, and capable of profiting by it, so attracted and retained or not, he never will be able to allure it, if gamekeepers do their duty. The following anecdote will serve to illustrate and prove my assertion. In September last a gamekeeper complained to his master that one of the tenants had begun to cut a piece of barley at the wrong end of the field, in consequence of which sixteen pheasants had strayed to the border of the property, instead of taking their course in another more desirable direction. The gamekeeper feared a cunning rival game-preserver's efforts to attract and retain the said sixteen pheasants; he therefore proposed and received permission to guard against this impending calamity by any means in his power, and he that very night caught fifteen out of the sixteen pheasants alive, in a net, unknown to any one except his assistant, and carried them three or four miles from the spot, into the centre of his master's property, where he deposited them beside a large stack of barley, in an extensive wood, and where they have doubless since remained, unless shot by the proprietor or his friends.

* Few persons, I am apt to think, are aware of the sum it costs to rear pheasants. I have seen a very accurate calculation, made upon a series of years, for one of the best stocked estates in the kingdom, and computing at the very lowest rate, it appears that every pheasant killed thereon has cost the proprietor twenty shillings.

Many persons who regard with just apprehension any increase of the severity of our penal statutes, look with a prudent caution towards any alteration in the game laws, which by making game private property would entail the necessary consequence of visiting the breach of those laws with a heavier punishment. But I think it will not be difficult to demonstrate that this is no sufficient objection. For it proceeds wholly upon the supposition that game being of no value, no moral criminality attaches to stealing it. I am certainly one of those who esteem the game laws even at present much too severe, and especially because they are, as I think, inconsistent with each other, as well as unjust and ineffectual for the prevention of crime. But this opinion is not by any means untenable or inconsistent with the wish to make other more severe enactments upon more just principles, all the present existing laws being first repealed.—The moment game is made legally saleable, and is declared to be the private property of every one on whose land it is found, there can be no doubt that many persons will, at great care and expence, rear and preserve game for no other purpose than that of carrying it to market. The landlord who is no sportsman, or the landlady, will unquestionably in many instances let the game on his or her estates to

the farmer, whose rent will be paid out of the profits arising from the sale of his game as well as of his wheat or other produce of his land.* Game would become an article of as-

* I cannot omit this opportunity of expressing my total dissent from a doctrine held upon this part of the subject by a gentleman to whom the public is much indebted for his laborious efforts during the last session of parliament to amend the game laws—viz. that although no reservation is made by a landlord in the lease which has been granted to his tenant respecting a right to the game upon a farm, that right shall be vested in the owner and not in the occupier. Exactly the reverse of that doctrine I think I have proved to be consistent with the whole tenor and practice of our law, from the time of Canute—exactly the reverse appears to me to be consistent with moral justice, and exactly the reverse appears to me to be in conformity with the object of the bill of which this most extraordinary clause did form a part. In point of law there can I hope be no doubt that game, however the application of it may be restrained, is as much a part of the produce of the soil as a man's turnips. If then game be property by natural right and by law, how can we justly during an existing lease assume that a man has not hired the game, a part of the produce of the land, with the land itself and with other produce not specified? The object of the bill being much recommended to the public by the expectation that a less oppressive and more just scheme of game laws would he introduced, it is, as it appears to me, almost inconceivable that such a clause as this, so obviously oppressive and unjust, could have found its way into a bill originated and patronised as this bill was. But as a further proof of my position, if it can be legally or fairly and equitably assumed that the owner of land has a right to the game upon it, after he has let his land on lease, and can compel the payment of the rent agreed upon between the parties, how happens it, and for what purpose is it, that almost every lease in almost every game county in England (certainly throughout Norfolk) contains a specific reservation to the owner of his right to sport over the land when let? Is it not manifest from this well known practice that the assumption ought and must be the reverse of that which it has been proposed to enact? Here we have not only the rule, but the exception establishing the rule.

certained value, a sense of moral wrong would soon attach to the offence of stealing it, upon the same principle as the feeling attaches to other offences, and while this feeling might (as it certainly would) operate as a means of diminishing the crime of poaching, severe punishment would no longer be unjust or inconsistent with the principle upon which our penal code is established.

It has also, I believe, been contended against

A great deal has also been said upon the hardship which the tenant undergoes in supporting the game which he is not allowed to kill. I think this matter has been neither sufficiently nor properly considered. The right is vested in the owner of the soil, and may or may not be by him transferred with the other produce to the occupier. If then the occupier voluntarily agrees to a reservation of the game on the part of the landlord, he does so upon a special contract, and it constitutes one of the circumstances upon which he forms his estimate of the value of his hiring. At all events it is a condition which he voluntarily accepts. Should game be made saleable, it will dissipate the illusion without altering the fact, and the game will become necessarily an object of value. As the question stands at present, the gentleman makes his selection of a tenant, who either is or is not a sportsman, and he knows the consequences of his choice.—The tenant, on the contrary, acts upon precisely the same principle, and knows beforehand whether he is or is not to be permitted to shoot. I cannot see therefore that either party can justly complain in the event of disappointment, unless there should be an infraction of the agreement. The proposed alteration of the law will not make the slightest change in the existing relations of landlord and tenant in this respect, but leave the game a subject for mutual arrangement. In point of fact no man even at the present moment hires a farm liable to injury by game, without claiming an abatement of rent on that account. With respect to general legal disqualifications, they are not imposed by the landlord; as to these the tenant stands upon the same ground with the public at large.

