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Stockdale Hardy,

Published by J. B. Nichols & Son, 1856.

THE
LITERARY REMAINS
OF
JOHN STOCKDALE HARDY,
FELLOW OF THE SOCIETY OF ANTIQUARIES,
SOMETIME REGISTRAR OF THE ARCHDEACONRY COURTS OF LEICESTER.

EDITED, IN PURSUANCE OF HIS WILL,
BY
JOHN GOUGH NICHOLS, F.S.A.

WESTMINSTER: JOHN BOWYER NICHOLS AND SON.

1852.

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In the Will of JOHN STOCKDALE HARDY, Esquire, dated
24th May, 1847, is contained as follows :—

“ I give and bequeath all my Literary Memoranda and Manuscripts to my friend John Gough Nichols, of Parliament Street, in the City of Westminster, Esquire, with a request that he will look them over and publish such of them as he thinks proper to be collected, together with the pamphlets I have already published, and collect them and the said pamphlets into a volume, such volume to be entitled, ‘ The Remains of John Stockdale Hardy, F.S.A. sometime Registrar of the Archdeaconry Courts of Leicester.’ Of this publication I of course wish him to act as the Editor. I particularly wish the said John Gough Nichols to attend my funeral. And I give and bequeath to him the sum of £150 to defray the expense of the above-mentioned publication, and the sum of £200 as a personal legacy and a mark of my esteem for him. I wish such of the articles which I communicated to the ‘ Gentleman’s Magazine ’ as he may deem fitting to be reprinted in the aforesaid volume. I began to correspond in that publication in the year 1809, and the first article I wrote appeared in the Magazine for the month of August in that year.”

The first thing I noticed when I stepped out of the
train was the smell of fresh air. It was a relief
after the stuffy atmosphere of the train. I looked
around and saw a beautiful landscape. The hills
were green and the sky was blue. I felt like I
was in a new world. I walked for a while and
saw a small village. The houses were made of
stone and had red roofs. I went to a shop and
bought some bread. The baker was smiling and
said hello to me. I felt like I was part of the
community. I continued to walk and saw a river.
The water was clear and the banks were green.
I sat on a bench and watched the water flow.
I felt like I was in a peaceful place. I
thought about my life and how I felt. I
was happy and content. I felt like I had
found a new home. I smiled and looked
at the sky. The sun was shining and the
birds were singing. I felt like I was in
paradise. I walked home and felt like I
had found a new world. I was happy and
content. I felt like I had found a new home.

CONTENTS.

INTRODUCTORY MEMOIR	viii
ESSAYS RELATIVE TO ECCLESIASTICAL LAW :	
Letter to a Country Surrogate, containing a Summary of the Laws relating to Marriage Licences, and Suggestions, &c.	3
Letter to the Earl of Eldon, on the Marriage Act Amendment Bill, 1822	24
Letter to Lord Stowell, on the Marriage Act Amendment Bill, 1823	47*
On the Proposed Removal of Diocesan Registries, 1834	47
Observations on the Ecclesiastical Courts Consolidation Bill, 1836	58*
Observations on the Jurisdictions of the Vicars General, Officials Principal, and Commissaries of Bishops, and upon those of Archdeacons and their Officials	58
Memoir on the Offices of Commissary and Official of the Arch- deaconry of Leicester	79
Historical Account of the Proctors of the Court of the Arch- deaconry of Leicester	87
ESSAYS AND SPEECHES ON POLITICAL QUESTIONS AND PUBLIC BUSINESS :	
On the Law of Libel, 1811	107
A series of Letters addressed to a Friend upon the Roman Catholic Question. By Britannicus. 1820	112
Letter on the Roman Catholic Marriage Bill, 1823	186
Speech and Petition against the Roman Catholic Claims, 1825	189
. 1828	196
Essays on the Poor Laws, and the Framework-Knitters' Relief Society. 1819 or 1820	204
Speech on Mr. Scarlett's Poor Laws Bill, 1821	214
Letter on Home Distress and on Slavery, 1826	218
Letter on proposed alteration of the Poor Laws, 1834	220
Letter on the Poor Laws Amendment Bill, 1849	223

