OBSERVATIONS

ON

THE GAME LAWS:

TO WHICH ARE ADDED

COPIES OF CANUTE'S FOREST LAWS,

AND THE

TWO CHARTERS OF THE FOREST

GRANTED BY

KING JOHN AND HENRY THE THIRD.

BY PHILANTHROPOS.

Ελευθερῳ ανδρι ευκτον.—XENOP.

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PREFACE.

THE following sheets were *begun* during the time the Bill * for the Revision of the Game Laws, was under consideration in the last Session of Parliament; and although the evil tendency of the Game Laws had, for many years past, been strongly impressed on the mind of the Author, yet, when he commenced the following work, it was partly to employ a few leisure hours, aud partly to trace the evil of the system to its very source, and thus ascertain, by a more extensive and minute examination of the subject, whether his previous ideas were correct or not. While the Bill was pending, he had completed the first, second, third, and what is now the twelfth (then the fourth) chapters, and here he intended to have stopped, and in this state the subject rested for several months; although at that time he had some thoughts that, at a future opportunity, he might make some additions, by tracing the origin of the Game Laws, and then examining the several Acts of Parliament passed respecting them.

This idea, however, was not carried into effect, and perhaps never would have been executed, had he not, in September last, accidentally met with an old newspaper of the preceding March, in which he saw Lord Suffield's and Mr. Bankes' Works advertised. He purchased and read them; and shortly after he re-commenced the undertaking, and the remaining chapters were written under these circumstances. It is right to say, that the four chapters before-

* Mr. S. Wortley's, M. P. for Yorkshire.

mentioned, were originally written in the shape of letters, and supposed to be addressed to the Editor of a Newspaper, but without any original intention of making them public. When, however, the other chapters were added, the extent of the work, and the perusal of Lord Suffield's and Mr. Bankes' Observations, rendered it necessary to make some alteration, as well in the arrangement of it into chapters, as in the style of those parts previously written in the shape of letters.*

The view taken of these Laws by Lord Suffield and himself are nearly the same; and the Author found that he had unconsciously taken nearly the same basis, and the same line of argument as his Lordship had done: but this is by no means extraordinary, as they are by far the most prominent features of the case, and must obviously claim the first place in the attention of every one who will take the trouble of examining this most important subject.

Should he be accused of plagiarism, and that he has merely copied from other authors; he can only say, that every author he has quoted is liable to the same charge. Blackstone has quoted from Canute, Justinian, Puffendorff, Coke, Littleton, and many others. Christian, Chitty, Lord Suffield, and Bankes, have quoted from Blackstone, and he has quoted from all of them; if, therefore, he has offered the opinions of others, in *preference* to his own, it ought to acquit him of the charge of presumption—if, in *support* of them, he claims the benefit of having such eminent characters for the purpose; and he trusts, that those who oppose such opinions will be able (before they condemn him) to bring forward as numerous a body, and as eminent authorities, in support of their opposition.

He must here protest against any intention of casting a stigma on any man or set of men, either individually or collectively—it is the *System* he reprobates, and which he contends creates incongruities, and places men of the very best and purest intentions, in situations which lay them open to temptations, which even the strongest and best disposed minds cannot always withstand, and renders both the magistrate and the man liable to suspicion.

The facts detailed by Lord Suffield on the conduct of certain

* Thus what originally was the Fourth Letter necessarily became the Twelfth Chapter.

noblemen, gentlemen, and magistrates, are certainly disgraceful to them as individuals, but cannot affect them as a body. Yet still all this is to be attributed to the *system*, which is what the author intends alone to reprobate; and he adduces these facts, not for the purpose of calumniating a most respectable and useful body of gentlemen, but to show that the evil extends into the mansions of the great, and even into the seat of Justice itself, as well as into the hovel of the pauper; operates on the minds of the learned and enlightened part of society, as well as on those of the middling and ignorant parts of it; extending itself from the peer to the peasant, as well as to every other description of persons between these two extreme classes; and is, after all, so far from producing the good intended, that the experience of ages (and indeed of centuries) tells us, that every additional penalty produces additional crime.

The hope he had previously expressed, of having abler heads than his own to discuss this important question, has in a great measure been realized by the production of Lord Suffield's Work; still he hopes other Noblemen and Gentlemen will take the trouble of investigating the subject with the same candour and ability displayed by his Lordship; and, in the prospect of the assistance lately evinced by some of his Majesty's Ministers in opposing the present system of the Game Laws, he trusts they will not much longer be permitted to remain a disgrace to our code of Laws, or to disfigure the otherwise beautiful symmetry of the British Constitution.

With these hopes the Author has been influenced; and should his feeble efforts excite only *one* of those characters to such an examination of the subject, one of his objects will be in some degree answered, for one more advocate will probably be obtained towards effecting the end he has in view; viz. the abolition of the Game Laws, the decrease of crime, and the general happiness of his fellow-creatures.

The idea of his being an anonymous writer, may operate with a few, but he trusts with a *very* few. To them, he will leave their prejudices, and may it gratify them to the full extent of their wishes; he will only

"Remember, when the judgment's weak, the prejudice is strong,"

and submit to their censures (if founded on that account only) with

a smile, and may perhaps infer, they will attack the author, because they cannot *combat* his statements.*

To those who will form their opinion of his endeavour by its own merits or demerits, and not from the name of the author or his situation in life, he will submit to their corrections with thanks and gratitude.

Nov. 12, 1825.

* The Author of the following sheets has been induced to make this observation, as a writer of no small degree of eminence, and of unquestionable abilities, has attacked an anonymous author with some severity, although it was evident he could not combat his reasonings.

DEDICATION.

To

THE RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL, AND COMMONS, IN PARLIAMENT ASSEMBLED.

My Lords and Gentlemen,

To whom can a work of the following description be so appropriately dedicated, or to whose attention so well directed, as to those who possess the means of remedying the evil of which that work complains?

A glorious opportunity is now presented to you, of cancelling the oppressive and tyrannical conduct of your ancestors and predecessors, by expunging from the public records of your country, a code of laws which has so long disgraced them, (and which, notwithstanding their rigour, are found utterly inefficient to the end designed); and, at the same time, of exhibiting to the world a noble and dignified contrast, between the feudal tyranny of a former and a darker age, and the enlightened moralists and philanthropists of the nineteenth century.

Religion, Justice, Policy, and Humanity, alike are eagerly awaiting your determination, and hope from you the abolition of a system daily violating every principle which they inculcate.

To you, therefore, as the only source from whence can emanate the hoped-for remedy, the following sheets are (without permission) respectfully dedicated by,

My Lords and Gentlemen,

Your most obedient Servant,

And fellow-Subject,

THE AUTHOR.

OBSERVATIONS

ON

THE GAME LAWS.

CHAPTER I.

Among the numberless petitions presented to Parliament on different occasions, against different measures proposed by the legislature, I have been astonished to observe the apathy with which Mr. Stuart Wortley's Bill relative to the alteration in the Game Laws has been treated.*

These laws, as they stood forty or fifty years ago, have in effect been declared, by two of the ablest judges that ever sat on the bench, as severe, unconstitutional, and oppressive; since which time, many important alterations (all of them for the worse) have been introduced, and their oppressive operation increased in a hundred-fold ratio; those alterations having for their object the increase of the pleasures, and securing the amusements of the aristocratic part of the community, at the expence of the *lives, liberties, limbs,* and *privileges,* of the rest of the public.

The veil thrown over the scheme of the honourable member for Yorkshire, is too flimsy not to be penetrated by the most ordinary capacity. It appears to me, not only to fall very far short of what the public have a right to expect, and to destroy the common-law-right of the subject, but by a *side wind* intended to vest the property in the game in the large *owner*, and not the *occupier* of the soil; so that not only the rights of many persons will be taken from them, but they will be vested in some neighbouring lord of the manor, or other large landed proprietor: that this not only will increase crime, but be very inadequate to the end proposed, if the object be the preservation of game; and that if a power is given to enable parties to sell game, there is not only a possibility of the public being deprived of it altogether by lords of manors agreeing

* This was written at the time the Bill was under discussion in Parliament, which was thrown out by the Lords.

not to sell any, but there is a strong temptation for the magistrates to appoint only their own gamekeepers, or persons equally under their control and influence, who will not be allowed to sell to any but such as their masters may permit. and by a little management they will not only appropriate the whole property to themselves, but will deprive every person, except the village nabob, and country Nimrod, from tasting game, or even getting it into his possession; and the small landed proprietor, and the farmer, who breeds and rears it at an enormous expence, and great injury to his crops, will have nothing to do but to sit quietly down and see his corn destroyed by some neighbouring bashaw,* without daring to take the produce of his own land, or possessing the right to claim it. And this will be, and indeed is, the law in such a place as England!

Surely this is much worse than when Blackstone wrote (about 1760); and, even at that time, he distinctly states, "That the Game and Forest Laws were both productive of the same tyranny to the commons, but with this difference, that the Forest Laws established only one mighty hunter throughout the land; the Game Laws have raised a little Nimrod in every manor." And he adds, "That, in one respect, the ancient laws were much less unreasonable than the modern."

Mr. Justice Willes, too, in 1785, in giving his judgment on a case then before him (Jones and Smart), distinctly states, that "the Game Laws are already sufficiently oppressive, and therefore ought not to be extended by implication;" and adds, "Nothing can be more oppressive than the Game Laws." And after quoting Blackstone on the subject, he goes on to say, "Whenever a law is productive of tyranny, I shall ever give my consent to narrow its construction." Here, then, are the opinions of two judges, that these laws in *their* time were tyrannical, unreasonable, and oppressive: and I again ask, if this was the case in Blackstone's time, and in 1785, how much more oppressive have those laws since been made, and what a march (in case the *present* Bill should pass into a law) will tyranny and oppression make on the constitution and liberties of the people.

If these are facts with respect to the *principles* of the Game Laws, how much worse is the *practice* with respect to the execution of them? for what can be worse than bad laws, administered by bad judges? and that judge must be bad (if only on the liability of suspicion to partiality) if he is interested in the question before him.

Let us examine what is the practice in nine cases out of ten which arise under the Game Laws:—a gentleman's *servant* is the informer,

* The Author by this term means no disrespect to the whole body of country gentlemen, for he has found many exceptions to this character; but it must be admitted, it is one much too general on sporting questions, even with persons who in every other respect are most amiable and worthy: but should any gentleman feel himself offended by this term, he will find himself much more severely treated by Knox in his Essays: *vide* vol. iii. p. 119.—See also, the present work, preface pp. 2 and 3.

his *gamekeeper* the witness, and the *master* (or his friend, who is equally interested in the question,) is the judge, and, I may add, the executioner also; for should the master happen to be the visiting justice of the gaol, he may render the offender's confinement under his sentence much worse than it otherwise would be.* And is this the law of England?

That the Game Laws tend to idleness, and lead to crime, cannot for a moment be doubted. By rendering game *prohibited* property, you make it *valuable;* for it is almost one of the fundamental principles of our nature, that whatever is most prohibited, is most desired; and as the poacher's occupation is in the night, he is incapable of exertion (even if he was willing) in the daytime. Besides, as he can (generally speaking) earn more by one night's poaching than six days' labour in the usual mode of his employment, he is of little service either to society or his *family;* for money, easily obtained by such characters, is in general badly expended. His habits become predatory; and should he be unsuccessful in poaching, sooner than return home empty handed, he will attack a hen-roost, from the hen-roost he will go to the stable, from the stable to the dwelling-house, until he reaches the very acme of crime, and ultimately suffers on the scaffold. Thus have the Game Laws been the nursery of crime, and the cradle of idleness; and as long as they exist, the poacher will be found;† for it may be fairly computed, that seven-tenths of the culprits who are brought to the bar of their country, (at least at the assizes) owe their commencement of crime to them.

If I am asked, what remedy I would apply to this evil, I would say, if game must be vested in any particular description of persons, let it be in the *occupier* of the land; until that is done, all legislative enactments will be useless; you will then make him a game *preserver,* and now he is a game *destroyer,* and to an extent far beyond what is generally imagined; for having no interest in the

* No imputation is intended on the conduct or character of the magistrates; but it must be allowed that almost all of them have a bias on their minds against an offender under these laws. At all events, such a power ought not to be trusted to any man, or any set of men, particularly in cases of summary convictions.

In the last number of "The Westminster Review," there is a good article on the administration of provincial justice, in which the writer lashes with well-deserved severity, the ignorance, heartlessness, and oppression of the county magistrates. Much has been said about trading justices, but, for our parts, we would a thousand fold prefer a paid to an unpaid magistracy. The prejudices of county justices are more to be feared than any risk of corrupt motives in a pecuniary point of view. In town we are glad to see the police magistrates no longer taken nor selected from tradesmen tired of business, but from persons bred to the bar; and we should be glad if other persons in the country were left to decide on poaching cases than sporting squires, who, in such cases, may be said to be most unconstitutional judges in their own cause.—*Reading Mercury.*

† Poaching was the consequence of game being preserved. He, for one, could never defend the practice of setting engines to endanger the life of a fellow-creature for the sake of a head of game.—Lord Eldon in the House of Lords, March 7, 1825.

preservation of it, but a great one in its destruction, it is well known that thousands of eggs are destroyed, which, if the farmer had an interest in them, would be preserved.* What farmer would raise poultry, if it was to become the property of the Lord of the Manor? The poacher's occupation would be gone,† for every farmer would not only be enabled to protect his own interest, on his own land, but would have it in his power, either by sale or present, to supply his friends, who now purchase of the poachers: and it is an indisputable fact, that one poacher will destroy more game in a month, than three good sportsmen will in a season; and many farmers, while cutting their clover, or weeding their corn, will destroy more eggs and leverets, than twenty game-keepers can preserve.

If this system was adopted, steel-traps and spring-guns would become useless, and the lives, liberties, and limbs, of our fellow-men would not be considered of less consequence to themselves, their families, and society, than that of a hare or a pheasant; and those lives and limbs might be preserved for the support of a wife and children, which are now without compunction sacrificed to the preservation of so insignificant an object; nor can I agree with what appears to me to be a most horrible proposition of some advocates for the Game Laws, "that taking away the life of a fellow-creature by a spring-gun, or rendering him for ever a cripple by a steel-trap," (with all its concomitant consequences,) is "the most humane way of preserving the game." A philanthropist, or a moralist, would contend, that from this very expression there was abundant proof that the Game Laws tended to brutalize our nature.

I cannot conclude this chapter, without noticing a circumstance which has frequently appeared to me most strange, viz. That those persons who for the last twenty years have been most noisy for the liberties of the subject, have never exerted their talents, or raised their voices, in getting rid of laws, which are so generally acknowledged as oppressive and tyrannical;‡ on the contrary, one and all of them have been wholly silent on the subject, and it is almost invariably found, that they are not only the most arbitrary and tyrannical in enforcing these laws, but in endeavouring to strain their construction far beyond what the legislature ever intended: and in

* *Vide* Knox's Essays, vol. 3, no. 119. Christian on the Game Laws, 299. Chitty on same, pp. 28 and 32.

† This is a fact admitted by every poacher I have ever conversed with; and they say, that, from the number of servants the farmer has, it would be easy for him to keep a constant watch on their motions; but that as it is, it is no uncommon circumstance for them to find a bottle of gin, or some other refreshment, placed in a particular spot for their use; in return, the farmer will find a brace or two of game with his empty bottle; they also say there is no measure that would so effectually stop them.

‡ Since writing the above, I find Mr. Cobbett, in his Political Register, 13 vol. p. 650, has proposed that game should be made private property; the proof of the proprietorship being, that the animal was upon the land of the *claimant* at the time of its being killed. But, query, does he mean landlord or occupier?

one case which has fallen within my own knowledge, a respectable professional man, his wife, and several children, (I think five or six,) were reduced to beggary and ruin, by *a suit instituted against him, under the game laws, by one of those patriots for the liberties of the people. The result of which was, the husband died broken hearted, his goods were taken in execution, and his wife (who had been well and tenderly brought up and educated) and children were sent to the parish work-house, for the enormous offence of killing a hare!!

From these, and many other observations on circumstances of a similar description, arising from the same sources, I have ever suspected these pretended reformists wished for power, and not reformation; and that their object was thereby to increase their own influence in the state, in order to enlarge the sphere of their own tyranny; and have, therefore, given but little credit either to their words or demonstrations; for, whatever errors might have crept into the state, they have not shown themselves, in my humble opinion, calculated to correct or lessen them.†

In the next chapter I shall not only make a few observations on the origin of the Game Laws, but view the reasons assigned for such origin and continuation; and also give a few quotations from different authors who have considered the subject, both in a constitutional and moral point of view.

CHAPTER II.

In the last chapter, I intimated my intention of making some observations on the origin of the Game Laws, reviewing the reasons assigned for such origin, and continuation; as well as giving a few quotations from different authors who had considered the subject both in a constitutional and moral point of view.

* Not in the shape of a common information, but by proceeding in the crown office. The real fact of the case was this:—the defendant alluded to had to visit a patient three miles from his residence; it was a frost, and a sleet had fallen so as to render it dangerous to ride over the down country he had to go. He took his gun to beguile the way, a hare crossed him, he, to his own surprise, killed it. It was the first head of game he had ever shot, and the last.

† Johnson, in his "Shooters' Companion," observes, "These tyrannical Nimrods will be found Whigs. I have experienced," says he, "liberality from the Tories, with respect to Game, but never from the Whigs: and when I hear the latter, with inflated pride, boast so much of patriotism, the Game Laws flash across my mind."

I will only add, that the plaintiff in the action I have above alluded to, is still living, is a magistrate, a great reformer, and as great a stickler for Game as any in the kingdom.

The Game Laws, far from harmonizing with the general spirit of legislation, are as remarkable for the petty tyrannical spirit which pervades them, as for the injustice in which they are founded; and yet, paradoxical as it it may appear, whenever in the senate, attempts have been made to soften their severity, many

But, before I enter on this subject, it may not be amiss to examine what were men's *natural* rights previous to the enactment of these laws.

We are told by Blackstone, Coke, and Puffendorf, that, "by the law of nature, every man, from the prince to the peasant, has an equal right of pursuing and taking to his own use all such creatures as are *feræ naturæ;* and, therefore, the property of nobody, but liable to be seized by the first occupant;" and we are further told, that, "so it was held by the imperial law, even so late as Justinian's time; "Feræ igitur bestiæ et volucres, et omnia animalia, quæ, mare, Cœlo, et terrâ nascuntur, simul atque ab aliquo capta fuerint, jure gentium, statim illius esse incipiunt, quod enim nullius est, id naturali ratione occupanti conceditur."

Such it appears were the public and natural rights of men respecting *feræ naturæ,* acknowledged by the Roman law; but we are told by the learned commentator, that, "it follows from the very end and constitution of society that this natural right, as well as many others belonging to man, may be restrained by positive laws, for *reasons of state,* or for the *supposed* benefit of the community."

This doctrine, to the extent here carried, has, by an author,* though a good sportsman, and an admirer of field sports, (with that candour and liberality which always distinguishes that character "in its best estate," and dignifies the true Briton,) been justly questioned, by his observing, "that when the *public welfare* in any instance demands that the natural rights of an individual should be controlled in its exercise, by regulations established by law, the justice of such regulations is indisputable; but, surely nothing but *reasons of manifest good* policy, and the *actual* benefit of the state, can justify such restrictions. If they may be abridged or withheld, as the learned writer here affirms, they may, for reasons of state, and the *supposed* benefit of the community, we hold them by a tenure of very uncertain duration. Nothing can be more vague than the terms on which we must submit, if not to their absolute surrender, at least to an indefinite encroachment on them."

With this observation and limitation, I admit the position is most true; but I contend, that till it can be shewn that the Game Laws are founded upon reasons of *manifest good policy, and the actual* (not the supposed) benefit of the state and community, their advocates gain not a single point by the doctrine; and I fancy it will be difficult to prove that these Laws are founded upon either one or the other of these principles. And although the learned commentator gives some pretended reasons, yet it is perfectly clear, that he gives them as the reasons of the authors or advocates of the Game Laws, and not as his own.

of the Opposition have distinguished themselves by their decided hostility to such laudable intentions; nor have they been content to stop here, but have, on the contrary, eagerly embraced every opportunity of rendering an odious system still more disgusting. So much for patriotism!—Johnson's Shooter's Companion, p. 263.

* The Rev. Mr. Daniel; *vide* his "Rural Sports."

One of the reasons assigned is, "For *the encouragement of agriculture, and improvement of lands, by giving every man an exclusive domination over his own soil.*" But do the Game Laws effect this? In late harvests, is it for the encouragement of agriculture, for the farmer, who is the cultivator of the land, to have his standing corn rode into, and his hedges broken and trampled down by his more wealthy neighbour, his servants, horses, and dogs, in pursuit of an object, which he dares not himself pursue? Does it give him that "exclusive dominion over his own soil," which this reason assigns him; or does it not on the contrary exclude him, and give that right to another? This reason then is not only futile, but insulting, both to truth and common sense. And with respect to its being for "the actual benefit of the community," to entitle it to the merit it claims, it must be understood to mean the community *at large,* not a small portion, or a particular branch of it, to the exclusion of the rest. We cannot in justice legislate in *penal* laws, differently for the rich and poor; besides, a law which creates a poacher, and his long catalogue of crimes, merely to supply an amusement to a lord of a manor, or what is called a qualified sportsman, cannot be much for the *actual* benefit of the community at large.

The second reason assigned is, "*For the preservation of the several species of these animals, which would soon be extirpated by general liberty.*"

And thirdly, "*for the prevention of idleness and dissipation in husbandmen, artificers, and others of low rank, which would be the unavoidable consequence of universal licence.*

I will not stop to examine what *particular orders* of men have by the *law of nature* an exclusive right to *feræ naturæ,* or from whence they derive such right, if any such is claimed; although, perhaps, if any such exists in any class, it might with most justice be claimed by the *poorest;* as being designed by the God of nature, as providing, on the common and waste grounds of creation, the means of supporting those who have no (or at best small) powers of purchasing the necessaries of life, and of which they ought not to be deprived, unless from "manifest good policy," or "the actual benefit of the state."

But it is well observed by the author of "The Rural Sports," that these reasons destroy each other. It is evident to reflection, that, without any restrictive law on the subject, the evil would have cured itself: it is admitted * that "game would soon be extirpated by a general licence, of course all idleness and dissipation arising from this cause, must end with the cause itself, and would require no law for its prevention." Besides, were rabbits extirpated before they were ranked as a sort of game? No, they are in abundance, because they are not become so prohibited a property by a legislative enactment, and game would most probably be much less covet-

* That is, it is admitted by the promulgators of these reasons that such would be the effect of a general licence. Mr. D. meant not to grant such an admission as true, but merely to show that their own reasoning destroyed their own hypothesis.

ed, if it had not been rendered so desirable by prohibitory measures.

But let me ask, is it *necessary* for the preservation of game to destroy mankind, or deprive them of life, limb, or liberty?* if so, are we not buying gentlemen's *amusements* at rather *a high price?* Are we not in effect saying, "These species of animals, and their preservation, is of the *first* consequence, and the preservation of man, only a minor and a secondary one? and do not the advocates for the Game Laws in effect, say, "Let mankind perish by thousands, so that we preserve our game, and our amusements? and without blushing assert, that to kill a man is a *humane* way to preserve a hare or a pheasant!"

With respect to the third reason, "*that of preventing idleness and dissipation in husbandmen, artificers, and others of low rank;*" so far from this being the case, I maintain that the very reverse of it is the truth. So long as the Game Laws exist, the poacher will exist; poaching creates idleness, idleness and poaching create crime, and the Game Laws are the parents of both. I would ask, what reason is there to exclude a person of two or three thousand pounds, or two or three hundred pounds a year, arising from property in the funds, or any other personal property, from a qualification † (if a qualification must exist) when the son of a grocer, a tailor, a tallow-chandler, or a shoemaker, whose father happens to be a mayor of some little beggarly town, and therefore, *virtute officii*, bears the title and is dubbed an esquire, without a yard of land, or perhaps a guinea in his pocket, is entitled to sport as a qualified man, while the younger branches of the first gentlemen in the kingdom, a fund-holder of forty thousand pounds a year, or the possessor of leasehold property to the amount of ten thousand pounds, as well as the farmer who rears it, are prohibited; and by a statute which has for its object "preventing idleness and dissipation in *artificers, &c.* ‡ and how many of such unqualified men as these are there in the kingdom, contributing largely to the exigencies of the state, and rendering it services of the first importance, and who

* "The permission to take away a man's life by a spring gun, for the preservation of an article *which is not property*, was a great grievance to the people in general. It was a grievance even to a poacher, whose life ought certainly not to be sacrificed in order to preserve such a thing as game."—Mr. Scarlett in the House of Commons, 21st June, 1825.

† Lord Lauderdale reprobated the state of the Game Laws altogether. "Parliament had, within a short period, created eight hundred millions of funded property; and a class of persons enjoying revenues to the amount of thirty-two or thirty-three millions a year, were not allowed to kill game."—*Vide* Debates in the House of Lords, March 7, 1825.

Lord Dacre animadverted at some length upon the injustice and inequality of the existing law, particularly of that part of it which disqualified the holders of forty millions in value of land, merely because they held by leasehold instead of freehold interest.—March 7, 1825.

It will hereafter be seen, that some of the old statutes admit a qualification arising from personal property.

‡ Another absurdity here arises, that while the son of the esquire is qualified, the esquire himself may not be.

are thus excluded? Is it to be supposed that such persons will be deprived of game, if it can be obtained? Certainly not; and if no other means present themselves, will they not employ the poacher? and thus are poachers created, supported, and encouraged, from the very description of persons against whom this reason is supposed to be levelled.

A fourth reason assigned is "*for the prevention of popular insurrections, and resistance to the government, by disarming the bulk of the people;*" "which last reason," the learned commentator observes, "is one oftener meant than avowed by the makers of the Forest or Game Laws." I am aware, that a humble individual like myself, must be guilty of presumption in differing in opinion from so great a man as Blackstone. Yet, although this reason might have been urged and assigned by the makers of the *Forest* Laws, it is almost impossible to suppose that such were the reasons either expressed or implied by the makers of the more modern Game Laws, at least of those laws which have been passed within the last hundred years.* For are we not told by all the great legal and constitutional writers, "that the militia is the great constitutional safeguard and military force of the country; that they are inrolled only for a limited period, in order that every man may, in process of time, learn the use of arms for the defence of the kingdom?" And, when we consider the events of the last war, when we had the old, the local, the supplemental militia, and 360,000 volunteers, and associations of all descriptions; amounting to upwards of a million of men, raised, sanctioned, and armed by government, this reason must appear ridiculous. If there might have been some reason for it at the time the Forest Laws were made (which by no means appears, as the use of fire-arms was not then known); yet those times, their manners, customs, and necessities, having passed away, those laws which arose out of them should have died with them; but, in the face of the above-mentioned facts, it is something worse than ridiculous to say that the legislature, who passed the acts for embodying and arming the population of the country last war, should now enact Game Laws, which shall have for their object "the preservation of the people from the knowledge or use of fire-arms."

The reason here given then is absurd; the practice and the law, as it at present stands, gives a direct negative to its truth; and, when nothing but bad or weak arguments can be brought forward

* Since writing this passage, the writer has, with much surprise, seen it stated in a public print, that this argument has been advanced by a member in his place in Parliament: that such a circumstance should have occurred in the early part of our history, or even at a much later time, when even the whole learning of the legislature knew not sufficient grammar to pen an Act of Parliament ("there being no less than six grammatical errors, besides other mistakes, in the statute 5, Anne c. 14.") is not to be wondered at; but that such sentiments should be avowed in the nineteenth century, cannot but be a matter of surprise. These sentiments were, however, attributed to Lord Westmoreland by the print above-mentioned, and as being delivered in the House of Lords, May 1825.

in support of a measure, we have a right to conclude the measure itself must be bad or weak.

The true reason which operated upon the minds of the makers of the Forest, as well as the Game Laws, is, in my opinion, more accurately stated by Mr. Daniel: "The Game Laws," he says, "were introduced amongst us at an era when property was not governed, either in the use or in the possession, by those enlightened maxims of justice which at present secure it. The aristocratic orders of that period consulted their own amusements and pleasure, without any very scrupulous regard to the rights, or very provident care of the comforts, of the least opulent, but not least valuable part of the community. They were strong, and they were not willing to weaken the foundation of their power by a relaxation of their privileges; their pride made them averse from sharing with the commonalty an amusement which, by a small stretch of power, they might appropriate to themselves."

It must be admitted, there does not appear to have been very great alterations in the principles or practice of our ancient and modern aristocracy, as far as relates to the Game Laws.*

But let us now look a little more closely to the origin of the Game Laws; and here will I again quote the learned commentator, who tells us, "from this root (viz. the Forest Laws) has sprung a bastard slip, known by the name of the Game Laws, now (in 1760) arrived to, and wantoning in, its highest vigour, both formed upon the same *unreasonable* notions of permanent property in wild creatures, and *both productive of the same tyranny to the commons.*"† And, he adds, "that, however defensible these provisions in general may be, on the footing of reason, or justice, or civil policy, (which, with submission to so great a character, I cannot agree is made out on any of these grounds,) we must, notwithstanding, acknowledge that, in their present shape, they owe their immediate origin to slavery," (alluding to their introduction at the Conquest.)‡ And Mr. Christian, in his note on this text, states "that it certainly is as great injustice to deprive any one of the right of hunting, fishing, &c., as it is to take from them the value of that right in money, or any other species of private property."

Now, the basis of slavery is not one upon which we, as Britons, have been in the habit of founding our laws; and yet we are told by a judge, and the ablest commentator on the laws of a kingdom

* If it is thought right that the present system of Game Laws should be continued, would it not be more honest, and better, boldly to adopt the laws of Jenghiz Khan, the founder of the Mogul and Tartarian empire, published Ann. Dom. 1205, prohibiting the killing of all game, from March to October, that the *court* and *soldiery* might find plenty enough in winter, during their recess from war.—*Vide* Modern Universal History, vol. iv. 468.

† The operation of the Forest Laws extended only to the king's forests, while the Game Laws extend over the whole kingdom.

‡ Although Forest Laws were not first introduced at the Conquest, yet those which had previously existed, either under the Saxons, Canute, or Edward the Confessor, we are repeatedly told, were mild and benevolent, when compared with those of the Conqueror.

that perhaps Europe or the world ever produced, this is the foundation of our Game Laws!*

Is it to be wondered at, then, that the superstructure is oppressive? We are told, too, that they were introduced by William the Conqueror, and are coeval with the feudal system. Alas! how strongly do they retain the principles and practice of feudal vassalage, when every baron held in his hands the lives, the liberties, and the properties of his dependants. If this be the case, the charters granted by John and Henry are mere dead letters and waste paper, and, as far as applies to the Game Laws, nothing has been granted to the subject; for although by the latter of those charters the Forest Laws were abolished, yet that abolition only served to introduce the *Game* Laws, which by some of the judges of the land have been declared (and I believe by almost all of them are thought) to be much more oppressive to the Commons. But, if we look to many of the late statutes relative to game, much of the lord's powers have been increased, the liberties of the subject curtailed, severer punishments enacted, and many a weary and heavy link added to the chain.

And for what is all this done? We have been told, to increase the *amusements* of a chosen few—the Aristocracy!

If this be true, if this be all, surely the conduct of Caligula and Nero, when they devoted thousands of their subjects to death, has the same excuse, and is no longer to be execrated; for they did it "for their amusements." And when, as we are told, one of them sat on the top of his palace, to enjoy the prospect of the destruction of a city and its inhabitants, he had the same excuse; and his conduct must no longer be condemned, for it was only for his "amusement!"

And we only devote the lives, limbs, and liberties of hundreds (indeed I may say thousands) of our fellow-creatures to loss and forfeiture, merely to preserve "an amusement," (not, thank Heaven, for our kings, but) for our country squires.

But the amusements of a Nero or a Caligula were the mere feasts of a day; ours, on the contrary, is a carnival of years, for

* The same learned author tells us, "that the cruel and insupportable hardships which those Forest Laws created to the subject, occasioned our ancestors to be as jealous for their reformation, as for the relaxation of the feudal rigours, and the other exactions introduced by the Norman family; and, accordingly, we find the immunities of Charta de Foresta as warmly contested for, and extorted from the king with as much difficulty, as those of Magna Charta itself."

It is a melancholy historical fact, that few of the immunities obtained from King John were beneficial to the great body of the Commons, as in general they only served to increase the independence of the barons and clergy of the king, without lessening the arbitrary and feudal power of the barons over their vassals; for we find, that for many years after the granting of Magna Charta, and Charta de Foresta, that power continued to be exercised; so that the Commons obtained but a small addition to their liberties, till the revolution of 1668 (or, more properly speaking, till 1678), when their liberties may be said to be completely confirmed by legislative enactments, amongst which was the Habeas Corpus Act.

every year produces new victims to these laws, and adds new regulations to increase the "amusements."

Let us suppose there are 1200 convictions a year* under the Game Laws, and each person convicted has on an average a wife and three children, it will follow that in the course of a year 6000 fellow-creatures will be reduced to beggary and ruin by the operation of these laws, 1200 of whom will be deprived of liberty, and the remaining 4800 thrown for support on the different parishes;† but if this number be considered too large, let only half of it be taken, and that will be sufficient to prove the dreadful operation of these enactments.