the fact of game being property, as the statutes now stand, that the law has in no case made the stealing of it a felony. So long as the sale of game is illegal, it would undoubtedly be very improper and unjust to make the theft of it a felony; but the fact of its not having yet been made a felony will supply nothing like a sound argument against the property in game. It will not be contended that a man's dog is not his property, yet it is not a felony to steal a dog; indeed dog stealing was not, till within a few years, a punishable offence; but an action might always have been brought against any one who had either stolen or had injured another's dog. I shall state a case illustrative of this matter, connected as I think it is, by analogy, with another part of my subject, of very much greater importance. A gentleman ordered spikes to be placed in trees in his own wood; it was proved by the evidence that they were so placed with the intent of destroying both foxes and dogs trespassing there; they were moreover fixed in such a manner, that if a fox or a dog pursued a hare, the hare would run under them, but the fox and the dog would run upon them, and probably be killed. A person was coursing, where he had a right to course; his greyhound pursued a hare into the defendant's wood, and was there killed by one of the spikes before described. The owner of

the dog brought his action against the gentleman who caused the spikes to be fixed. It was tried, and a verdict was given for the plaintiff, with damages. "It makes (says the Commentator on this case) a material distinction whether a man does an act merely to benefit himself, and where the injury to others is not designed or contemplated, and if any actually happens, it is an accident, and is as likely to happen to his own property as to that of others; but when any thing is done with an intent to injure other persons, the injury is not the less because there was also another object. It has been already decided that no one has a right to shoot a dog in pursuit of a hare. The defendant could not legally run a spear into a dog as it ran past him in pursuit of a hare; if he did, he would be guilty of a trespass; he surely then would be guilty of the same trespass, if he knelt down and held out the spear, which he foresaw the dog must inevitably run upon: if these two cases are equipollent in legal consequences, though the form of the action might vary, then surely it must be the same in effect, whether he fixes the spear in a tree, or in a wall, where he foresees, or thinks it probable, that a dog will run upon it. In all these three cases, the loss to the owner of the dog is precisely the same; the intention to destroy in each of them is precisely the same: every one therefore is, I think, compelled to draw the conclusion, that the consequences in each ought to be the same in moral justice, that is,

that the defendant ought to make a full compensation in damages for the loss which he has designedly occasioned. The owner of the hares would have a remedy for the injury done to him, if it be done wilfully, by the owner of the dog; and if the dog commits the injury the first time, without his master's knowledge, so that he might not be answerable, yet I conceive there could be no doubt but he would be answerable if he had notice and warning given to take care of his dog; but when the owner of the hare takes justice into his own hands, and wishes to do what the law will not allow, viz. to set off one trespass against another; and in this instance commits an injury out of all proportion, beyond what he has received; the precepts of law, *alterum non lædere*, and *suum cuique tribuere*, demand that the account should be settled by a full pecuniary compensation."

I come now to a circumstance collaterally connected with my subject, deserving the most grave and serious attention—I mean the practice of protecting game by spring guns, instruments uncertain in their effects, but always wounding, often maiming, and scarcely less often destroying the life of the person shot by them. As a question of humanity, as a question of law, the use of spring guns appears to me to be alike indefensible. In point of humanity, the gun mechanically inflicts a punishment which I hope I may say no game-preserver would deliberately adjudge, or with his own

hand execute against a poacher. In point of law, he who causes a spring gun to be set, not only takes the law into his own hands, but he punishes the offender to a degree and in a manner which the law does not warrant. The law does not adjudge either wounding, or maiming, or death, as the punishment of a trespass, nor of pursuing game, much less does it justify the infliction of these penalties upon the spot, and with no other evidence of guilt than the presence of the culprit, if such he be. The practice, therefore, does appear to me to be alike repugnant to common humanity, to justice, and to the analogy of the law of the land. I come now to further arguments and proofs. My chief purpose in the foregoing recital from Mr. Christian's book was to shew by analogy that the setting a spring gun to shoot poachers is an illegal act. It appears to me that every part of the case before recited, and every word of Mr. Christian's comment, are applicable to the case of setting a spring gun. If a gun be placed in such a manner as to render it probable that any one entering the place in which it is set will be killed or wounded by it, either in legal or moral justice it must surely be the same as if the person who set the gun had fired it from his shoulder. How then can a man be justified in setting a gun to execute a deed which he could not be justified in doing by his more immediate agency? There seems to be every reason for supposing such an act less justifiable.

If a man with a gun accidentally in his hand were to shoot a poacher dead, without further provocation than that he came into his wood to steal game, I imagine the shooter would be deemed guilty of murder, whatever notice or warning he might in charity extend to the unhappy sufferer. How then can it be any less crime to place a gun with a design to do that infallibly and without the exercise of any momentary discretion, which if done immediately by the man who set the gun would be considered murder? In the case of a man firing at another, a thousand circumstances might intervene, a thousand considerations might occur to prevent bloodshed—doubt as to the motives with which the trespasser entered the wood—a knowledge of the trespasser's person, in whom might be recognized a familiar friend, the father of a large family dependent upon him for support, a former benefactor, or even last, though not least of all, some qualms of conscience might arise in the mind of a Christian whether he should deprive a fellow creature of life and drive him headlong into an awful eternity, making himself at once his judge, his jury, and his executioner. The man with a gun in his hand, in short, might relent before he pulled the trigger.*—In the case of a

* I have heard the following relation, which corroborates forcibly the supposition I have hazarded in the text. Not many years ago a gang of poachers in this neighbourhood associated together, and bound themselves by an oath, to fight to the last rather than surrender. A battle ensued; they

spring gun there is no such chance for life; it affords no time for repentance or discrimination of objects. The man who set the gun may, for ought he knows, to the contrary, shoot his own father, or any perfectly innocent person—in point of fact innocent persons appear generally to fall the sacrifice of these horrid instruments. It may not be amiss to show how the use of spring guns may be retaliated. Three or four years ago, a person was riding up the public drive in Cossey Park, at a pretty brisk rate, when his horse's foot lighting upon a piece of wood, slipped, and the rider pulled short up. Within a single pace, he observed a spring gun, set directly across the road, and the wire fastened to a tree opposite. Knowing that Sir George Jerningham (now Lord Stafford) never allowed a gun to be set, enquiry was immediately made, and it was found that a poacher had been taken near this spot a short time previously. His companions had brought this gun, which was stolen from an adjoining manor, and had set it in this road, firing a little beyond it, in order to draw the watch into the peril. Fortunately the keepers came up in such a direction that they missed the wire. What renders the circumstance still more

were overpowered, tried, and convicted. After conviction, the leader of the gang confessed that he had levelled and fired at one of the keepers within a very few feet—but that at the very moment of pulling the trigger, when the gun was directly in a line with the man's head, he had felt remorse, and had in the very instant lifted up the piece, and the shot went over him.

remarkable is, that a little girl had passed the gun in her way to school, and not knowing what it was, had cautiously avoided it by striking out of the path into the wood.