ESSAYS AND SPEECHES, &c.—*continued.*

Speech on the plan for Watching and Lighting the town of Leicester in 1822	233
Reports relative to the Erection of St. George's Church, Leicester	237
Exposition of the motto, LIBERTY, EQUALITY, FRATERNITY	243

BIOGRAPHICAL ESSAYS:

Character of the Very Rev. R. B. Nickolls, LL.B. Dean of Middleham, and Rector of Stoney Stanton, Leicestershire	255
Memoir of the Ven. Thomas Parkinson, D.D., F.R.S. Archdeacon of Leicester	268

LITERARY AND MISCELLANEOUS ESSAYS:

On the Authorship of "The Beggar's Petition"	283
On the Publication of Banns	293
On the Want of Parochial Chapels	295
On a plan for Improving the Condition of the Clergy	298
On the Commutation of Tithes	302
On the Marriage of Cousins	306
On the legality of the Remarriage of a [Man or] Woman when deserted for seven years	313
On the Residence of the Clergy	314
Defence of the Law as to making Wills	325
On the Curfew Bell	329
On the Personification of Death	332
On a Roman Pavement * found at Leicester in 1831	342
Letter on Ashby de la Zouche	346
An Attempt to appropriate a Monument in the Trinity Hospital at Leicester to Mary de Bohun, Countess of Derby	352
Norman Piscina and Sedilia in St. Mary's Church, Leicester	387
Statement relative to the Newarke at Leicester	394
The Blue Boar Inn, Leicester	396
King Richard's Bedstead. By the Editor	403
Rothley and the Knights Templars	417
On Ancient Inventories	456
Appeal for the Antiquities of Leicester, 1840	469
Letter of Dame Dorothy Hastings, of Braunston, a Recusant, in the year 1619	476

* The Editor's note in p. 345 seems to require some apology after the complete account of the various Roman Pavements found in Leicester which has lately been compiled by Mr. James Thompson, and published in the Leicester Chronicle. Of the more recent discoveries made in 1851 an account will be found in the Gentleman's Magazine for January, 1852, p. 77.

POETRY :

Lines written on the Death of the Princess Charlotte of Wales, 1817	481
Epitaph on an Infant	482
Lines addressed to an Inconstant	482
Song for Mr. Pitt's Birth-Day	483
Friendship	484
Lines addressed to Colonel and Mrs. H——, on being restored to each other after a long and painful separation	485
Lines on the Death of the Duke of York, 1827	486
Distinction and Life	487

LIST OF PLATES.

Portrait of Mr. Stockdale Hardy	<i>To face the Title.</i>
Gateway of the Newarke	<i>Vignette at p. xxiii</i>
Monument in the Trinity Hospital Chapel	369
Norman Piscina and Sedilia in St. Mary's Church, Leicester	389
The Blue Boar Inn, Leicester	396
The Pillar or Cross at Rothley	440

INTRODUCTORY MEMOIR.

THE official position which afforded Mr. Stockdale Hardy the leisure and the information to produce the miscellaneous writings contained in the present volume, descended three times from uncle to nephew.

The first of these officers was Mr. James Stockdale, a native of Cumberland. He was the clerk of Thomas Bennett, notary public, of Nottingham, who was in 1726 appointed junior proctor in the Archdeaconry Court of Leicester; and he succeeded Mr. Bennett in that position in 1730. He became the sole proctor of the court in 1731, and was appointed its deputy registrar in 1745, at which time he came to reside in Leicester. He continued in office until his death, in 1767; and was then succeeded by his nephew John Stockdale.* This gentle-

* "The trials my dearest uncle John went through were great—not of his own seeking, but necessarily attendant on his kindness to his relatives. Having had the privilege, when a youth, to profit by that kindness, and his good example, I can well remember his benevolent features, his manly bearing, and his virtuous conduct."—Written by J. S. H. in 1836.