Hares, pheasants, and partridges, snipes, quails, and woodcocks, shout and sing, invoke the aid of Pan or Apollo to extol the fame of your preservers! for although the Creator of the universe in his wisdom, and by his laws, ordained man your *superior*, yet men by their laws (no doubt from a conviction of their own *inferiority of intellect*) have placed you in a higher scale of creation than themselves, and have estimated your preservation as of more value than their own. Tits, daws, and rooks, owls, bats, and butterflies, may in a short time hope to enjoy the same privileges, for the same reasons, *and from the same conviction*, and be alike protected at the same *trifling* expense, and who shall dare to doubt the wisdom of the decision, or *the justice of the preference?*‡

But, to be serious, if (with the *potent* reasons given for the necessity of all these laws, pains, and penalties, created to preserve a hare, a partridge, or a pheasant, still strong on our minds,) we can be so, it must not be forgotten that the cruelty and insupportable hardships of even the Forest Laws (at least so says Blackstone) was one of the causes which led to the dispute between King John and his barons, and involved this country in the worst of all evils, a civil war. Now it is said, that the Game Laws are more oppressive than the Forest Laws; and if it be a truism, that in the general order of things the same causes produce the same effects, what have we not to fear, unless they are abolished or greatly modified.

* *Vide* Parliamentary Returns.

† Is it not strange that while we are legislating to protect the brute creation from inhumanity, we appear to have forgot the miseries of our fellow-creatures?

‡ This idea is not so absurd or improbable as many persons may at first imagine; for we are told "that the Kings of Persia were wont to hawk after butterflies with sparrows and stares (or starlings) trained for the purpose."—*Vide* Burton on Melancholy, p. 169, from the Relations of Sir Anthony Shirley. And we are also told that "Monsieur de Luisnes, afterwards prime minister of France, in the non-age of Louis XIII. gained much upon him by making little birds catch butterflies."—*Vide* Life of Lord Herbert, of Sherbury, p. 133.---And it is well known that a very few years ago it was a favourite "amusement" amongst noblemen and gentlemen to collect moths and butterflies: why not render a qualification necessary for the peculiar exercise of this "amusement" by enacting "Moth and Butterfly Laws," as well as "Game Laws," with the same pains and penalties? why, if the *ends* are the same, should not the *means* of preservation be the same—the general utility of each considered? The effect would only be, that from its being prohibited property, every man, woman, and child, would become poachers under "the Moth and Butterfly Act!!"

I am old enough to remember the commencement of the French revolution;* I have studied its causes, have watched its progress, and, thank heaven, have lived to see its termination, and to know that my beloved king and country (in the hands of Providence) were the principal means of bringing it to a happy, an honourable, and a victorious conclusion; but I cannot remember without shuddering the many horrors that revolution produced, the millions of lives and treasure which it cost, the many perils in which it involved this kingdom, and the sacrifices which were necessary to be made by all classes of his Majesty's subjects for carrying on the contest which it occasioned: but I also remember, that one of the great causes of that revolution was the overbearing privileges of the aristocracy and clergy, and the too great attention of the French government to their pleasures and amusements, at the expence of the rights and privileges of the democracy. And what was the consequence? The throne was destroyed, the aristocracy annihilated, and the democracy gained an ascendency which was purchased by the blood of their fellow-creatures. I again say, let us remember that the same causes may produce the same effects, and let us be wise in time.†

In the next chapter I will consider the general policy of the Game Laws, on general principles, and as a question of revenue.

CHAPTER III.

"POLITICAL or civil liberty" has been defined to be "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."

Now if this definition be correct, I apprehend it would puzzle the greatest casuist to prove that the Game Laws are founded on this basis: it would puzzle him still more to defend them against the charge of violating every principle of this definition.

The game of this country are denominated *feræ naturæ*.‡ The very term gives an implied *public* right in them; and how does it appear that by restraining or destroying that right, the *general ad-*

* One of the first acts of the French in their revolution of 1790, and of the Dutch, in 1795, was to abolish those exclusive rights of shooting, hunting, and fishing, those native rights of man, and to declare that they should be restored in their utmost plenitude.—*Vide* Seymour's History of the Wars of the French Revolution, vol. i. p. 251, and Madame de Genlis' Memoirs.

† The aristocracy would do well to remember another historical fact in the history of this country; viz. that whenever the commons have been deprived of their rights, and have been driven to arms for the recovery of them, they have not only recovered those that were lost, but acquired new ones, with sufficient guarantees for their preservation.

‡ I take this term to mean such animals as have not been reclaimed from a state of nature, and not domesticated by man.

vantage of the public is increased? Is it "to the general advantage of the public," or is "it necessary and expedient" for them to have a nursery for crime? Is it necessary and expedient, and for the *general* advantage of the public, that three or four thousand persons a year should be reduced to beggary, and thrown as a burthen on their parishes? Is it consistent with the general principles of the British constitution, that we should legislate in penal laws, in one manner for the rich, and in another for the poor, for no other reason than to secure an amusement to the former. Let this principle be once established, and the liberties of Englishmen will rest on a cobweb: might it not be brought into precedent for the future innovations of the rich, on the middling and lower classes of society, and thus form the stepping stone of an aristocratic power, which might, in process of time, be too mighty both for the throne and the people, and make the constitution retrograde seven or eight centuries?

The author of the "Rural Sports" very justly observes, that "no admirer of a manly, liberal, well regulated system of public freedom, will be forward to assert, that the laws for the preservation of game do not require to be thoroughly revised; they certainly depart more widely from the line of genuine political justice, and expose the humble and unqualified classes of the community more to hazard of punishment, and the oppression of power, than any rational advocate of moral equality can consistently approve.* They are greatly imperfect, inasmuch as their penalties are infinitely too severe. *That the punishment of death, should in any case be inflicted on an act which in itself violates no rule of religion, justice, or morality, is a reflection from which the mind revolts with pain and horror: where is the wrong to individuals which demands such an atonement? where is the injury to society which requires such an example?* That the act of destroying game is not *malum in se*, is evident, or the legislature could not licence it; not only the want of true wisdom, but the want of common justice, in these statutes requires the most earnest and attentive consideration in those who administer the government of the state. Every amendment, however minute in the defective part of the legislative system, is an acquisition of strength to our constitution. It takes a weapon from the armoury of its enemies, and knits still more closely the union of its friends. Unwise laws are the worst foes of a state. It is the public statutes that should perpetuate and keep alive the great principles of practical freedom."

* The Game Laws as they now exist in England, are a disgrace to a free constitution, they are illiberal in their nature; they originated in slavery, and they lead to tyranny. The whole body of the Game Laws is replete with perplexity, absurdity, and contradiction: what can be more ridiculous than that the legislature of a mighty empire should require 100*l.* a year to shoot a poor partridge, and only 40*s.* to vote for a senator?—Knox's Essays. Yet this is not all, for a freeholder of 40*s.* a year is qualified as a juryman to dispose of the lives, liberties, and properties of the subject; but it requires fifty times that amount to qualify him to *keep a dog*, or *kill game!!*

After tracing the career of a poacher from snaring of hares, and the netting of partridges, through the different petty thefts, of the log pile, the stack, the fold, and the hen-roost, till he suffers as a felon, he proceeds to express a hope,

"That when the legislature shall turn its attention to the revision of our penal statutes, those which respect the preservation of game, will receive that share of correction which they so much need, at present; * the civil penalties which they impose are inordinately severe and oppressive. That they should originally have crept into our code, as they did at a period when the rights of the subject being neither greatly regarded, nor well understood, were without much ceremony fettered with restrictions, is not surprising; but that they should be suffered to reproach our statute book in an age when freedom, refined by science, boasts the enlargement of her empire; when the political and moral rights of all orders of men are submitted to the test of reason, and the touchstone of philosophy, and a patriotic sovereign sanctions those rights by his support, and protects them by his power; that at such a period the spirit of hardship and injustice should display itself so conspicuously in this part of our penal system, reflects a dishonour on our constitution, from which its considerate admirers would most ardently wish it relieved."

This must be acknowledged to be the language and sentiments of a true Englishman, and a good sportsman. The man who feels or acts differently, may be justly doubted of being either; for he would destroy the natural liberties of one class of society, to monopolize them to himself. He would weaken those barriers of the constitution, which protect the poor from the encroachments of the rich, merely for the selfish gratification of encreasing his own amusements; and would be alike indifferent to the prerogatives of the crown, the liberties of the people, or the stability of the constitution, if he imagined they in the least militated against his own pleasure or profit.

But should it be necessary to show by a practical demonstration how these laws violate, not only general principles, but every just and moral feeling which ought to be the ground of every legal enactment, it will be sufficient to take one clause in the Mutiny Act, which enacts,

"That, if any soldier unlawfully destroy any hare, pheasant, &c., he shall forfeit 5*l.* and that every *officer* commanding in chief, where such offence has been committed by any *soldier*, shall forfeit 20*s.* and on neglecting to pay the same within two days, shall be declared to have forfeited his commission, and his commission shall be null and void."

It has been well observed upon this clause, "that to visit the sin of one person upon another, is to declare open war against all those axioms which eternal wisdom has given as the guide of human con-

* Mr. Daniel published his excellent work in 1801, since which time several new Acts of Parliament have been passed, and several new penalties created.

duct. It is to carry more than the rigour of military discipline into the spirit of judicial dispensation. The principle which this statute contains is foul, iniquitous, inadequate; it ought to be weeded out, let it have grown up how it may: such principles are the curse of every penal code, the corruption of every civil system."

But this is not all; for by another act of parliament, if a person is found with a stick (which by the feelings and prejudices of the parties, is easily converted into a bludgeon), in a wood, &c., he is liable to transportation for seven years.

Let us suppose a case, which, so far from being an imaginary one, is one of every day's experience, that of a labourer, who has been employed the whole week in a neighbouring parish, returning home to his wife and family, with his hard earned wages, and with a stick to support his tired and aged limbs, and assist him the more speedily to the bosom of his family. To shorten his journey, and to save him a distance of half a mile or more, he takes a nearer cut through a wood, or some other newly prohibited place which he has been in the habit of passing through without molestation, from his earliest infancy, should he have the good luck to escape a spring-gun or a steel-trap, he has still to encounter a more formidable enemy in the person of a gamekeeper. I say, *more* formidable; for the two former might only deprive him of a limb; and should he even lose that, the rest of his body is left, for the consolation of his wife and children. I admit he may even lose his life by either one "of those humane methods of preserving the game;" but still his remains are left in his native village, as some little consolation to his wife and family; but should he meet with a gamekeeper, whose magnifying powers of eye-sight convert a walking stick into a bludgeon, with as little difficulty as he would convert a bull-rush into an oak tree, (if necessary for his purpose,) he loses his character, liberty, wife, children, home, and country, and becomes an exile, perhaps a corpse, in a foreign land. His wife and family lose their happiness and support, and the parish "gain a loss" by being obliged to support them for the rest of their days.

And for what is all this sacrifice of principle and happiness to be made? It is as possible that he might have had no other motive than the one I have ascribed to him, as that he intended the destruction of game;* but if his judges are to be Lords of Manors (as they almost always are), and the witnesses against him their gamekeepers, his trial cannot be without suspicion of unfairness, and of private feeling interfering with public duty.

How frequently does it occur, that bands of poachers issue out of a night with a determination to oppose force by force, and that a body of gamekeepers is deputed to attack, take, or disperse them: they meet, and death to one or the other, or perhaps to both of the parties, ensues. And is the life of man to be pitted

* Laws against constructive crimes are always bad; but they become monstrous when the construction is placed in the hands of a partial or an interested judge.

against man for objects such as these? was it given for such purposes? or is it of no more value than to be taken away for such trifles? Let the Christian, the philosopher, and the philanthropist, determine these questions, and let the moralist, the legislator, and the patriot, consider them.

But if any further proof is wanting to substantiate the unconstitutional and oppressive operations of these laws, it may be found in the conduct of almost all our judges, when presiding in cases arising under them. I have already shown the publicly declared opinion of some of them, and it is observable with almost one and all of them, that when a case of this nature comes before them, they frequently blink the question by saying, "It is unnecessary to enter into the policy of the Game Laws." The counsel for the prosecution generally say the same thing; and thus, to the honour of the British bench and bar, scarce a judge or an advocate will be found to prostitute their consciences or feelings to justify laws, they feel and know, violate the best principles of the British Constitution.* Surely that silence conveys volumes of commentary in cases where the judges, if they could justify them, would probably feel themselves bound to do so.

Let us now consider the subject as a question of revenue, and this will be very short, for it will depend on self-evident truths.

If it is intended to continue the duty on certificates, let those persons sport who are willing to take them out, and who can get permission of their friends to sport over their estates; but let those certificates protect them against informations and penalties, not, as now, render them subject to a penalty, after obtaining a licence to sport, for which they have paid a considerable sum to Government.

Supposing, then, every occupier of land (to say nothing of others), on obtaining such certificate, had a right to sport, almost every one of them would do so, and perhaps also a son or two of each might do the same. I suppose there are not above twenty or twenty-five persons in the parish where I reside who now take out licences; in the case I have supposed, I think there would be seventy. A proportionate number of dogs would also be kept, and a proportionate increase of gunpowder would be consumed, both of which, I believe, pay a duty; and thus would the revenue be increased in the same, or perhaps a greater proportion.

But it may be objected, and I may be asked—"What, do I mean to assert there will be more game by increasing the number of sportsmen?" My answer is, Yes; for by that means you increase the number of preservers, who have not only the *power* to preserve, but who will then have the inclination also. And where they, as sportsmen, would kill one head of game, they would, as farmers, preserve fifty, and get rid of the poachers to boot.

The following facts may serve to illustrate this position, and are

* The author is aware there are some of the judges and counsel who think differently on the policy of the Game Laws; and he has no doubt they act most conscientiously. He does not presume to question for a moment their honour or integrity: he is aware they are far above his blame or praise.

a few, out of many others of the same description, which have fallen within my own knowledge.

A gentleman in this neighbourhood discharged his gamekeeper, who, immediately after receiving his wages, went to a neighbouring farmer to whom he related the circumstance of his dismissal. The farmer kindly gave him some refreshment, and while he was taking it, the gamekeeper observed—"That the game upon the manor must have done a great deal of injury in a certain field he named." The farmer admitted the fact, and naturally enough complained. What was the consequence? The gamekeeper, without saying a word to the farmer of his intentions, the next morning brought him sixty pheasants' eggs; and informed him, if he would look on a certain bush he named to him, he would find as many young hares. The farmer from curiosity went to the place mentioned, and certainly found the hares as described, hanging, as he expressed it, "like so many moles" to the boughs. He kept the secret (at least from those who were most interested in the knowledge of it), and was, no doubt, rejoiced in his heart in the destruction and havoc which had been made; but would he have done so, or permitted the circumstance, or would the gamekeeper have thought he had been making an acceptable offering, had he been allowed to sport on his own land?

Another circumstance was that of a gamekeeper who had been dismissed from his service for killing and selling game unknown to his master, and on his own account, (a very common practice, I believe,) and who, during his servitude, had collected nearly two hundred wires laid by different poachers. On his dismissal, he went to a gang of poachers in the neighbourhood, and gave them every wire. The result was, that they brought home, within two or three nights, nearly one hundred and fifty head of game. Would this have happened had a farmer been a game preserver? *

A third circumstance was that of a person he well knows, whose property arises principally from the funds, who, notwithstanding he had taken out a certificate, had an information laid against him by a lord of a manor, for which he paid 5*l.* A short time afterwards a poacher was convicted in another 5*l.* penalty, for poaching on the manor of the same lord, which the gentleman above alluded to enabled him to pay. A night or two afterwards, he had brought to him, obtained by the poacher and his party, upwards of a hundred head of game, principally pheasants and hares, and all obtained off the manor belonging to the person who laid both informations. This was about three years ago, and within that period, some hundreds of head of game have been derived, partly from the same quarter, and by the same means, and partly from the tenant, over whose land, and at whose invitation, the gentleman

* The fact was, that two farmers, tenants of the manor, knew of the wires having been thus disposed of, and of the intention of the poachers; but as they suffered much from the game on the manor, and were by their leases strictly prohibited from sporting, they only looked to their own interest in having the game destroyed.

was shooting at the time the information was laid, and who, of course, felt indignant at the conduct of the informer, and who, it may naturally be supposed, would rather encourage the poacher and his system, than otherwise. How destructive, then, are the Game Laws to the end proposed!

From these and a variety of other circumstances, which would be too tedious to detail, I am perfectly convinced that the farmer can, and in general does, and, as long as the present system prevails, always will, on the strongest of all principles of action, self-interest, either by himself or others, destroy more game in one year (by breaking eggs, and destroying the young hares in breeding time, as well as by winking at, if not encouraging, the poacher,) than he would kill as a sportsman in six or eight seasons. Nor can we blame him, when by the preservation of it he sustains a certain injury, without an adequate compensation, and by the destruction of it (by means the legislature can never reach) he insures a certain good.* Give him, then, a motive to preserve game, and he will do so: at present he has every inducement to destroy it, and he cannot in reason be blamed if, under such circumstances, he follows the impulse of his feelings; and, I would ask, who amongst his judges or accusers would not be governed, or at least influenced, by the same or similar principles, particularly when it is recollected there is nothing in it *malum in se?*

The argument used by some persons, that landlords would not visit their estates in the country, unless for the purposes of shooting, &c. is too weak and absurd to need refutation. It might have had some weight a century or two ago; but, in the present day, it is ridiculous.† But for a moment admitting the fact, if these landlords leave their smoaky residences in town to visit the country for no better purpose than to break their tenants' fences, and tread down their corn, in pursuit of game, to transport and imprison half-a-dozen poachers, and send their families to be a burthen to the parish, there is not a tenant, or individual of any description, either farmer or pauper, would lament, but rather rejoice, in their absence. And what other result occurs in nine cases out of ten?

On the whole, I am afraid that if Mr. S. Wortley's bill passes into a law,‡ its effect will be to vest an absolute property in game in the lords of manors, and other great land-owners, to the exclusion of almost every one else; their gamekeepers, or other persons

* A celebrated foreign writer (De Lolme), in describing the omnipotence of a British Act of Parliament, states, that it could do any thing but "make a man a woman, or a woman a man;" but how is an Act of Parliament to determine whether a man treads upon and destroys a nest of eggs, or with his scythe in cutting grass destroys a breed of hares by *accident* or *design?* We may legislate on human actions, but cannot on the human mind, at least in these cases.

† "The opinions of the twelve judges were divided on the Game Laws. The argument used by Mr. Justice Best, in favour of them, was discreditable to the gentlemen of England: viz, that the preservation of game was an inducement to them to reside on their estates."—Sir Francis Burdett, on the Spring-gun Bill, 21st June, 1825.

‡ Since writing the above, this Bill has been rejected by Parliament.

equally under their control, will be the only persons licenced to sell game, and that only to such an extent, and to such persons, as their masters shall direct. The country will be overrun with poachers, and the gaols overflowing with prisoners; the parish workhouse full of paupers, and the parish purse "full of emptiness;" and the only good I can possibly imagine will be, (what I have been assured is a transaction of every day's occurrence,) that the lord of the manor, and the great landed proprietor, will have better opportunities of transmitting to their fishmongers and poulterers in London, game sufficient to discharge their fish and poultry bills.*

In the next chapter I shall take a view of the different statutes made upon this subject, briefly noticing what was the common-law-right of the subject previous to the passing of such statutes.

CHAPTER IV.

In the last chapter, I proposed "to take a view of the different statutes made upon this subject, briefly noticing what was the common-law-right of the subject, previous to the passing of such statutes."

It has been before shown,† that "by the law of nature every man, from the prince to the peasant, had an equal right of pursuing and taking to his own use all such creatures as are *ferœ naturæ*, and, therefore, the property of nobody, but liable to be seized by the first occupant."

But we are also told, "that every man, when he enters into society, gives up a part of his natural liberty as the price of so valuable a purchase, and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws *which the community has thought proper to establish.*‡

It appears, from a variety of authorities, that the common law, in the time of our Saxon ancestors, and up to the time of the Conquest,

* At the time this was written, the author had not seen Lord Suffield's pamphlet, nor was he aware of the extent to which this system was carried, or the proofs which had been produced in support of the charge. He has, however, noticed the circumstance more fully in another part of this work, to which he begs to refer the reader.

† If this passage should appear to the reader to be too frequently repeated, it must be remembered that it is the basis of the common-law-right, which has been said, ought not to be restrained, but on grounds of public policy, or the *general* welfare of the public; and I have here repeated it, in order *more distinctly* to show how far these statutes do not accord with these principles.

‡ It must be evident that this is a much wider latitude than is allowed to the same doctrine in a former page: by *that* it appears that such laws must be for the benefit of the state, or the general welfare of the community; but, by this doctrine, no such necessity appears to exist, and, however absurd and unfriendly these laws may be, either to general policy or public welfare, they must be submitted to.

was, in the matter in question, in perfect accordance with these rules, or rather with those stated in page 12; for it seems that, up to that period, every person had a right to take to his own use such game as was found on his own land, as well as on those parts as were not then appropriated to the use of any particular individual, of which there were at that time, and long subsequent, large tracts.

The Norman Conqueror, however, destroyed this fabric, and, with the aid and consent of his foreign auxiliaries, not only introduced all the arbitrary and tyrannical provisions of the feudal system—a system almost universal among the northern nations,—but deprived the Saxon inhabitants of their ancient common-law-rights of hunting, &c. and transferred those rights to his Norman followers.

In their hands it continued under the reign of the Conqueror, his two sons, and several successive reigns, until at last the conduct of the monarchy became so oppressive, even against the barons, as no longer to be endured; and in the reign of King John, those ancient rights were, by the great charter, restored to all, although the enjoyment of them was withheld from the inferior class of people, who were still, and for a considerable period afterwards, held in vassalage by the barons.*

Thus was the common-law-right restored, and by degrees began to be generally enjoyed, till the thirteenth year of the reign of Richard II. when the first qualification (or rather the first disqualification) act was passed, in which, for the first time, either in our statutes, or in any of our records, the word "game" occurs.

But, before we notice this statute, it may not be amiss to make a few observations on what were the laws, habits, and manners of our Saxon ancestors, relative to hunting and taking what is now called game, and in what manner those laws, habits, and manners, were affected by the Norman Conqueror, his descendants, and successors, prior to the passing of that act.

It has been repeatedly stated, that by the Saxon law "every man had a right to take to his own use the game found on his own land." And as population at that time was comparatively small, notwithstanding there were many forests appropriated solely to the king's use, there were large tracts of uncultivated land which they considered and used as common to all; and every person acquainted with the ancient history of the kingdom well knows, that hunting, &c. was one of the principal amusements, and with many an almost necessary pursuit, of the inhabitants of that period.† Such, then, were

* "This famous deed (Magna Charta) granted or secured freedom to those orders of the kingdom who were already possessed of freedom, namely, to the clergy, the barons, and the gentlemen. As for the inferior, and the greater part of the people, they were as yet held as slaves; and it was long before they could come to a participation of legal protection."—*Vide* Hume's History of England, p. 166, 167.

† "In the earliest periods of civilization, game was the property, as it formed the subsistence, of any who could reduce it into possession. It was a necessary of life, before it became one of its luxuries. When the far larger part of the country was uncultivated, the forests and waste lands almost supplied the food of the scanty population, which was scattered among them."—Chitty's pamphlet, p. 5.

the state and habits of the people at the time of the Conquest; but when, after the battle of Hastings, the whole kingdom was subjected to the yoke of the Conqueror, and he had time to study the natural dispositions and propensities of his new subjects, and considered their warlike nature and inherent bravery,—he, perhaps, thought that the most probable and easy method of keeping such a people in subjection, was by breaking their spirit, and rendering it impossible to practise those habits, and follow those pursuits, to which they were so much attached, and which might have rendered them still formidable to the government. He, therefore, introduced the feudal system, by which he made them the slaves and vassals of his Norman followers, who exercised over them the most wanton and barbarous tyranny; exacted from them services of the most disgusting and disgraceful nature, frequently taunting them on their Saxon origin, of which no nation was more proud, and deprived them of a right which they held amongst their first and dearest privileges, the right of hunting.

These provisions of the Conqueror operated as a twofold benefit to him, inasmuch as by granting large tracts of land to his generals and principal officers, and with them the property and persons of the vassals upon those lands, he thereby not only rewarded his followers for their aid, but each baron kept a watchful eye upon the conduct of his vassals; and perhaps it was the most effectual method that could have been devised for debasing and subjecting both the minds and persons of the unfortunate Saxons: and thus, instead of one mighty tyrant, he created hundreds, and appointed them their respective districts to act in.

Having thus disposed of the two different classes of his subjects, he had time to turn his mind to his own amusements and pleasures; and one of those being hunting, notwithstanding the country abounded at that time with forests, chases, &c.,* and we are told by Walter Mapes, an historian of the very next age, "that in order to create a new forest, (the same as now known by that name,) the Conqueror took away much land from God and man, converted its use to wild beasts, and the sport of dogs, demolishing thirty-six mother-churches, and driving away the inhabitants of many villages and towns, measuring together fifty miles in compass." What must have been the feelings of the poor and unfortunate Saxons, at this gross and infamous act of tyranny, may be imagined, but cannot be described.

He then introduced a new and more severe system of forest laws, established courts, in which all questions relative to those laws were to be tried, and created a variety of officers to see those laws carried into execution;† and in order, as much as possible,

* Mr. Daniel tells us there are *now* sixty-nine forests, thirteen chases, and upwards of seven hundred and fifty parks. Vol. i. 252.

† It may here be objected, that Canute the Dane had previously introduced a system of forest laws, which are said to have been dated at Winchester, in 1062. Those laws were not very strictly enforced, and appear to have been obtained from the King at the request of the Barons. It is perfectly clear that they were mild, and even benevolent, when compared to those of William I. The former, by an express clause, reserves the right of every man to kill game on his own land, and so far were in favour of the liberty of the subject; whereas, those of William I. are most despotic, tyrannical, and cruel in their operations. They appear to have so little reference to the laws of Canute, that they may be considered an introduction of a new system.—*Vide* Johnson's Shooters' Companion, 241.

to keep the common people from infringing those laws, he created a court "of Regard, or Survey of Dogs," to be held every third year, for expeditation or lawing of dogs, by cutting off to the skin, three claws of the fore feet, to prevent their running at or killing *deer*.* So severe and so savage indeed were the forest laws, that the death of a beast was a capital offence, as well as the death of a man. Among other punishments for offences against these laws, were castration, loss of eyes, and cutting off hands and feet.†

It is somewhat singular that the son should be slain in the pursuit of deer, in the very district which his father had depopulated for their accommodation and increase: a mind not peculiarly disposed to credit that the sins of the fathers are visited upon the children, must, in this instance, however, admit of its being completely verified.

After having stated the very severe enactments of the forest laws, it may appear superfluous to add any further evidence on the subject; but, in order to show how callous bad laws render the hearts of men, and how far the mind of man may be influenced in pursuit of a favourite object, which has only personal amusement for its aim and end, I will notice only two more acts, which were passed previous to the 13th of Richard II.

The first is the 3d of Edward I. c. 20; which provides "that if trespassers in parks be thereof attainted at the suit of the party, *great and large amends shall be awarded,* according to the trespass; and *they shall have three years' imprisonment,* and *after, shall make fine at the king's pleasure,* (if they have whereof,) and then shall find good security, that after, they shall not commit the like trespass. And if they have not whereof to make fine, after three years' imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm.‡

One would naturally have supposed that these inflictions would have satisfied the mind of any monster bearing the shape of man; but no, the seed of oppression was sown, its produce was not sufficiently great, and had not yet reached maturity; accordingly another statute of this humane and game-loving monarch was passed, viz.

The 21st Edward I. c. 2, s. 2, and entitled "de Malefactoribus in Parcis," enacting, "that if any forester or parker shall find any

* Daniel's Rural Sports, vol. i. 256.

† Ibid, 348.

‡ This statute appears to have been taken from the tenth clause of King John's Charta de Foresta.

trespassers, wandering within his liberty, *intending* to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, *do flee,* or defend themselves with force and arms, although such forester, parker, or their assistants, do kill such offenders, they shall not be troubled for the same, nor suffer any punishment."*

It is observable here, that in order to render a person liable to the penalties of this act, it is not necessary to show that he was in pursuit of game, but merely that he was "wandering," within the liberty. It is not necessary to prove that he *did* do the slightest damage; but that he "*intended*" to do so; and if, in order to avoid the penalties of his thus "wandering," or the supposed *intention* of doing damage, he flies,—he is to be shot!! But how is the forester to know what his "intentions" are, till taken? He is, it seems, authorised to kill the "wanderer" first, and then learn (I suppose from the dead man, for no one else could tell what his "intentions" were,) what were those intentions. But it may be said "he fled," and therefore he was shot; but who is to prove this? Why, the parker and his assistants, who shot him! for it is a hundred to one if any one else were present.

Here is, at all events, a strong temptation for a forester to kill an innocent man, and claim a merit from his employer for a strict and vigilant discharge of his duty. Surely the punishment far exceeds the offence.*

It is true there is a sort of caution added to this act, that if the forester or gamekeeper should wantonly exceed his powers, and unnecessarily kill one of these unfortunate "wanderers," he shall be amenable to the laws; but who is to prove this excess? certainly none of the parties concerned, and, for the reasons before mentioned, it is difficult to imagine what other evidence could be produced.

I will now notice the statute of Richard II., which is in the following words:—

"None shall hunt but they which shall have a sufficient living.

"Forasmuch as divers artificers, labourers, and servants, and grooms, keep greyhounds and other dogs; and on the holidays when good Christian people be at church, hearing divine service, they go hunting in parks, warrens, and connegries of lords and others,† to the very great destruction of the same; and sometime under such colour, they make their assemblies, conferences, and conspiracies, for to rise and disobey their allegiance: it is ordered and asserted, that no manner of artificer, labourer, nor any other layman, which hath not lands or tenements to the value of forty shillings a year; nor any priest or other clerk,‡ if he be not advanced

* This liberty of killing the offender is extended to lords of manors, and their gamekeepers, by statutes 4 and 5, William III. c. 33.

† It is contended, that from this preamble it is clear the previous right of the persons here described is acknowledged; or why, it is asked, was this restraining statute necessary?

‡ The prevalence of the clergy to indulge in the secular pastimes, and especially those of hunting and hawking, is frequently reprobated by the poets and moralists of the former times. Chaucer, in his "Canterbury Tales," makes the monk much better skilled in riding and hunting than in divinity. The same poet, in the "Ploughman's Tale," accuses the monks of pride, "because they rode on coursers like knights, having their hawks and hounds with them." He severely reproaches the priests, alleging that many of them thought more upon hunting with their dogs, and blowing the horn, than of the service they owe to God. The prevalence of these excesses occasioned the edict, established in the 13th of Richard II., which prohibits any priest or other clerk, not possessed of a benefice to the yearly amount of 10*l.* from keeping a greyhound, or any other dog, for the purpose of hunting. *Daniel's Rural Sports*, vol. i. 273.

to the value of 10*l.* by the year, shall have, or keep from henceforth, any greyhound, hound, or other dog, to hunt, nor shall they use fyrets, heys, nets, harepipes, nor cords, nor other engines, to take or destroy deer, hares, nor conies, nor other *gentlemen's game,* upon pain of one year's imprisonment; and that the Justices of Peace have power to enquire of the offenders on this behalf, and punish them by the pain aforesaid."

Upon this statute Mr. Christian makes the following observations.

1st—That the animals protected by this act, are deer, hares, and conies; and we are left to conjecture what is "other gentlemen's game."

2nd—That it is worthy of observation, that this is the only act of Parliament in the whole statute book that lays any restraint upon keeping hounds.

3d—That it would therefore follow, as it is not any where expressly repealed, and no other penalty any where substituted, that with respect to hounds, it would still be in force.

4th—That this is the first statute respecting game, and is the foundation of all the Game Laws, and that it fully refutes two great errors; viz. "that all game belonged to the king, and the game laws sprung from the feudal system."

Whether the Game Laws sprung from the feudal system, as asserted by Blackstone, or not, appears to have given rise to a strong point of discussion, on the doctrine of the learned judge, and Mr. Christian, as well as several of those writers on the Game Laws, who have followed him. I think the question is not very important; but I would only observe, that it appears clear that they were altogether unknown to our Saxon ancestors; except so far as regarded the king's forests; that the foundation of them was laid by Canute and the Norman Conqueror, by the introduction of the forest laws,* (of which Mr. Justice Blackstone says the Game Laws were "a bastard slip,") and so continued till the reign of King John, when, as is before stated, the common-law-right was again restored,

* The first William was so fond of the chase, as to desolate an extent of thirty miles, which is described by Pope in his Windsor Forest.

> ——— "In ages past,
> A dreary desert, and a gloomy waste,
> To savage beasts, and savage laws a prey,
> And kings more furious and severe than they."
>
> 1st Daniel's Rural Sports, 348.

until this restraining statute of Richard II. disqualified the description of persons there named. I therefore cannot go quite the length of the learned professor in admitting that it *fully refutes* the *error* that the Game Laws sprung from the feudal system; for although they might not directly spring from, yet I conceive that the forest laws (of which the Game Laws are said to be a bastard slip) were a part of that system; they were coeval with it; both were introduced at the same period; contrived for the same ends; supported by the same means; and continued by the same sovereigns, who originated and supported both evils. It is difficult to divest our ideas of an unity between the feudal system and the forest laws; it is equally difficult not to see a close connexion between the forest and game laws.