By the public reports of newspapers it will be seen, that poachers are almost the only persons who escape being shot by spring guns. Women, children, servants, friends, nay, even nearer connections of the parties setting them, frequently suffer by these engines; and I have heard of a Judge on the circuit, who not very long ago wishing to take air and exercise before the business in Court commenced, or after it had concluded, was on the point of entering a wood where he would almost inevitably have been shot, had he not received accidental intimation that spring guns were set there. If the person for whose destruction the gun was set must necessarily, when he exposes himself to the hazard, be in the act of committing a capital felony, then indeed in point of law, however objectionable the setting the gun might be on other considerations, in point of law the setting a gun for the purpose of killing or wounding a person so criminal, might possibly be justifiable. But where are these guns commonly placed? they are notoriously set only in gardens or preserves for game, where a person by entering can only be guilty of a trespass or an offence much less than felony, and where if any one were killed by a gun fired from the hand, the person firing the gun

would certainly be guilty of murder. "A few years ago, a man terrified a village near London, by going about in the night under the appearance of a ghost; another person went out with a gun, and killed the man so representing the ghost; he was tried for murder at the Old Bailey, and the judges would not receive a verdict of manslaughter, which the jury wished to bring in: they told them, if they believed the witnesses, the crime was nothing less than murder; if they did not believe them, they might pronounce a verdict of not guilty—but the circumstances did not admit of any intermediate verdict. In that case, he who personated the ghost might have been indicted for a misdemeanour, of the nature of a nuisance; but he, who deliberately put him to death for it, was guilty of murder." Surely then it must follow that he who had killed one by placing a spring gun in his path must also have been adjudged guilty of murder. In support of this opinion I will also cite the following section from Mr. East's Pleas of the Crown, vol. 1, p. 288. "When the trespass is barely against the property of another, the law does not admit the force of the provocation sufficient to warrant the owner in making use of any deadly or dangerous weapon. As if, upon sight of one breaking his hedges, the owner takes up an hedge-stake,

and knock him on the head and kill him, this would be murder, because it was an act of violence much beyond the proportion of the provocation; and still more where such or the like violence is used, after the party has desisted from the trespass. But if the beating were with an instrument, or in a manner not likely to kill, it would only amount to manslaughter; and it is even lawful to exert such force against a trespasser who comes, without any colour, to take the goods of another, as is necessary to make him desist."—*Kel.* 132. *Fost.* 291. 1 *Hale,* 473, 486.

In two actions it has been held, that whoever is injured by spring guns, not being in the commission of felony, may recover full damages for the injury he sustains from them. "In the first case, a gentleman ordered a gardener to prune a tree; and in proceeding to enter upon the work he was ordered to do, he was wounded by a spring gun."—*Osborne* v. *Gough.* And at the Warwick assizes in 1816 or 17, an action was brought for a similar injury. "A boy, who went to cut a stick out of a hedge, where he was clearly a trespasser, drew the wire of a spring gun, and was very severely wounded; the jury gave him £160 damages; and the verdict was acquiesced in, the defendant's counsel thinking the law too clear to take the chance of the effect of a

motion for a new trial in the Court above."—*Jay* v. *Whitfield, Warwick Spring Assizes,* 1817.

Whatever may be the fate of the game laws, it is quite clear, and I must repeat I think it is undeniable, that the matter of legality respecting spring guns requires immediate attention.—1st. The use of them as a means of protecting game or any other sort of property is cruel and indefensible upon the common principles of law or moral justice.—2dly. Supposing for a moment that any doubt can exist as to the legality or the justice of using such means for the protection of property, it will I am confident be universally admitted that a question involving nothing less of public interest than the lives of his Majesty's liege subjects, cannot be too soon decided by those in whom the Constitution has vested the right to interpret and administer our laws.

If I have digressed from the course which I prescribed to myself, and all that I have said respecting these engines should be thought in strictness irrelevant to the game laws, by which, bad as they are—cruel, unjust, and tyrannical as they are—spring guns are not yet authorised, I must plead excuse on the ground, that game-preserving by legal means, and game-preserving by means that are illegal, are so generally one and the same thing, that I cannot very easily divest my ideas of the association between them. Among those who believe that spring guns are legal, or that their

legality being a question as yet undecided, hold that they are not illegal, I have heard the practice of setting them for the preservation of game defended on the plea of necessity; without the aid of spring guns say they, we cannot keep our game. I shall very soon prove that game is to be preserved without using spring guns. But in the mean time, granting for argument's sake, that game cannot be accumulated and retained in such abundance as it is in some places at present without the aid of spring guns, I would very confidently submit it to the judgment of the public whether this makes out the case of necessity. The public will I think be led to question the necessity of the object itself, rather than the necessity of the means by which it is to be attained, and especially in a case where the end is so manifestly unworthy the means.