The Editor adds another testimony, from the pen of his grandfather:

"At the moment of concluding this page [p. 1126, and last of West Goscote Hundred], I have to regret the loss of another of my very kind assistants in the progress of this extensive undertaking, Mr. John Stockdale, proctor, and nearly 40 years deputy register of the Archdeaconry Court of Leicester, who died April 7, 1804; whose inflexible integrity, correct judgment, liberal sentiments, exact punctuality, and peculiar suavity of manners, rendered him an ornament of society through life, and his death a public loss. It was his greatest pleasure to do good to others; and to the poor, in particular, he was a steady and liberal friend."—History of Leicestershire, vol. iii. p. 1126.

Before the History was finished, in 1811, Mr. Stockdale Hardy himself had the gratification of assisting Mr. Nichols in several of his pedigrees.

man resigned the office of deputy-registrar to his nephew, William Harrison, who was the uncle of the subject of the present memoir.*

Mr. Hardy's paternal ancestors were respectable freeholders, long resident at Gaddesby, in the county of Leicester; his father was Mr. William Hardy, a manufacturer in the town of Leicester, where John Stockdale Hardy was born, on the 7th of October, 1793. His great-uncle, John Stockdale, was his godfather, and gave him his name. His father having met with commercial misfortunes, his own prospects were not encouraging, until he was adopted by his uncle, Mr. Harrison.

His school education was of limited extent, having been entirely received before the age of fourteen at a day-school in Leicester kept by Mr. Peter Marsh.† This was at that time the best and only large school in the town, the Grammar School being unfortunately out of repute and not in due operation. It was situated at the southern end of Millstone Lane, next door to the Wesleyan Chapel; and numbered from sixty to eighty boys, who were taught reading, writing, arithmetic, &c. and the rudiments of Latin. Few progressed far in the last, and John Stockdale Hardy formed almost a class by himself. He was a lad of quick and lively talents, and a favourite both in and out of school of Mr. Marsh. But his studies

* See Mr. Stockdale Hardy's own statement of the succession of these officers in pp. 95-102 of the present volume.

† Mr. Marsh was brought up in the Church of Rome, educated at St. Omer or Douay, and entered the priesthood. He was dissatisfied and disgusted with the lives of the priests, and seceded. Having come to Leicester, where he at first lived *incog.* to his relations, he opened a school, by which he acquired, after many years, a sufficiency, and then returned to Lancashire, where he spent the remainder of his days. He lived in St. Mary's parish in Leicester, was a constant attendant at Church, and a personal friend of the Vicar, the Rev. Thomas Robinson. He was a clever, though not a learned, man, and very much respected by every one.

were prematurely interrupted* by the prospect opened to him of entering his uncle's office. He went to reside entirely with Mr. Harrison on the 23rd of July, 1807; and on the 26th of November following (that being his uncle's wedding-day) his indenture was executed. From that period he returned no more to his paternal roof: yet he never failed in attention to his parents, both of whom lived to an advanced age, and resided near him.† After entering on his clerkship, he continued to take occasional lessons from masters, but the acquirements which he made in literature were chiefly the result of voluntary study and spontaneous mental culture, aided only by his natural talents.

Shortly before the commencement of young Hardy's pupilage a general election occurred, and produced a contest for the town of Leicester, which endured during a poll of six days. This initiated him in politics, in which he ever after entertained an ardent interest, though in political as in other discussions he may sometimes have taken part rather from a love of argument, and of personal distinction as an orator or a writer, than from very zealous sentiments as a partisan. He prided himself on maintaining a courteous demeanour towards his opponents, and was in most cases more solicitous to be regarded as a skilful and graceful combatant, than to accomplish very important results. Whatever may have been the force or depth of his religious and political convictions, they were ever tempered by his caution as a lawyer, and by his

* In his Diary for 1807 is this entry, "June 18. Went to Birstall. I finished my education." One week earlier he had "first copied on parchment."

† His father died in Friar Lane, Leicester, on the 23rd of March, 1839, in his 74th year. His mother died on the 31st August following, in her 77th year. His aunt, Mrs. Harrison, lived till the year 1843, when she died, also in Friar Lane, aged 82.

absolute deference to constituted authorities in Church and State.