I would ask what is meant by "gentlemen's game," so strongly expressed in this statute? the distinction must have arisen with the Normans, and have "grown with their growth, and strengthened with their strength." It appears to have been a term well understood, at the time of passing this act: that it did not originate with the Saxons, and did not exist prior to the conquest, must be evident, as then every sort of game was common to all; it is therefore equally evident that they crept in with the Conquest; and although the charter restored the general or common-law-right to all, yet, as has already been shown, the Barons were almost the only persons benefited by it. In process of time, however, the common people,* always attached to their old customs, and gradually emerging from the state of ignorance and vassalage in which they had been kept for nearly three centuries, claimed not only the right, but the exercise of those rights, as well with respect to hunting, &c. as all others, till at last it became necessary on the part of the aristocracy, to pass this restraining and disqualifying act, in order to protect their illegal and tyrannical pretensions; using, however, that caution which disqualified only the description of persons named in the statute, most probably feeling that it might be dangerous to extend it farther; but we shall presently see in what manner they have from time to time extended these assumed claims, and violated those rights. We shall see that from depriving artificers, labourers, servants, and grooms, and the other persons there described, from taking deer, hares, and conies, they have step by step equally deprived these and thousands of others, not only of their legal rights in taking those animals, but pheasants, partridges, grouse, moorgame, bustards, nay even fish, pigeons, wild ducks, snipes, quails, and indeed almost every other animal, except crows and rooks;† and attached penalties to the breach of those laws, which make human nature shudder, and which can scarcely be

* Among these were many of the descendants of the Normans, who began to understand the doctrine of *meum* and *tuum*, and joined with the Saxons (with whom they had, by intermarriages, become incorporated) in asserting their ancient privileges.

† And even for this, it seems, they were obliged to be licenced at the sessions, and then were permitted to kill them for hawk's meat only.—*Vide* post, p. 36.

justified for any offence short of murder or treason, and this merely to preserve an amusement to a few privileged beings, and, as is said, to keep gentlemen at their country seats, who, if deprived of it, would, like sulky children, run away and tell their tenants they would not come again.*

I shall now proceed to the next statute, which appears to bear on the subject; previously observing that not a single statute relative to game seems to have been passed during the time the House of Lancaster filled the throne.

The next statute then (for the 1st of Henry VII. is repeated) is the 11th of Henry VII. c. 17, (the preamble of which is important, and appears in a subsequent page, inasmuch as a committee of the House of Commons have declared, that in such preamble "the common-law-right is clearly and unequivocally declared."†

By this act it is declared, that none but the king shall keep hawks; and as hawks were at that time almost the only, or at all events the most usual mode of taking partridges, it is not too uncharitable to suppose that this was an effort on the part of the monarch to appropriate this species of game to himself, and it might have been an experiment to try the feelings of the people on the subject.

By this statute it was also enacted, that *no person of any condition* shall take any pheasants or *partridges* by nets, snares, or other engines, upon the freehold of another, without the licence of the owner or *possessioner* of the same, under the penalty of 10*l.*, half to him who shall sue, and half to the owner or possessioner.‡

This statute also prohibits every person from taking the eggs of swans.

If this statute was intended to authorize the owners and possessioners to kill game on their own land, it was a valuable acquisition, as in that case it would have restored the old common-law-right; but this does not appear, and it might intend to mean no more than what is at present the law, that of preventing trespasses on

* Lord Suffield observes upon this statute, that it unquestionably proves that, previous to its enactment, all orders of men might legally kill game; for if no such right existed at common law, the restrictive provisions of this act would have been unnecessary.

† *Vide* the Report, post. 53.

‡ This statute is certainly still in force. There is no subsequent statute which expressly, nor can I find one that by inference or implication, repeals it. The possessioner is a comprehensive word, to express the tenant in possession.—*Vide* Christian on the Game Laws, pp. 53, 54.

This statute suggests an obvious improvement on the Game Laws, that instead of giving one-half of the penalty to the poor, as under conviction before magistrates, that one-half of the penalty should go to the tenant in possession of the land upon which the offence shall be committed. If 10*l.* were thought not too high a penalty in 1404, when the tenant in possession could have recovered the whole of it for his own use against every trespasser upon his land, it surely could not be thought now too great a penalty against unqualified trespassers. The unqualified possessioner would *then have an interest in the preservation of the game who now has clearly a great interest in its destruction and extirpation.*—*Vide* Christian on the Game Laws, p. 55.

the lands of the owners or possessioners; at all events, it was an important recognition of the possessioners' right.*

The next statute is that of the 10 Hen. 7, c. 11, and refers to herons, and makes them protected property.

The 14 and 15 Henry 8, c. 10, prohibits taking or tracing hares in the snow.

The 25 Henry 8, c. 11.† applies to herons, wild ducks, mallards, widgeons, teal, and wild geese, and their eggs.

By the 5 Eliz. c. 21, persons taking hawks or their eggs out of woods ‡ are liable to three months imprisonment, pay treble damages, and find security for their good behaviour for seven years.

The 23 Eliz. c. 10, provides against taking pheasants and partridges in the night-time.

We have hitherto seen how the shield of the law has step by step been thrown over the different sorts of animals now denominated game, and how the rights of the subject have from time to time been invaded. We may, however, better comprehend this by the following recapitulation, and affixing the dates of the year to each event.

At common law, prior to 1066, the game was the owner's or possessioner's on whose land it was found.

William I. about 1070, established the Forest Laws and all their penal consequences.

John, in 1215, signed Magna Charta, and Charta de Foresta.

13 Richard II. 1389.—*Deer*, *hares*, and *rabbits* were protected.

11 Henry VII. 1495.—None but the king could keep *hawks*, then the usual mode of taking game, and nets and other engines were prohibited. Swans, pheasants, and partridges were also protected.

19 Henry VII. 1503—Herons share this protection.

14 and 15 Henry VIII. 1523—Hares are still further protected.

25 Henry VIII. 1531.—Herons, wild-ducks, mallards, widgeons, teal, and wild geese, are privilege property.§

* It is said that an unqualified man, although he cannot kill game upon his own estate, may nevertheless permit any qualified man to do so. He may sell it alive to any one; he may lease it by the year, or by the day, or by the number or weight of the animals killed (Christian, 104). Surely this is one of the greatest absurdities in nature: by this it seems a man may give another a greater power over his own property than he himself possesses.

† This statute was afterwards repealed by the 3 and 4 Edward VI. c. 7, the preamble of which is curious: it states that,

"Whereas in the five and twentieth year of the reign of your Majesty's father, of most famous memory, King Henry VIII. an act was made, &c. and that no manner of common commodity is either perceived to be grown of the same, being notably by daily experience found and known that there is, at this present, less plenty of fowl brought into the markets than was before the making of the said act, *which is taken to come of the punishment of God*, whose benefit was thereby taken away from the poor people that were wont to live by their skill in taking of the said fowl," &c.

‡ This property was vested in the owner of the woods by Henry III.—Charta de Foresta, c. 13.

§ By a statute of 32 Henry VIII. the penalty of selling game was first created; but this was a temporary law which was suffered to expire, and the sale of game

33 Henry VIII. 1541.—Cross-bows, hand-guns, hagbuts, and demihakes, are prohibited for the destruction of game.

5 Elizabeth, 1562.—Taking hawks or their eggs from woods was forbidden.

23 Elizabeth, 1580.—Pheasants and partridges were still further protected.

Having seen what description of *animals* were thus protected, let us now see who were the *persons* exclusively authorized and qualified to take and kill them.

By the 13 Richard II. it is enacted that no layman who had not lands to the amount of forty shillings a year, nor any priest or clerk who had not preferment to the value of ten pounds a year, should keep any dog, ferrets, or engines for the taking of deer, hares, or conies.

The 11th of Henry VII. prohibits any person from having hawks but the king; and the 5 Elizabeth seems intended to secure this privilege, by making it penal to take hawks or their eggs from the woods.

The same statute of Henry VII. prohibits any person of any condition from taking pheasants or partridges by nets, snares, or other engines. Thus, as guns were not then in use, hawks being reserved only for the king's use, and nets, snares, and other engines, being prohibited to all, as far as applies to pheasants and partridges, this latter species of game may be almost said to be absolutely vested in the king exclusively, for the statute of Richard II. applies only to deer, hares, and rabbits.

The next Qualification Act is the 2 James I. c. 27, * which pro-

was not again restrained till the 1 James I. (1602) c. 27, a period of about sixty years.—*Vide* Report of Committee of House of Commons.

* There appears a peculiar circumstance relative to the date of this Act of Parliament. In Hawkins's edition of the Statutes at Large, published by authority in 1735, as well as in the other old editions, this Act (as well as all the other Acts of that Sessions) is dated as of the first year of Jac. I. and Ann. Dom. 1603; and not a single statute appears to have been passed in the second year of that reign. It appears also, that almost the very last act of that sessions was one providing the manner in which persons infected with the plague (at that time raging in London) should conduct themselves, and giving the magistrates a power of enforcing the provisions of that Act: and that, immediately on passing it, the Parliament adjourned. On the other hand, in the subsequent editions of the statutes, this statute is dated as of "the second year *vulgo primo*" of Jac. I., and dated Ann. Dom. 1604. It must be admitted, that in confirmation of this latter authority, Hume, in his history of this reign, has the following passage, and assigns the date to the 19th March, 1604.* "The Parliament," says he, "was now ready to assemble, *being so long delayed* on account of the plague which had broken out in London, and raged to such a degree that above 30,000 persons are computed to have died of it in a year, though the city contained at that time little more than 150,000 inhabitants." Against the idea of its being an act of the second year of the reign, it is urged, not only that those who lived nearest the time of its enactment are most likely to be correct, but that the statute respecting the conduct of persons afflicted with the plague was evidently a *precautionary* measure against a *then* existing evil, which evil, according to Hume, had then ceased, or so far subsided as to render it not unsafe for

* James I. succeeded to the throne March 24, 1603.

hibits *every* person from killing any pheasant, partridge, house-dove or pigeon, hearn, mallard, or duck, with a gun,* and requires that *every* person who shall have or keep any greyhound for coursing a deer or hare, or setting dog or net, to take pheasants or partridges, (unless seized in his own right, or in right of his wife, of lands, &c. of ten pounds or more yearly value; or of lands, &c. in his own right, or in right of his wife, for term of life or lives, of the yearly value of thirty pounds, or of goods to the value of two hundred pounds, to his own use; or be the son of a knight, or of a baron of parliament, or of some person of higher degree, or the son and heir apparent of an esquire, shall on conviction be committed to gaol for three months, unless he pay forty shillings to the poor.

It is to be observed, that in this statute *pigeons*, *moor* and *heath game*, as well as *water fowl*, are protected, and a penalty attached for killing or taking them.

Mr. Christian tells us, that though pigeons, teal, widgeons, or any such fowl, are mixed up with game, they are not so called in this part of the act; and that this statute was to prevent the use of a gun entirely for the destruction of game. It was then fired by a match, and was then a mode of killing game not fit to be pursued by a gentleman; and every one who used a gun was to take out a licence at the quarter sessions, and could use it only for killing crows, choughs, &c. for hawks' meat only.

Passing over the act of the 3 of James I. c. 13, which is one

the Parliament to meet, and therefore the passing of such an act at the *close of the sessions*, unnecessary. There is also another curious circumstance connected with this statute. In the *title* of the Act of 48 Geo. III. c. 93, it is noticed as the Act of the 1st Jac. I.; but in three or four lines below, viz. in the *preamble* of the Act, it is treated as "the second, commonly called the first" Jac. I. Burn, in his work, treats it as the 1st Jac. I. Let casuists and historians settle this point: but there certainly seems a fatality and propensity to err in these Game Laws, more than can be found in any other part of our code.

There is a similar error in the statute of 1 Eliz. c. 17, relating to fish. In some of the editions of the Statutes there is a penalty of twenty pounds attached to the offence created by it; in other editions the penalty is twenty shillings; in the Record it is not distinguishable whether it be pounds or shillings. *Vide* 2nd Burn's Justice, 21 edit. p. 369. Surely the demon of mischief and folly presided when any of the statutes relating to game were framed.

* This statute is still in force: if so, *no person* has a right to kill any of the game here specified with a gun.—*Vide* Christian, p. 6, 230, 232.—Lord Suffield, p. 95.

I may as well take this opportunity of noticing another error as to dates. Mr. Johnson, in his "Shooter's Companion," in giving a copy of Canute's Forest Laws, (which he appears to have taken from Manwood's treatise on that subject,) states that they were dated at Winchester, in the year 1062, and that they were *afterwards* confirmed by Edward the Confessor. On a reference to the Regal Table, or the History of England, it will be found that Canute died, and was buried at Winchester twenty-six years previous to the time stated, viz. in 1036; that Edward the Confessor died and was buried at Westminster, in 1066. Harold succeeded him, and was slain in the battle of Hastings in the same year; upon whose death William the Conqueror ascended the throne. So that in the year 1066 England had three reigning monarchs.

for the preservation of deer and rabbits, I proceed to what is generally termed the Third Qualification Act, and relates to pheasants and partridges. The 7 James I. c. 11, (1608) enacts that every free warrener, every lord of a manor, and every freeholder, seized in his own or his wife's right of lands, &c. of the clear yearly value of forty pounds of some estate of inheritance; or of lands, &c. in his own or his wife's right for term of life or lives, of the clear yearly value of eighty pounds; or worth in goods four hundred pounds, may by him or his menial, or household servant, sufficiently by him authorized, take pheasants and partridges in the daytime only, in his own or his master's free warren, manor, and freehold, betwixt Michaelmas and Christmas only.* There are several other provisions for protecting the game of partridges and pheasants.

We come now to the last Qualification Act, the 22d and 23d Car. II. c. 25 (1670). The preamble of which states, that "Whereas divers disorderly persons, laying aside their lawful *trades* and employments, do betake themselves to the stealing, taking, and killing of conies, hares, pheasants, partridges, *and other game*, intended to be preserved by former laws, with guns, dogs, trammels, lowboys, hays, and other nets, harepipes, and other engines, to the great damage of this realm, and *prejudice of noblemen, gentlemen, and lords of manors, and others, owners of warrens.*"†

And after authorizing lords of manors to appoint gamekeepers to seize guns, dogs, nets, &c.‡ of persons not qualified, and also by warrant of a justice search the houses, &c. of unqualified persons for guns, dogs, or game, it enacts

"That all persons not having lands, &c. or some other estate of inheritance in his own or his wife's right of 100*l.* per annum; or for term of life or lives, or having lease or leases of ninety-nine years, or for any longer term, of the clear value of 150*l.* per annum, (other than the son and heir apparent of an esquire,§ or other person of higher degree; and the owners and keepers of forests, parks, chaces, or warrens, being stocked with deer, or conies, for their necessary use in right of their said forests, parks, &c. are thereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other persons, any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets,

* Mr. Christian scarcely notices this act.

† Here was an immense stride in the claims of the aristocracy, both as against the King and the public; for it is for the first time assumed to be the exclusive property of noblemen, gentlemen, &c. By the previous statutes it appears to have been almost exclusively vested in the King.

‡ There does not appear to be any authority for a gamekeeper to seize *game* from the *persons* of parties who are in pursuit of it.

§ The absurdity of this provision has been before noticed; but it may be carried still further, by supposing the heir apparent of an esquire, holding such title by virtue of his father's being mayor of a town, the son, by his father's death, during his mayoralty, succeeds to an estate of his father's of 95*l.* per annum; if he is not otherwise qualified, this would deprive him of his former qualification, although he might be a much richer man.

lowbells, harepipes, gins, snares, or other engines aforesaid, but shall be, and are thereby prohibited to have, keep, or use the same.*

Having thus seen what *persons* are entitled to take this privileged property, it may be here necessary to pause and again observe the progress of innovation made on the common law-right of the subject, not only by these statutes, but such as have been since passed by the legislature.

The first statute of Richard II. complains of, and is levelled against "artificers, labourers, servants, and grooms; and requires a qualification of 40*s.* a-year for a layman, and 10*l.* a year for a priest, to kill deer, hares, and rabbits.

The next statute of 1 James I. complains of "vulgar sort of men, of small worth," and requires a higher qualification of a freehold of 10*l.* a year, a lifehold of 30*l.* or goods of the value of 200*l.* or to be the son of a knight, or a baron of Parliament, or the son and heir apparent of an esquire, to kill pheasants and partridges.†

The third statute is that of the 7 Jac. I. complains of "*base* persons, of bad and mean condition," and authorizes certain persons therein named, who shall have freehold lands, &c. of 40*l.* per annum, or of lands, &c. for life of 80*l.* or goods of the amount of 400*l.* to take pheasants and partridges.

The next statute is that of the 22 and 23 Car. II., which ranks "tradesmen" amongst "disorderly persons," and gives us some clue to understand what is meant by the term "gentlemen's game," used in the statute of Richard II., as we are told the conduct of these tradesmen, or disorderly persons, by taking the game, "prejudiced noblemen, gentlemen, lords of manors, and other owners of warrens."

This statute also, after mentioning rabbits, with hares, pheasants, and partridges, uses the term "other game." Surely this term is too general for a penal statute, and increases the qualification, as to freeholds, to 100*l.* per annum, life or leaseholds to 150*l.* and omits the qualification arising from property in goods altogether.

Such has been the progress of these qualification, or rather disqualification acts.

The next statute to be noticed is the 4 and 5 William and Mary, 1692, and is intituled, "An Act for the more easy discovery and conviction of such as shall destroy 'the game' of this kingdom;" and it enacts, "that every constable, authorized by the warrant of one justice, may search the house of a suspected person not qualified; and in case any hare, partridge, pheasant, *pigeon, fish, fowl* or

* Here the qualification arising from personal property contained in the two former statutes is altogether omitted, and hence one of the principal causes of the increase of poachers and crime; for it cannot be supposed that persons possessed of large incomes, derived from these sources, will be precluded from game, nor is there any natural or rational ground why they should.

† There is another Qualification Act of 3d Jac. I. but as it relates to deer and rabbits only, and authorizing certain qualified persons therein named to seize guns, nets, &c. I shall take no further notice of it than I have already done.

"other game," shall be found, if such offender cannot give a good account how he became possessed of them, shall, upon conviction, for *every* hare, pheasant, partridge, pigeon, *fish, fowl*, or "other game," forfeit and pay any sum not under 5*s.* and not exceeding the sum of 20*s.* and if not paid, to be committed to the House of Correction for any time not exceeding a month, nor less than ten days, *there to be kept to hard labour and whipt!*

It must be admitted that this was another immense stretch of power, in order to preserve such insignificant objects, so shamefully purloined from the public right; for by this statute it appears that if any unqualified person is only *suspected* of having even a pigeon, a gudgeon, or a fowl, or *any other game,* (which after the enumeration above given, might be considered a cat or a rat)in his house; his castle, his sanctuary, and every hole and corner about it, is to be violated for so trivial an object, and if either of these are found, on non-payment of the fine, he is to be committed *to hard labour and whipt!*

But this is not the whole of the provisions of this statute, for it empowers lords of manors and their gamekeepers to kill offenders in the same manner as is provided by the statute of Edward I.*

It is also observable, that every pigeon, fish, and fowl, is made game.

This statute also declares "that if any inferior tradesman, apprentice, and other dissolute person (unless attended by a person duly qualified) shall *presume* to hunt, hawk, *fish,* or fowl, he shall be liable to the penalties of the act.

Mr. Christian, without noticing the penalties of imprisonment and whipping, asks, "Could any one have supposed this possible in a land of learning and liberty?" and further adds, "That no magistrate ought to enforce an act so pregnant with ignorance and absurdity."

With respect to the clause relating to fishings, he stigmatizes it as being "miserably composed."†

The 5th Anne c. 14, (1706) is the next statute upon the subject, and it enacts "that if any higler, chapman, carrier, innkeeper, victualler, or alehouse-keeper, shall have in his possession, or shall buy or sell any hare, pheasant, partridge, moor, heath-game, or grouse, unless the game in the hands of a carrier, be sent by a person qua-

* "By this statute gamekeepers may apprehend unqualified persons using dogs and guns in the night-time; but the horrible power of killing them if they flee being ordered to stand, ought not to have been entrusted to them."—Christian, 144.

† Several attempts have been made by different persons to claim a private fishery in the river Thames, and other public *navigable* rivers, and thereby to deprive the public of their rights therein—rights which are secured to them not only by Magna Charta itself, but by several other statutes, and numberless decisions of the courts of law. Those statutes and decisions not only secure to the public at large their right of fishing in such rivers, but destroy the very idea of a private fishery being vested in any individual in such rivers, and even denies the power of the crown to grant such a right. The author, in a recent publication, has offered these authorities to the public, with his observations on them.

lified,—upon conviction by a justice of the peace, he shall forfeit for every *hare, pheasant, partridge, or moor-game, 5l.**

This part of the statute is clearly confined to these four kinds of game.

The statute then declares "That if any person not qualified, shall keep or use any greyhound, setting dog, lurcher, or any engine to kill and destroy 'the game,' and shall be convicted upon the oath of one witness by a justice of the peace, he shall forfeit *5l.*"

And further authorizes a justice of the peace in his own county, and the *lords* and *ladies* within their respective manors, to take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or "any other game," from any higler, chapman, innkeeper, victualler, carrier, or any person not qualified to kill game.†

Upon this statute Mr. Christian observes, "all convictions before magistrates, and all actions in courts of law, are founded to recover penalties. We may therefore conclude that no animal now comes under the appellation of game, with a reference to these penalties, besides hares, pheasants, partridges, and moor game.

Mr. Christian also observes, that the words "the game" are used generally, and to the four specified sorts are added "any other game;" but in statutes *so extremely penal,* the judges would think themselves bound to confine themselves to what is clearly expressed, and would not think themselves justified in subjecting the people of England to severe penalties, and to the privation of liberty, by such *loose, vague, indefinite,* and *unintelligible* expressions as "the game" and "any other game," concerning which no legislator, lawyer, nor antiquarian, can assign a rational meaning, nor even suggest a probable conjecture."

Mr. Justice Blackstone too, (vol. iv. p. 175,) in his observations on these laws, says, "The statutes for preserving game are many and various, and not a little obscure and intricate: it being remarked that, in one statute only, there is false grammar in no fewer than six places, besides other mistakes; the occasion of which, or the denomination of persons who were probably the *penners* of these statutes, I shall not at present enquire."‡

But it would be tedious and disgusting to examine minutely all the different acts of parliament passed for the preservation of this

* This statute was originally made for three years only, but was made perpetual by the 9th of Anne.

† "There is no statute which authorizes a *gamekeeper* to take away *game* from an unqualified person; and he is prohibited from shooting dogs."—*Vide* Christian, p. 262.

‡ "It is remarked by Burn, and the great commentator on our legal system, that in one statute only for the preservation of game, there are not less than six blunders in grammar, besides other mistakes; so that one is led to conclude that this part of our boasted code was drawn up by a committee of boorish country esquires and stupid fox-hunters."—Knox's Essays. It is a little singular that the two principal statutes, upon which almost all the actions are brought, or convictions made, viz. 22d and 23d Car. II. and 5th Anne, should be liable to these severe animadversions.

species of property, and calculated for the destruction of the common-law-rights of the subject. I shall therefore follow Mr. Christian's plan, and borrow from him his notices of the subsequent acts of the legislature, now and then stopping by the way, to make a few observations of my own.

The next act, then, which occurs, is the 9th of Anne, c. 25 (1710,) which, Mr. C. observes, specifically mentions, in three distinct clauses, hares, pheasants, partridges, and moor-game, without any *foolish* reference to "any other" animals.

He next notices the 3d Geo. I. c. 11 (1716), which makes some alteration in the qualification of a gamekeeper; and it enacts that "no lord or lady of a manor shall appoint any gamekeeper with power to kill any hare, pheasant, partridge, 'or other game,' unless he comes within the description there specified."

This statute has a reference to the 22d and 23d Car. II.; and any other game here will comprise what was game under that statute.

The 8th Geo. I. c. 19 (1721), has the term "the game;" and as it has a reference to the statutes of 5th and 9th of Anne, so the game there mentioned are hares, pheasants, partridges, and grouse.*

I shall pass over the statutes of the 26th Geo. II. (1753), the 28th Geo. II. c. 12 (1755), the 2d Geo. III. c. 19 (1761), and the 13th Geo. III. c. 80 (1772), without any other notice than by observing upon the great endeavours which have been, from time to time, made for the preservation of this species of animals, and all of them hitherto ineffectual; and only notice the 39th and 40th Geo. III. c. 50, which, although repealed, still has the term "any other game;" as has also the 46th Geo. III. c. 130, which repeals it; and, with respect to the last act, merely notice another proof of the omnipotence of an act of parliament, which, for the purposes of this act, has declared it should be *night* for more than a quarter of an hour after the sun is above the horizon!!

The next act to be noticed is one that has been before alluded to, viz. the Mutiny Act; and which I shall beg leave again to insert, for the purpose of introducing Mr. Christian's observations upon it, and as he has copied the clause in it more fully than I have done.

The clause is to the following effect:—

"And for the better preservation of the game, in or near the place where any officers or soldiers are quartered, if any officer *or soldier* shall, without leave of the lord of the manor, *under his hand and seal,*† take, kill, or destroy any hare, coney, pheasant, partridge, *pigeon,* or any other sort of *fowls, poultry,* or *fish,* or his *Majesty's game,* within Great Britain and Ireland, being convicted before any justice of the peace, the *officer* shall forfeit *5l.* for every such of-

* See further on this statute, as to the recovery of the penalties by action of debt, *post,* and Christian, pp. 217, 219.

† The permission, therefore, must be *by deed,* duly stamped.

fence, and *the commanding officer* 20*s*. *for every such offence committed by the soldier;* and if such officer refuses to pay within two days, he shall forfeit his commission.

This subject has been before mentioned with some degree of severity, but I think not with more than the occasion required; I shall now, however, add Mr. Christian's observations upon it, previously observing, that even a lord of the manor is deprived of bestowing a common act of courtesy to an officer, and a gentleman, by giving a *verbal,* or even a *written,* permission to sport on his manor or land, for nothing short of a deed *under hand and seal* would protect him against the attack of a common informer, and the penalties of this statute.

Mr. Christian observes, "This is certainly the most extraordinary clause that can be found in the whole statute book. That the composer or preparer of it should have been a member of the British senate, or that such a composition should have been approved of every year by the king, lords, and commons of the United Kingdom of Great Britain and Ireland, is a subject that must create the greatest astonishment."

"What," he asks, "can be meant 'by any other sort of fowls,' besides pigeons and poultry? Shall every commanding officer be called upon to pay 20*s*., or forfeit his commission, for every sparrow or gudgeon that any drummer-boy shall amuse himself with catching? The heroes of Waterloo ought not to be so insulted every year by such a farrago of wretched nonsense."

By the Revenue Act, of the 48 George III. c. 55, a certificate is required to be taken out for the purpose of taking or killing any game whatever; or any woodcock, snipe, quail, or landrail, or any conies, in any part of Great Britain.

Thus, new restrictions are laid upon woodcocks, snipes, quails, and landrails, which, although not game, the public are prohibited from killing without a license.

Mr. Christian then comes to this conclusion, "That no animals are now to be considered as falling under the denomination of game, except only hares, pheasants, partridges, and grouse."

There are only two more statutes with which I shall trouble the reader; the first is that of the 57 Geo. III. c. 90.

Reciting, "That, whereas idle and disorderly persons frequently go armed in the night-time for the purpose of protecting themselves, and aiding, abetting, and assisting each other, in the illegal destruction of game and rabbits;* and whereas *such practices are found by experience to lead to the commission of felonies and murders.*†

* Here is a clear acknowledgement that rabbits are not game.

† If the game be the object of the parties so going armed, the Game Laws, by making it prohibited property, are the first cause of those effects which, this act declares, lead to practices which are found, by *experience*, to lead to felony and murder. Is not this another reason why the Game Laws should be abolished, and a proof that they lead to crime? Destroy the *cause*, and the *effect* ceases.

It therefore enacts, that "if any person, having entered into any forest, chase, park, wood, or inclosed ground, with intent illegally to destroy, take, or kill, game or rabbits, and with intent to aid and assist any person illegally to destroy, &c. the same, shall be found *at night;* viz. between the hours of six in the evening and seven in the morning, from the 1st of October to the 1st of February;* between seven in the evening and five in the morning from the 1st of February to the 1st of April, and between nine in the evening and four in the morning for the remainder of the year, armed with a gun, cross-bow, fire-arms, or any other offensive weapon, shall be transported for seven years, or such other punishment as the court may adjudge; and if such offender shall return before the expiration of his term, he shall be transported for life."

Upon this statute Mr. Christian makes the following observations:

"This statute repeals the 56 Geo. III. c. 130, which I have ventured to declare was an excellent statute: I was induced to do this, because it inflicted the punishment of transportation, where the court might think it necessary, upon those who go in the night to deprive the *owners* of a very valuable species of property, and to any extent. The extreme punishment was not likely to be adopted but in extreme cases. The punishment was exactly the same as may be adjudged for petty larceny, except that for petty larceny no fine can be imposed. If a man," he continues, "steal an article of personal property, worth a single farthing, he is liable to be transported for seven years; but that punishment is not likely to be resorted to for a trifling theft, unless it has been accompanied by terror, cruelty, or some circumstances of great aggravation."

"Transportation is a punishment best suited of any other to the crime of stealing game in the night. The offender who commits this depredation by night, must sleep by day; so that he becomes much worse than an unprofitable subject to his country at home; and he can only be made useful to the world by a removal to such distant parts, where there is not a temptation† or opportunity to commit a similar crime."

The only difference in the latter statute is, "that no one shall be subject to the punishment for having entered any ground in *the night,* with intent to kill game or rabbits, who is not found *armed with* offensive weapons."

* On the 1st of October the sun rises at 13m. past 6, and sets 13m. before 6.

1st of February,	28	7,	28	.
1st of April,	34	5,	34	7.
25th of May,	0	4,	0	8.
21st of June, and for 4 days before, and 3 after	43	3,	43	9.
18th of July	0	4,	0	8.

† Or, in other words, where there are no Game Laws; for the prohibition which they contain creates the temptation.

Some trifling alteration is made in the description of "the night." In burglary, by the common law, night is defined to be, "*that time when there is not sufficient light from the sun to distinguish a man's face*;" and *juries are always told, there may be such a light for one hour after the sun sets, and one hour before it rises.*"

"But the legislature, in various Acts of Parliament, have described the night just as they have thought best to produce the effect intended; and in this very statute, it is to be *night* till four o'clock in the morning, though, for nearly two months,* the sun is actually above the horizon some minutes before that hour."—*Vide* Christian, pp. 305, 6, and 7.

Having stated Mr. Christian's opinions on the subject, I will crave permission to make an observation or two of my own:—

I have in a former part of this work, stated "that the Game Laws lead to crime."

Here then, in the preamble of this statute, is a direct legislative acknowledgment of the fact.

I have also urged, that as "the poacher's occupation is in the night, he is incapable of exertion, even if he were willing, in the day-time."

This fact is admitted by Mr. Christian, and must be admitted by every other reasonable person, for it is a law prescribed by nature.

I have stated that the Game Laws are the parents of both these consequences:

And I appeal to the understandings and hearts of every impartial man, if here is not complete and abundant evidence of the fact.

I have asserted, that as long as the Game Laws exist poachers will exist.

The experience of four hundred years, and the language and preambles of almost every statute upon this subject, are strong and appalling proofs of this fact.

But what violations of truth and fact are pressed into this and several other acts of Parliament, to "produce the effect intended." If it be right for a judge to tell a jury, in a case where the character and liberty of the subject, and his protection of a wife and family, are at hazard, that it is not night an hour before sun-rise, and till an hour after sunset,—where is the justice, and where the *necessity* for making it night, and inverting the order of nature, for the purposes of protecting such a property as game, and that for a long time after the sun has risen?

Again, we are told that the extreme punishment is not likely to be resorted to, unless it has been accompanied by terror, cruelty, or some circumstances of great aggravation.

As long as the present laws exist, I would have the extreme punishment inflicted in every case where any instance of cruelty is

* From the 25th of May to the 18th of July, the sun rises before four in the morning.

proved; but it must be remembered that cases under the Game Laws arise mostly in the country, that they are principally brought before country magistrates, who are mostly lords of manors, and they in general commit to the sessions: I think, therefore, that if a return was made of persons convicted at the sessions, a very large proportion of the offenders against these statutes would be found to have been sentenced to the extreme punishment, without any reference to whether the case was attended with cruelty or not.

The last Act of Parliament to be noticed, is that of the 58 Geo. III. c. 75, which attaches a penalty either for a qualified or unqualified person to buy game, which did not before exist.

Upon this statute Mr. Christian makes the following observations:

"This statute has removed one inconsistency in the Game Laws, viz. that a qualified man was subject to a penalty of 5*l.* for every head of game he sold, but he was subject to no penalty for buying game."

Though no one can disapprove of this new act of Parliament, as long as it shall be thought right that the game shall not be legally sold, yet it will produce no sensible effect whatever, either in the preservation of game, or the preservation of the lives of his Majesty's subjects; or in the diminution of the crimes which will inevitably fill our gaols, till the time shall arrive when game like other property shall be legally sold.*

The purchasers of game who were qualified to kill it upon their own estates, were comparatively few, † and very few of those who were not deterred by their consciences from purchasing game before this statute, will be intimidated by the penalties from purchasing it at present. The law in respect to all others is just the same.

The poulterers and fishmongers will sell the game just as they did before, by adding to the price of the ducks, and geese, and fish, or by charging it under an &c. a cipher, or an unintelligible name; and the poachers in the country will have the same demand from their customers in London and in the great towns; so that we may confidently predict, that there will be just as many gamekeepers murdered, and as many poachers shot, executed, and transported as ever; and till game is legally sold, every winter will exhibit a more melancholy catalogue than the preceding, of the loss of human lives, in consequence of depredations upon this species of valuable and highly prized property.

Crimes, if not effectually suppressed, increase by a rapid accumulation.

By the provisions of 8 Geo. I. c. 19, and 2nd Geo. III. c. 19, power is given to the prosecutor to recover the penalties by an action of debt; upon these acts, Mr. Christian observes:

* Since the penalties have been increased to a very great degree of severity, poaching, instead of being checked in its baneful operations, appears to have increased, proceeding exactly in an inverse ratio.—*Vide* Johnson, 267.

† And yet, as will be seen hereafter, they furnish one-third of the game sent to London.