The question lies then in a very small compass. Shall game or human beings be sacrificed? Supposing that one or the other must be abandoned to their fate, the distance between the object and the means to my view is so immeasurable, that I can scarcely conceive the possibility of their being brought together in competition. Shall an excessive quantity of game be preserved at the expence of the life of any one who may accidentally or by design enter the wood in which it is kept? Viewed in this light, can any reasonable man entertain the question for an instant? In what does

the necessity of this excessive quantity of game consist? It may fairly be inquired, is it to tempt the poor man and seduce him from the path of honesty into a course of vice and crime? Is it for the purpose of destroying the farmers' crops in the adjoining fields, and creating an endless source of complaint and disagreement between the landlord and his tenants? In neither of these consequences of the preservation of an excessive quantity of game shall we probably find the necessity. Does the necessity then lie (in spite of the foregoing very usual results) in the ability to kill more game in a single day than our forefathers were well amused and content to kill in a whole twelvemonth? I cannot think, and I am persuaded that the English nation will not think, this sort of enjoyment so indispensable to the privileged order of men, as to authorise the sacrifice of human life for its accomplishment. It has been often ably argued in favour of an alteration and a mitigation of the severity in our criminal code, that unless punishing an offence capitally be found to have the effect of rendering the commission of that offence less frequent, capital punishment in such a case is not justifiable; nothing can be more reasonable than that if hanging is of no use, hanging had better be abandoned; by a parity of reasoning, if spring guns do not prevent poaching, they also had better not be set.

I happen to know two places where as much

game is preserved as in any other part of Norfolk without the use of spring guns; granting therefore that even the excessive quantity of game is necessary, spring guns are not necessary to its preservation. At one of the places alluded to, it was formerly the practice to set spring guns, and while spring guns were set, gangs of poachers frequently visited the woods, although, as it happened, certainly from other causes, never with much success. Since the practice of setting spring guns has been discontinued, no gang of poachers has made its appearance. The owner of the place being of opinion, that at all events, risk of human life should not be incurred for the sake of his own amusement and that of his friends, while at a little greater expence the same sport may be ensured without such risk, established a little army of watchers, or of persons who, although they might not all watch, were ready and willing to defend their employer's property, in case of its being invaded by nightly marauders. The numbers of which this little army consists are well known in the neighbourhood. Paid as it is only when called out on actual service, the expence of maintaining it is comparatively trifling, and its force is notoriously so overwhelming as to deter (hitherto) any gang of poachers from attempting to oppose it. I trust then I have succeeded in my endeavour to show—1st, that the attempt to preserve game by means of spring guns is cruel and illegal—and

2dly, that the pretended necessity for their use is no justification. I shall now proceed to consider the most common objections urged against the proposal to make game legally saleable.

It is contended, that if game could be legally sold, the consumption of it would be so great, and poaching would be so much increased by the facility afforded for illicit traffic in game, in the absence of the law which prohibits an unqualified man from having it in his possession, that the stock in the country would soon be exhausted, and then gentlemen would cease to reside on their estates.

Touching the consumption, I appeal to the evidence taken in the House of Commons, also to common notoriety, and to the debates in parliament, (where a Secretary of State is reported to have said, no longer ago than last year, that game is now sold as openly as if the law which prohibits its sale were repealed,) to testify whether, by making game legally saleable, the consumption is likely to be increased. Are we not told by the evidence, that the supply now exceeds the demand, that the superabundance of game, that the overflow of the market, has in some instances led to its being thrown away in prodigious quantities, as useless and unprofitable? Is it not notorious, that any man who can buy a chicken can buy game in any great town in the kingdom? And what could he do more if the law were repealed? Supposing the

demand, however, to increase, it might be met by a supply from sources not at present open—viz. from the continent, in some parts of which game is so abundant, and is to be obtained at so low a price, that if once admitted into the English market, it would not only answer any increased demand, by a sufficient supply, but such supply would be at so low a price as to keep down the price of our own game, and do away with much of the present temptation to steal it. But it is further argued that in the absence of prohibition there would be increased facility for illicit traffic, illicit so far as concerns those who are not licensed traders, for I assume that game shall become saleable by licensed dealers only—without this limitation I in part admit the validity of the objection, and poaching would be augmented. I contend on the contrary, that by permitting the public sale of game by licensed persons, the illicit traffic must necessarily be rendered more difficult, and that poaching thereby would be diminished. It would become the interest of hundreds of persons to detect and punish the illegal trader, who now are at least indifferent to the matter. And I beg to ask where would the poacher find a market for his stolen commodity? How would he be recompensed for his toil and risk? No one surely would by preference deal with a dishonest man, especially when such dealing exposes him to a penalty which he would not incur by dealing with

another, and by means of the competition which would ensue upon the market being legally opened to game, the price must fall so low, that the remuneration of the poacher, if he could dispose of the stolen property (which certainly would be more difficult than at present) would be insufficient to encourage him in his course of crime. But I will go further; supposing even that the thief become a poacher, as described in the first chapter, could himself be remunerated by the common price of game then sold in the market, (which I think he could not), a very little diminution of the present price of game would prevent this professor of poaching from alluring auxiliaries into his service. He could no longer afford to pay others out of his profits, if he could pay himself; and an universal and prolific source of corruption among the poor would thus be annihilated. If it be still doubted whether the consumption of game would increase, and whether the London poulterer would deal with the poacher or the person licensed to trade in game, let the evidence before the House of Commons be referred to, when it will be found, that the poulterers and others most decidedly offer it as their opinion, that the consumption would not be increased by making game legally saleable, and that persons who now retail game out to their customers, would prefer having a regular supply from honest men at a moderate price and subject to no penalty, rather than have an irregular supply from dishonest men

even at a lower price, but making themselves liable to a penalty which it would be the interest of so many persons to inflict upon them.* It is moreover sometimes urged that the evidence before the committees of the House of Commons, not being given on oath, is not entitled to credit. I think it will be admitted that men do not com-

* "Is it the general wish of the trade that there should be some regulation of that sort? *A.* I have no doubt that it is the general wish at present certainly of the trade, feeling, as others of the trade feel, a kind of reluctance and disinclination to trade in the article, but they are all, of course, compelled from their connections; if they cannot get game from one person they can from another. A few years back our trade did come to a resolution not to deal in the article at all; they bound themselves in some measure not to deal in it; it unfortunately happened, that some few individuals of the trade would not come into it; those who did, professed to prosecute those who continued to sell, but that threw it out of the general channel; a parcel of Jews & porters had the game trade thrown into their hands; they supplied the taverns and other places, and found no difficulty in getting fully supplied; and some few individuals of the trade, who were averse to coming in, derived the benefit of it."—*Report, page* 11.