Some of Mr. Hardy's first attempts in literary composition were poetical, and during the greater part of his life he continued occasionally to woo the muse. His earlier productions in verse consisted chiefly of enigmas, charades, and similar contributions to the *Lady's Diary*, &c.; and from the whole of his occasional poems the Editor has merely selected a few which it may be supposed were valued by their Author, as he had himself in most cases obtained more than one vehicle for their publication. These are placed at the close of the present volume.

His earliest prose composition was "An Essay upon the Obligations which Parents and Children owe to the Dispensers of Education." This he transcribed several times, and already was anxious to see himself in print: but this wish was not gratified at the time, and, as there is no merit in the piece beyond that of a passably good school-exercise, the Editor has not included it in this selection.

Shortly after, young Hardy engaged in a newspaper controversy in the *Leicester Journal* with the Reverend Jerome Dyke, Rector of Burbach, near Hinckley, on the matter of the Duke of York and Colonel Wardle. He assumed on this occasion the signature of Attalus, and was much gratified by his opponent reprinting the correspondence in a small pamphlet.

From that time Mr. Hardy was ready to exercise his pen on almost any subject of political controversy; and was a frequent writer in the *Leicester papers* and the *metropolitan Sun*, under the signatures Coriander, Britannicus, and others.

He commenced a correspondence with the *Universal Magazine* in July 1807, and continued it until May 1809. The Editor has consulted those volumes, but has not found the articles to be of any present interest. In August

1809 (p. 726), Mr. Hardy made his first communication to the Gentleman's Magazine; and, from his numerous articles subsequently inserted in that miscellany, all the more important are now reprinted, in compliance with their author's desire.

In the general arrangement of the contents of this selection, the Editor has judged it proper to give the foremost place to such of the Author's writings as are more immediately connected with his professional pursuits. It is not asserting too much to say that Mr. Hardy had deeply studied the principles and science of his profession, and that there were few men in the country of more sound and accomplished erudition in that department of jurisprudence. A few shorter articles of the same complexion will be found among his literary and miscellaneous papers.

The second division of this volume consists of a selection of Mr. Stockdale Hardy's Essays and Speeches on political questions and public business. The first of these, an Essay on the Law of Libel, which was originally published in the Leicester Journal in 1811, the Editor has found (since the sheet was printed) at somewhat greater length in the Gentleman's Magazine for May 1812, but in substance the same as now reprinted. The series of Letters on the Roman Catholic Question first appeared in the Sun newspaper, and afterwards as a pamphlet in 1820; at the close of which, besides his Character of Dean Nickolls, and his Letter to a Country Surrogate, Mr. Hardy also advertised,

"3. A Letter to the Right Hon. the Earl of Liverpool, upon the Motion of Earl Grey for a Repeal of the Declaration against Transubstantiation.—1s.

"4. Thoughts on Dr. Phillimore's Proposed Alterations in the Marriage Act.—1s."

The Editor, after inquiring in various quarters for such pamphlets, has arrived at the conclusion that Mr. Hardy

never actually produced them. Of the former of the two he has discovered no trace. The substance of the latter appears to have been worked up into a "Letter to Lord Eldon" on the same subject, published in 1822, and printed at p. 24 of the present volume.

With respect to the Letters on the Poor Laws, and on the Society established at Leicester (in or about the year 1818) for the relief of the Framework Knitters, it may be remarked, that Mr. Hardy was not contented with endeavouring to benefit the operative workmen of his town and neighbourhood by the efforts of his pen. He liberally contributed from his purse to the assistance of the poor stockings in the too frequently recurring periods of slackness of work; and they testified their gratitude to his long-continued patronage by following his body to the grave in considerable numbers.

Having acquired the character of a Protestant champion by the letters of "Britannicus," Mr. Stockdale Hardy was regarded as one well qualified to take a prominent part in his county in resistance to the Roman Catholic claims.* He willingly accepted the task of drawing up petitions to the legislature on this subject; and in 1828 his efforts were encouraged by two very gratifying letters which he received from Lord Kenyon and Earl Howe:—

Lord Kenyon to Mr. Stockdale Hardy.

Dear Sir,

Portman Square, Nov. 11, 1828.