"This proceeding by information in the Crown Office is attended by so heavy an expense, that it is only resorted to in order to gratify a rancorous spirit of malice and revenge. It is not adopted for the preservation of game, but for the vexation and destruction of a fellow-creature; it is every way a disgrace to the laws of England, and the legislature ought not to permit such a horrid and abominable mode of prosecution to remain another sessions a reproach and a scandal to the statute book."

Thus have I endeavoured to trace the origin and progress of the Game Laws, dividing the subject into three distinct periods—1. By showing what was the common law-right of the subject in the time of the Saxons. 2. How that right was affected by the laws of the Conqueror, and the operation and influence of those laws up to the time of Richard II. when the first Qualification Act was passed; and 3dly I have endeavoured to show the progressive innovations which have been made on the natural liberties of the subject, as well as the increase of penalties, by different legislative enactments from that period to the present time,* from which I think the following conclusions must be drawn:

1.—That no *public good* was the aim or object of these laws, but they are solely calculated to secure an amusement to a few privileged individuals; and therefore, as neither the public good nor the actual benefit of the state requires these laws, they are not only cruel, oppressive, and unnecessary, but unconstitutional.

2.—That if the public good was the aim and object of the legislature, the experience of more than four hundred years must have proved that the means are inadequate to the end.

3.—That the severity of those laws has increased, is increasing, and, it is to be feared, will continue to do so; and as it is found by experience that those severities rather increase than diminish the number of poachers, as well as the nature and quantity of crime, so is misery and beggary increased in the same proportion.

4.—That supposing what has been stated by one of the secretaries of state in his place in the House of Commons † be true, and that upon an average *one thousand two hundred convictions take place in a year* under these laws; and supposing that each of these offenders has, on an average, *a wife and four children*, there will be every year *seven thousand two hundred persons* reduced to misery and want; and in twenty years, the liberty and happiness of *one hundred and forty-four thousand individuals* will be lost and destroyed by the operation of these statutes, and that no partial advantage to a few should be purchased at such an expense.

5.—That, connected with all these circumstances, an evil of so extensive a nature, founded in injustice, and supported by tyranny, bad in principle, and worse in practice, condemned by some of the

* The unprofessional reader will perhaps be surprised when he is told, that I have not noticed more than about one-half of the statutes passed for the preservation of game, or connected with the subject.

† In the year 1825 the returns stated the number at nearly 1600, and it has been said that nearly 3000 persons a year are incarcerated under these laws.

most learned and best informed men, both of ancient and modern times; reprobated by judges, lawyers, philosophers, nobles, and senators, ought no longer to remain a disgrace to our code of laws, merely as a mistaken means to secure an amusement to, or protect an usurped, assumed, or an imaginary right in, a few particular individuals. Reason, religion, morality, policy, common sense, and common justice, forbid it, and call loudly for a repeal of the Game Laws.

CHAPTER V.

I NOW propose to notice the opinions of several authors who have written upon these laws, more fully than I have hitherto been able to do; and although I have already borrowed rather largely from the Reverend Gentleman, I will first notice Mr. Daniel's Work.

In his third vol. p. 179, he observes, "That the sentimental novel writer of the present day, *without invention* or real knowledge of mankind, *dresses up* some narrative with affected maxims of exquisite sensibility, and endeavours to influence the passions and mislead the understandings of the rising generation with *direful stories* of the ingenuous peasant, torn from his weeping parents, or his distracted bride, and either hurried into a loathsome dungeon, or banished to an unhealthy climate, only for the murder of a hare or a partridge."

There appears to me in this passage a complete contradiction of terms. The "sentimental writer" is first accused of want of invention; and then charged with invention in *dressing* up a narrative founded in fiction. But is the example here given, that of fiction? Is not the committal of a peasant, for poaching, an event of every day's occurence? and does the Rev. Gentleman imagine, because the wife of a peasant is devoid of riches, she is also devoid of feeling? Does it follow as a *natural* consequence, that the wife of a poor man shall feel less upon being deprived of the being "whose family depends entirely on his labour," * than the wife of a rich one would feel in similar circumstances, who requires not the labour of her husband for the support of herself and family?

If such a writer had strayed into the world of fiction for the hero or heroine of his tale, he went farther than he had need, for he must have lived in a very extraordinary country indeed, if he could not have drawn his picture "from life," either in his own or an adjoining parish.

But, says the Rev. Gentleman, "In contradiction to these fictitious tales of woe, *hear* the *truth* from the remarks of our judges, almost every circuit, upon the offences *which poaching and smuggling are sure to inculcate and cherish*, until at length brought under their

* The Rev. Author's own words.

cognizance; unfortunately their admonitions have little weight to deter from the practice, however verified by the *too frequent* exercise of even *capital punishment* as its consequence."

When I first read this sentence, I was in great hopes I should have heard, or at least read, what were the judge's remarks on the subject; but he has left us entirely in the dark on this point, and we are obliged to rely on our own knowledge of it, which is, that when a felon is brought up to receive his sentence, it is a very common thing for the prisoner to declare that his first entrance into crime was by poaching; or, should this fact come to the knowledge of the judge, either by the culprit's own confession, or by evidence in the course of the trial, it is not only perfectly natural, but highly proper for his lordship to advert to it; while at the same time, it is as highly probable, he may in his heart reprobate the Game Laws as the first cause of leading the unfortunate culprit into temptation, and attribute his first departure from the path of rectitude to their baneful influence; he may also agree with the Rev. Author that "poaching and smuggling are sure to inculcate and cherish crimes, until at length the offender is brought under his lordship's cognizance." And it is not one of the least evils arising from this system, that even "the admonitions of the judge, or the exercise of capital punishment (which he admits are too frequent), will deter them from the practice or its consequences."

This is precisely what I contend for, and is another proof that the Game Laws create the poacher and his long catalogue of crimes, and that the means for prevention are inadequate to the end.

But now let us examine the Reverend Author's remedy for this evil, which he says "should be seriously tried, which should attach upon the *receiver* of the spoil;* and if the penalty of 5*l.* for destroying a single partridge, &c. be inflicted on the actual offender in catching it, this sum ought to be multiplied *five-fold*, as to the person who purchased it, *be he whom he may*. Pass a law," says he, "to this effect, and *allow the informer to be a sufficient evidence* against the buyer, *and the whole penalty to go to him*, the traffic will be checked, and the public morals will be benefited, however less luxuriant the appetites of some parts of the community may be regarded and pampered."

It is almost impossible to credit that this passage could have been written by the same person who wrote the one quoted in a former part of this work. That it should have been written by the same author, who has stated that "the game laws ought to be thoroughly *revised;* that they certainly depart more widely from the line of genuine political justice, and expose the humble and unqualified classes of the community more to hazard of punishment and the oppression of power, than any rational advocate of

* I presume Mr. Daniel, at the time he wrote this, was as ignorant as myself of the circumstance of their being gentlemen poachers; for, had it been known, I am certain his liberal ideas would not have confined the penalties to the receiver alone.

moral equality can consistently approve: that they are greatly *imperfect, inasmuch as their penalties are infinitely too severe:* who observes that the act of destroying game is not *malum in se;* who asserts that not only the want of true wisdom, but the want of common justice in these statutes, require the most earnest and attentive consideration in those who administer the government of the state." I say it is incredible to imagine, that these two passages could have been the production of the same person. Is this the *revision* he would recommend as extending the line of genuine political justice, and as less exposing the humble and unqualified classes of the community to hazard of punishment and oppression of power? Is this the mode he would recommend to render them more perfect, and the penalties less severe? Is this the punishment he would inflict upon an action not "malum in se?" Would this be true wisdom and common justice? would it be wise in government to adopt it?

The Rev. Gentleman asserts that poaching is sure to inculcate crime, which ultimately ends in the culprit suffering as a felon; yet he would quintuple the penalty, that is, make it 25*l.* instead of 5*l.* for every offence of buying game, let the evidence rest upon such a tainted character as he has just painted him, and as a further inducement and temptation, to add the crime of perjury to his already long list of offences, would give the poacher the whole of the penalty.

Let us see for a moment what would be the probable result of this "revision" of the Game Laws, which is so strongly recommended "to be seriously tried."

It is admitted on all hands, that the poacher is a depraved character, not "nice to a shade," either in his words or actions, and with such a temptation as 25*l.*, it is more than probable he may be induced to do much to obtain it.

Let me suppose the Rev. Gentleman an unqualified person, and having an information laid against him for buying two brace of pheasants, and the same quantity of partridges, which may happen to be the exact, or nearly the exact, quantity he had that day killed from his own gun, of which the poacher by watching him, or some other means easy enough for him to ascertain, had got intelligence. The poacher lays the information, and the defendant appears before the magistrates. The poacher is asked when and where did you sell this game to the defendant? his answer is, on such a day, and in such a field, or on such a common. Was any other person with the defendant or yourself? the answer would be No; which was probably the case, and which an old poacher would take care should accord with the fact.

Now should it have so happened, that the Rev. Gentleman *had* on that day been out *alone,* and *had* in the course of his beat been in such a field, or on such a common; how, let me ask him, though perfectly innocent, would he have avoided the infliction of eight penalties, amounting to no less a sum than 200*l.*, the act of parliament allowing the evidence of the informer to be sufficient? Until

this can be proved to be not only an improbable, but an *impossible* case, such a law would be most horrible, would be the cope-stone of the system, and the Rev. Gentleman himself would be the first to lament the alteration.

To make a man an evidence in his own cause in any case, is contrary to every principle of sound law and justice: but to make such a character an evidence, with such a temptation before him, and attended with such ruinous consequences to the parties, would be a strange "revision" of the law.

Mr. Daniel then proceeds to say, "That laws should be made to prevent the man whose family depends entirely on his labour for support from quitting his flail, his plough, or his spade, to range the woods for a precarious subsistence,* by the destruction of animals, must be conceded by all who contribute to the fund which is exacted to support the indigent in this country. And the writer who paints in his *closet* the hardships of the husbandman in being restrained in capturing these *feræ naturæ*, would in his *parlour* be amongst the foremost to grumble at the demand of an increased rate occasioned by the families of half a dozen poachers coming suddenly upon the parish purse to which he paid.†"

It is difficult to understand what connection there is in the burden imposed on the parish for the support of the poacher's family, with the depriving the husbandman of his legal right to capture *feræ naturæ*, unless it is, that the prohibitory laws are the means of laying a very heavy parochial burthen upon him.

"Of poachers," continues our Author, "committing murders, there have been many instances: one some few years since at Lord Buckinghamshire's, in Norfolk. In 1798, the Duke of Richmond's life was threatened, and fire denounced against his grace's and other gentlemen's property; for discovering of the offenders, a reward of 2300*l.* was offered upon their conviction. In Norfolk it has been known, that the Norwich poachers have gone so numerously and well armed, that when the keepers of the different manors which they have entered, and their assistants, have opposed them, they have candidly told them the business they came upon, and their determination to effect it by force; and if the keepers chose to begin the engagement, they were properly prepared, and would not be the *last* ‡ to leave off. With these facts, and a very numerous catalogue of a similar complexion, a gentleman, well known for his general philanthropy, asks "if ever the *character* or *sufferings* of a real systematic poacher could ever entitle him to a *tear*, even

* Has not this been the avowed object for centuries; and has not the task been hitherto found impossible? has not every new enactment rather increased than diminished the evil? why then persevere in a system so ineffectual and mischievous?

† Might not such a person naturally ask, for what *cause* are these families thrown on the parish purse? would it be satisfactory to him to be told, "Because their fathers lessened the *amusements* of the noblemen and gentlemen in the neighbourhood? and thus, in fact, levying a fine on all the parish: and would he not have just cause to grumble?

‡ I apprehend "first" is here intended.

from that most sentimental of all sentimental heroes, the man of feeling himself?*" Menou's soldiers in Egypt were not more bloodthirsty, when primed with brandy and gunpowder, before the attack upon what they termed the English schoolboys, than poachers, when starting in an evening, after being muddled all day in an alehouse, are ripe for any mischief that they can perpetrate. Of the extent of a poacher's labours in his vocation, a curious display was made in 1793. Upon searching the house of a *farmer* in Yorkshire, where a great quantity of snares and other implements were found, and 1500 hare-skins, to all appearance killed that season; and to crown the whole, the culprit was the constable of the parish, and openly extremely alert against offenders of his own class."

"In 1795," continues the Author, "at Barnstaple, in Devonshire, at the age of 96, died Mrs. Barbara Snellgrove, the most noted female poacher (until upwards of ninety-four) that this century, or perhaps the preceding one, ever produced. The skill of Granny Bab, (the name she was known by,) in taking all kinds of game, was never surpassed; she frequently boasted of selling fish to gentlemen taken out of their own ponds, and game from their own manors; her coffin and shroud she kept in her apartments twenty years previous to her decease; mementos seldom in the recollection of even male poachers, and for the most part provided for them at the parish expense."

All these are facts I am ready and willing to admit as probable, and can easily believe to be true; but what do they prove? not only the impolicy and inefficiency of these laws, but that, for the sake of game, poachers, if necessary to the attainment of their object, will be guilty of murder and arson; that their desperation will increase in the same proportion as the resistance opposed to them; that the demoralizing influence of the Game Laws creates the poacher, and all the propensities above described; that so great is that influence, as even to extend itself into the mind of the farmer, and the female character; and, in the latter case, so debase it, as to render her capable of looking upon the last habiliments, and the last receptacle of mortality, with apathy and indifference; and, although for years she must have been tottering on the brink of eternity, to boast of her crimes.

Need I ask for any other, or further proofs of the destructive operation of the Game Laws, than those produced by the Rev. Author, or better evidence that the means do not attain the ends proposed? Here is evidence, that for the sake of Game, which he can more easily obtain, and get more money for than by labour,

* I confess this appears to me to be strange language for a philanthropist. His title to the character seems to me to be a little dubious. He may have acquired it something in the same manner that Sancho Panza acquired his from the celebrated Don Quixote; in which case their titles are *equally* good. Had he for a moment reflected on the *cause* which *created* the poacher, he might have lamented the effect, and, if a philanthropist, have afforded the tear: but, perhaps, the philanthropist intended to allude to the "gentleman poacher" presently described; if so, we may more readily allow him his feelings on the subject.

the peasant is tempted to quit his plough, his flail, and his spade; that revenge and desperation are excited to so high a pitch, as to cause the life of a noble duke to be threatened, and fire denounced against his and other gentlemen's property; that sooner than relinquish their object, force is opposed to force, and many lives placed in jeopardy; that in a farmer's* house, 1500 hare-skins were found, to all appearance killed that season; and that even females will embark in this destructive, dangerous, and demoralizing pursuit. Where then, I ask, is the benefit of the Game Laws, and who will deny the existence and extent of the evil which they engender? and is it not a question deserving of the greatest attention, whether the increasing of the penalties and punishments has not been the means of increasing crimes, both as to number and enormity?

I will make one more extract from the Rev. Author's work: "It is," he says, "perhaps, among that description of persons, well known by the name of poachers, that the greater number of those are trained to rapine, who infest every rural neighbourhood with their petty thefts, and whose dexterity almost bids defiance to precaution. Accustomed in the ensnaring of game, to the secrecy of fraud, and committing their depredations amidst the silence of the night, those horrors, and that consequent dread which frequently deters from the commission of great offences, gradually lose their effect; solitude and darkness, which have wherewithal to appal the human mind in its first deviations into guilt, are divested of their terror in those pilfering pursuits, and the consequence is sufficiently well known to all, who, in the capacity of magistrates, are called to sit in judgment on the delinquency of public offenders. *It is to this initiation they ascribe their subsequent enormities.* When guilt, however venial, becomes by repetition familiar to the mind, it is not in the power of the ignorant and uneducated to restrain its excesses: they cannot arrest their career of iniquity; they cannot chalk out the line of wrong beyond which they will not pass. Confining their first nocturnal excursions to the snaring of hares, and netting of partridges, whenever they have a less booty than usual, they are tempted to compensate the deficiency by petty plunder of some other kind; and the log-pile, the stack, the fold, and the hen-roost, all in turn pay tribute to the prowling vagabond, who fills, as he can, that 'capacious bag' which has been left vacant by his want of success as a poacher."

The great evil is, that a culprit of this class, feeling no compunction in the early stage of his guilt, proceeds carelessly to a state of the most complete degeneracy. Game is a species of property of which he has so indistinct a conception, that he scarcely thinks he has committed a moral injustice in the various stratagems by which he has contrived to obtain it: he sees not that the claim of a stranger is better than his own; he knows not whence that

* If the farmer had possessed a right of killing the game on his own lands, it is more than probable he would not have adopted the character of a poacher, and all this havoc might have been saved, or at least a great part of it; and is another proof of what I have before asserted, that the Game Laws make the farmer a game destroyer, instead of a game preserver.

absolute right in another to that which he has taken is derived. His companions, to whom he recounts his manœuvres, are more likely to applaud his cunning, than reprove his crime. Thus, the remorse of conscience being but slight and feeble in the outset, the wretch is encouraged by degrees to trample on the laws with greater boldness, and at last suffers as a felon."

This is a correct history of the origin, progress, and termination of a poacher's career; and here I shall for the present leave this part of the subject—so far, at least, as it is treated of by the Rev. Gentleman, whose work is certainly a most valuable one, and in general inculcates liberal, manly, and constitutional doctrines: and if a few errors and contradictions should have crept in, it is almost an inevitable consequence of so extensive and laborious a work. The mind, like some of the Rev. Author's hounds, will "run riot" at times, and some indulgence ought to be made for the keen feelings of a sportsman, who, from his admiration and love of his subject, now and then may be betrayed into a slight error, and in some degree be excused from an adherence to that consistency which the critic requires.

CHAPTER VI.

THE next authority to which I shall refer, will be the Report of the Committee of the House of Commons in 1816.

"Report from the Committee on the Game Laws.

> "The Committee appointed to take into consideration the Laws relating to Game, and to report their observations and opinion thereupon from time to time to the House, have considered the matters to them referred, and have agreed upon the following Report.

"Your Committee, in investigating this important subject, proceeded to the consideration of the present existing laws for the preservation of game; their adequacy to their professed object, their policy and justice, and their effects upon the habits and morals of the lower orders of the community.

"In considering the existing state of the law upon this subject, their attention was naturally directed, in the first place, to its state in the early periods of the common law; and in that your Committee find concurrent and undisturbed authorities for contemplating game as the exclusive right of the proprietor of the land *ratione soli*. In a law of Canute's (*vide* 4 inst. p. 320,) your Committee find that he thus expresses himself, "Preterea autem concedo, ut in propriis ipsius prædiis, quisquis tam in agris, quam in sylvis excitet, agitetque feras." And in *Blac.* 2. p. 415, "Sit quilibet homo dignis venatione suâ in sylvâ et in agris situ propriis et in dominio suo." In the preamble of the statute of the 11th Henry VII., c. 17. a *parliamentary recognition of the common law is most distinctly made,*

and in unequivocal language. It states that "persons of little substance destroy pheasants and partridges upon the lordships, manors, lands, and tenements, of divers owners and *possessioners* of the same, without licence, consent, or agreement of the same possessioners, by which the same lose not only their pleasure and disport, that they their friends and servants should have about hawking, hunting, and taking of the same, but also they lose their profit and avail that should grow to their household, &c."

"In the fourth Institutes, p. 304, it is laid down that, seeing the wild beasts do belong to the purlieu men, *ratione soli,* so long as they remain in his grounds, he may kill them, for the property *ratione soli* is in him. In 11 Coke's Reports, p. 876, it is laid down, that for hawking, hunting, &c. there needeth not any licence, *but every one may, in his own lands, use them at his own pleasure,* without any restraint to be made, if not by Parliament, as appears by the statutes of 11 Henry VII. c. 17, 23 Eliz. c. 10, and 3 Jac. I. c. 13.

"In Sutton and Moody's 5th modern reports, p. 375. Holt, C. J., says, "The conies are as much his, in his grounds, as if they were in a warren, and the property is *ratione soli.* So in the year-book 12 Hen. VIII. pl. 10. If a man start a hare in his own ground he has a property in it, *ratione soli.*

"In limitation, and to a certain degree in *derogation of the common law,* a variety of statutes have subjected to penalties persons who, not having certain qualifications, *shall even upon their own lands* kill any of those wild animals, which come under the denomination of game.

"By the 13 Richard II. st. 1. c. 13. laymen not having 40*s.* per annum, and priests not having 10*l.* per annum, are prohibited from taking or destroying conies, hares, &c. under pain of a year's imprisonment. (This statute appears to be the first qualification to kill game.)

"By the 32 Hen. VIII., c. 8, a penalty for selling game was first enacted; but this was a temporary law, which was suffered to expire, and the sale of game was not again restrained till the 1 Jac. I. c. 27. By the 3 Jac. I. c. 13. the qualification was increased to 40*l.* in land, and 200*l.* in personal property.

"By the 22d and 23d Car. II. c. 25. Lords of manors, not under the degree of an esquire, may by *writing under their hands and seals* appoint gamekeepers within their respective manors, who may kill conies, hares, &c. and other game, and by warrant of a justice may search houses of persons prohibited to kill game.

"It appears to your Committee that the stat. of 22 and 23 Car. II. is the first instance, either in our statutes, reports, or law treatises, *in which the lords of manors are distinguished from other land owners in regard to game.*

"The same statute, s. 3, confines the qualification to kill game to persons having lands of inheritance of 100*l.* per annum, or leases of 150*l.*, (to which are added other personal qualifications,) and persons not having such qualifications, are declared to be persons not allowed to have or keep game, dogs, &c.

"The 22d and 23d Car. II. c. 25, was followed by the 4th and 5th Will. and Mary, c. 23, and the 28th Geo. II., c. 112, which enacted penalties against unqualified, and finally against qualified persons, who shall buy, sell, or offer to sell, any hare, pheasant, partridge, &c. Similar penalties are therein enacted against unqualified persons having game in their possession.

"Such appears to your Committee to be the state of the laws respecting game as they at present stand; the various and numberless statutes which have been enacted on the subject, and to which your committee have not thought it requisite to allude, have not been unobserved by them; but seeing that they are merely supplementary to those to which your Committee has made reference, they have not thought it important to enter into a detail of their enactments.

"Your Committee cannot but conclude that, by the common law, *every possessor of land* has an exclusive right, *ratione soli,* to all the animals *feræ naturæ, found upon his land,* and that he may pursue and kill them himself, or authorize any other person to pursue or kill them, and that he may now by the common law, which in so far continues unrestrained by any subsequent statute, support an action against any other person who shall take, kill, or chase them.

"The statutes to which your Committee have referred, have, in limitation of the common law, subjected to penalties persons who, not having certain qualifications, shall exercise their common law-right; but they have not divested the possessor of his right, nor have they given power to any other person to exercise that right without the consent of the possessor.

"It appears to your Committee, that the 22d and 23d Car. II. has merely the effect of exempting from those liabilities which were previously enacted against unqualified persons, such gamekeepers as shall receive exemption from them by the lords of manors (and which exemption the said lords are thereby empowered to give), *but that the restraints upon the sale of game equally affected the entire community.*

"Your Committee conceive that, in the present state of society, there is little probability that the laws above referred to can continue adequate to the object for which they were originally enacted. The commercial prosperity of the country, the immense accumulation of personal property, and the consequent habits of luxury and indulgence, operate as a constant infraction, which no legislative interference that your Committee could recommend appears likely to counteract.*

* I cannot help regarding the distinction in the qualification for killing game as most unjust. Why, in the name of all that is reasonable, should the merchant be debarred from the pleasure of the chace? It is very well known that the revenue arising from merchandize, or moveable property, is far greater than that derived from land; and, therefore, since it pays more towards the support of government, and the protection of the country, why should it not entitle its possessor to the same privileges as the landholder? I do not mean to say that a merchant ought to have the privilege of entering upon the grounds of any person without the consent of the owner; quite the contrary. Property

"It appears that, under the present system, those possessors of land who fall within the statutable disqualifications, feel little or no interest in the preservation of game; and that they are less active in repressing the baneful practice of poaching, than if they remained intitled to kill and enjoy the game found upon their own lands.* Nor is it unnatural to suppose that the injury done to the crops, in those situations where game is superabundant, may induce the possessors of land, *thus circumstanced, rather to encourage than suppress illegal modes of destroying it.*

"The expediency of the present restraints upon the possessors of land, appears further to your Committee extremely problematical. The game is maintained by the produce of the land, and your Committee is not aware of any valid grounds for continuing to withhold *from the possessors of land the enjoyment of that property which has appeared by the common law to belong to them.*

"The present system of Game Laws produces the effect of encouraging its illegal and irregular destruction by poachers, in whom an interest is thereby created to obtain a livelihood by systematical and habitual infractions of the law. It can hardly be necessary for your Committee to point out the mischievous influence of such a state upon the moral conduct of those who addict themselves to such practices; to them may be readily traced many of the irregularities, and most of the crimes, which are prevalent in the lower orders in agricultural districts.

"Your Committee hesitate to recommend, at this late period of the season, the introduction of an immediate measure, upon a subject which affects a variety of interests; but they cannot abstain from expressing a sanguine expectation that, by the future adoption of some measure founded upon the principle recognized, as your Committee conceive, by the common law, much of the evils originating in the present system of the Game Laws may be ultimately removed.

"Upon mature consideration of the premises, your Committee have come to the following resolution:—

"Resolved, That it is the opinion of this Committee that all game should be the property of the person upon whose lands it should be found."*

"June 26, 1816."

This Report is so conclusive, and so self-evident, that it would be as presumptuous as unnecessary in me to make a single observation upon it. One can only wonder that, after the receipt of it, and such a display of self-evident facts, the Game Laws, in their present shape, should have remained a single week, but much less for nine years, unaltered.

I may, however, be permitted to give the observations of Mr. Christian upon it, who says,

"The Committee have not resolved that game *is* the property of the person on whose land it is found, but "*should be*" his property.†

"This," says he, "is a very vague and indefinite expression; it is difficult to say whether the words 'should be' refer to moral propriety or expediency, or political propriety or expediency; or whether from legal principles it ought in all cases to be so decided by the courts of law." Upon the *last* construction of the words he hopes he has abundantly proved in the course of his work, that in all cases it has been so decided; and, therefore, that we may confidently conclude, that in all future cases it will be so decided.‡

should and must be held sacred, or anarchy will ensue; but, as the matter stands at present, an unqualified person is liable to be prosecuted, *even should he be sporting with the consent of the owner of the ground, and in possession of a game certificate.*

As the Game Laws are neither founded in justice, nor supported by reason, it is impossible to exhibit them in a very clear or a very favourable light. At first view, the qualification appears absurd; and, if we proceed to examine the matter more minutely, we shall soon discover that it will not bear the scrutiny of investigation. In a free commercial country it must be particularly obnoxious; for what can be more unreasonable or more absurd, than the invidious distinction which is thus exhibited between the landed and commercial interests? A man, with a small freehold of 100*l.* per annum, is legally qualified to keep game-dogs and pursue the diversions of the field; when a man in trade, possessed of property to the amount of many thousands, is denied the same privilege. It has been argued, that as the game is supported by (or fed upon) the lands, so the owners of land, and they alone, are entitled to chase and kill it; but this doctrine will be found altogether futile, and even ridiculous, since, in the first place, property in *houses* is a qualification equal to grass or corn fields, and consequently the argument instantly vanishes. Game, strictly speaking, can be called the property of no person; it respects neither the fields of the rich, nor the gardens of the poor; its excursions are unlimited, and it feeds every where; if it can be called a property at all, it is the property *of the country*; and since commerce pays comparatively so much greater a proportion towards the support of the state, the rights of the statesman ought at least to be equal with those of the landholder.—*Vide* Johnson, 269, 330.

If a partridge could, like a sheep, be kept in a paddock, then, indeed, the right of private property would be claimed with justice: but as no limits can be put to its motions; as it is seen on the ground of one man this hour, and on that of another the next; may feed on the corn of the peer in the morning, and ravage the poor man's crop in the evening; what can be more ridiculous or unjust than to claim as a right that which, in the very nature of things, can belong to no particular person whatever?—*Ibid.* 264.

* If the farmer were allowed to breed game, and bring it regularly to market, in the same way as domestic poultry, the poacher would not only be undersold, but more strictly watched by the occupier of the land. *Ibid.* 267.

* It is much to be regretted that this resolution was never carried into effect, as it does infinite honour to the spirit, liberality, and constitutional knowledge of the Committee.

† I think the Committee has in effect declared, that by the common law the game *is* the property of the person on whose land it is found. What I conceive the Committee intended was, that the common law-right "*should be*" acknowledged by an act of parliament; and that not only the right, but a power of exercising it, should be given to such person.

‡ I conceive it will be but of little consequence, and of less benefit, to the landholder to possess the *right* to the game by the common law, if he is prohibited from exercising that right by the statute, unless it be the privilege of preventing others taking what he is prohibited taking himself, or even giving to others unless they are qualified.

"If all game belonged to the King, then he might give up his right, so far as it still remains in himself, to be disposed of by Parliament for the good of his subjects.

"Or if there was no property, but it was common to all, then the Parliament, as the representative of the people, or the organ by which they declare their will, *might* be justified in giving it to every landowner, in order to render it most productive of general good.*

"But God forbid that a thought should ever be indulged, that the Parliament should ever take away a valuable right from one subject, and transfer it to another, without his consent, or without restoring him a full equivalent!

"The justice of Parliament ought ever to be as boundless as its omnipotence."

Having already noticed the foregoing Report, I trust I may be permitted to offer another of a very different character to the attention of the reader, not only as affording additional proofs of the evil tendency of the Game Laws, and their inefficacy to the end proposed, as admitted by the legislature itself, but as showing the remedy intended to be applied to these acknowledged evils.

It appears "Lord Cranbourne having presented a petition to the House, complaining of the present state of the laws respecting the preservation of game, and deprecating the *harsh* and *inefficacious* penalties of these laws, *involving alike life, liberty, and character,* and praying the House to take into consideration the propriety of permitting the sale of game under certain restrictions; the same was referred to the consideration of a select Committee to report thereon, with the usual power to call before them and examine any person whose evidence might elucidate their enquiries. They sat accordingly; and, after several days' investigation, reported as follows:—

"The select Committee of this Honourable House, appointed to take into consideration the laws relating to game, and to report their observations thereon to the House, and who were empowered to report the minutes of evidence taken before them, have, pursuant to the order of the House, examined the matters referred to them, and report to the House as follows:—

"Your Committee, in considering the subject referred to them, have turned their attention principally to those laws which relate to the *purchase and sale of game,*† conceiving that the morals of the lower orders of the community were most materially affected by

* This passage is penned with no small degree of caution: the learned professor asserts the Parliament *might* be justified, &c.: but, with great submission to him, such a measure ought to be indisputably founded on the *general* good: and surely to take away any right from the public in general, to vest it in a particular class of people, would, to say the least of it, be unconstitutional and oppressive. This power, the author conceives, has been exercised, and this injustice done by every Act of Parliament made relative to the Game Laws.

† It cannot escape the reader's attention how contracted was the ground of this inquiry, compared with the former.

their operation; and they have ascertained by evidence, points which appeared to them essential to be enquired into, with a view of showing how far the enactments at present existing, respecting the purchase and sale of game, effect the purposes for which they were made."

"The evidence which has been taken, which refers for the most part to the supply of the metropolis with game, *established, in the opinion of the Committee, the following facts:*—

"1st. That the *laws which prohibit the sale of game are constantly and systematically evaded, or set at defiance.**

"2nd. That the trade in game is carried on to a great extent by respectable salesmen, who receive a commission upon the game sold by them, amounting, on account of the risk, to double that which they receive on the sale of poultry.

"3rd. That this trade is also carried on by other persons, such as higglers, waggoners, coachmen, guards, and porters, at the several inns, where coaches, waggons, &c. put up.

"4th. That the game is in some instances delivered by the poachers, principally to this latter description of dealers, by absolute sale, or upon commission; in others, it is collected by persons who send it up together with the poultry; and lastly, is sometimes received from *owners of manors* and *landed proprietors,* who are in *the habit* of sending their game either to salesman or others, for the purpose of sale.

"5th. That the markets by these means appear to be *constantly* and *abundantly* supplied; and that, in consequence of the illegal mode in which it is obtained, it is impossible to regulate the supply by the demand; that large quantities are therefore sometimes wasted, and even thrown away.

"6th. That the demand during the season is constant; and that the *practice of purchasing the game is not confined to any one class of the community,* 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

* The following extract from the examination of one of the witnesses is illustrative of this point:—

"*Ques.* Some years ago an Act of Parliament passed to make it illegal to buy game?—*Ans.* Yes.—*Ques.* Did you immediately after that find the sale diminished at all?—*Ans.* Not the least. Indeed, I consider it a particular advantage in some respects; I know a person, individually, who has found it so.—*Ques.* Will you state of what advantage it is?—*Ans.* There is one particular clause in that act which says, that if I go and inform against any person, and convict him, so that he is fined, I shall be cleared from all pains and penalties up to that moment, to which I have become liable. Suppose I had a threat of having a whole bench of country magistrates upon me, and a person comes into my shop and buys a certain article of game; I lay an information against him, he pays the 5*l.* I procure the record of the conviction, and I am immediately informed against, and the penalties, perhaps, come to 2 or 300*l.* I produce the record of this conviction, and I am cleared: it is in my favour, and I can produce evidence that it has been acted upon."

† By this it appears that lords of manors are not only sellers, but buyers of game also.

particular laws, appears not to be considered as any *moral offence* whatever.

"These facts being established, it becomes quite clear that *these laws have entirely failed* in preventing the purchase and sale of game; and that although in some instances persons legally in possession of game dispose of it by sale, yet that the great supply of the market is in the hands of the poachers,* who are, by this nearly exclusive trade, encouraged in the greatest degree to the continuance of their depredations.

"Your Committee, therefore, cannot but recommend the repeal of the laws relative to the purchase and sale of game; and that an act should be passed permitting persons qualified to kill game in virtue of *real* property, and who may therefore be supposed to be in a situation to have a legal means of obtaining it, to sell it to such persons as shall be duly licensed to retail game for the use of the public, under certain regulations and restrictions.