"Generally speaking, you can tell stolen chickens by the way in which they are killed?— *A.* Yes, there are two or three persons who have been in the habit of sending me game, and now the season has subsided, they have sent me poultry lately; my men have said, "Sir, I think these are stolen;" we probably have not been able to sell them; we sold some lately at six-pence or nine-pence a piece; they have been killed improperly with their victuals in them; it is not reasonable for me to suppose these men could purchase them and send them to London in this state; I have not a question in my own mind that they are stolen, but I have not positive knowledge of it; I would get rid of these things if I could, but they send such quantities of game."—*Report, page* 23.

This last circumstance in the evidence introduces a new fact illustrative of the temptation to thieving which poaching engenders; for by this it appears, that the disposal of game affords also a facility for the disposal of stolen fowls, which the fowl stealer would not otherwise have.

monly lie without a motive of some kind. Now let us enquire what is the most probable motive of the poulterer, admitting (which I do not) that he has falsified in his evidence. What is the tendency of his evidence? What conclusion is to be drawn from it? I submit that nothing more nor less than that if he be credited, it may appear to the legislature desirable to allow game to be sold publicly under licence. And why should this rogue of a poulterer so impose upon the legislature, unless it were his unfeigned and sincere wish to avail himself of the means thus afforded him of earning an honest livelihood? Is he suffering now under the infliction of penalties? We know he is not. Is he unable now to procure or to sell game? We know he is not. What in nature then can induce the man to lie? But granting for a moment that he does lie without a motive, then I say we do not want his evidence or his opinion, because, honest or dishonest, it will be his interest to deal with the licensed trader instead of the man who steals the game.

After all, supposing that calamitous and terrific event to occur, the very great improbability of which I have shewn, viz. that the consumption of game should be so much increased, that our stock of game in this country would become less than it is at present;—can such a libel upon the character of our country gentlemen be believed, as that they would, for such a cause, desert their residences?

Is it to be supposed, that gentlemen who officiate as magistrates in their neighbourhood, sacrificing much of their ease and amusement to a sense of public duty; that gentlemen who are employed in the improvement of their estates, or in ornamenting their abodes—thus promoting their own pleasure and the real interest of those around them, could be so easily led to shrink from the discharge of duty or be expelled from the scene of so much enjoyment? It cannot be believed of any such as have been here described, and as for the mere game-preserver (as I have before observed in public), I really think the country might go on tolerably well without him. No one, I am persuaded, except the mere man of pleasure, the man who consults no one's happiness but his own, and whose happiness consists in selfish gratification, would be driven from his country seat to the town, or the watering place, by the diminution of his game; and the public perhaps will agree with me in thinking, that the town or the watering place would be the fittest residence for such a man, since there he might pursue his object with least injury to society.

Having now replied to all the real or pretended objections urged against an alteration of the present game laws—it follows of course that I should offer some opinion as to the best mode of amending them, and this I propose to do in a concluding chapter.

CHAPTER IV.

THE DESIRES RESPECTING GAME ON THE PART OF THE PUBLIC ATTAINED BY VERY SIMPLE AND SALUTARY MEANS—VIZ. BY THE REPEAL OF CERTAN TYRANNICAL, OBNOXIOUS, AND ABSURD STATUTES, AND BY PUTTING THE PROPERTY IN GAME UPON A LEVEL (IN A LEGAL POINT OF VIEW) WITH OTHER SPECIES OF PRIVATE PROPERTY—REAL DIFFICULTY OF LEGISLATING RESPECTING GAME—IN WHAT IT CONSISTS.

To arrive at any rational conclusion respecting new game laws, it may be requisite first to consider what the public has a right to expect, and how far it may be consistent with justice and good policy to substantiate or to control by legal enactment the exercise of such rights as are demanded. It is quite obvious, if my reasoning in the foregoing chapters be correct, that an owner of the soil has two distinct and acknowledged rights. First, he has a right to all its produce, animal and vegetable; and secondly, he has a right to make such use of all that produce as he may think fit, provided such use be not injurious to society. It certainly does not appear to me that any danger or difficulty can ensue from the confirmation of these rights by

law; subjecting the first only to such limitations as may be in future made by private agreement, and taking care that due provision shall be had not to prejudice the rights of the present possessor or occupier of land or of manor, which he may now enjoy by inheritance, purchase, hire, or custom, and assuming that game in all its cases shall be the exclusive property of the occupier of the land on which it is found, or of the lord of the manor if found on his waste, unless some agreement or custom established for sixty years or more, be offered and proved in evidence to the contrary. If the first be conceded, the second cannot reasonably be denied, but it will be necessary to prescribe rules for its exercise in order to prevent the evil effects that might otherwise arise to society. Game being a species of property easily purloined, and when purloined not easily identified, it seems to be necessary for the protection of so valuable a commodity, viewed either as a means of affording manly recreation or an article of wholesome food, that no one should exercise his natural right of selling it without a licence. The selection of proper persons to sell game may be made by the magistrates for each county or place in the kingdom, where the traffic in game may be desirable or desired. They may be made responsible for the sources whence they procure the game which they may have for sale, and thus will the article in question be in some degree secured against theft. The free ex-