I am glad to hear that the County of Leicester is inclined to stir in support of the Protestant Cause. In Earl Howe I have perfect reliance; but I hope the thing will be done in a high style in that county. Both Members being sound, gives the cause a great advantage. I cannot but hope that the Duke of Wellington is sound, and I have no fear but Peel is so. Both of them, I

* The Pitt Club for the county of Leicester was formed in 1814. With his characteristic deliberation, Mr. Hardy did not join it until 1818.

feel persuaded, would feel advantage and support in Protestant Declarations from respectable and large bodies of men.

Dr. Philpotts has never published any notes on the royal correspondence with Mr. Pitt, other than that contained in his pamphlet the beginning of this year.* That is a most able work, on the Constitution Oath especially. Mr. Pitt, as appears in the royal correspondence and by his speeches in the House of Commons, always declared securities, and among them controul over the Roman Catholic Church, should accompany concessions. He further declared there should be first exhibited a general (not universal) willingness among Protestants to concede, and positively denied that anything like a pledge was ever given to the Irish House of Commons. See his Speech 1805, which I heard.

Any Petition touching on securities should require a nomination of the Roman Catholic Bishops to the Crown, and a rescinding of the dethroning by other decrees. Not that any security can ever be of use except exclusion.

Believe me, dear Sir, your obliged and faithful,

KENYON.

The Archbishop of Canterbury and Lord Aberdeen are very intimate. The Archbishop was Tutor in Lord Abercorn's family.

J. S. Hardy, Esq. Leicester.

Earl Howe to Mr. Stockdale Hardy.

Dear Sir,

Gopsall, November 14, 1828.

Far from your requiring any pardon for the letter you was kind enough to send me the other day, I must beg you to accept my best thanks for it. With every word in it I most cordially agree; and although, if certain difficulties were removed (which I fear are insurmountable) I might be rather inclined myself to take the feelings of our County in an open public meeting, yet as it is, I humbly imagine it will be the duty of the Pitt Club in the present case to put forth such a declaration as may be adopted by

* Lord Kenyon stated this in answer to a question put to him by Mr. Hardy.

the county in general, and form the basis of a strong but respectful petition to Parliament. To you we look for aid in arranging the business, as to one of our most zealous and active friends; and I have no doubt of finding something prepared on the 20th, which will satisfy the anxious expectations of the Protestant population of our County.

I am, very faithfully yours,

HOWE.

J. Stockdale Hardy, Esq.

In 1818 and for some subsequent years Mr. Stockdale Hardy was actively engaged in promoting the erection of a new church in Leicester. After the lapse of another quarter of a century, during which so many additional edifices* have been supplied to the requirements of the Established Church—though even yet they may come far short of the actual necessities of the population—it has become almost difficult to realise how arduous a task this was, and how great were the obstacles in the way of early efforts of the kind. At first, all that the friends of the Church in Leicester proposed to effect was the erection of a “Chapel of Ease” (as was then the customary term) in the large parish of St. Margaret, in accordance with the provisions of an act of parliament recently passed for the encouragement of such undertakings.† The Dissenters had various objections to urge, which were advanced in letters addressed to the newspapers, chiefly running on the arguments that the existing churches were not really filled, that another was consequently not required, and

* Two other new churches have since been erected in Leicester: viz. Trinity, which was built and endowed entirely by Thomas Frewen, Esq., and Christchurch, under the auspices of the Church Building Society. Another is at the present time in progress for the district of St. George, the population of which has now increased to 15,000.

† One of Mr. Hardy’s earliest communications to the Gentleman’s Magazine was a letter written in August, 1810, “On the want of Parochial Chapels,” which will be found reprinted at p. 294.

that the parishioners would be heavily taxed for the advantage of "a few interested individuals." On one occasion a writer asserts that "the Secretary (Mr. Hardy) and others interested in its erection, were much alarmed by the publication of a handbill, which stated some facts they were not then prepared to contradict, and called upon the parishioners to defend themselves against any further addition to their burdens." This was in the year 1819. In June 1820 the site was finally determined upon ;* but still the progress of the work was slow.† The site was purchased by voluntary contributions, and the expense of erecting the church defrayed by the Commissioners for building Additional Churches in populous places. The first stone was laid by Earl Howe on the 29th August, 1823 ; and the church was consecrated by the Lord Bishop of Lincoln on the 21st August, 1827.