"This, the Committee imagine, would have the effect of inducing the retailers to purchase only from such persons as are so qualified, and for their own interest they would assist in putting a stop to any illegal sale by the poacher.

"In case the House should agree with your Committee in the propriety of making the proposed alterations, it is evident that game, becoming thereby an article which may be legally sold, will acquire a real value; and that those who have the means should be encouraged to supply the market with it, and have a fair claim to any additional protection which it may be capable of receiving, and which may be compatible with other considerations.

"In considering this part of the subject, it appears to your Committee that the present laws do not afford a sufficient summary remedy against the depredations of persons who are in the habit of trespassing upon the lands of others in the pursuit of game; they therefore recommend, in addition to the alteration proposed in the laws as to the purchase and sale of game, that the present laws relating to the latter species of offence should be rendered more summary.

"Your Committee do not hold out to the House that poaching can, by this or any other mode, be suddenly and entirely put an end to; it being evident that many of those engaged in it, are of a description not likely to be deterred from it by any thing *but an absolute impossibility of carrying it on, which the most sanguinary laws would not create.* But your Committee must state to the House their conviction, that the purchase and sale of game, under regulations, will have the effect of decreasing the number of those who are at present concerned, or who might henceforward engage in that practice, *which greatly induces to demoralize the lower orders of society;* and that those persons whose residence upon their property is in all points of view so eminently beneficial, will find in these measures *great additional facilities in the preservation of that which*

* It will be seen hereafter that one-third is supplied by the gentlemen.

affords them the amusement and recreation to which they are fairly entitled.*

"Your Committee have, in conformity to the opinions here submitted to the House, directed their chairman to move for leave to bring in a Bill for effecting the several objects herein recommended, for the consideration and adoption of the House."

"April 18, 1823."

It appears that, in conformity with the above report, a Bill was brought into the House of Commons to make the selling of game legal, and the following were its chief provisions:—

Two or more magistrates, at any petty sessions, may grant licences for one year to any householder, not being an inn-keeper, a victualler, a stage-coach owner, or a waggoner, to buy game of a qualified person, and to sell the same. Persons, on taking a game certificate, are to state to the clerks of the commissioners, or surveyors of the district, whether they are qualified to kill game by virtue of having a *real* estate; and every such statement is to be published by the commissioners for the affairs of taxes, in the list of certificates directed to be advertised by them; and any person may inspect the entries of such statements, in a book to be kept by such clerk or surveyor, on payment of one shilling to such clerk or surveyor. Qualified persons taking out game certificates, are to be exonerated from the penalty of selling game, as well as licenced persons for buying it: but licenced persons are to be prohibited from buying, *except of qualified persons.*† Power is given on information to search a licenced person and his family for game unlawfully purchased or procured, and also to search an unqualified person and his premises for game suspected to be illegally procured. Innkeepers not to be liable to penalties for game sold in their inns for consumption, provided such game shall have been purchased by such innkeeper from licenced persons. Game sent by public conveyances to be entered in the way-bills, stating the names and places of abode of the persons by whom and to whom such game is sent. Power is also given to search public conveyances for unentered parcels of game. The act is not to *affect the rights now possessed* of *lords and ladies of manors,* nor to extend to Scotland or Ireland."

Such was the consequence of this report, the Bill brought in, founded on the principle there recommended, was lost.

* There is great modesty in this expression; for it is not pretended that they are "*justly* or *legally*" entitled to it: the *fairness* of it, I confess, I do not see, unless it could be obtained at a far less price than it is at present; and although it is admitted that the most sanguinary laws would not prevent poaching, and that poaching greatly tends to demoralize the lower orders of society, yet it is asked "in fairness" to continue the present system with this only alteration,—to permit gentlemen to consider game as private property, and *as such to sell it!!!*

† Supposing none of these gentlemen should choose to sell, would not this provision amount *in effect* to an absolute vesting of the property in game in the qualified man? which I strongly suspect is intended by these measures, and which should be strictly watched and guarded against by the public.

It will, however, be impossible for the reader not to observe a very marked and prominent distinction between the report of 1816 and that of 1823.

The former was taken up upon principles which do the parties who framed it the highest honour, both as to soundness of head and goodness of heart. An evil is complained of, and they probe it to its source before they offer a remedy; they meet the case and all its difficulties with manly courage; they adopt as their motto, "*suum cuique tribuito*," and although the alteration they recommend may be supposed to weaken their own powers, and abridge some of their own amusements, which from education and habit they had been led to believe were exclusively their own, yet, with that patriotism, that integrity, and that honour which dignifies them as statesmen and men, they fairly examine into their own title, and that of the public, to the property claimed by each; they lay bare the evil, acknowledge the right of the public, and propose the only measure which they justly think will not only remedy the evil, but meet the wishes of, and do justice to all parties.

But what are the prominent features of the report of 1823? I may fairly and fearlessly ask, is it not the very reverse of all this? The Committee appear to have been alarmed by the first mentioned report; to have felt that it revealed and acknowledged too much to be generally known by the public. It was throwing back the veil, and exposing truth too openly. They felt there were facts detailed, and laws expounded, which they could not deny; and therefore, like good generals, they beat a retreat, took up another position, (not exactly in *line*, but in *eschelon*,) leaving that from which they felt assured they must be beaten, to be occupied by the enemy, who per chance (their only hope) might overlook its advantages.

They omit altogether any inquiry into the *origin* of the Game Laws, the violation of the common law-right of the subject, the justice or justification of the statutable restrictions of that right, the creation of poachers by those restrictions, and by the present system of the Game Laws, and all the attendant consequences of those restrictions and that system; but they commence their operations and their labours by assuming as a fact not to be questioned, (what in truth is the only bone of contention), that the property in game is absolutely and unalterably, and has, "from the time whereof the memory of man runneth not to the contrary," been vested in the *qualified* proprietor of land, lords of manors, &c.; and, under the influence of this mental aberration, they confine themselves to arranging the manner by which they can with most advantage become dealers and chapmen in game, or by a side wind vest the absolute property in them beyond a question of doubt, by a legislative enactment.

This may be all very convenient to these gentlemen so to think and so to act; and had the Bill been carried, it would have answered

all the purposes they expected: but the plan had only *one* fault, viz. it was bad from beginning to end; as I have said before, "the veil was too flimsy not to be penetrated by the most common capacity." Surely these gentlemen must know *something* of the history of the Game Laws—something of the rights of property; surely they must have known *a little* law; and if so, why did they begin in the *middle* of a title, leaving a thousand incumbrances on that title behind them? had the possession of the right they claim been claimed by *the public*, not an old statute, not a musty record, not an authority ever so old, obsolete, or worm-eaten, but would have been brought into "the battle's front," for the protection and recovery of their darling privileges.

We must however take them as they choose to present themselves, only observing, that their line of battle on this occasion looks very much like apprehension.

Let us examine the facts detailed in this report.

1st, They admit that the morals of the lower classes of the community are most materially affected by the operation of the present system.

2d, That the present laws are ineffectual, as to remedying the evil, and have failed in their object.

3d, That the illegal trade in game is carried on, not only by higglers, coachmen, guards, and porters, but by *owners of manors*, and *landed proprietors*; the latter of whom are in the *habit* not only of sending their game either to salesmen or others for the purpose of sale, but buying them of the poulterer; (contrary to the form of the statute in such case made and provided, but of which it is to be presumed they were *ignorant*.)

4th, That by these means the markets are *constantly* and *abundantly* supplied, and even *overstocked*.

5th, That from this source all classes buy and obtain game; and that a breach of these laws is not considered a moral offence.

6th, That the present system "greatly induces to demoralize the lower orders of society."

7th, That poaching will not be put an end to by any thing but an absolute impossibility of carrying it on, which the most sanguinary laws will not create.

These being the evils admitted, (and they must be admitted not to be small ones,) let us see what are the remedies proposed for getting rid of them.

Why the repeal of such *part only* of the present Game Laws, as relates to the purchase and sale of game; leaving all the other obnoxious parts, and preserving the rights of lords and ladies of manors untouched and unrepealed, and investing the magistrates with a more summary mode of convicting offenders."*

Here is no recognition of the common law-rights; no permis-

* Should not an act of indemnity be passed to purify such of the Magistrates as may have been offenders against these acts, before they sit in judgment on their associates in crime, and before these additional powers should be intrusted to them?

sion to the possessioner for the enjoyment of them; no repeal of the Qualification Acts, nor any of the oppressive clauses in existence; but merely that an act should be passed, permitting qualified persons to kill and sell game in virtue of real property only.

Let us put this intended act into plain English, and it will appear thus:

No person shall kill or sell game, unless he has a freehold qualification. No other qualification shall be allowed for the sale of game. Lords of manors *may* sell to licenced persons, *if they please so to do;* if not, the public must go unserved, or they must rely on the poacher for a supply, against whom additional penalties are to be enforced, which, judging from the past, will create additional crimes; greater and more summary powers are to be vested in the magistrates for punishing offenders, although the report in which this power is recommended distinctly states, that many of these magistrates, in the buying and selling of game, are doubly guilty of offending against the same laws.

But the grand object will be obtained and secured, viz. that whatever injury the public may sustain, however incongruous it may be, to allow one offender to sit in judgment on another, the property in game will be absolutely vested in lords of manors, and other great landed proprietors, who by these means, to use the words of the report, "will find great additional facilities in the preservation of that which affords them the *amusement* and recreation which they are *fairly* entitled to."

Such an act would have only had the effect of legalizing the present illegal act of what Lord Suffield calls the qualified poacher; of extending the field of tyranny and oppression; and of taking from one part of his Majesty's subjects a property which the law has assigned them, and giving it to another by a statutable enactment. "But truth, like murder," they say, "will out;" and the latter part of the report which I have just quoted, though rather obscurely worded, fully developes the object of the Bill proposed. The House, however, had the good sense and prudence to reject it; thereby doing an act of justice to the public, and to their own credit.

If I have been correctly informed, Mr. Stewart Wortley's Bill was formed on the same principles, had the same objects in view; with this additional circumstance, that the game on lands under a certain yearly value was to be considered not as the property of the landowner or possessioner as now, but of the lord of the manor!

I do not pledge myself for the truth of this part of the Bill; but if it were not so, the public prints mistated the facts; and, for the sake of every feeling that is or may be dear to an Englishman's heart, I hope it is incorrect.

But even supposing that lords of manors should think proper to supply the market plentifully with game, and that there shall be a constant and abundant supply of it; can it for a moment be imagined, this is all the public have a right to expect or is due to

them? To nine men out of ten this would be a boon not worth their acceptance. If the qualified man judges of the public feeling by his own, he must know, that to most people the game itself is of little consequence, but the pleasure and amusement of taking it is of the first. If the qualified man, on the contrary, is indifferent about it, and supposes the public as indifferent as himself; why, then, all these disqualifications? why these restrictions? why this school for crime, this sacrifice of life, limb, and liberty, for an object so indifferent to every class? why should the merchant, the farmer, the tradesman, be deprived of this amusement, any more than the qualified man, when the common law of the land gives him an equal right with the lord of the manor, and no just cause has been assigned that he should be restricted from the exercise of it from motives of public policy, reasons of state, or the actual benefit of the community? nor has a *single statute ventured to pronounce that such were the objects contemplated by them.*

Having gone through these reports, I shall, in the next chapter, return to the opinions given by different authors, as proposed in Chapter V., with their suggested alterations on the subject.

CHAPTER VII.

Mr. Christian begins his suggested alterations, by saying, "In the preceding chapters of my work, I have fully proved, that by the law of England, game, and all wild animals, are the property of the *occupier* of the surface of the land upon which they are found and taken.* And I trust that I have also shown that the law of the land is conformable to the precepts of religion, and the principles of sound morality. When the right of property is established, the divine commandment 'thou shalt not steal,' equally applies to an animal that is wild, as to one that is tame."†

As one of the proofs of the Game Laws not only leading to crime, but that crime increases in the same proportion as the severity of the punishments increase, and are, therefore, insufficient to the end proposed, Mr. Christian gives the following "horrible Paper," which had been sent to all the gentlemen in the neighbourhood of Bath.‡

* "The reader will understand that game always belongs to the *owner*, when he is *occupier;* but it belongs to the tenant when it is not reserved by the landlord. Note by Mr. Christian.—This is certainly very true; but is it not absurd to say, such a thing belongs to the tenant, but by the law of the land he is prohibited from taking or enjoying it?

† How can property be said to exist in *wild* animals? In case of stealing them, *in their wild* state, whose property would they be laid in the indictment to be? Such an indictment could not be supported.

‡ Notwithstanding the excessive rigour of the Forest Laws, the lower orders of English could never be prevented from committing depredations; and

"Take notice! We have lately heard and seen, that there is an act passed, that whatever poacher is caught destroying game is to be transported for seven years."

"This is English liberty!"

"Now do we swear to each other, that the first of our company that this law is inflicted on, that there shall not one gentleman's seat in our country escape the rage of fire. We are nine in number, and will burn every gentleman's house of note. The first that impeaches shall be shot. We have sworn not to impeach. You may think it a threat, but they will find it reality. The Game Laws were too severe before. The Lord of all men sent these animals for the peasant as well as the prince."

Bath Newspaper, October 21, 1816.*

The language and sentiments (of the latter part particularly) of this paper, clearly proves that it was drawn up by a character superior to that of the generality of poachers, or if he was one of the nine, it shows the influence of the temptation, operating upon a mind calculated for better purposes.

The first improvement the learned professor suggests is, that every one who pursued game without leave upon another's ground, should be liable to pay full costs in an action of trespass in the first instance, though the damage was under 40*s.* just as he is now subject to costs, in a free warren, or as if he had shot at and pursued any tame animal.†

This, he observes, would be one mode of making game respected as property.

The next alteration he suggests is, "that instead of giving one half of the penalty to the poor, by which neither they nor the parish are ever sensibly benefited;‡ one moiety in every instance

though time has so much altered the face of the country, as well as its political institutions, as to render the Forest Laws a dead letter; yet the passion for the chase appears unabated, and the most severe exercise of the complex enactments of the Game Laws has been found inadequate to the intention, as poaching, so far from being prevented, is extensively and audaciously practised, *and appears even to increase in proportion as the laws for its suppression are multiplied and rendered more severe.*—Johnson, 262.

* "The fire which has been raging for some time on Bowes Moor, Boudersdale, and the adjoining fells on the borders of Westmoreland, still remains unextinguished. The injury it has done is incalculable. The ling, the moss, and the peat of *many thousand acres have been consumed. The food of immense numbers of sheep* has not only been *destroyed*, but the great portion of the *game*, with its *unfledged offspring*, must have suffered. Different causes have been assigned for this dreadful conflagration. It has been attributed by some to the power of the long continued drought, by some to lightning, and *by others to poachers.* The last opinion appears to prevail pretty generally in Westmoreland; and the severity which has been exercised towards the poachers is supposed to have induced them thus to revenge themselves, depriving others of shooting,—sport in which they are not allowed to participate." Tyne Mercury.

† When the public right in game is considered to be in the possessioner, why should this departure from general principles be necessary for so trivial an object, when there are many cases which much more strongly require it.

‡ Query, if one penalty in a hundred ever reaches the parish purse.

should be given to the occupier of the land upon which the offence was committed, if he can be ascertained; and when he cannot be ascertained, that the informer should have the whole."

"This," says he, "would give the unqualified occupier and his family an interest in the preservation of game, *who has now an interest in its immediate destruction and extermination.*"

The next alteration he proposes, would be, "that the penalty in all cases should be 10*l.* instead of 5*l.*; 10*l.* now are probably not more than 5*l.* in the time of Queen Anne.

"That sum is certainly of trifling value now, compared with what it was in the year 1494, when the parliament enacted that every one should be subject to a penalty of 10*l.* who took a pheasant or a partridge upon another's land without his leave; one half of the penalty was then given to the informer, and the other half to the possessioner, that is the occupier. This statute* is still in force.

"If hares and grouse were included, and the penalty could be levied before a magistrate, or the plaintiff (the occupier) was sure of his costs,† much by that simple alteration alone would be effected for the preservation of game against poachers, or those who had no property in game or lands."

Another alteration which he recommends is, "to take away the qualification of a gamekeeper, to kill game, except in 'dominicis terris,' or in the demesnes of the lord of the manor, that is, upon the lords lands and wastes.

"This unjustifiable and unnecessary power in a gamekeeper to kill game out of his master's grounds without being subject to the penalty of unqualified men, ought certainly to be removed. When he is out of his master's estate, he is a trespasser, and he carries away valuable property, which neither is his, or his master's.

"The gamekeeper is more destructive than a wolf amongst lambs, a fox amongst geese, or an otter in a trout stream. He is more voracious than any of these animals in every field within the manor, which does *not* belong to his master; he there creates a perfect desolation; and he never touches a feather of his master's property while he can supply his table by depredations upon the property of others‡.

"Every lord of a manor, who encourages his servant in such rapacious and lawless acts, and who treats his guests luxuriantly with the spoils from the fields of his poorer neighbours, seems to resemble "The rich man who had exceeding many flocks and herds; but the poor man had nothing, save one little ewe lamb, which he

* 11 Henry VII.

† It must be evident that unless the occupier had the benefit of the game on his own lands, he would only be fighting the battle for others.

‡ I have reason to believe this observation does not apply to gamekeepers only, and I could give many instances where it is the settled practice of their masters to beat what they call the "outskirts" for the first week or ten days of the shooting season; by this means, what they don't kill is driven into their own peculiar property. And see a note to Lord Suffield's Considerations, p. 9, as a further proof of the conduct of gamekeepers.

had bought, and nourished up; and there came a traveller unto the rich man, and he spared to take of his own flock and of his own herd, to dress for the wayfaring man that was to come unto him, but took the poor man's lamb and dressed it for the man that was come unto him." 2 Samuel xii. 2.

Mr. Christian then observes, "that ignorance falsely imputes this flagrant violation of private rights to the feudal system; but that *noble* system from which originated Magna Charta, and the two houses of parliament, stands honourably acquitted of all participation in this modern usurpation*.

The next suggestion is to legalize the sale of game; and he says, "till it can be bought and sold by legal authority, nocturnal depredations will be perpetually committed, not only with respect to game, but with respect to every other kind of property; many lives will be lost—many limbs mutilated—the value of land diminished—the breed of game destroyed—and the minds of the lower orders of society, and of many of the higher orders also, greatly demoralized,—for game must and will be sold, and they who are guilty of a violation of law in buying and selling game, have a less respect for the observance of the laws in every other instance. A qualified buyer of game, is at present subject to no legal penalty,† but he is guilty of all the moral turpitude of being an accomplice in the violation of the laws of his country, and his children and domestics, all are conscious that the table of the master of the house is furnished with the spoils of iniquity. Thus a spirit of dishonesty, or disregard of property, and the laws by which it is protected, is far diffused."

The professor then goes on to notice the practice of noblemen and gentlemen selling and exchanging game for poultry and fish, in the following words:—

"It is said, that many noblemen and gentlemen send their game to poulterers and fishmongers in London, for which their tables are supplied in return with fish and fowl. This, in fact, is *selling* game, and is a direct violation of the statute of 28th Geo. II., c. 12, and for which they are subject to a penalty of 5*l.* for each head of game so sent to be bartered, just as if they received so much money for it. If any nobleman or gentleman so dispose of their game (and this is frequently asserted) a legalized sale would produce to such individuals all the advantages of such *contraband practice*. If no such practice exists, a legalized sale would remove the imputation or suspicion which unjustly degrades men of rank and fortune in the minds of their inferiors."

Here then, the assertion only of such practices is made; it will hereafter be proved, by undoubted evidence, that the practice is not only very general but very extensive. The professor, however,

* The learned professor calls the feudal system a *noble* one: in what way this is made out, I am at a loss to conjecture; since it was from *the oppressions* of that system, Magna Charta and the two houses of Parliament originated. *Vide* p. 85.

† This was written by the learned professor, prior to the passing of the 58th Geo. 3, by which both qualified and unqualified persons are prohibited from buying game.

plainly tells us, that "the man who exchanges game for fish or poultry is doing not only an illegal act, but one that degrades men of rank and fortune in the minds of their *inferiors*." And yet these are the men who not only do not hesitate in breaking the laws themselves, but are those who accuse and sit in judgment in the execution of the *same* laws, where the offender is an *inferior*.

Query, Which is the superior and which the inferior character—the education and the means of the one, and the temptations and poverty of the other, considered? I think no Chancellor would have a *doubt* on this subject, or think it necessary to direct an issue to try this question.

The following lines of Shakspeare naturally occur on this subject:—

"What! art blind? a man may see how this world goes with no eyes; look with thine ears: see how yon justice rails upon yon simple thief. Hark in thine ear; change places, and handy dandy, which is the justice, which is the thief?"

> "Thou rascal beadle, hold thy bloody hand,
> Why dost thou lash that whore? *Strip thy own back*,
> Thou hotly lustest to use her in that kind,
> For which thou whippest her.
> Through tatter'd cloaths small vices do appear,
> Robes and furred gowns hide all; plate sin with *gold*,
> And the strong lance of Justice hurtless breaks;—
> Arm it in rags, a pigmy's straw doth pierce it." *Lear.*

Mr. Christian then recommends that "if the sale of game should be made legal, every nobleman or gentleman who intended to sell his game, should take out a certificate or license, which should be published like the present game certificate. And every shopkeeper who intended to sell game in a public shop, should also take out a similar certificate or license; the shopkeeper should buy only of the licensed land-owner, and he should sell only in his public shop. And if any game was bought or sold by any bther person, and in any other manner, both the buyer and seller should be subject to a penalty of 10*l.* and either of them should be at liberty to give information against the other."

"It may," says he, "be observed upon this, that poaching would still be continued, by the temptation to purchase at a lower rate of the unlicensed destroyer of game.

"The licensed shopkeeper, however, would scarce venture to purchase a hundred head of game, by which he was to gain 5*l.* or 10*l.* and at the same time be subject to the payment of 1000*l.*; for which large sum the poacher might consider the shopkeeper as his banker, might draw upon him for it, and compel him to pay it whenever it suited his convenience."

There are several other very good and just reasons assigned for the adoption of these measures, but all of them falling far short of the right of the public, and what they may fairly expect.

I will, however, give one more extract from this author, whose writings, I confess, I leave with some reluctance.

"If a nobleman, or a gentleman," says he, "who had two manors, or two estates, were to sell the game upon one, the game upon the other would probably be greatly augmented; or, in every case, if a qualified man thus publicly sold one half of his game, he would probably find by experience, that this is one of the instances in which the Greek proverb would be found to be true, that "one half is greater than the whole."

I now propose to make a few remarks on the production of an author of rather a different description; viz. Mr. Chitty, who in 1816 published "his observations" on these laws.

He commences by observing that "the Game Laws have recently become the subject of considerable enquiry and discussion; "that the attention of the humane had been powerfully aroused by the alarming increase of crime; that some had attributed many outrages and crimes to a *supposed* severity in the Game Laws, and had insisted that the whole system is most arbitrary and unfit for the regulation of a free country; whilst others have urged, that more efficiently to protect game, and especially to destroy nocturnal poaching, (the forerunner of most crimes) severer regulations for the protection of game should be introduced.

"The subject of the Game Laws," he continues, "in whatever light it is considered, is one of no common importance; the property which they protect, is viewed with peculiar jealousy, both by those who are precluded from taking it, and those to whom its enjoyment is secured. The *former* consider it as a common right, of which they are unjustly deprived;—the *latter*, as more sacred than any other class of property, *on account* not only of its intrinsic merit, *but of the amusement which it affords them.*"*

Let us examine the claims of each party. They appear to be these:—the title of the first is a claim of common right, of which they say they are unjustly deprived, and which, it appears, has been acknowledged for ages, is founded upon the Common law of the land, has been recognized and allowed not only by the Statute law, but by recent Reports of Committees of the House of Commons, and has justice and reason to support it.

The claim of the other party is, "that by them it is held more sacred than any other property, not only on account of its intrinsic value, but of the *amusement* it affords them.

Supposing it to be a moot point to which party this property belonged; would not the former party have as good a right to urge these arguments as the latter? for, as matter of *amusement*, they have *naturally* as strong a claim to it as any other: and if it is once admitted that one class of society can deprive the other of a right or a property, merely on the ground of increasing or affording them amusement, there must be an end of all security to every kind of property, and a more dangerous principle of law or practice cannot be adopted. For, on that principle, one person may claim of

* Thus "*amusement*" is the grand plea on which this privilege is founded, and for securing which, all these demoralizing and unconstitutional enactments are made.

another his field, or his house, on pretence of converting the one into a bowling-green, or the other into a riding school, as necessary to the increase *of his amusement*. It was this very pretence which William the Conqueror made use of to desolate whole parishes; and to allow the argument to be valid in the case of the Game Laws, it would be difficult to deny it on any other occasion, or to control its operation.*

The learned author, after acknowledging the Common law right of the subject, and the recognition of it by the Statute of King Henry VII, and taking a view of the antient state of the inhabitants of the island, by whom it was considered as one of the NECESSARIES OF LIFE, says, "When the inclosure of lands became more general, the places in which Game might be taken became proportionably narrower; and as agriculture improved, and population increased, the attention of the lower orders was necessarily directed to the improvement of the soil; and hunting, and fishing, which in ruder times were the means of *subsistence to the people*, became amusements, naturally appropriated to the higher classes, who alone had leisure to enjoy them."

The origin of this exclusive privilege then appears to be, not in any absolute legal right which the higher classes possessed, but while the lower classes were usefully and beneficially employed in agriculture, the gentry "naturally appropriated" it to themselves, and afterwards claimed it as a legal and exclusive property.

In another part of the learned gentleman's work, he observes "that the principle which denies the right of appropriating particular *animals* to a certain class of society, would equally prove the tyranny of appropriating the *soil*.

But surely it is unnecessary to argue this point. In the first place there is no analogy between the two cases. The soil is a distinct, permanent property, distinguished by artificial or natural bounds; where it is to-day, there it was yesterday, and there it will be to-morrow. The owner acquires it either by descent from his ancestors, or by purchase, and it can be identified at all times: but can this be said of *ferœ naturæ*, or game, which is constantly on the move, feeding one hour on the property of the nobleman, and the next of the peasant, distinguished by no mark, confined by no bounds? Can it be said to be acquired either by purchase or descent?—a species of property for which no indictment would lie for stealing it, nor subject to any of the bankrupt laws. If this be the case as between individuals, it must be much stronger as between two different classes of society. If it is said the *rich* possess it, and not the poor, the present laws deny it; for the stockholder, be he ever so rich, does not (as such) possess a qualification.† If it be said it belongs to the landowner and the possessioner, the laws also deny this; for the property of even a landowner under a 100*l.* a year, nor that of the possessioner to any amount, unless otherwise quali-

* This plea would not be sufficient even in Turkey, or any other than the most barbarous countries.

† While a person not possessed of any property (as the son of a mayor) may be qualified. *Vide* p. 37, *note* 4.

fied, though they contribute, in proportion to the quantity of land they own or occupy, to the maintenance of this property, do not entitle them to take or kill it.

This last argument also applies to another part of the learned author's doctrine, in which he states that "it is admitted* that in the principle on which the Game Laws are framed, there is nothing *unfair* or *improper*, there can be no injustice in securing the right of taking a certain description of animals to those at *whose expense they are fed.*"

It would appear from this, that *every* person "at whose expense these animals are fed, ought to have the right of taking such animals secured to them." Is this so? We have already seen that by the laws as they at present stand, many who contribute to the feed of them are not allowed to kill them, even if found on their own land; while many persons who have not an inch of land, or contribute a grain to their support, may be qualified. The learned gentleman asks "What right have the class who have been enriched by commerce, or who invest their money in the funds, to complain that they do not share in an enjoyment for which others must pay?" Yet this very merchant, or fundholder, who contributes nothing towards the maintenance of the game, is most likely qualified, by possessing buildings in the very centre of London, while the tenant of a farm of 7 or 800 acres is not. The reasoning, then, on this point wholly fails, and it will be difficult to prove why the objection is superficial (as asserted by this author), that because there can be no property in wild animals till they can be reduced into possession, the right of taking them should belong to all mankind. I confess the general right appears to me to be the best title, at all events till a better can be shown, which the author subsequently endeavours to do by the following claims.

"To the landed proprietors," says he, "they belong as *equitably* as any *tame* animals supported at their expense.

This mode of claiming an equitable title to game, and putting it on a footing with *tame* animals, is so very like the comparison made between the soil and the game, that a parity of reasoning must destroy it.

Tame animals are reduced into possession, are identified, are confined within certain bounds, and for stealing of which an indictment would lie: game is not so confined, and there are numerous decisions of the courts establishing the distinction.

Let us examine the grounds of this "equitable claim" as stated by the author:—

1st. The landowner sets a far *higher value* on game than any price they would produce in the market.

2d. It is an object to them of *pride* and *pleasure*, affording them not only gratification in the pursuit, but an opportunity of presenting a luxury to friends.

* I really know not where this admission is to be found. The learned writer appears to have assumed it merely for the purpote of founding his subsequent reasonings upon it: their unfairness and impropriety are the general objects of complaint.

3d. Were every one allowed to sport, the pursuit would become a mere matter of trade.*

4th. Were it allowed to be sold without the consent of the party authorized to kill, the value of game would no longer exist.

These are the grounds upon which this "equitable title" is stated by the learned gentleman to depend; viz. the avarice, pride, pleasure, and gratification of the claimants. The country, I think, has a right to expect much better and stronger grounds than these, before they would be willing to allow the *equity* of the claim; and would ask if they are sufficient to justify the severity of the Game Laws, and all their dreadful consequences.

Having seen what is the "equitable claim" of these gentlemen, and examined the grounds by which they are supported, we will now notice another title set up by the same parties, viz. "a *peculiar* right."

"To deprive these men," says the learned author, "of the peculiar right" of killing game would be to deprive them of one of the inducements to reside in the country, and of course to continue *what they are.*

The advantage of the residence of gentlemen at their country seats is noticed in several places in this work; I shall, therefore, only here remark on the new description of title attempted to be set up. In the former paragraph it was denominated an "equitable claim;" now they have advanced to "a peculiar right;" and not contented with these titles, or perhaps not quite satisfied with the justice of them, or the grounds upon which they rested, the author in another part of his work† has given them a still further designation by styling them "an *equitable exclusive* right." Thus, in the course of eleven or twelve pages, has this claim, or right, made a considerable march; and it is only to be wondered at, that it was not concluded by "an absolute, legal, exclusive right," which no doubt could have been supported by the same cogent reasons as the former claims were.

There then follows some pretty smart phillippics on the doctrine contained in Knox's Essays, (part of which I have before quoted,) and the production of a gentleman, who has written on the subject, under the character of "a country gentleman, a magistrate, and a proprietor of game."

I am rather surprised that a writer of Mr. Chitty's eminent abilities, should resort to a measure too generally adopted by inferior minds—that of cutting a knot instead of untying it. This appears to me to be the case with respect to his treatment of Knox's Essays; for, instead of combating some of the doctrines they contain by argument or reason (in which there is a most material distinction); instead of refuting them by either of these means, (which no man in the kingdom was more capable of doing, had they been susceptible of refutation), he contents himself by saying "he will pass over

* We shall presently see this is the case with the qualified man; why then should he object to it as the resource of a poor man for the maintenance of his family?

† In page 23.

what he calls abuse," and leaves the paragraph complained of to stand uncontradicted.

With respect to "the country gentleman, magistrate, and proprietor of game," one of the complaints he makes against him is, that "he has attired himself in "a little brief authority" as "a country gentleman," "a proprietor of game," and "a magistrate;" and that "since he comes armed and disguised, he might be justified in calling in the black act to his assistance.*"

Here may be some wit in this sneer, but certainly no refutation of the gentleman's arguments.

I know not why it should be necessary to ascertain the name or character in life of an author. *The work and its doctrines* are all with which the public or a contemporary writer have to do, unless they mean to weigh the value of that work, and those doctrines, by the weight of the author's character or his purse. This mode may be well enough for those who write for emolument, as it might save them the unpleasantness of offending some noble author or some titled patron; but it tends to check investigation, and obscures truth; and if it be a fault, the author of Junius, as well as of many other of our best works, has been guilty of it:† none of these motives could have operated on the mind of Mr. Chitty, and the public would have been much more gratified, and, I have no doubt, benefited, by the refutation of those doctrines, than by the attack on the person and character of the author, or the evasive manner in which they have been met.

Mr. Chitty, however, with great candour admits, "that the power to kill game being extended to the occupiers of land, whether owners or tenants, would necessarily increase the interest to preserve the game, and consequently add to its general stock and the amusement of the fair sportsman."

The alterations proposed by Mr. Chitty are very similar to those of Mr. Christian, except that the former recommends the extension of the right to all owners of land, whatever may be the quantity; and to all occupiers of land exceeding twenty acres, not adjoining a preserve or wood of another person, and to authorize the owner or occupier of land to empower any person having a stamped licence to sport over his land for a limited time. By this latter permission, he observes, persons of opulence having no interest in land, might legally obtain amusement in sports of the field; and by this means one of the principal objections to the Game Laws would be avoided, without any probability of the game being diminished; for the occupier, finding pleasure and profit thus incident to game, would adopt all possible means to keep up the breeding stock and renew his annual profit or pleasure."

He would also, for the reasons he has before assigned, enable the licensed owner and occupier of land to sell game, either to the immediate consumer, or to a poulterer or innkeeper licensed by a magistrate.

There are other alterations calculated to meet these general principles; and although I have ventured (perhaps, I ought to say, presumed,) to differ in opinion, in some instances, with so eminent a character, yet I feel it but justice to say, his suggested alterations are, in my opinion, (with the exception of Lord Suffield's,) by far the best and most liberal of any yet offered to the public; because they approach the nearest to the common-law right of the subject, the justice of the case, and are better calculated to effect the end proposed.