ercise of the right of disposal, subject only to this precautionary restraint, will be sufficiently ensured by the repeal of certain prohibitory and restraining statutes now in existence. The principal points reasonably required by the public will thus at once be obtained; every man who has land may kill the game found upon it, and every lord of a manor may kill the game found on his waste, or they may employ or permit any other persons to do so, and every man who has no land may kill game, if he can obtain leave to sport from a friend who has land and game upon it, and all may eat game who can afford to purchase it. So far as the public is concerned I think this is all that can be reasonably demanded, and I anticipate only one objection to my proposed scheme of enactment, so far as that part of the public, called generally the people, are interested. I mean relative to substantiating by law the lord of the manor's right to the game found on his waste as property. If this be objected to as a right of a novel kind, I must deny its novelty, and refer to the authorities already quoted in a preceding chapter, for the purpose of shewing that game is the property of the owner of the land on which it is found. The claim here set up in behalf of manorial rights is indeed exactly equal and consistent with the principle upon which the law invests the owner of the soil with his property in the game. One of the cases cited is especially applicable to this matter. It is

that of a lord of a manor who brought his action against a person who had a large estate, and therefore, I presume, a qualified man, and who had a right of common upon the waste, on which, after notice, it was alledged that he had committed a trespass, by sporting over it—verdict was given for the plaintiff, and Professor Christian observes upon this case, "that it must have been decided upon the principle, that the Lord of the Manor is the owner of the soil upon the waste, and therefore has a right to the whole produce, except the grass, which may be taken by the mouths of the cattle of the commoners. It is a consequence of that general rule, "*cujus est solum, ejus est usque ad cœlum et ad inferos.*" Here was a qualified man and a commoner, who it was decided had no right to the game on the waste, nor do I see how he could have such a right to that species of produce, unless he could claim a common right also to the trees growing thereon. The game must surely belong to some one. It was decided that the commoner had no right to it, although qualified, any more than to the trees. In future, when it is to be hoped, according to the principle which I have been endeavouring to explain and to support, there will be no longer qualification or disqualification of any one for killing game, to whom, unless to the lord of the manor, can this species of produce be assigned? I trust I shall not be accused of partiality for the interest of a particular class, by the course of rea-

soning which I have followed. Through the whole of this lengthened dissertation it will be seen, that in giving the lord of a manor property in game found on his waste, I am only adhering closely to the general principles of the law which I have endeavoured from the beginning to establish. Having thus concisely suggested the outlines of the simple but effectual alterations of the law that appear to me to concern the public or the people generally, I shall leave the detail of enactments for the protection of individual rights to private property to others, who are more competent than myself to undertake such a measure of legislation. I have only to hope that the legal provisions will be as simple as their objects.—By the same bill, which enacts new regulations respecting game, all the old laws will of course be repealed, many of which are in their nature so tyrannical, in their tendency so oppressive, and all in their effect so absurd, because inoperative, as to render them a disgrace to our book of statutes. In addition to all that I have already adduced in proof of these opinions, can any thing be more tyrannical than a law which enacts that every man, because he happens to be possessed of a little more or a little less land, shall or shall not be disqualified to make the most he can of his property? Can any thing be more oppressive than a law which limits the enjoyment of a natural right, and a right which has been confirmed by

ancient laws, to a particular class or set of individuals? Can any laws be more absurd than those to which so universal a repugnance is felt as to make them altogether inoperative? Half these laws I believe are absolutely unknown to the public, and those which are known are unobserved. Of those not commonly known, I will give a single instance. The statute of 2 James I. ch. 27, laid a penalty of 20s. for every pheasant, partridge, pigeon, wild fowl, moor game or hare, which should be killed with a gun, by any person whatever. The statute the 5th of Anne, c. 14, has enacted, that if any unqualified person use any engine to destroy game he shall be subject to a penalty of £5. This may repeal the statute with respect to the penalties upon an unqualified man for using a gun, but still the penalties upon the qualified man must continue the same. This state of the law is rendered more remarkable by the circumstance of there having been an act passed in the 48th Geo. III. ch. 93, to repeal so much of the former law as prohibited the shooting hares, but the law relative to the shooting pheasants, partridges, &c. at that time at least remained, and I believe still remains in force. Gentlemen who are in the habit of bagging upwards of an hundred head of game to their own gun in each day's battue, if sued under this statute for the penalties attaching to their offence, would find battueing rather costly sport.

Upon a calm and dispassionate review of the

whole subject, I am persuaded that no disinterested person can deny the propriety of abolishing the present game laws, or of the endeavour at least to enact others more just in their principle, more efficient for their purpose, in all respects better suited to the times in which we live, and more accordant with public opinion. The Secretary of State is reported to have said, last year, in the House of Commons, in a speech from which I have already taken the liberty of making some quotations—"if laws stand upon our statute book which are practically evaded and violated every day, this is of itself a sufficient reason for their repeal." I consider the public indebted to the Right Hon. Gentleman for this very candid and sensible declaration, the more especially so because he knows and we all know such a doctrine, coming from him, will have its effect where it would be held utterly profane and impious if broached in an opposite quarter. But if we consider the subject generally we shall perceive, that the present laws being practically evaded and violated every day, is by no means the only reason, although a very sufficient one in itself, for their repeal. There are indeed but too many others; we see the hundreds and thousands of persons who are seduced into the commission of dishonest and dishonourable acts by unjust and impolitic restraints upon the exercise of their natural rights. It is notorious that a sense of natural right in the case of the game laws pre-

vails over the vain interdict of acts of parliament, and so it always must and will in a free country, should the Legislature attempt to impose such restraints upon men's natural rights as are not founded in justice, not conducive to the advantage of the public, and therefore not supported by public opinion. It is not less notorious, however, that uneducated men, particularly men having been induced to do that which requires more or less concealment, because it is contrary to laws which, if enforced, would subject them to punishment, become familiarized with and reconciled to the commission of acts which, though of equal guilt in the eye of the law, are morally, and in the eyes of men, much worse, without being aware of their declension from the bright and lofty path of honour and honesty, losing sight of those moral guides, principle and reputation, they sink gradually, till they at length find themselves irretrievably lost in the abyss of crime and misery. In game counties, and in none perhaps more than in Norfolk, this theory is exemplified by frequent instances which come within the immediate observation of the magistrates. In corroboration of this assertion I subjoin the petition, which I am shortly to have the honour of presenting to the House of Lords.* But let it not be supposed that

* To the Right Honourable the Lords Spiritual and Temporal in the Imperial Parliament assembled.
The humble Petition of the Justices of the Peace for the

the light in which the present game laws are seen as conducive to the corruption of morals, or the light in which the Norfolk magistrates see poaching as a prolific source of crime, is any new discovery, or that the evils now felt are only in their infancy, and therefore easily corrected. Be the game laws repealed when they may, the evils generated by them, and long since grown into maturity, will and must be felt for years to come, and can be corrected only by the enactment and gradual operation of other laws, more just, more liberal, and accordant with public opinion, and therefore more operative. Among the evils created by the old laws perhaps one of the greatest, because it is one which I fear essentially impedes its alter-

county of Norfolk, assembled at the General Quarter Session of the Peace held at the Castle of Norwich, in the Shirehouse there, on the 12th day of January, 1825,

SHEWETH,

That your petitioners, in their capacity of magistrates for a county remarkable for the extensive preservation of game, have found frequent occasion to deplore the injurious moral operation of the existing game laws, under which the commitments to the several prisons in this county have, of late years, increased to an alarming and unprecedented extent.

They have felt high satisfaction in observing that the attention of the Legislature was, during the last Session of Parliament, called to this important subject, and they earnestly entreat that your Lordships will take it into your most serious consideration, in order that legal provisions may be finally established, which, by withdrawing some of those temptations to poaching, so obviously arising out of the present game laws, may put a check not only to that practice itself, but to those other prevalent habits of vice and crime of which experience amply proves that it is a fruitful and unfailing source.

And your petitioners shall ever pray, &c.

ation for the better, has been the encouragement they have given to a principle and a feeling among the higher orders of society, the most opposite to the principles and feelings which should regulate and animate the breasts of British landlords or legislators. In point of fact, gentlemen have so long enjoyed, under shelter of unjust and arbitrary legislation, exclusive and inordinate privileges connected with game, as to induce a belief, in their own minds at least, that these privileges are rights proper to themselves, and apart from all the rest of his Majesty's subjects. This erroneous notion is entertained by some in so great a degree, that I have had it said to me by an advocate for the old law—in conversation, or rather dispute upon the subject—an Englishman ought never to surrender his right—his right I suppose to deny the second son of the richest man in the country the joint privilege with himself of killing a pheasant, or the father himself perhaps, if his property be funded, of eating it legally. Now this advocate for right in matters of game would, I have no doubt, struggle as stoutly for the maintenance of these his supposed rights under the present law, as his ancestors did for the abrogation of similar exclusive and arbitrary privileges enjoyed under the forest law, of which they obtained the repeal by Magna Charta and Charta de Forestâ. He is I well know a good Englishman, but I much doubt whether he will read and examine into this subject with

all the candour and disinterestedness that distinguish his view of most things; if he will not, there is no chance of convincing him that his rights are imaginary; and if not convinced, I well know also he would die at the stake in their defence, and would become a willing martyr in this rightful cause. In both houses of parliament I fear there may be found many persons of a similar description, and herein lies the real difficulty of legislating respecting game. It is not, as is commonly imagined, that there is a difficulty in making laws that will protect game for the reasonable diversion of country gentlemen, without oppressing other classes of society, or depraving the poor; but the difficulty lies in adapting laws founded in justice, and productive of general public advantage, to the particular interests of individuals, and without encroaching upon exclusive privileges, ignorantly esteemed rights, In different counties different customs & different interests prevail, as to the exercise of these privileges, and that law which may happen to serve the purpose of a game-preserver, and secure his rights (or perhaps extend them) in Norfolk, will be the utter destruction of the game-preservers' darling rights in Yorkshire. Each man will be pertinacious of his right, and make some clause reserving to himself its continual enjoyment, the *sine quâ non* of his support of the newly proposed enactment. I appeal to the members of both houses of parliament, if every attempt to

amend the present game laws since the committee sat in the Commons in the year 1817, has not been defeated, chiefly by operation of these causes? From all I know of the temper of both houses of parliament upon this subject, I must own that I think the chance of altering the game laws for the better almost a forlorn hope, nay I hold it to be impossible, till a more correct and liberal view is taken of the matter, and until members of parliament can be induced to legislate with a more direct view to general rights. While many gentlemen obstinately insist upon the maintenance of their own rights, actuated by very good English principle, although mistaken in their application of it, and other sporting senators, mindful of their own amusement only, and therefore, actuated by no principle at all, object to every alteration of the game laws, lest it should, by possibility, have the effect of diminishing the quantity of game; it will be in vain, I fear, to expect any beneficial result to the public, from the efforts of those who have for their sole object the good of the community. Such is the consequence of the spirit inculcated by the game laws within doors as it is called—i. e. in parliament; out of doors, or in the world—though perhaps less mischievous, the same spirit is no less perceptible. To exemplify its pernicious agency I will appeal to the observation of every one, whether sportsman or not, who has been in