* Vide preface, p. 4.

† The author of Waverley and his long list of interesting novels would also be liable to this censure.

CHAPTER VIII.

I COME now to an author whose work I unfortunately never met with till within these few weeks; and if (as I am sensible of) I have been guilty of prolixity in my quotations and extracts from other authors, I fear still more the probability of the charge, when I enter on the work I am anxious to bring under the notice of the reader. I know not where to begin, and I fear when I begin I shall not know where to leave off. I feel the necessity of chaining my pen, by the strongest links control can forge; for every paragraph, every page, is replete with truths, which must carry conviction even to the most prejudiced minds; and when it is considered as the production and the sentiments of a nobleman, a senator, a large land-owner, a magistrate, a game-proprietor, and a qualified man, and as such, may be naturally supposed to be partial to the present system, it deserves more than common attention. From the constitutional principles it inculcates and cherishes, from the very liberal ideas it instils, and the facts it discloses, this work ought to be read by every person (who can read) in the United Kingdom;—I mean "The Considerations on the Game Laws," by Lord Suffield.

His Lordship's first chapter is intended to demonstrate "the inevitable tendency of the present Game Laws to demoralize society;" and he commences by observing, that "trade and commerce in a free country cannot fail to create considerable wealth distinct from the 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 expense, and by any means, be obtained."

His Lordship, in a note on this subject, says, "The Secretary of State for the Home Department, is reported to have said last year in the House of Commons," speaking of the sale of game, "In

point of fact, game is already sold as openly as it could be if the laws were repealed;" and again, "Is it conceiveable, Sir, that the head of a corporation, *animal propter convivia natum*, would be restrained by any penal restraint from the indulgence of his appetite for game."

He then continues, "Hence the origin of poaching and of the illicit trade in game; but before we can reproach 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."

He then refers to the printed evidence taken by the committee of the House of Commons, supplying some facts which have fallen within his 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 higlers. 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 but 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 the salesmen. *The supply of game is beyond the demand.* He thinks if the sale of game was licensed, salesmen would procure it through more respectable channels, and that no greater quantity would come to 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 practice 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 persons connected with coaches take it to London. *The witness receives about one-third of his supply from gentlemen themselves.*† *The gentlemen send up a certain quantity of game in a*

* *Vide* Lord Suffield's note on this, p. 9.

† Supposing, then, that there are 30 poachers to one gentleman who thus sells the game; it follows that such one gentleman sells as much as 10 poachers; and yet many of these gentlemen most probably sit in judgment and administer the laws against an offender who is only one-tenth as guilty as himself. If gentlemen dislike the proportion I have stated, let them alter it to their own taste, only remembering, that still one third of the game sent to the poulterer is furnished by them.

year, and the account is squared by taking an equal amount in poultry.

The *petty officers of Government* do not appear exempt from this species of traffic.

"A gentleman of my acquaintance," says his Lordship, "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-warrant, he learned, to his surprize, from the *magistrate himself*, that he (the magistrate) thought it probable that 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!!*"

In another part of the work he says, "the poulterer declares he receives one third part 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, says his Lordship, afford the public the means of judging of 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 *country magistrate*, who now annually pockets from 3 to 500*l.* a year by the sale of his game."

He then mentions several other instances, and other modes of disposing of game, which I shall not occupy the reader's time by copying, but recommend them to his attention.

If this be true, and there can be no doubt of it, coming from such a quarter, we may less wonder at these noblemen and gentlemen (whom his Lordship designates as equally respectable as the poacher,) being so tenacious of their game; but one may be allowed to express a little surprize, how they can have the hardihood to sit in judgment and inflict a punishment on others, who have poverty to plead for their excuse, which they cannot urge.

"When we see," adds his Lordship, "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 farther. But look at the case of the two principals in these breaches of the statutes! Which is the most an object of pity and 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, or secure from conviction; or the poor wretched labourer, who, yielding to a temptation that solicits him from every side, sells his morals, his character, and his peace, often to the sacrifice of his life, always to the sacrifice of his innocency and 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 because he felt he could not do them justice,* his Lordship proceeds to say.

"I shall next refer to the evidence of 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;"

"*Quest.* Are there any particular cases which you can mention, which have come within your knowledge, of particular atrocity?

"*Ans.* 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 gamekeepers 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 the 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

* A Judge's address to a convicted offender of this description would be worth hearing.

actually shot the game-keeper 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 the Ready Reckoner, but the Court took that as sufficient, it having the effect to bind them."

"*Quest.* 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?

"*Ans.* 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.*

"*Quest.* 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?

"*Ans.* 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.

"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 direct 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 consistently 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.

"Customers and consumers," continues his Lordship, "abound in every class of society. Interdicted from the enjoyment 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 dependent 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 and 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 es-

quire of his parish, and the justice of the peace, who is to take legal cognizance of his crime, if detected?"

His Lordship then gives the following receipt to make a poacher.

"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 seven or ten 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 an absolute certainty, of an ultimately accomplished villain."

In page 33, his Lordship states, "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 those 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 authorises 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 nine thousand; that is, about twelve hundred 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," says his Lordship, "that no great price is to be paid, or sacrifice offered, for the accomplishment of the desired object. I believe 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 entirely of annihilating it—a result upon which no man can reasonably compute, so long as there are thieves in the country, and plunder for them to prey upon. All that a reformer 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 amongst a class of persons the most numerous in this, and every other country, viz. the poor.

2d.—Thereby to prevent the increase of crime generally.—And

3d.—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 law. I contend, and

* In six years, 1500 per annum; in seven years, about 1285; in 1825, there were 1597.

with the greatest confidence, that this alteration may most legitimately be 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 principles 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—which is *old*."*

Thus, I flatter myself, that by the very high authorities I have produced, and the facts disclosed by them, I have fully proved one of the great objects I contend for, viz. that the Game Laws have an inevitable tendency to demoralize society, and increase the amount of crime.

I shall now endeavour to prove, that the restraints imposed by those laws are unconstitutional, impolitic, and inconsistent with the natural and civil rights of the people, and contrary to justice and civil liberty.

This being the ground taken by Lord Suffield, and having produced Mr. Christian's arguments on the subject pretty much at length, I shall proceed to give his Lordship's reasoning in support of this assertion.

His Lordship commences, by taking, as the definition of civil liberty, the doctrine laid down by Mr. Justice Blackstone, i. e. "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 farther) 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-creatures, though it diminishes his natural, increases the civil liberty of mankind; but that even 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."‡

* The Game Laws afford a complete illustration of the truth of that ancient observation in the laws of England, that, "whenever a standing rule of law, of which the reason perhaps could not be remembered or discerned, hath been wantonly broken in upon by statutes or new resolutions, the wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation.

† Although I have made this extract in a former part of this work, I may be allowed perhaps to repeat it, to prevent the reader the trouble of referring to it in another place.

‡ Vide 1 Black. p. 126, and the learned Commentator adds, "nay, that even

"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," says his lordship, "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, (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 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 and selling 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;—for unless the general advantage of the public renders necessary or expedient the exclusive right of slaughter by a certain description of gentlemen, to restrain others from participating 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 these privileged orders assume, that the natural right to procure, or the taste for eating game, can be abrogated by a 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 sell it. *No one certainly of their own order*,—no game-keepers, no salesmen, poulterers, porters at inns, coachmen, and guards, higlers 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 the law, that he will never offer a price

laws themselves, whether made with or without our consent, if they regulate and constrain our conduct in matters of mere indifference, without any good end in view, are regulations destructive of liberty.

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."

His lordship then adverts to what he justly terms the disqualifying act of Richard II., which he contends unquestionably proves, that prior to that statute *all orders of men* might legally kill game, or why could there have been a necessity for restraining the exercise of a privilege that did not exist, and that had not been enjoyed?

He then says, "I shall beg leave to question the necessity and 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."

"Let us," says his lordship, "see who they are, and who they are not;" and he avails himself of a humorous speech of the right honourable the Secretary of State, giving a description of the persons qualified and unqualified as reported in the debates of the then last Session of Parliament.

"The honourable 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*l.* 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, even on their father's own estates. *Is it not a most absurd and anomalous state of things to see men in the capacity of magistrates*,

* It would, in the estimation of some persons perhaps, amount to something as bad as treason to doubt the omnipotence of an Act of Parliament, which we have been told can do any thing but make a man a woman, or a woman a man; and which we have seen (in the case of Malta) can take realms from Africa, and place them in Europe, and by an Act already noticed, convert day into night; yet, notwithstanding all these examples, I must be a sceptic in its efficacy to accomplish any one of these objects.

† This is something analogous to a person having a right to the game, but not the right of taking or killing it himself, yet may depute these rights to another. All things founded in injustice must be subject to anomalies of this description.

*and enforcing the Game Laws against others, when their own sons are every day violating them?"**

His Lordship then proceeds to prove, that according to the 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 may think fit,) it has been virtually property from the earliest period of our history to the present time (excepting only during the interruption of the Norman tyranny). Among our Saxon ancestors every man might, by the existing law of the land, hunt or take game on his own estate."†

* Notwithstanding the discouraging view Lord Suffield in the latter part of his work takes, and the small hope he holds out of any reformation in the Game Laws, yet, when his Majesty's ministers not only see, but so manfully point out the absurdity, cruelty, and tyranny of the present system, supported as they would be by the talents of those very eminent men I have before noticed, and sanctioned by every other description of persons whose support would be worth possessing, I still indulge the hope, that the time is not far distant, when these odious laws will no longer disgrace our Statute book, but that ministers will throw their united weight of influence and talent into the scale of justice and humanity, and rejecting the assumed and illegal claims of others, do justice to the public on the broad principles of constitutional right; they will then find that such principles, and such actions, will be the best and strongest support, both to the crown, the constitution, and themselves; and that public opinion will defend them against all attacks of the discontented and factious of *any* description.

† Mr. Rapin, in giving his history of William the First, says, "After the King had thus settled his revenues, he sought means to gratify another passion, which was almost as strong as the former: I mean his fondness for hunting, which caused him to commit a world of unjust acts. By these acts I don't understand those severe laws he made on that account, (namely, *that whoever killed a deer should have his eyes put out*,‡) though they were exceeding rigorous; this does not properly distinguish him from many other princes, who look upon the breaches of the Game Laws as a most capital offence, and more readily pardoned the killing of a man than a stag§. What I speak of was, the prodigious desolation King William ordered to be made in Hampshire, by dispeopling the country for above thirty miles in compass, demolishing the churches and houses to make a forest for the habitation of wild beasts‖; if we may believe certain historians, he did not make the owners of the lands or houses the least amends." Vide Rapin, vol. i. p. 177.

As a farther proof of what has been advanced in a former part of this Work (page 28), I beg leave to make another extract from the same author, (which I omitted doing in the proper place,) in order to prove the facts there stated; the extract is as follows:—

'The step lately taken by the English in calling in the Danes into the kingdom, thoroughly convinced the King he should never be in peaceable possession of the crown till he had entirely put it out of their power to execute the projects formed against him. This made him resolve to humble in such manner all that had any interest with the people, that they should not be able to make any considerable effort. It is true many innocent persons were to suffer in the execution of this design; but at that time, it is certain the King thought only

‡ Nothing of this appears in the laws of Canute. Vide Appendix.

§ Mr. Rapin wrote his History between 1708 and 1725.

‖ There were thirty-six parish churches demolished. Note to Rapin, vol. i. p. 178.

"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 Magna Charta, and Charta de Foresta. 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 Charter, that British subjects derive their claim to freedom, it was their birth-right, of which they had been unjustly deprived, and the Charters contained a renunciation on the part of the Crown, of all power and authority which had been assumed and found to be incompatible with the ancient rights and liberties of the people."

"Viewing then the right in question,

1st. As founded on the law of Nature and reason.

2nd. As being part of the old law of the realm.

3rd. As being essential to the liberty of the subject.

4th. As one of the usurpations of the Norman conquests. And,

5th. As an usurped right virtually renounced by the two

of his own safety, without troubling himself whether the means he made use of were consistent with justice. To accomplish his ends, he suddenly removed the English from such posts as gave them any power over their countrymen. After which, he dispossessed them of all the *baronies* and the *fiefs* of the crown in general, and distributed them to the Normans and other foreigners who had followed him into England. But as these last were not so many in number as those that were deprived of their estates, he was obliged to *load* them, as I may say, with benefits, in order to draw all the crown lands out of the hands of the English. We may be satisfied by the following instances, how profuse the King was in this distribution.

"Robert, his uterine brother, had the earldom of Cornwall, in which were 288 manors, besides 558 which he possessed in other counties. Odo, bishop of Bayeux, his other brother, was made Earl Palatine of Kent, and Justiciary of England. This prelate had 180 fiefs* in Kent alone, and 255 in several other places." Here follows a long list of other grants of the same extensive nature, to which I beg leave to refer the reader, vide vol. i. p. 172. I will only take the concluding part of this paragraph, which after enumerating those grants, and the names of the persons to whom they were made, concludes by saying, "that from the foreigners who were then put in possession of these lands, are derived a great part of the most eminent families this day in the kingdom."

This origin may probably account for the conduct of most of the lords of manors, and great game preservers.

* A fief is a large district or parcel of land, which was allotted by the conquering general to the superior officers of the army, and by them dealt out in smaller parcels or allotments to the inferior officers and most deserving soldiers. 2 Black. 45.

great charters, it surely cannot be denied that this right again devolved to the people at large. Not that the people were very anxious probably, or much in a situation to avail themselves of it at that time, being then in a state of dependence on the Barons and great men, who, for many reasons, (which still have their operations on the minds of some,) would exert their power in preventing the idea of a free liberty and licence to sport each man on his land, and to claim the game found thereon as his own exclusive property. If the Saxon constitution was restored, (which we are warranted by the Commentaries of Mr. Justice Blackstone, and other authorities, in believing,) the law of Canute and Edward the Confessor 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 confirm them."

His Lordship, then, after giving a variety of other proofs, and referring to a variety of other authorities, in support of his argument, to which I must beg leave to refer the reader, says—

"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., only interrupted by usurpation. I contend, with submission, that the law made in that reign, and all subsequent laws relative to game, have either been mere restraints on the exercise of that right, thus indirectly confirmatory of it, or directly confirmatory of it, by specific enactments."

"None of these enactments being repealed, the right still subsists in the same description of persons who were entitled to it in the time of the Saxons."

From these authorities, supported as they are by the opinion of others, and the history of our country, I submit, ample evidence is produced in support of my proposition, That the restraints imposed by the Game Laws are unconstitutional, impolitic, and inconsistent with the natural and civil rights of the people, and contrary to justice and the first principles of civil liberty.

CHAPTER IX.

I NOW come to that part of my subject which relates to the different modes employed for the preservation of Game, particularly that of spring-guns. And upon this point I should have thought it altogether unnecessary either to have offered a single argument, or produced a single proof, had it not been a short time since asserted, that "steel-traps and spring-guns were the most *humane* means of preserving the Game."* I should have thought, but for

* This doctrine must be considered as *true* or *false*; if *true*, how horrible must be the *other* means authorized for the preservation of game, and must be

this, the means were too horrible, and the end too paltry, to have needed a single argument on the subject.

Despairing, however, of convincing any mind that could entertain such an opinion by any arguments of my own, I shall offer those of others, and state the law of the land on the subject; trusting that such persons as are advocates for these engines, will be as obedient to the law on these points, (if not on the score of humanity to others, at least on that of self-preservation,) as they are desirous others should be with respect to the Game Laws.

The learned commentator, to whom I have had so frequent occasion to refer, tells us* "that a man's limbs are the gift of the wise Creator, to enable him to protect himself from external injuries in a state of Nature. To these, therefore, he has a natural inherent right, and they cannot be wantonly destroyed or disabled without a manifest breach of civil liberty."

And he subsequently observes,† "that whenever the constitution of a state vests in any man, or body of men, a power of destroying at pleasure, without the direction of laws, the lives or members of the subject, such constitution is in the highest degree tyrannical; and that when any laws direct such destruction for *light and trivial causes*, such laws are likewise tyrannical, though in an inferior degree, because here the subject is aware of the danger he is exposed to, and may by prudent caution provide against it."

Supposing then, that the laws authorized a person to set a spring-gun, which may not only deprive a person of his limb but his life, those laws, and the constitution which enacted them, are declared by the learned commentator as tyrannical; but what must that individual be, *who contrary to law*, or even where there is doubt of the legality of using them, (as in the present case,) who for such "light and trivial causes' can employ so destructive an engine, which might inflict such dreadful consequences, for the protection of so trifling an object as a head of game; and then declare it to be the most humane method to secure the object intended? It would be as well for such a man, previous to proceeding to such an extremity, to look into the statute of 5 Edw. III. c. 9. by which it is enacted, that "No man shall be prejudged of life or limb contrary to the great charter and the law of the land;" and by the 28 Edw. III. c. 3. "That no man should be put to death without being brought to answer by due process of the law."

"The placing a spring-gun," says Mr. Christian, "is a proper mode for destroying the public enemy of man, and of his pacific associates. But human nature revolts with horror when such machinery is placed by man for the destruction of his fellow-creature."

"If a gun," he proceeds to say, "be placed in such a manner, that the person killed or wounded is made to discharge the gun

an unanswerable reason for the abolition of them; if *false*, all the arguments in favour of the continuation of them must fail in having the slightest effect.

* Vol. i. p. 130. † Idem vol. i. p. 133.

himself, surely, in moral and legal justice, it must be the same as if he who had so placed it had fired the gun deliberately from his shoulder.

"We will suppose, that a person in the night, in a garden or wood, is made to ring a bell, and a gun is fired from the hand at the spot; or the person within a house draws a string, by which a gun is fired at the spot; or the person who rings the bell also draws the string which discharges the gun, by which he is killed or wounded, all these cases seem to me, in moral and legal guilt, to be the same.

"If a human being is killed by any one of those modes, the effect is precisely the same; and he who is the immediate cause, or the primary cause, or the *causa causans*, is equally answerable to God and his country.

"But of all guns the spring-gun is the most horrible, and the instrument of the most determined wickedness. It leaves no room for repentance or discrimination of objects. If the bell had given notice of the approach of an object to be shot at, he who could have fired a gun by drawing a string, might have desisted from his dreadful purpose by misgivings of compunction; if he had taken his gun in his hand, and had approached the object, he might have met a friend, a beautiful female, or a smiling child, who would, probably, have arrested his murderous intent; but all are alike doomed to destruction by the spring-gun."

This hypothesis may be carried still farther, and proved to be not only prejudicial but destructive to the party who sets them. Let us suppose a person returning home in the evening, saw at a distance the flames issuing from the house of the person who had set these spring-guns. A shorter way through a wood might have enabled him, either to have given timely notice to the family to have escaped, or to the neighbouring town to have afforded assistance; but fear of these dreadful engines prevented him, and he was obliged to go a long distance round. In the first case, a part of the family might have escaped a dreadful death; in the other, the mansion-house might have been saved from destruction.*

"The man-trap," resumes Mr. Christian, "is an engine of similar horror; if life is not destroyed by it, it can only be ransomed by loss of a limb.

"If a man is walking in a path in the night, and another concealed behind a tree or a bush, holds in his hand a trap which the other must step into, it surely, both with respect to cause and effect, must be precisely the same, as if he who held the trap had placed it on the ground, and had taken the other person, and put him into it. And he who places it to catch every human being, man, woman, or child, who unfortunately comes that way, is guilty of more deliberate wickedness than he who actually puts another's limbs into this horrid machine."

"If these are placed so that the person killed by them must have been in the commission of a *felony*, or have come to the spot with that intent, the person placing them, perhaps, might in law have been justified; but they are generally placed to prevent injuries in gardens, or in preserves for game, where, if a person was killed by a gun fired from the hand, the person firing the gun would certainly be guilty of murder."

Since the above passage was written by the learned Professor, an Act of Parliament of the last session was passed, making the robbing of *gardens* a felony, and therefore the setting of spring-guns *therein* lawful. On the discussion of this subject in Parliament, a strong endeavour was made to legalize the setting these engines in what are called "preserves," but it was negatived.*

A few days after this act came into operation, a person was detected in robbing a garden in the neighbourhood of Windsor, and refusing to stop when called to, he was shot, and after lingering a few days, died. An inquest being held on the body, the Coroner and Jury, as this was the first case under the statute, very properly took the opinion of a very eminent counsel on the subject, and adjourned the inquest till such opinion could be obtained: the result of that opinion was, a unanimous verdict of "justifiable homicide."

With respect to what are called "preserves," the law stands precisely as it did before the passing of this statute; but I remember about twenty-five years ago, an action being tried at the Berkshire Assizes, between two gentlemen, one of them the Lord of a Manor, and the other a very respectable gentleman farmer, for a trespass under the Game Laws, and on the part of the Lord of the Manor, the trespass was attempted to be aggravated by showing, that it was committed in "a preserve." The learned judge, however, stopped this part of the case, and, with great indignation, asked what was meant by "a preserve?" adding, "*Sir, the law knows nothing of preserves,*" and his Lordship did not appear to wish

* The following paragraph in a morning paper records the casualty from spring-guns in Suffolk. On Tuesday last, November 8, (1825,) a poor woman was shot by a spring-gun whilst getting acorns in the Link Wood, Bradfield, Suffolk, belonging to John Moseley, Esq.; the woman was conveyed home much wounded, and has been confined ever since the accident. On the same day, a fine sow, the property of Mr. George Biddle, was shot dead by one of the same engines, whilst in search of acorns in the same wood. The maiming of a poor woman is an event not likely to make much impression upon the squires; such accidents to human beings are common, and what are the guns set for but to shoot trespassers? but the slaughter of a fine sow, worth upwards of five pounds, cannot but be considered in a serious light by the farmer, and must suggest to squires the alarming reflection that the lives of brutes are exposed to danger from these engines.

* From this circumstance, and from the very strong expressions used by several members of Parliament, I sincerely hope and believe that the legislature begins to feel the cruelty and oppression of these laws, and that a remedy for these evils is not far distant.

to disguise his feelings, which evidently were unfriendly to the Game Laws.

But to return to Mr. Christian. He says, "It will then, I think, follow, that he who places or orders these instruments to be placed, to destroy a person who can only be committing a *trespass*, or an offence much less than felony, can be guilty of no crime less than murder.

"And if he who places them with an intent that they should be fired only in the night, but neglects to take them up in the day, and any one is killed, contrary to the intent of the owner; in that case, in all probability, he would be held to be guilty of the crime of manslaughter."

He then proceeds to instance a case which occurred at Hammersmith a few years ago, where a person went about in the night under the appearance of a ghost; another person went out and shot him. He was tried for murder, and convicted; on the ground, that as the appearance as a ghost was no felony, the prisoner was not justified in shooting him, although the ghost might have been indicted for a misdemeanour of the nature of a nuisance.

The prisoner, thinking he was doing a meritorious act, and on account of his ignorance of the law of the case, obtained the King's pardon.

In support of his opinions, Mr. Christian cites the two following authorities:

"When the trespass is barely against the property of another, the law does not admit the force of the provocation to warrant the owner in making use of any deadly or dangerous weapon. As, if upon sight of one breaking his hedges, the owner take up a large 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 be 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: Forst. 291: Hale 473—486."

"When they are placed, not for the prevention of felonies, I think it would be held that the very act of setting them is an indictable offence as a misdemeanour.*

"But in two *actions* it has been held that whoever has been injured by them, not being in the commission of a 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.

* It is much to be regretted that this question is not put beyond *a doubt*.

"And at the Assizes for Warwickshire, 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*l.* damages, and the verdict was acquiesced in; the defendant's counsel thinking the law too clear to chance the motion for a new trial in the court above. Jay *v.* Whitfield. Warwick Spring Assizes, 1817.

"The publication of these cases, it is to be hoped, will in some degree suppress the *use of these horrid species of machinery*, as the result of this consideration of the subject appears to be this: that when any one is killed or wounded by them, he who has ordered them to be set will be answerable by the common law, both in a criminal prosecution and in a civil action, to the same extent as if he had discharged a gun at the injured party from his own arm."

Having produced the learned Professor's opinions, and quoted them so copiously, I am aware that some apology is due to the reader for trespassing longer on his time; but when it is considered that even now, this practice is justified by some, and adopted by many; when it is considered how dreadful in its consequences such practice is to many innocent individuals, nay, even to the parties who set them (of which some recent instances have appeared,) I trust I may be allowed to quote the instances afforded by Lord Suffield, as farther proofs of the horrid and illegal consequences of this practice.

"I come now," says his Lordship, "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.

"In the case of a man firing at another, a thousand circumstances might interfere, 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 dependant 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 spring-gun there is no such chance of life; it affords no time for repentance, or discrimination of objects. The man who set the gun, may, for aught 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 previous; 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 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 report 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 connexions of the parties setting them, frequently suffer by these engines; and I have heard of a judge on the circuit, who, not long ago, wished to take air and exercise, before the business of the court commenced, or after it had concluded, and was on the point of entering a wood, where he would almost inevitably have been

* His lordship relates the following fact:—

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 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.

† Another plan the poachers adopt in order to protect themselves, and retaliate on those who set these engines, is to drive some of the owner's cattle before them, and thus the evil falls on those who set them.

shot, had he not received accidental information that spring-guns were set there." Had his lordship been shot, we should, most probably, have had a legislative prohibition on the subject.

"If," continues his lordship, "I have digressed from the course which I have prescribed to myself, and all that I have said with respect to 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 authorized, I must plead excuse on the ground, that game preserving, by legal means, and the 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."*

* Is it not another proof of the absurdity of these laws, that the magistrate who shall thus *illegally* set a spring-gun or a steel-trap, for the destruction of his fellow creatures, and publicly announces that such guns and traps are set, should sit in judgment, and punish a man for keeping a dog or a gun, or having a partridge or pheasant in his possession; while the magistrate himself is contemplating the murder of another, merely for the sake of preserving them?

The King v. John Comyns, Clerk, and others.

In the King's-Bench, 27th of May, 1826.

This was a rule obtained last term, calling upon the Reverend defendants, three in number, magistrates of the County of Devon, to show cause why a criminal information should not be filed against them for corruptly and illegally convicting one William Crunden in a penalty of 20*l.*, for a supposed offence against the 5th of Anne, c. 14, in destroying game without a certificate.

The affidavit in support of the rule stated in substance as follows:—Mr. Crunden was convicted in the penalty of 20*l.* for sporting without a game certificate; no summons was personally served on him, or left at his house, calling upon him to appear to the information. By some means, however, he obtained notice that an information had been lodged against him. On the day of hearing, he did not appear at first personally, but his attorney appeared on his behalf. The *evidence of the informer was taken in Crunden's absence*, notwithstanding the protestation of his attorney. When the latter, however, was proceeding to cross examine the informer, the defendants interposed and refused to allow him so to do.† In the interim, Mr. Crunden came into the justice-room and protested against the case going on, objecting that he had not been summoned—that he had not heard the evidence—and that he was not prepared with his defence. The case, however, proceeded, and when Crunden asked the informer, on cross-examination, what sort of dog he (Crunden) had with him? one of the defendants interrupted him, and said, "that is perfectly immaterial,‡ the case is perfectly clear, and you are convicted in the penalty of 20*l.*; *if*

† This system of refusing a defendant the assistance of his attorney is bad, and it betrays a great anxiety on the part of the magistrate to convict, whether right or wrong, especially in a case where, in 99 times out of 100, they are interested parties; but, in a case of Coxe and Coleridge, it is now determined that a defendant, in summary convictions, is intitled to such assistance.

‡ Surely this is strange doctrine. It is perfectly clear law that any man may possess a gun or a dog if *not used for the destruction of game*, and evidence of such intention must depend on circumstances; thus, if a man carried a gun, and is seen in the fields, attended by a *sporting* dog, such as a setter, pointer, or spaniel, it would be *prima facie* evidence he was using both, for the destruction of game; but, on the contrary, should he be carrying a gun, attended by a bull-dog, a Newfoundland, or any other dog of a similar description, it may, I

"Among those who believe that spring-guns are legal, or that

you had not brought your attorney here, the penalty had been mitigated to 10*l.* so you have to thank your attorney for that, and you must pay the money down directly." Under these circumstances the present application was made, it being alleged that the defendants had acted from corrupt and unworthy motives.

The Attorney-General and Mr. Coleridge now showed cause against the rule, on affidavits denying all corrupt and unworthy motives. They admitted, that the evidence of the informer had been taken in the absence of Crunden, but that this was done conformably to their usual practice.* They admitted that one or other of them did say, that "the penalty might have been mitigated, if you had not brought your attorney here." They also admitted that Crunden had not been served with any summons; that Crunden had been interrupted as to his cross-examination of the informer respecting the dog, but stated that in their opinion, it was an immaterial point. It was insisted, however, that Crunden was convicted on the clearest evidence; that justice had in effect been done between the parties, and that if the defendants had been irregular as to any of the other points objected to, they had acted under an error in judgment, and without any corrupt or malicious motive. Under these circumstances it was contended that the ground of the motion had failed, for without express proof of malice or corruption, magistrates were not liable to an information.

Mr. Scarlett and Mr. Chitty, in support of the rule, contended that there were quite sufficient grounds made out to justify the interposition of the court.

The Lord Chief-Justice, adverting to the affidavits on both sides, I am of opinion that there is not sufficient ground for imputing to these defendants any corrupt or malicious motive; nor can I say that, in the result, any actual injustice has been done; but there has been so much improper and irregular conduct on the part of the defendants, that I think Crunden might be fairly led to think that he had good grounds for this application, and therefore, though I think the rule ought to be discharged, yet it must be on the terms of the defendants paying the costs of this application. It is clear that the summons was not regularly served, but there seems no reason to doubt, that Crunden knew by other means of the charge he was called upon to answer. Whether the defendants were bound to suffer the attorney to be present, and act as advocate for Crunden, I shall not now decide:† it is a very important public question, and requires more mature deliberation. The interruption of Crunden's cross-examination of the informer was upon an immaterial point, but still it had better been avoided. In making the assertion that the penalty would have been mitigated from 20*l.* to 10*l.* if Cruden had not brought his attorney to act for him, the defendants acted, to say the least of it, very unadvisedly; and, I must say, I highly disapprove of that part of their conduct in particular. In several respects the defendants have certainly conducted themselves in a very improper and irregular manner; but, as I do not see ground enough for charging them with malice or corruption, I think the rule must be discharged. For the reasons, however, which I have already given, I think it quite proper that the defendants should pay the costs of the application.

Mr. Justice Bayley. I shall only mention one point in addition to what has fallen from my Lord Chief-Justice. It is a general, but erroneous practice

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think, be as fairly inferred, and it would be equally good evidence, that he was not in pursuit of game, but used for the protection of his person, which he had a legal right to do.

* One would think that common sense must have told any one this practice must be unjust. See Mr. Justice Bayley's Observations upon it, p. 95.

† The magistrates ought to have allowed the defendant's attorney to have attended the whole examination of fact, as well as the discussion of law, in all cases where they are come to an adjudication. Mr. Marryatt's opinion on a similar case to the above.

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." But 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 where the end is so manifestly unworthy of the means."

"The question lies then in a very small compass. Shall game, or human beings be sacrificed? Suppose 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 be fairly enquired, 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 disagree-

among magistrates, to examine the witnesses in support of accusations made before them, on penal statutes, in the absence of the parties accused, and that was done in the present case. *This is a highly irregular, illegal, and mischievous practice*, and magistrates should learn, that from henceforth it must be corrected. The examination in such cases as these, should not take place until there is an issue joined upon the plea of not guilty, and then the witnesses are to be *examined in the presence of the party accused*, in order that he may *hear the evidence and exercise the right of cross-examination.*

The Lord Chief-Justice said, he concurred in what had fallen from Mr. Justice Bayley; the practice alluded to was most incorrect and dangerous, and he trusted after this public notice it would be corrected.

Mr. Justice Holroyd and Mr. Justice Littledale agreed.

Rule discharged upon payment of costs by the Reverend defendants.—*British Traveller.*

* I should think, that after the passing of the late Act of Parliament, there cannot be entertained a reasonable doubt on the subject; if a man could be shot, either by direct or indirect means, for any thing short of a felony, the late Act would have been unnecessary.

† And between the two objects, too, should not be forgotten, particularly in man's relative character, as husband, father, brother, and friend.

‡ It may here be worth while to enquire what is the quantity of grain spoiled and consumed by the game in the kingdom. A very intelligent friend of mine, who was land agent of a very large estate, assured me, that on a moderate calculation, the game on that estate devoured the produce of one acre of land in seven, exclusive of what was given them in winter.

Supposing this to be generally the case; what quantity of corn is thus lost annually to the community at large, and what is the number of persons it would have supported?

ment 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 day, than our forefathers were well amused with, 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 authorize the sacrifice of human life for its accomplishment."

"It has been 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 that 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."

"But we are told, that if this or some other method be not allowed for the preservation of game, or if it should be permitted to be sold, the consumption of it would be so great, that the stock would become less than it is at present, and that the gentlemen will leave the country, by which means the large sums of money which they expend there, will be a loss to the neighbourhood near which their country-seats happen to be situate; the nation would lose their services as magistrates; and various other evils are anticipated, which are more hinted at, than defined."

I had already expressed my opinion on this subject,* as well as quoted Mr. Scarlett's observations upon it, in the House of Commons: but I will now beg leave to add Lord Suffield's, who says:—

"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 pleasures, 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 described; and as for the mere game-preserver, 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

* *Vide* p. 25.

the public, perhaps, will agree with me in thinking, that the town or the watering-place would be the fittest place for such a man, since there he might pursue his object with least injury to society."

The temper shown by the Duke de Longueville, when it was observed to him that the gentlemen bordering on his estates were continually hunting upon them, and that he ought not to suffer it, is worthy of imitation; "I had much rather," answered the Duke, "have friends than hares." If some of the rigid preservers of game in Great Britain were to adopt similar sentiments towards their neighbours, and be a trifle more liberal in their permission of a day's sporting to a stranger, when properly solicited, neither the game upon the estate, nor the popularity of his lordship or the squire, would be much injured by so doing. The game would derive safety from the indulgence, nor would the employment of the poachers in the vicinity where an uncivil refusal has been given, be so often encouraged or resorted to.*

The opinions here produced on *the principles* of the game-laws, (particularly those of Lord Suffield, from whom, when his various characters are considered, and judging from the conduct of the generality of other persons in a similar rank and situation of life, the very opposite doctrine might have been expected,) deserves the most serious consideration. Law, justice, and humanity are violated by the system here condemned, and demand the abolition of it by a legislative enactment. The character of the magistrate, who in most instances is the person who sets these destructive engines, is satirized by placing him in a situation which is incongruous and unjust; inasmuch as it creates the greater offender the judge of the lesser one, and compels him to levy a *fine* on the latter, while it is not only possible, but even probable, that before the court breaks up, and while the sentence is on his tongue which imposes this fine, the magistrate himself may be justly accused of murder, manslaughter, or a misdemeanour, from the consequences of setting a spring-gun or a steel-trap, for either of which the law has imposed a much heavier penalty, and justly considers a much more heinous offence.

CHAPTER X.

We will now farther, and more minutely, consider the different plans suggested by different persons for an alteration in the Game Laws; the advantages expected to be derived from them, the objections to those plans, and the validity of those objections.

We have already seen what are the sentiments of Mr. Justice Blackstone, Mr. Daniel, Mr. Knox, and others, as to the general

* Vide Daniel's Rural Sports.

principles of these laws; we have also seen what are Mr. Christian's plans, and some of his reasons for them, the substance of which nearly amounts to the restoration of the common law rights, and vests not only the right of killing game, but the power of exercising it, in the owner or occupier of the land on which it is found, to legalize the sale of game, and to license both the seller and the buyer.

Should it be objected, that by this plan poaching would still be continued, by the temptation to purchase it at a lower rate of the unlicensed destroyer of game, the learned Professor observes,

1.—That the licensed shopkeeper would scarce venture to purchase a hundred head of game, by which he was to get 5*l.* or 10*l.*, and at the same time be subject to the payment of 1000*l.* for which large sum the poacher might consider the shopkeeper his banker, might draw upon him for it, and compel him to pay it whenever it suited his convenience.

2.—That the fair trader would allow sufficient profit, and place the dealer above the temptation of thus putting himself in the power of others to bring him at any time to disgraceful ruin.

3.—That a private individual, to save a few shillings in the purchase of three or four head of game, would hardly subject himself to a penalty of 30*l.* or 40*l.*, besides the public shame which would result from the conviction of such a petty fraud.

4.—That with respect to poulterers, they are not only most anxious to have the power of selling game legally, but they declare the profit is no object; they admit they do, and must procure game for their customers in London; but they are subject to so much anxiety, and to so many artifices by informers to obtain evidence against them, which they must counteract by artifices and contrivances on their part, that they declare their business is deplorable, and that they would do all in their power to promote an honest legal sale of the article.

("If any one," says Mr. Christian, "will converse with them on the subject, he will be convinced of the sincerity of their intentions; when he mentioned to one 10*l.* as the penalty for an illegal sale, he said, "make it 100*l.*, make it death, or any thing rather than leave us to be harassed as we are.")

5.—That this would also permit foreign hares, pheasants, partridges, and grouse, to be sold, (which are now prohibited,) just in the same manner as English game.

These are the advantages which are asserted by Mr. Christian would arise from his proposed alterations; but in stating them, he appears to me to have overlooked the great and principal advantage, of making the owner and occupier of the land the owner of the game upon it.

But in another part of his work he admits, "that you would thereby give such a person an interest in the preservation of property, that he not only does not now possess, but which it is admitted it is his interest to destroy; and Lords of Manors, and others of that description, have a very imperfect idea of the quantity of game destroyed, as it were in embryo, by the former: from the number of servants he keeps, he has an opportunity of watching the poacher much better and more effectually than the gamekeeper can do.

The gamekeeper has been proved to be as great a poacher, or perhaps a greater, than any other upon the estate; and has been known to send his game by night to London. This circumstance, in the course of their nocturnal depredations, has come to the knowledge of the poachers; and when the latter have sometimes been detected by the former, it is no uncommon case that the gamekeeper has been silenced by the recriminations and threats of the poacher to expose him, and thus both parties commit their depredations with impunity.

It is in evidence that a great part of the game sent to London is furnished by *gamekeepers*; if even the present laws were to be continued, I feel convinced that qualified gentlemen would do well to get rid of the gamekeeper altogether, and give his tenants the liberty of sporting. They would then be game preservers; at present, it is an unquestionable fact they are greater destroyers of game than the poacher and gamekeeper united. Where the experiment has been tried, the result has proved the truth of this position, and not only abundance of game has been found, but the poacher is almost unknown.*

With respect to telling the farmer that he has by nature and the common law the right to the game, but the statute law restrains him from the enjoyment of that right; it is something like saying to a man who is just tied up to the gallows, and the drop ready to fall from under him,—"My good friend, Nature and its God gave you life, and you ought and have a right to possess it; but justice and the statute-law require you should be restrained from the enjoyment of it; you must therefore submit to your fate." There is only this difference, that in one case truth authorizes the observation, but truth and justice are equally violated in the other; and would not the observation in one case be considered as a cruel and wanton insult, and is not the argument in the other a gross insult both to justice and common sense?

In his reflections on this subject, Lord Suffield premises, that it

* Mr. Chitty's amendments go much farther. He recommends the extension of the privilege, not only to all freeholders and copyholders, but to all tenants of land of twenty acres and upwards, with a few trifling exceptions; and he adduces the same reasonings which appear here, and contends that it will be attended with the same beneficial results, as all others have done, who have given the subject any consideration, and are unbiassed by fancied prerogatives. His plan certainly approaches much nearer to the common law right than Mr. Christian's, and could no other be obtained, it would be of great advantage to the public to have it adopted.

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 controul by legal enactment the exercise of such rights as may be demanded.

"It is quite obvious," says his Lordship, "that the *Owner* of the soil* has two distinct and acknowledged rights. First, he has a right to all its produce, both 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 by a 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 actual possessor or actual occupier of land or 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 unreasonably 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 of each county or place in the kingdom where the traffick 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 principal points reasonably required by the public will thus at once be obtained. Every man who has land may kill the game

* I presume his lordship intends *occupier*; or, otherwise, it is difficult to understand how any other person can be entitled *to all its produce, both animal and vegetable.*"

† This method is open to objection. It has already been shown that both magistrates and gamekeepers are illegal dealers in game; and it is a case by no means impossible, that such a magistrate may appoint his own gamekeeper to sell, and stipulate that he shall sell none, but such as he shall supply him with, which may be in large or small quantities according to the avarice or love of sport operating on the magistrate's mind. To guard against such a partnership and monopoly between the magistrate and gamekeeper, a clause should be introduced, providing against any person being licenced to sell game who had not been a shopkeeper in the parish for not less than three years, and rated to the poor to the amount of 20*l.* per annum, or upwards; this would secure more respectable venders, who might not be so easily induced to receive game from illegal sources.

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 not, 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 reasonably be 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."*

His lordship then observes, "that by the same Bill which enacts new regulations, 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 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 of his property? Can any thing be more oppressive than a law which limits the enjoyment of a natural right, and a right which had 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 1 Jac. I. c. 27.‡ laid a penalty of 20*s.* for every pheasant, partridge, pigeon, wild-fowl, moor-game, or hare, which should be killed *or shot at* with a gun, by *any person whatever.*"

"The statute of 5th Anne, c. 14. has enacted, that if any *unqua-*

* To this I think the lord would, in common justice, be entitled; to understand the question, it is best to ascertain what are the respective rights of the lord and the commoner in the waste and commons, at least those where common of *pasture* only is claimed.

The commoner has the right of the herbage, to be fed *by the mouths of his cattle*, but to be used in *no other way*; here then his rights are defined, and here they end. The lord has every *other right*, both as to minerals, soil, quarries, &c.; and if the commoner enjoys all the rights he has ever been entitled to, he has no ground of complaint—all other rights belong to the lord. In claiming our own rights, we ought to respect those of others; the neglect of or the encroachment on this maxim, is what is complained of under the present system of the Game Laws.

† And it might be asked, can any laws be more disgusting than those which blend the senator, the nobleman, the lord of the manor, the magistrate, the gamekeeper, the poacher, the poulterer, and the higler, in one common mass, as co-partners in crime, and equal offenders against them; and yet appoints one class of these offenders to sit in judgment upon and punish the other. There is but one principle upon which it is possible to account for so strange an absurdity; "Set a thief," &c.

‡ His lordship quotes this statute as the 2d James I.; but see note p. 35.

lified person use any engine, or destroy game, he shall be subject to a penalty of *5l.* This may repeal the statute with respect to the penalties upon an unqualified man for using a gun, but still the penalties upon a qualified man must continue the same."

"This state of the law is rendered more remarkable, as applied to the act of Jac. I., by the circumstance of there having been an act passed (the 48 Geo. III. c. 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 remained, and I believe still remains, in force.* Gentlemen who are in the habit of bagging upwards of a 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."

CHAPTER XI.

HAVING thus noticed the various objections to the present system of game laws, both as to principle and practice; having shown that in both these points of view they violate not only our natural, but our civil rights, and tend to tyranny, oppression, and crime; having arrayed the opinions of the most eminent men of almost every age, since the first introduction of the game laws, and that in a greater number than can be brought forward on almost any other subject; I proceed now to consider the opposition made to the proposed alterations in these laws.

The first objection is, "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."

This objection has been more than once answered, and it is hoped completely refuted; but it has been farther observed, that the evidence taken in the House of Commons, common notoriety, and 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 was repealed), may be appealed to, 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

* That the act was intended to remain in force as to pheasants, &c. is perfectly clear, as the statute of 48 Geo. III. recites the act of 1 Jac. I.; and that its object is to repeal "so much of that act as relates to hares."—*Vide* also Mr. Christian on Game Laws, pp. 227 and 232.

superabundance of game, and the overflow of the market, has in some instances led to its being thrown away in prodigious quantities? 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 temptation to steal it."

But it is farther argued, that, "in the absence of prohibition, there would be an increased facility for illicit traffic;" illicit, so far as concerns those who are not licensed traders; for Lord Suffield assumes that game shall become saleable by licensed dealers only:—without this limitation, he in part admits the validity of the objection, and poaching would be augmented. But he contends, 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 he asks, 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.

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 deal 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

* Where there are no game laws, and where, in the absence of any such nuisance, they have not only an abundance for themselves, but could most amply supply us from their *surplus*. What a farrago of nonsense and idiotism is it, then, to speak of the Game Laws as *necessary* for the *preservation of game*, and the *protection of gentlemen's amusements*, when, if the importation was allowed, it would not only most probably lessen the home consumption, and thus tend to answer both these purposes, but a considerable revenue might be derived from it, and many might be supplied with game without resorting to the poacher for it. The fact appears to be, that game is considered as too sacred and hallowed a luxury for any but qualified men to partake of, and whether it be the production of this country or the continent, no others are thought worthy of tasting it.

their opinions, 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 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.

This is proved by the following evidence, given before a Committee of the House of Commons.

Quest. Is it the general wish of the trade that there should be some regulations of that sort?

Ans. 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 them of course compelled from their connexions:—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 and porters had the game trade thrown into their hands; they supplied the taverns and other places, and found no difficulty in getting well supplied; and some few individuals of the trade, who were averse to coming in, derived the benefit of it. *Report*, p. 11.

Quest. Generally speaking, you can tell stolen chickens by the way in which they are killed?

Ans. 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 them lately at sixpence or ninepence a piece; they have been killed improperly, with their victuals in them; it is not reasonable in 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 me such quantities of game. *Report*, p. 22.

This last circumstance in the evidence not only proves what has been before asserted, that, if the poacher is unsuccessful, he will attack the hen-roost, &c., but introduces another 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 always have.

I should be doing great injustice, and be liable to the charge of partiality and unfairness, if I did not state, that to the doctrine and evidence produced by my Lord Suffield, there have been made

objections; and as they are particularly stated, to be levelled against that doctrine, and a petition of the magistrates of the County of Norfolk, on the subject of the Game Laws, I candidly confess I think I should merit the charge if I passed them by unnoticed.*

But as it must be obvious the petition itself should appear, as well as the objections to it, I will give the copy of it as supplied by his Lordship.

It is as follows,

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 County of Norfolk, assembled at the general Quarter Sessions of the Peace, held at the Castle of Norwich, in the Shire House there, on the 12th day of January, 1825.

"Sheweth,

"That your petitioners, in the character of magistrates for a county remarkable for the extensive preservation of game, have

* House of Commons, April 19, 1826.

Mr. Blackburn presented a petition from the inhabitants and Grand Jury of the County of Lancaster, praying a repeal of the Game Laws.

Lord Stanley did not wish to say that these laws ought to be entirely abrogated without substituting some others of a milder description in their stead: great danger arose from these laws, and some measure ought to be brought forward which would secure the game, and not be productive of so much mischief.

Mr. Holme Sumner said, that the system that had existed for the last three years in Lancaster ought not to be suffered to exist any longer, characterized as it was by open violence. In many cases, *thirty or forty persons* on a side were drawn up at night, and without a single word being said, fired on each other; great mischief was done, and there was no possibility of ascertaining who those persons were. *This had been the case for the last three years*; it was quite impossible that this system could go on any farther. While, however, the wealthy interest must be supplied with game, persons would be found who would undergo any risk to obtain it. It was impossible gentlemen could go on preserving game if this system went on much longer—much longer it cannot go on. *This petition was signed by the whole of the Grand Jury of Lancaster, and all the landed interest of the county.* He trusted the honourable member for Yorkshire (Mr. S. Wortley) would not be put off from bringing forward his measure on this subject.

Mr. Wilbraham supported the prayer of the petition.

Lord Milton hoped, if the Honourable Member brought forward any measure on the subject, it would be a simple one in its nature. He would say that nothing would put an end to the distress and mischief arising from this measure until a different conduct be produced in the lower orders of the people. As long as game is used as it is now by the whole of the community, and so much prized, *and by the common consent of all mankind be considered "ferœ naturæ,"* people will run the risk, and he was confident that no great improvement could be made in the system till those animals were not held in so much estimation. (Laughter.) Gentlemen might smile at the use of the word estimation, but he would repeat that no great improvement could be made till game was less prized. Laid on the table.

Mr. S. Wortley said, he would bring in a *bill on the same principles his last bill was founded, next session.*

found frequent occasions 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 intreat 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."

Such was the petition intrusted to Lord Suffield, to present to the House of Lords; and whether it is considered as a document in which facts are stated of the utmost importance to the morals of the age, by persons fully competent from their situations to judge of them, and their influence on society; or whether the characters of the petitioners, as magistrates, lords of manors, clergymen, and others of the first rank and consequence in a county remarkable "for the extensive preservation of game," be contemplated; in either of these views, it deserves particular attention.

To this petition, and to the "Considerations" of the noble lord, from whose admirable work I have extracted so largely, a gentleman,* has lately given to the public a work which he calls, "Reconsiderations on certain proposed Alterations of the Game-Laws," upon which I crave leave to make a few observations.

He dedicates his work to the magistrates of the county of Norfolk, who signed the above petition. And in this dedication, after referring to his lordship's Considerations, and declaring his intentions of profiting by his lordship's "candid discussion," and by the researches and reports of two committees of the House of Commons, the Author professes "to keep in view the prevention of crime, not the preservation of game."

He then commences his work with this general proposition, that "Of trade and commerce, it is a received and undisputed principle, that a largely increased and permanent rate of demand, will follow the excessive supply of any article, more especially in a market which has hitherto been partially closed against its reception. The course of operation so beneficial to the trader is sufficiently obvious, whereby that which has been considered a rarity and a luxury, becomes on a sudden an article of familiar use, and is generally adopted by all classes: it forces itself upon their attention by its novelty, it is recommended by its cheapness, and

* George Banks, Esq.

when the prices rise in proportion with the increasing consumption, and with the consequent diminished quantity of supply, it has become necessary to their social habits, and however scarce and costly it shall ultimately prove, it must be obtained by all of them at any expence, or by any means."

I confess the honourable gentleman has in this sentence, as well as in several other parts of his work, rather puzzled me, and rendered it difficult to understand his meaning; but as far as I do understand it, he appears to have assumed certain propositions as true, which if so, it is possible the results would be as stated: but he seems to forget that the truth of the proposition itself is the very object of discussion—is the bone of contention.

But without entering farther into this part of the case, or endeavouring to refute what appears to me to be direct contradictions in his argument, I shall proceed to observe, that after the author has bestowed a pretty plentiful, and I think undeserved abuse on the Poulterers, accusing them of wishing to create *a monopoly* of game, and quoting their own evidence as what he considers proofs of the charge, he says,

"Of all species of saleable articles, game is that where *the interference of the thief is the most certain to defeat monopoly*, for of all articles it is that which is most easily stolen."

Now, as far as I understand this, it appears to me to be the opinion of the author of the Reconsiderations, that in order to keep down the offence of monopoly in the Poulterer, (which in his eyes seems to be no small crime,) it is necessary to support *the thief*. And I am again in the dark, and unable to reconcile this doctrine with what is stated in his dedication, that his object is "the prevention of crime, and not the preservation of game."

The honourable gentleman then adverts to that part of the evidence produced to the Committee of the House of Commons; in which it is stated, that *one* third of the game does not find purchasers. He has, however, stated this circumstance as *two*-thirds, and it would have passed unnoticed by me, had not the mis-statement appeared more than once in the course of his work. This must have proceeded either from inattention to the fact, or wilful misrepresentation: if the former, it must subject his observations to a suspicion of incorrectness in other respects; if from the latter, it may lead to a doubt of the correctness of his motives, particularly as he founds many of his subsequent calculations upon this erroneous datum.

But to proceed to his next objection to any alterations in the present system, which is,

"That game has been for so many years considered as the peculiar property of the qualified classes of society, that many of them having purchased their estates under that idea, they would sustain a serious injury, and a great injustice would be done them, were they now to be deprived of it."

This, at first view, has something fair and plausible about it; but what, in fact, is it but saying, "that the qualified proprietor wishes you to forget the original common law right of the subject, and the tyranny and injustice of his ancestor who deprived the subject of it; that he has been so long in the illegal possession of this property, it would "vex his soul" to part with it, and therefore he now pleads that the robbery was committed so many years ago, that it is statute run, and claims the sanction of time to sanctify the injury.

But let me ask any of these qualified gentlemen, if in the character of a magistrate it has not happened to them, that a person has purchased a horse which has turned out to have been stolen; would it have any effect on them in their judicial capacity for the purchaser to say, "At the time I bought this horse I paid in money its full value, and the owner ought not, in justice to take it from me without first repaying me what I gave for it?"

Or to put the case still stronger: suppose any of these gentlemen had been sworn as jurymen on a trial in ejectment, where the heir-at-law, or any other plaintiff, claimed an estate, for which the defendant had some time before given 10,000*l.* to a person who then appeared to have a right to sell it; would it have availed the defendant any thing for him to say, "I have given 10,000*l.* for it to the vendor, and although it turns out he had no right to sell, yet the plaintiff ought not to recover in this action, without first paying me the amount of the purchase money." From a parity of reasoning, the Lord of the Manor, his ancestors, or the ancestors of those under whom he claims, have unjustly sold that which they had no power to sell, and therefore their title is bad, and they must abide the consequences.

A third reason assigned is, the very great expence Lords of Manors are at in preserving game; and a paragraph of Lord Suffield's is eagerly caught at, in which his Lordship states, "that few persons are aware of the sum it costs to rear pheasants: I have seen," says his Lordship, "a very accurate calculation made upon a series of years of one of the best stocked estates in the kingdom, and, computing at the very lowest rate, it appears that every pheasant *killed* thereon cost the proprietor 20*s.*

And in the preceding page his Lordship gives "an account of corn delivered at ——— for pheasants," by which it appears that in 1824 the value of that corn for one year was 141*l.* 6*s.* 10*d.*

From this statement the honourable gentleman contends, "that if the proprietor attempts to undersell the poacher, supposing game to be sold at the same rate at which it stands at this day as between poulterer and poacher, he, the proprietor, will lose 19*s.* a head upon every item of his dealings, and this on the very lowest rate of computation."

But it should be remembered that if 141*l.* 6*s.* 10*d.* was expended in corn on pheasants in the course of a year, it must be obvious that

part of that corn only was consumed by such as *were killed*, which might be only a very small proportion; the remainder ought to be charged to the value of those pheasants which were left in the preserve; and as Lord Suffield only made his calculations on such as were *killed*, not taking into the account the stock remaining on hand, the honourable gentleman should have formed his calculations accordingly.

A merchant, in taking stock, will take an account, not only of what he has sold, but on that part of it which is left on hand, and from this account form his calculations of profit and loss.

But here another important consideration occurs, both of a public and private nature.

It appears that, for the year 1824, corn to the value of 141*l.* and upwards was delivered and expended on *one* estate for the support of the pheasants.* Now we know, that it is only in very severe weather in the winter months, that it is in general necessary to feed pheasants, the remaining part of the year they take care of themselves from the produce of the neighbouring lands. Supposing then that there are one thousand game preservers in the kingdom, of this description, and to this extent, the value of the corn annually delivered for their use, and for the purpose of preserving "an amusement" to a certain description of persons, would amount to the enormous sum of 141,000*l.* (to say nothing of what they have derived from other sources, which may be calculated at the produce of one acre in seven or eight,) which, estimated at 10*l.* per load, would amount to 14,100 loads in one year, a sufficient quantity perhaps for the support of an equal number of persons!

I may here observe upon a passage in the same author's work, in which he says "that search-warrants and other such accompaniments of the new and indulgent code of laws, must, of course, be confined in operation to those who take the benefit of the statute, and who subject themselves, by accepting licences, to the exclusive privilege of inquisitorial visitations; *the larders of our land-owners and Lords of Manors, let us hope, will still be sacred, untouched, and unquestioned*, or some may be led to think they have paid too dearly for the restoration of those rights and privileges, so long unjustly withheld from their forefathers, of selling game."

Now from the evidence given before the Committee of the House of Commons, and from the statements made by Lord Suffield, (neither of which are denied by the honourable gentlemen, except that a *doubt* is expressed of the fact, and that he cannot give credit to the supposition of gentlemen selling what it has been their pride to give away,†) it appears that the Lords of Manors,

* It appears from the same account, that in the preceding year, 144*l.* 18*s.* was expended for the same purpose.

† This scepticism is a little singular after reading the evidence given before the Committees of the House of Commons, and the honourable gentleman's declaration "of his intention of profiting by them;" but what renders it still

Members of Parliament, magistrates, &c. are as much, or more implicated in the breach of the laws, as poachers, higlers, &c.; and till their characters are rescued from this imputation, it would be difficult to see the justice or reason of exempting their larders from the "inquisitorial visitation," more than any other person's; and should the case be otherwise, we should again have to complain, that there would be legislative enactments in one manner for the rich, and another for the poor.

I come now to a part of the honourable gentleman's reasoning, which I presume he intended as an excuse for gentlemen and Lords of Manors violating the laws against selling game.

He tells us that "the prohibition in respect of selling game, which has never been complained of by the class on whom the prohibition acts, is a *restraint imposed on the opulent in consideration of the necessities and frailties of the poor.*"

"It is a *restraining* law, intended to operate in a great degree to the *public welfare*,† and therefore not inconsistent with the full enjoyment of that which is a man's own, according to the true principles of civil liberty."

In other words, and if I understand this passage correctly, it is said that this is a prohibition on the rich, not only in consideration of the necessities and frailties, and for the benefit of the poor, but for the public welfare; and yet we have unquestionable evidence that this prohibition is continually violated by those very persons (to the amount of one-third of the game illegally supplied to the London market) against whom this law was intended to operate; and that neither the necessities, the frailties, or the benefit of the poor, or even the public welfare, are inducements strong enough to deter even Members of Parliament, Magistrates, or Lords of Manors, from the infraction of these laws.

If I have mistaken the author's meaning in this passage, I owe him an apology; but if it was intended as an excuse, or a justification of these practices, it certainly is one of the most awkward that could possibly have been thought of.

I will trespass but a little longer on the reader's patience by farther quotations, as I flatter myself that enough (and perhaps more than enough) has been shown to prove the necessity of an amelio-

more singular is, that he gives the evidence of one of the witnesses in support of one part of his doctrine, and relies much on that evidence, and, in another part of his work, he states that this witness gives the following answer to the following question,

"Q. You are in the habit of receiving game from gamekeepers?"

The witness replies—"*From the gentlemen themselves.* I never made a contract with a gamekeeper in my life."—*Vide* Reconsiderations, p. 29.

† I must here be permitted to doubt whether any such intention ever operated upon the minds of any of the framers of this or any other statute relative to game. I am more inclined to think that private advantage, and not public welfare, has been their general feeling from the earliest period to the present time.

ration, at least, if not a total repeal, of all the present Game Laws; and should it be asked, How is it, that with all these imperfections, anomalies, tyrannical provisions, inoperative clauses, and unconstitutional enactments, these statutes should for so many years be allowed to disgrace our statute book, the best, and perhaps the truest reason, is given by my Lord Suffield, which I shall here give in his own words.

"Among the evils created by the old laws," says his Lordship, "perhaps one of the greatest, because it is one which I fear essentially impedes its alteration 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 and 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 a dispute on the subject,—'An Englishman ought never to surrender his rights.' 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 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 distinguishes 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 usually 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 and different inte-

rests 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 preserver's darling rights in Yorkshire: each man will be pertinacious of his right, and make some clause reserving to himself its continual enjoyment, the *sine qua non* of his support to 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 the 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 a very good English principle, although mistaken in their application of it, and other sporting senators, *mindful of their own amusements only, and therefore actuated by no principle at all*, object to any 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."

I have thus endeavoured to point out, and to draw the attention of others, to the enormities of the present system of the Game Laws. Those enormities must be obvious to every unprejudiced mind, and cry aloud for an alteration and a return to first principles. The mischievous consequences of a departure from them in this case (as in every other), is, I think, sufficiently demonstrated. Lord Suffield has, I think, rationally proved why these enormities have so long existed, and has given us some reason to fear they will still continue. But as almost every poison

* His lordship, in another part of his work, p. 69, gives a strong proof of this feeling. He there states the fact, of a gentleman, to whom the public is much indebted for his laborious efforts during the last session of Parliament to amend the Game Laws, wishing for a clause to be introduced, declaring that "although no reservation is made by a landlord in the lease which has been granted to his tenant, respecting the right to the game upon a farm, that right shall be vested in the owner, and not the occupier." Exactly the reverse of this his lordship trusts he has proved to be consistent with the whole tenor and practice of our laws from the time of Canute; exactly the reverse of this appears to him to be consistent with moral justice, and exactly the reverse appears to him to be in conformity with the object of the bill of which this most extraordinary clause did form a part. I will only add, that if any beneficial object had been intended by the bill, the introduction of such a clause must have rendered it worse than nugatory; for in that case the game would have been virtually vested in the owner by legislative enactment, and considerably weakened even the present rights of the public.

† I apprehend his Lordship meant 1816.

has its antidote, and as the history of this country clearly proves every excess of arbitrary power will create and engender its own remedy, though slow, yet (sure, I will still hope the period is not far distant, when the voice of reason, justice, morality, and good sense, will predominate over that of tyranny, oppression, injustice, and covetousness; and that, supported by a sovereign, whose duty (and I firmly believe whose pride and happiness) it is to support and preserve the true and genuine and equal liberties of his subjects, and backed by his ministers, (some of whom have so lately and so justly satirized and condemned the absurdity and immorality of these laws,) that they will shortly be repealed, or at least most materially modified.

CHAPTER XII.

HAVING trespassed on the patience and time of the reader for so many pages, and appearing under an assumed character, desirous only of concealing his *name*, with which he conceives the reader has little to do, and perhaps cares less about; and as it is the merit of the *work*, and not of the *author*, that is submitted to his consideration, it can be of little consequence whether the writer be a Peer or a Peasant; he is, however, willing to inform them of as much as he apprehends the reader may wish to know of him.

The writer, then, of these "Observations" is anxious that neither his motives nor actions should be misinterpreted or misconstrued. He is fully aware he is treading on a mine ready to be exploded by hundreds of hands, whose privileges he may be supposed to have invaded, or whose imaginary rights he may have disputed; all eager to apply the match, and sacrifice him to their general and individual feelings. But before they so immolate him, in justice to himself, and by way of appeal to those who may not exactly agree with him, either on general principles or particular facts, he will lay before them not only his motives for writing, but, in addition to the many already stated, those other sources from whence he derived his information, and from which he deduces his reasonings; and when they know them, he will trust to the candour and liberality of the *true* and *genuine* sons of the *chase* and the *trigger*, leaving it to the more degenerate race of sportsmen and the aristocratic game-preserver to adhere to the opinions inculcated against every opposer of a system at best "a bastard slip of the forest laws."

They must know, then, that he has not been (as might be supposed) a disappointed man, who has been curtailed in his amusements, either in hunting or shooting; but on the contrary, has enjoyed, and if he pleases, can still enjoy both, in its greatest pleni-

tude. He has been in the habit of hunting with some of the fleetest and staunchest packs of hounds in the south and west of England, and in his day has been esteemed one of the boldest riders amongst them; he has occasionally taken to the hounds, with whose names, their merits and demerits, he has been well acquainted,—knew the truth or falsehood of their challenge, and has most generally succeeded in taking the object of pursuit, whether it was a fox or a hare.

He has also been well acquainted with "the trigger," and has had to boast of as good dogs and gun as most people, with always a good country to shoot over without molestation. Under these circumstances, he cannot be said to have acted under the impression, or have been influenced by disappointment or chagrin; but on the contrary, he has every reason to be grateful for the very many kindnesses he has received in the course of his sporting life, both from strangers and friends.

It is a trite observation, that if a man wishes to make *friends*, he must *hunt*, as every owner of a pack of hounds is glad to see what is called "a good field." And the hunter becomes acquainted with a number of characters, and gets into society which may be most serviceable or prejudicial to him, according to the nature of his education, habits, and pursuits. On the contrary, if he wishes to make enemies, he must *shoot*, as most persons wish to have as few sportsmen of that description as possible.

But the author of these Observations has to repeat, with great satisfaction, that he has not only had, and still has, plenty of country to shoot over; but has always been received, both by the owner and occupier of the land, in the most friendly and hospitable manner: for in shooting, to which these observations more particularly refer, he has frequently gone to some farmer's, on whose lands he had been sporting, taken his luncheon, or perhaps his dinner, and left the game, or at least a part of it, with the person on whose land it was killed. This was a gratification to his host, conferred at a trifling expence to himself, for, as before has been observed, to a true sportsman the game itself is nothing, the pleasure of taking it is every thing. Thus has he always been welcome, both on his land, and at his table, and many times has been told by the farmer of coveys, or forms, which others knew nothing of. These visits have also made him acquainted with the complaints of his host, of his hardships in having his corn destroyed, and his hedges broken, by his landlord, his friends, his servants, and even strangers, while he (the farmer) dared not pursue the same object even on his own land.

They have also given him an opportunity of knowing the destruction of game in embryo, and of affording him ocular demonstration of the proof of it,* as well as the motives which have influenced the parties in such destruction. He has known also something of the conduct of gamekeepers and poachers; and what sportsman does not?

* The writer once saw 130 pheasant's eggs taken by the farmer and his servants from his own fields, which they said they used in their domestic affairs and sold the hen's eggs.

His other avocations in life have enabled (nay compelled) him to witness the manner in which the Game Laws have been administered, as well as to study them with no common degree of attention. He has witnessed the evils resulting from them, and their tendency to destroy, or at least to violate, every constitutional and natural right of the subject, and at the same time to weaken, if not to annihilate, the moral feeling of every branch of society; being the sure and certain means to create crime, increase immorality, perfect the neglect (if not the total abandonment) of every religious and moral feeling, as well as to destroy most effectually the end for which they were intended, viz. the preservation of the game; and he cannot conceive a system of any kind more calculated to destroy the end proposed, than the present legislative provisions and operations of the Game Laws.*

If he is mistaken in his ideas, either as to general principles, or the particular application of them, he has this consolation, that he has fallen into the same error with the most eminent men of both ancient and modern times; such as Justinian, Puffendorffe, Rapin, Coke, Blackstone, Willis, Eldon, Lauderdale, Dacre, Knox, Scarlett,† as well as with very many others, who have made these laws the subjects of their reprobation and satire,‡ and he is quite content to be classed with such characters, and to share with them the opprobrium of his ideas; opposed to them are only two or three (though great) far less eminent authorities, whose opposition is so evidently laboured that they rather strengthen than weaken, much less destroy his opinion.

* Could it for a moment be supposed possible, that the legislature would ever pass an act "for the encouragement of vice and immorality," I would humbly submit to them the following, as the title and outline of the Bill; any imperfections which may be found in it, may be amended in a Committee of either house; if that Committee should happen to be composed of "strict Game-preservers."

"An Act for the greater encouragement of Vice and Immorality, and for the more effectual Propagation of Crime and Irreligion.

"Whereas the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, have, with deep regret and profound sorrow, observed the slow progress of Vice and Immorality, and the small increase of crime and irreligion, and greatly fearing the utter extinction thereof, unless some effectual and permanent remedy be applied to prevent the same: To prevent which evil, and to encourage the speedy growth of poaching, and other crimes connected therewith,

"May it be enacted, and be it enacted by, &c. by and with the consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same; That from and after the passing of this act, all and every the laws now in force relating to the game of the United Kingdom, with all their provisions, pains, and penalties, shall be, and are hereby declared to be PERPETUAL!!"