the neighbourhood and in the society of game-preservers—Will not a poor man with a gun or a dog in his house, both possibly kept for the protection of his property, become more or less an object of suspicion? Does not the squire's enjoyment of shooting mainly depend upon the general exclusion of others from participation in that enjoyment? Can a yeoman of small landed property in a game county presume to carry a gun and shoot his own game in the neighbourhood of game-feeders, without becoming an object of jealousy at least, if not of positive hatred and petty spite? I am very confident that the answer to all these questions will universally be in the affirmative; nay I have in private put the same questions to some of the larger proprietors themselves, who have been candid enough to admit the affirmative in reply. They have even attempted to justify their desire for exclusive privilege by the following course of argument. What, say they, constitutes the value of a title? If common, it would cease to be the distinction which now renders it an object of desire to many who have it not, and a possession of value to those who have. Though for a moment this may seem a plausible support for the innocent and unblameable love of exclusion, the illusion will vanish when we come to inquire whether the title derives its value from the distinction, or rather exclusiveness and peculiarity which attaches to it alone and in the abstract, or whether its value

is derived from some notion of honourable and hereditary claim to that distinction, from signal service performed to the state, from superiority of learning, or from long tried integrity of conduct in public office? That many hold titles to which no shadow of such claims exists, either on the part of themselves or their ancestors, the public is already sufficiently aware; yet it is equally notorious that many on the other hand do hold titles which were so acquired, some now living who by their own signal services in the field, others who by their diligence in the cabinet, and still a larger number who by the deeds of their ancestors have acquired and now enjoy the exclusive and honourable distinction as a badge of merit.—To those who have claims to title, such as are here described, those who have not are exclusively indebted for all the honour that the distinction confers upon them. They received it as it were by reflection, and shine resplendent, if shine they do, from the borrowed lustre of their luminous associates—not from their own original light. Now how does the squire shine, if shine he does, in the enjoyment of his exclusive privilege? What claim can he boast to this species of enjoyment? which, be it observed, is so far different from the case proposed by the squire as parallel to his own, that the one, namely the title, be it held with or without honourable claim, is perfectly innoxious. The public cer-

tainly cannot be admitted universally to such distinction, but the public are not excluded from the enjoyment or from obtaining a title by those who happen to possess one, or by any partial restraint upon natural rights. No one would think of urging a natural right to a purely civil and honorary distinction. Whereas the squire enjoys an unrestrained and natural privilege, which becomes exclusive only because others are disqualified from equal participation in its exercise, and even are debarred from taking all the produce and profits of that to which they hold by equally sound tenure and right of possession with himself. Besides it is to be remembered, titles are the gift of Kings. British liberties, says Bolingbroke, "are not the grants of Princes, they are original rights." It may be thought that I dwell too long on this point of exclusive principle, but I have no hesitation in affirming it as my opinion, an opinion founded upon long and intimate acquaintance with the practical operation of the game laws, the principle upon which they are founded, and the results which they produce, that here lies the evil—here is its very root. It will be of no avail to prune its noxious branches—they would shoot forth again perhaps imperceptibly, till society at large might feel, as it at present feels, the deleterious effects of their morbid effluvia. Love of exclusive power and privilege, in the reign of Richard II. laid the first restraint on the liberties of mankind

with respect to game, under pretence of preventing idle habits among the lower orders, who went hunting, instead of going to church like good Christians, as the preamble to the act testifies. Has not the taste of exclusive power and privilege thus afforded, tended, not to satiate but to quicken the appetite for it, and to render it more perfect, more secure? Numerous acts of parliament have been contrived from time to time as occasion seemed to require, and plausible pretexts offered the opportunity, till at length the weight of evil, generated by this system, begotten in selfishness, fostered by pride, and maintained by power, is become so excessive, that the nation groans under its burden, and prays relief from the humanity, the good sense, and the justice of its rulers.

I trust it will be felt, that in the foregoing pages I have been guided by public and general principles, and that I have endeavoured to speak, and even to think, as little as possible of self. But my wish to avoid egotism must not be allowed to induce me to suppress some particulars respecting the author of this little work, which may have more or less influence with those who know nothing of the individual whose sentiments on the game laws they have been perusing, the means of information that he may possess, or the private and peculiar interests which he may have a desire to advance.

It may then be useful to inform the reader, that these sentiments, proceed from a proprietor of

land (to some considerable extent) in one of the counties most celebrated for game in England, indeed in a county where game abounds to a greater degree than in almost any other. The estate upon which he resides devolved to him by right of inheritance; it has been celebrated for the quantity of game in which it abounds above most others, even in Norfolk, and the success with which that game has been preserved, so long as it has been known as a distinct estate, belonging to a particular family—a term now comprehending a long course of years. He himself has been a game-preserver and a sportsman ever since he attained the age of manhood. As he resides in a corner or an angle of the kingdom, the society of friends from a distance could rarely perhaps be adventitiously enjoyed, but the abundance of his game affords so great and general an attraction, that during the winter months he has the happiness of being usually surrounded by those whose company form one of the greatest pleasures of his life. His experience and acquaintance with game-preserving lead him to apprehend no decrease in the quantity of game from more liberal and just laws respecting it, than those which he is desirous of altering; but even if he could contemplate a diminution of the game, as a necessary consequence of such alteration in the law, he would be quite prepared cheerfully to make even so great a sacrifice of his own pleasures, to the hope of putting an end to the crimes which

now attend poaching. He trusts then to obtain credit for the sincerity of his belief in the extent and consequences of the evils which he seeks to remove; and at all events it must be in fairness admitted, that he can have no private interest to serve. His evidence upon the subject of game-laws and game-preserving, as to facts within the sphere of his observation, is likely to be honest, and his opinions, if erroneous, have not probably been warped by prejudice, or swayed by any selfish considerations. Finally, wishing to promote the public good alone, he feels little anxiety for the reception given to his efforts, beyond the degree in which they may contribute to that, his single object. In more able hands he is persuaded the course of argument which he has chosen might avail much. If in the present instance it should be deemed feeble, and prove to be powerless, his earnest hope is, that others, more competent to the task he has undertaken, and actuated by motives like his own, may, by a better use of similar materials, effect his purpose, and so enjoy the reward for which he humbly strives—the consciousness of assisting to remove one great cause of crime and misery.

BURKS AND KINNEBROOK, PRINTERS,
London-Lane, Norwich.