Or, as a surer means of obtaining the end, increase the penalties.

† And he may now add "Suffield."

‡ *Vide* Miss Hamilton's Hindoo Letters, cum multis aliis.

But as an old sportsman, he would wish with his brother sportsman (Daniel); as an Englishman, feeling that the solidity and happiness of the throne and the people almost wholly depends on an equal administration of the laws, and for the sake of dispensing and increasing sport to all, he would wish, with most of the eminent characters he has before named, that a most material alteration in these laws may be speedily effected, and that the principles recommended by the report of the Committee of the House of Commons in 1816, should be the basis of such alterations.

Let the advocates of the present system look to the markets of France and Spain,* where there are no Game Laws, and where game is exposed to sale like any other commodity, and is considered the property of the occupiers of the land, and say if such measures lessen the quantity of game. And if there is enough in those countries for the occupiers to bring to market, nay, even for exportation to other countries, it is a strong presumption there must be plenty for the amusement of the aristocratic part of society; at all events it will be incumbent on the parties who oppose this hypothesis, to prove that the same causes will not produce the same effects in England as in France, Italy, or Spain. As it is at present, we, as a nation boasting of our freedom, are the ridicule of every other, when these laws are urged against us. With the boast of freedom in our mouths, and the Game Laws staring us in the face, we stand, not only the laughing-stock of the Continent, but of Europe and America; and are even the subjects of satire to numberless authors of our own country.

To endeavour to get these evils corrected, to point out the inconsistencies, cruelty, injustice, absurdity, and immoral tendency of the Game Laws (for to all these charges are they subject), and to draw the attention of abler heads than his own; to prove the inadequacy of the means to the end proposed, as well as to increase the amusement of the sportsman, decrease the number of poachers, the quantity of crime, the disproportion of the punishment when compared with the offence; to draw into one focus the opinions of many eminent characters on these laws, and to obtain a consideration of this important subject generally, has been the object of the writer; and being aware that there are facts stated, and arguments used, which may be disapproved by some, or not admitted by many, he means not to quarrel with any one who may think differently from him,

* A very intelligent friend of the author's, who has held a high and confidential military situation, both in France and Italy, informed him that in both these countries, any man may shoot that will pay about 30*s.* a year for a licence. On uncultivated land, marshes, commons, &c. no permission is required. There are not a dozen land-owners in Italy, who preserve any part of their game, which is every where abundant. At Rome a hare may be purchased in the market at 1*s.* 6*d.*; a couple of woodcocks 1*s.*; wild boar at 6*d.* per lb. Both in France and Italy, many thousand peasants gain an honest livelihood by killing and providing the markets with game, principally consisting of wild boars, deer, hares, woodcocks, snipes, and waterfowl.

as he is willing most cheerfully to allow to others what he claims for himself,—the freedom of opinion. He can only say, he has bestowed many years' attention to the laws on the subject, and the manner in which those laws have been administered; he has watched their progressive increase and consequences, both to the sportsman and society; and the result is, the conviction, that they are not only calculated to destroy the object they were intended to effect, inasmuch as those laws and their penalties do not preserve the game, but as they have increased, crime has increased in the same or a greater ratio, and therefore they not only tend to, but actually promote, great national and individual injury.

If he has now and then been betrayed into a warmth or severity of expression, or one that may be considered stronger than the subject required, he trusts to the liberality and good nature of his countrymen to overlook a warmth natural to an Englishman, while discussing the liberties of his country, or any real or imaginary violation of them; his zeal for the preservation of those liberties is the parent of the offence, and for the parent's sake its offspring hopes for pardon and indulgence; and if he has erred, it has been an error of judgment, and one which he trusts will meet with some excuse, when it is remembered he shares it with, and it is supported and sanctioned by, the very high authorities he has before produced.

He disavows personal controversy, or the slightest injury to personal feelings; and when he has differed in opinion with any, he trusts he has done it in a manly way—he has stated the grounds of difference, and has left it to the reader to decide which is right, and it is probable the decision may be against himself and his opinions; but he must again repeat, he anxiously hopes the subject will be dispassionately, and with an utter disregard to private interest or selfish feelings, but with a rigid attention to constitutional principles, discussed by persons who are better qualified than himself to do so, and who are, or who will make themselves, acquainted with the origin, principles, and practice of the present system, and the present state of society arising out of it; for without such knowledge, they must be incompetent to the task.

He neither invites nor shuns criticism; he claims and exercises the liberty of an Englishman, in discussing and delivering his opinion on the laws by which he is governed: if he should provoke discussion from others, one of his objects will be obtained; for these laws only want to be generally known to be generally detested, at least by the liberal and humane part of society.

Should such discussion procure a result favourable to the general principles of constitutional freedom, the decrease of crime, and the increase of happiness to his fellow-creatures and brother Englishmen; should any *one* of these objects be obtained, he will not have written in vain.

APPENDIX.

As frequent allusions have been made to the forest-laws of Canute, King John, and Henry III., the author has given a translation of each.

CANUTUS King, with the advice of my nobility,* do make and establish that both peace and justice be done to all the Churches of England, and that every offender shall suffer according to his quality and the manner of his offence.

1. There shall be from henceforth four out of the best of the freemen, who have their accustomed rights secure, (whom the English call pœgened) constituted in every province in my kingdom, to distribute justice, together with due punishment as to the matters of the forest, to all my people, as well English as Danish, throughout my whole kingdom of England, which four we think fit to call the chief men of the forest.†

2. There shall be under every one of these, four out of the middle sort of men (whom the English call lespegend, and the Danes young men) placed, who shall take upon them the care and charge as well of the vert as the venison.‡

3. Again, under every one of these, shall be two of the meaner sort of men (whom the English call tine men), these shall take care of the venison and vert by night, and undergo other servile offices.§

* Canute the Dane instituted what are called the Forest Laws, or at least I am not aware of any written evidence on the subject farther back than the time of this monarch; but, whatever censure may be due to regulations which at the present time would be insupportable, must not be laid solely to the account of the Dane, as the nobility were despotic on their own estates, and ruled not only more absolutely but more tyrannically than the King himself. Thus, while various forests were appropriated to the use of royalty, the nobility, in imitation of the monarch, had each either his forest, chase, park, or purlieu, over which he exercised unbounded authority; in fact, these forest laws appear to have been instituted in compliance rather with the wish of his nobility than from the spontaneous inclination of Canute. The first charter of the forest, it seems, was granted by this monarch at Winchester, in the year 1062. *Sed vid.* note in p. 36.

† Now called verderers. ‡ Now called regarders.

§ Now called foresters, or keepers.

4. Also every one of the chief men (or verderers) shall have every year out of our ward (which the English call michin) two horses; the one with a saddle, the other without; one sword, five lances, one head-piece, one shield, and 200 shillings of silver.

5. Every one of the middle sort of men (or regarders), one horse, one lance, one shield, and sixty shillings of silver.

6. Every one of the meaner sort of men (or foresters), one lance, one cross-bow, and fifteen shillings of silver.

7. That all of them, as well chief men (or verderers), middle sort of men (or regarders), and meaner sort of men (or foresters), shall be free and quit from all provincial summons and popular pleas (which the English call hundred laghc), and from all taxes concerning the wars or weapons (which the English call warscot), and from all foreign plaints.

8. That the causes of the middle sort of men (or regarders), and the meaner sort of men (or foresters), and their corrections, as well criminal as civil, shall be adjudged and decided by the provident wisdom and discretion of the chief men, or verderers. But the enormities of the chief men, or verderers, if any such shall be, we ourselves will cause to be punished according to our royal displeasure.

9. These four chief men (or verderers) shall have a royal power (saving in our presence); and four times in the year the general demonstrations of the forest and the forfeitures of vert and venison (which the English call mechehunt), where they shall all of them hold claim or challenge of any thing touching the forest, and shall go to a threefold judgment (which the English call gang fordell), and thus the threefold judgment shall be obtained. The party shall take with him five others, and he himself shall make the sixth, and so by swearing he shall obtain a threefold judgment, or triple oath; but the purgation of fire or fiery ordeal shall be by no means admitted, unless in such cases where the naked truth cannot otherwise be found out.

10. Whosoever shall offer any violence to the chief men, or verderers of my forest, if he be free, he shall lose his liberty, and all that he hath; and if he be a villain, his right hand shall be cut off.

11. If either of them shall offend again in like case, he shall be guilty of death.

12. In the like manner, if any person shall contend in suit with one of the chief men, or verderers, he shall forfeit to the King as much as he is worth.

13. If any person shall break the peace before the middle sort of men, or regarders of the forest, he shall pay to the King ten shillings.

14. If any person shall be taken offending in the forest, he shall suffer punishment according to the manner and quality of his offence.

15. The punishment and forfeiture shall not be one and the

same of a freeman and one that is not free; of a master and of a servant; of one that is known and one that is not known: nor shall the management of causes, either civil or criminal, of the beasts of the forest, and of the royal beasts of the vert and of the venison, be one and the same; for the *crime of hunting* has been of old reputed (*and not undeservedly*) amongst the *greatest* offences that could be committed in the forest; but that of vert is esteemed so little and trivial, (except as it is a breach of our royal chace) that our constitution of forest laws doth scarcely take notice of it; nevertheless, he that offends therein is guilty of one of the trespasses of the forest.

16. If any freeman shall course or hunt a beast of the forest, either *casually* or wilfully, so that by the swiftness of the course the beast doth pant, and is put out of breath, such freeman shall forfeit ten shillings; and if he be not a freeman, he shall forfeit double; but if he be a bondsman, *he shall lose his skin.*

17. But if a royal beast be killed by any of them, the freeman shall lose his freedom, the other his liberty, and the bondsman his life.

18. My bishops, abbots, and barons, shall not be challenged for hunting in my forests, except they kill royal beasts; and if they do, they shall make satisfaction according to my pleasure, and without knowing the certainty of the forfeiture.

19. I will that every *freeman may, as he pleaseth, have and take venison or vert upon his own grounds, or in his own field, being out of my chace*; and let all men avoid and forbear taking my venison or vert in every place where it is mine.*

THE CHARTER OF THE FORESTS,†

AS GRANTED BY KING JOHN TO HIS SUBJECTS IN THE YEAR 1215.‡

John, by the grace of God King of England, &c. Know ye, that for the honour of God, and the health of our soul, and the souls of our ancestors and successors, and for the exaltation of Holy

* I have never yet been able to see the forest laws of William I., but it seems agreed by all authors that they were not only much more oppressive but enforced with much more rigour than those of Canute. *Vide* 2d Black. 415, *et seq.* Rapin, vol. i.

† The forests belonged originally to the crown, and the king granted several parts and parcels to private men, who had grubbed them up, and made them arable or pasture; but yet all that was thus grubbed was still called forests: these forests belonging to the king as his own demesnes, or as the sovereign lord, were a continual source of vexatious suits, as well against those which held them of the king, as against the neighbouring freemen, under pretence of the rights of the crown.

‡ As it is found in Matthew Paris, 250.

Church, and for the reformation of our kingdom, we have of our free and good will, given and granted for us and our heirs these liberties hereafter specified to be had and observed in our kingdom of England for ever.

Imprimis.—All the forests made by our grandfather King Henry, shall be viewed by honest and lawful men, and if he turned any other than his own proper woods into forests, to the damage of him whose wood it was, it shall forthwith be laid out again, and disafforested. And if he turned his own woods into forests they shall remain so, saving the common of pasture to such as were formerly wont to have it.

2. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest upon summons, but such as are impleaded, or are pledges for any that were impleaded for something concerning the forests.* All woods that have been taken into forests (*by King Richard our brother*)† in our time shall forthwith be laid out again; and the like shall be done with the rivers that have been taken or fenced in by us during our reign.

3. The archbishops, bishops, abbots, earls, barons, knights, and free tenants, who have woods in any forests, shall have their woods as they had them at the time of the first coronation of our grandfather King Henry, so as they shall be discharged for ever of all *purprestures*,‡ wastes, and *assarts* § made in those woods after that time to the beginning of the second year of our coronation; and those who, for the time to come, shall make waste, purpresture, or assart, in those woods without our licence, shall answer for them.‖

4. Our inspectors or viewers shall go through the forests to make a view, as it was wont to be at the time of the first coronation of our said grandfather King Henry, and not otherwise.

5. The inquisition or view of lawing ¶ of dogs, which are kept within the forests, for the future shall be when the view is made, viz. every three years, and then shall be done by the view and testimony of lawful men, and not otherwise; and he whose dogs at such time shall be found unlawed, shall be punished three shillings. And for the future, no one shall be taken for lawing, and such lawing shall be according to the common assize, namely the three claws of the dog's fore-foot shall be cut off, or the ball of the foot taken out, and from henceforward, dogs shall not be lawed unless in such places where they were wont to be lawed in the time of King Henry our grandfather.

* *Vide* notes on this in Rap. Hist. of Eng. vol. i. 290 and 294, fol. ed.

† These words are introduced in a note by Rapin. Ibid.

‡ Encroachments upon the king's land.

§ Grubbing up woods, and making it arable without licence.

‖ Every article of this charter is clear evidence how much the subject was oppressed under pretence of preserving the royal forests. Rap. vol. i. 294.

¶ Cutting off their claws, &c. *Vide* ante.

6. No forester or *beadle** for the future shall make any *ale shots*,† or collect sheaves of corn or oats, or other grain, or lambs, or pigs, nor shall make any gathering whatsoever, but by the view and oath of twelve inspectors. And when they make their view, so many foresters shall be appointed to keep the forests as they shall reasonably think sufficient.

7. No swain-mote for the time to come shall be holden in our kingdom oftener than thrice a-year, that is to say, in the beginning of fifteen days before Michaelmas, when the agisters come to agist the demesne woods; and about the feast of Saint Martin, when our agisters are to receive their *pannage*;‡ and in those two swain-motes, the foresters, verderers, and agisters, shall meet, and no other by compulsion or distress; and the third swain-mote shall be holden in the beginning of the fifteen days before the feast of St. John the Baptist, concerning the fawning of our does; and at this swain-mote shall meet the foresters and verderers, and no others shall be compelled to be there.

8. And furthermore every forty days throughout the year, the verderers and foresters shall meet to view the attachments of the forests, as well of *vert*§ as *venison*, by presentment of the foresters themselves; and those who committed offences shall be forced to appear before them; but the aforesaid swain-motes shall be holden but in such counties as they were wont to be holden.

9. Every freeman shall agist‖ his wood in the forest at his pleasure, and shall receive his pannage.

10. We grant also that every freeman may drive his hogs through our demesne woods freely, and without impediment, and may agist them in his own woods, or elsewhere as he will: and if the hogs of any freeman shall remain one night in our forests, he shall not be troubled so as to lose any thing for it.

11. No man for the time to come shall lose life or limb for taking our venison; but if any one be seized and convicted of taking venison, he shall be grievously fined, if he have withal to pay; and if he has not, he shall lie in our prison a year and a day; and if after that time he can find sureties, he shall be released; if not, he shall abjure our realm of England.

12. It shall be lawful for every archbishop, bishop, earl, or baron, coming to us by our command, and passing through our forest, to take one or two deer by the view of the forester, if present; if not, he shall cause a horn to be sounded, lest he should seem to steal them, and in their return it shall be lawful for them to do the same thing.

13. Every freeman for the future may erect a mill in his own wood, or upon his own land, which he hath in the forest; or make

* Bailiff of the forest. † Taking ale to excuse the offender.
‡ Money for the feeding of hogs with masts in the king's forests.
§ The offences that have been committed in cutting wood, or killing deer.
‖ Taking in his neighbour's cattle to feed.

a warren, or pond, or marl pit, or ditch, or turn it into arable without the covert in the arable land, so as it be not to the detriment of his neighbour.

14. Every freeman may have in his woods the ayries of hawks, of spar-hawks, falcons, eagles, and herons, and they shall have likewise the honey which shall be found in their woods.

15. No forester for the future, who is not a forester in fee, paying us rent for his office, shall take cheminage,* that is to say, for every cart two pence for half a year, and for the other half year two pence; and for a horse that carries burdens, for half a year a halfpenny, and for the other half year a halfpenny; and then only of those who come as buyers out of their bailiwick to buy underwood, timber, bark, or charcoal, to carry it to sell in other places where they will; and for the time to come there shall be no cheminage taken for any other cart, or carriage-horse, unless in those places where anciently it was wont and ought to be taken; but they who carry wood, bark, or coal, upon their backs to sell, though they get their livelihood by it, shall, for the future, pay no cheminage; but for passage through the woods of other men no cheminage shall be given to our foresters, but only in our own woods.

16. All persons outlawed for offences committed in our forests from the time of King Henry our grandfather until our first coronation, may reverse their outlawries, without impediment, but shall find pledges, that for the future they will not forfeit to us† in our forest.

17. No castellan or other person shall hold pleas of the forest, whether concerning vert or venison; but every forester in fee shall attach pleas of the forest,‡ as well concerning vert as venison; and shall present the pleas or offences to the verderers of the several counties; and when they shall be enrolled and sealed under the seals of the verderers, they shall be presented to the chief forester, when he shall come into those parts to hold pleas of the forest, and shall be determined before him.

18. And all the customs and liberties aforesaid, which we have granted to be holden in our kingdom, as much as belongs to us, towards our vassals, all of our kingdom, as well laicks as clerks, shall observe as much as belongs to them towards their vassals.§

* That is, money for passing through the forest.
† Commit no offence. Dr. Brady.
‡ May seize the body or goods of the offender to make them appear.
§ There is no original of this charter extant, nor any copy older than the 1st Hen. III. Rapin's Hist. Eng. vol. i. p. 296.

CHARTÆ FORESTÆ,

MADE AT WESTMINSTER, 10th FEBRUARY, ANNO 9 HENRY III. AND ANNO DOM. 1225. AND CONFIRMED ANNO 28 EDWARD I. ANN. DOM. 1299.

EDWARD, by the grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all to whom these presents shall come, sendeth greeting. We have seen the charter of the Lord Henry our father, some time King of England, concerning the forests, in these words: "Henry, by the grace of God King of England, Lord of Ireland, Duke of Normandy and of Guyan, &c." (as in the beginning of the Great Charter.)

CHAPTER I.

Certain grounds shall be disafforested.

First, we will that all forests which King Henry our grandfather afforested, shall be viewed by good and lawful men. And if he have made forest of any other wood more than of his own demesne, whereby the demesnor of the wood hath hurt, forthwith it shall be disafforested; and if he have made forest of his own wood, then it shall remain forest. Saving the common of herbage and of other things in the same forests to them which before were accustomed to have the same.

CHAPTER II.

Who are bound to the Summons of the forest.

Men that dwell out of the forest from henceforth shall not come before the justicers of our forests by common summons, unless they be impleaded there, or be sureties for some others that were attached for the forest.

CHAPTER III.

Certain woods made forests shall be disafforested.

All woods which have been made forests by King Richard our uncle, or by King John our father, until our first coronation, shall be forthwith disafforested, unless it be our demesne wood.

CHAPTER IV.

No purpresture, waste, or assert, shall be made in forests.

All archbishops, bishops, abbots, priors, earls, barons, knights, and other our freeholders, which have their woods in forests, shall have their woods as they had them at the first coronation of King Henry our grandfather, so that they shall be quit for ever of all purprestures, wastes, and asserts, made in those woods after that time, until the beginning of the second year of our coronation

And those that from henceforth do make purpresture, without our licence, or waste, or assert in the same, shall answer unto us for the same wastes, purprestures, and asserts.

CHAPTER V.

When Rangers shall make their range in the forests.

Our rangers shall go through the forests to make range as it hath been accustomed at the time of the first coronation of King Henry our grandfather, and not otherwise.

CHAPTER VI.

Lawing of Dogs in the forests.

The enquiry or view of dogs within our forests shall be made from henceforth when the range is made, that is to say, from three year to three year, and then it shall be done by the view and testimony of lawful men, and not otherwise. And he whose dog is not lawed, and so found, shall pay for his amerciament three shillings: and from henceforth, no ox shall be taken for lawing of dogs, and such lawing shall be done by the assize commonly used, that is to say, the three claws of the fore foot shall be cut off by the skin; but from henceforth, such lawing of dogs shall not be, but in places where it hath been accustomed from the time of the first coronation of the aforesaid King Henry our grandfather.

CHAPTER VII.

In what only cases gathering shall be in the forest.

No forester or beadle from henceforth shall make scotal or gather garb or oats, or any corn, lamb, or pig, nor shall make any gathering but by the sight and upon the view of the twelve rangers, when they shall make their range;—so many foresters shall be assigned to the keeping of the forests, as reasonably shall seem sufficient for the keeping of the same.

CHAPTER VIII.

When Swanimotes shall be kept, and who shall repair to them.

No swanimote from henceforth shall be kept within this our realm, but thrice in the year, viz. the beginning of fifteen days afore Michaelmas, when that our gest-takers or walkers of our woods come together to take agistment in our demesne woods; and about the feast of Saint Martin, in the winter, when that our gest-takers shall receive our pawnage,—and to these two swanimotes shall come together, our foresters, verderers, gest-takers, and none other by distress;—and the third swanimote shall be kept in the beginning of fifteen days before the feast of Saint John Baptist, when that our gest-takers do meet to hunt our deer. And at this swanimote shall meet our foresters, verderers, and none others by distress. Moreover, every forty days through the year, our foresters and verderers shall meet to see the attachments of the forest, as well for green hue as for hunting, by the presentment of

the same foresters and before them attached. And the said swanimotes shall not be kept but within the counties in which they have used to be kept.

CHAPTER IX.

Who may take Agistment and Pawnage in forests.

Every freeman may agist his own wood within our forest at his pleasure, and shall take his pawnage; also we do grant that every freeman may drive his swine freely without impediment through our demesne woods, for to agist them in their own woods, or elsewhere they will; and if the swine of any freeman lie one night within our forests, there shall be no occasion taken thereof, whereby he may lose any thing of his own.

CHAPTER X.

The Punishment for killing the King's Deer.

No man from henceforth shall lose either life or member for killing of our deer. But if any man be taken and convict for taking of our venison, he shall make a grievous fine, if he have any thing whereof: and if he have nothing to lose, he shall be imprisoned a year and a day, and after the year and a day expired, if he can find sufficient sureties he shall be delivered, and if not, he shall abjure the realm of England.

CHAPTER XI.

A Nobleman may kill a Deer in the Forest.

Whatsoever archbishop, bishop, earl, or baron, coming to us at our commandment, passing by our forests, it shall be lawful for him to take and kill one or two of our deer by view of our forester, (if he be present,) or else he shall cause one to blow a horn for him, that he seem not to steal our deer; and likewise they shall do, returning from us, as it is aforesaid.

CHAPTER XII.

How a Freeman may use his Land in the Forest.

Every freeman from henceforth, without danger, shall make in his own wood, or in his land, or in his water, which he hath within our forest, mills, springs, pools, marl pits, dikes, or arable ground without enclosing that arable ground, so that it be not to the annoyance of any of his neighbours.

CHAPTER XIII.

How a Freeman may use his Land in the Forest.

Every freeman shall have within his own woods ayries of hawks, sparrow-hawks, falcons, eagles, and herons; and shall have also the honey that is found within his woods.

CHAPTER XIV.

Who may take Chiminage or Toll in a Forest, for what cause, and how much.

No forester from henceforth, which is not forester in fee, paying to us ferm for his bailiwick, shall take any chiminage or toll within his bailiwick; but a forester in fee, paying us ferm for his bailiwick, shall take chiminage; that is to say, for carriage by cart the half-year, two pence; and for another half-year, two pence; for a horse that beareth loads, every half-year, an halfpenny; and by another half-year, *half a penny;* and but of those only that come as merchants through his bailiwick by licence, to buy bushes, timber, bark, coal, and to sell it again at their pleasure, but for none other carriage by cart, chiminage shall be taken; nor chiminage shall not be taken, but in such places only where it hath been used to be. Those which bear upon their backs bushment, bark, or coal, to sell, though it be their living, shall pay no chiminage to our foresters, except they take it within our demesne woods.

CHAPTER XV.

A Pardon of Outlaws of Trespass within the Forests.

All that be outlawed for the forest only, since the time of King Henry, our grandfather, until our first coronation, shall come to our peace without let, and shall find to us sureties, that from henceforth they shall not trespass unto us within our forest.

CHAPTER XVI.

How Plea of the Forest shall be holden.

No constable, castellan, or bailiff, shall hold plea of forest, neither for greenhue nor hunting: but every forester in fee shall make attachment for pleas of forest, as well for greenhue as hunting; and shall present them to the verderers of the provinces; and when they be enrolled and enclosed under the seals of the verderers, they shall be presented to our chief-justices of our forests, when they shall come into those parts to hold the pleas of the forest, and before them they shall be determined. And these liberties of the forest We have granted to all men, saving to archbishops, bishops, abbots, priors, earls, barons, knights, and to other persons, as well spiritual as temporal, Templars, Hospitallers, their liberties and free customs, as well within the forest as without, and in warrens and other places which they have had.

All these liberties and customs We, &c. (as in the great charter). And we do confirm and ratify these gifts, &c.

The following short account of the Forest Laws, and the two Charters of the Forest, may not be thought irrelevant to the present work : *

It is reported by ancient historians that forests have been always in this kingdom, from the first time that the same was inhabited; and the author of Concordantia Historiarium tells us, that Gurguntius, the son of Belyn, a king of this island, did make certain forests, for his pleasure, in Wiltshire; and that divers other kings have done the like since his time. Which forests the kings of this realm have always maintained and preserved (with divers privileges and laws appropriated hereunto) as places of pleasure and delight for their royal *pastime and diversion*.

And when it happened that any offenders entered into those privileged places, and committed any trespass thereon, they had very severe punishments inflicted on them, according to the laws then in force,† which were very grievous, and altogether uncertain, according to the arbitrary and unlimited will of the king; and thus those laws were executed, and their punishments continued, until about the year 1016, when Canutus the Dane became king of this realm; who delighting much in forests, did *establish* ‡ certain laws or constitutions *peculiar only to forests*. By which it appears, that before his time, all wild beasts and birds were only the king's, and that no other persons might kill or hurt them; the kings of England having, by their prerogative royal, a right and privilege in such things as *none of their subjects could challenge any property in;* and such were then said to be the king's, as wild beasts, birds, &c. in whose lands or woods soever they were found. Whereupon the said Canutus made a law that every freeman might at his pleasure have and take his own vert and venison, or hunt upon his own ground, or in his own fields, being out of the king's chace; but that all men should forbear to have or take the king's vert or game, in every place where his highness should have the same.

Also, it appears by the laws of St. Edward the Confessor, that he did confirm the said laws of Canutus, by a sanction made in his time to this effect:—That it should be lawful for every one of his subjects to enjoy the benefit of his own hunting, that he could any way have or make in his own lands, woods, or fields, so that he did forbear to hunt the king's game in his highness's forests or other privileged places, on pain of losing his life for such offence.

Which laws were afterwards confirmed by William the Conqueror,§ as appears in the 27th chapter of the book wherein his

* Extracted from a valuable and useful work, called "The Shooter's Companion," by T. B. Johnson, 2d Edit.

† What these laws were, or by whom made, does not appear, and the fact, I presume, rests on tradition.

‡ It would seem from this, that no Forest Laws existed prior to this time.

§ The laws of William the Conqueror appear not to be merely a confirmation of the laws of Canute, as neither castration or loss of eyes form any of the penalties of that code; which penalties are stated to be in William's laws.

laws were collected and digested, and so were continued by him all his time.

After whose death, William Rufus, his son, in like manner continued the same laws during his life.

And after his death, King Henry the First, his brother, succeeding him to the crown, by his charter confirmed all the laws of the forest made by St. Edward the Confessor, as appears by the book kept in the Exchequer, called Liber Rubrus, cap. I. Legum suarum; which laws of the forest so continued during all the lifetime of the said Henry I.

After whose decease, King Stephen, by his charter, confirmed all the said laws, privileges, and customs, granted by St. Edward the Confessor and Henry I., and continued the same during his life.*

After whose death, King Henry the Second succeeding him, did by his general charter confirm the aforesaid laws of the forest in many particulars, but not without great alterations and additions; for he doth, in and by his said charter, recite and declare the nature of the laws of the forest, and in what sense they were taken and used, or how interpreted or construed in times past, and wherein they do differ from the common law of the kingdom; and that the kings of England before that time, and he himself even then, *might make a forest in any place of the realm, where they or he pleased, as well in the lands and inheritances of any of their or his subjects as in their or his own demesne lands.*

Which unlimited and unaccountable power claimed by the Kings of England in those times by colour of the Forest Laws over the birthrights and inheritances of their subjects, was a mighty and insupportable grievance to those whose lands were so afforested; their pastures, and the profits of the lands being then devoured by the King's wild beasts of his forests, without any recompense for the same.†

The punishments for offences against the Forest Laws were often exceeding great for a small offence, and the forfeiture according to the King's pleasure, not regarding the quantity of the trespass, nor according to the course of the common law.

Which rigorous execution of the Forest Laws continued during the life of Henry II., and both the reigns of Richard I. and King John; every one of which Kings did daily increase those oppressions by making more new forests, in the lands of their subjects, to their great impoverishment.

And this mischief was not at all remedied until the making of Charta de Foresta, by Henry III., published in the ninth year of his reign, which was afterwards confirmed and enlarged by Edward I. his son, whereby it is provided that all Forests that Henry III.

* Thus it appears that to this period every man had a legal right to the game on his own land.

† The same sort of oppression exists under the present game laws, with this difference, that instead of having one claimant we have now thousands.

Richard I. and King John had forested and made of the land, meadows, pastures, or woods of any of their subjects, (being not the demesne lands of the crown) should be disafforested again. For those three Kings last mentioned had (in their times) afforested so much of their subjects' lands, that the greatest part of the kingdom was then converted into forests.

The following additional extract from the same author may be interesting to many.

When King Henry II. came first to be King of England, he took such great delight in the forests of this kingdom, that (being not contented with those he found here, though many and large) he began within a few years after his coming to the Crown, to enlarge divers great forests, and to afforest the land of his subjects, that any way were near adjoining unto those forests, and so they continued during his reign.

After whose death, King Richard I. succeeding him to the throne, within some short time after his coming to the Crown, began to follow the example of Henry II. his father, not only in the delight and pleasure he took in forests, but also in daily afforesting the lands of his subjects that any way lay near to his forests, by means whereof the enlarging of forests did daily increase during his reign.

After whose decease, King John, his brother, coming to the Crown, did in like manner, soon afterwards begin by a little and little to follow the examples of his father and brother in afforesting the lands of his subjects that lay any way near unto his forests, so that the greatest part of the lands of the kingdom was become forest. And thus they continued until the seventeenth year of his reign; at which time, in regard this grievance was not particularly injurious unto a small number of the meanest persons, but generally to all degrees of people, divers noblemen and gentlemen, finding a convenient opportunity, repaired to the King, and besought him to grant unto them, that they might have all those new afforestations that were made by Henry II. Richard I. and himself, disafforested again; all which King John seemed not willing to do, but promised to grant accordingly, and at last consented to subscribe and seal to such articles concerning the liberties of the forest, which they then demanded, being for the most part in such sort as are now contained in the Charter of the Forests of the said King John, dated at Runinge-mede, or Ryme-mead, (Runnymede, between Staines and Windsor,) the 15th June, in the eighteenth year of his reign. But before any disafforestation was made upon the grant, King John died at Newark Castle, in Nottinghamshire.

After whose death, Henry III. his eldest son, at the age of nine years, succeeded to the throne, so that by reason of his minority nothing was done until the ninth year of his reign; at

which time the two Charters were made and confirmed by the said Henry III. called Magna Charta, and Charta de Foresta, and caused to be sent into every County throughout the kingdom, to be published and proclaimed.

And, for the better accomplishing and performing all those Articles of Charta de Foresta, as concerns the disafforestation of such woods and lands as were afforested by Henry II. Richard I. and King John, the said Henry III. ordered Inquisitions to be taken by substantial Juries, for severing the new forests from the old; and thereupon two Commissioners were sent to take those Inquisitions: by virtue whereof many great woods and lands were not only disafforested, but improved to arable land by the owners thereof. So that now, after this charter thus made and confirmed, some of these new afforestations were perambulated, and after such Inquisitions taken, the certainty was made known by matter of record, which were the old, and which were the new forests. Nevertheless, the greater part of the new afforestations were still remaining to be disafforested during the life of King Henry III.

After whose decease, Edward I. his eldest son, succeeded him unto the crown; who, being often besought and petitioned, as well by the nobility as commonalty of this kingdom, to confirm the aforesaid liberties which his father had granted, was graciously pleased to confirm the same, according to their request. And now all things having been granted, performed, and confirmed, concerning the said two charters, viz. Magna Charta, and Charta de Foresta, the same were delivered, signed, sealed, and confirmed, to the Sheriff of London, to be proclaimed, which was accordingly done in St. Paul's Church-yard, in the presence of a numerous concourse of people there met together. Whereupon, the Lords and Commons soon after began to put the King in mind of granting commissions to persons fitly qualified for the same, that perambulations might forthwith be made for all new afforestations, that they might be disafforested, according to the first and third articles of Charta de Foresta.

Whereupon, three bishops, three earls, and three barons, were appointed by the King to take care of, and see those perambulations performed, who caused them to be made accordingly, and inquisitions to be taken thereupon, and returned into the Court of Chancery; whereby the King was ascertained what woods and lands were ancient forests, and what were newly afforested; and caused all those that were ancient forests to be meered and bounded with irremoveable boundaries, to be known by matter of record for ever. And likewise those woods and lands that had been newly afforested, the King caused to be separated from the old, and to be returned into Chancery by marks, meers, and bounds; to be known in like manner, by matter of record for ever.

THE END.

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