During the conduct of this business Mr. Stockdale Hardy acted as Honorary Secretary of the District Board of the Archdeaconry of Leicester, and as one of the Local Committee for the erection of the church. At a meeting of the District Board held on the 19th October, 1826, its cordial and sincere thanks were voted to him "for the able, zealous, and efficient services which he has uniformly afforded in furtherance of the erection of the new church."

Mr. Hardy was afterwards General Secretary to the Church Building Society for the county of Leicester. At the second anniversary of the Clergy Orphan Society for the Archdeaconry and County of Leicester he was appointed one of the Trustees of the invested fund of that charity, and also one of its Auditors.

He acted for ten years as one of the Auditors of the Society for Promoting Christian Knowledge, and of the

* See the Report describing it, in p. 237.

† See Mr. Hardy's second Report, dated 18th January, 1821, in p. 239.

Society for the Propagation of the Gospel in Foreign Parts, in the county of Leicester.

At an early stage of the Leicester Literary and Philosophical Society he was elected one of its Vice-Presidents. He frequently took part in its public discussions; and he prepared for one of its meetings the memoir on Rothley, which is printed in the present volume.

He was elected a Fellow of the Society of Antiquaries of London on the 13th of April, 1826.

Of Mr. Hardy's historical and antiquarian essays it may be said that they constitute that portion of the present volume which will be most interesting to ordinary readers, and especially to those of the town and county of Leicester.

Two of these—his disquisition on the Monument in the Chapel of Trinity Hospital, and his memoir on Rothley* and the Knights Templars, were the result of much consideration and persevering research. That he proved his point in the former subject cannot be conceded. Whilst there is nothing about the style of the lady's effigy or tomb absolutely to negative that appropriation to the Countess of Derby, which it was the object of Mr. Hardy's argument to establish, *except* its modest and unpretending character, there is also no intrinsic evidence to support it. Both tomb and effigy are altogether too humble in style for the daughter-in-law of the magnificent John of Ghent, the second person in the kingdom, whose own stately tomb was once the most prominent object in

* The Editor has with much pleasure found the following acknowledgment of the assistance Mr. Hardy received from Mr. Colin C. Macaulay, on a slip of paper introduced into the copy of this memoir which he read at the Literary Institution:—"I should account myself guilty of great ingratitude were I not, with sincere thanks, to acknowledge the kindness of my friend Mr. Macaulay, the present Steward of the Manor of Rothley, in revising the statement I had drawn up respecting the privileges and proceedings of the Manorial Court, &c. and in favouring me with some valuable additional particulars and documents."

St. Paul's Cathedral; or for the mother of our royal hero, Henry the Fifth—especially as we now know (which Mr. Hardy did not) that it was King Harry himself who erected his mother's tomb.*

Mr. Stockdale Hardy's second distinct publication was his *Character of the Very Rev. R. B. Nickolls, Dean of Middleham, and Rector of Stoney Stanton, in Leicestershire*, which had been originally printed in the obituary of the *Gentleman's Magazine*.

The Editor has met with only one other essay by Mr. Hardy of a biographical nature, that of Archdeacon Parkinson, which is placed after the *Character of Dean Nickolls*, in the following pages.

Mr. Stockdale became the junior proctor of the Archdeaconry Court of Leicester on the 20th December, 1814; his uncle, Mr. Harrison, having then succeeded as senior proctor, on the resignation of Mr. Mott, of Lichfield.† Mr. Harrison died on the 19th November, 1826, and Mr. Hardy then succeeded as senior proctor of the court, and as Registrar of the same; as well as in his uncle's offices of Deputy Registrar of the Court of the Commissary of the Bishop of Lincoln, and Registrar of the Court of the Peculiar and Exempt Jurisdiction of the Manor and Soke

* The Rev. J. Endell Tyler, in his *Memoirs of Henry the Fifth*, 8vo. 1838, has recovered an entry relative to the monument of the Countess of Derby. On the 20th May, 1413, money was paid "in advance to William Goodyere for newly devising and making an image in likeness of the mother of the present lord the king, ornamented with diverse arms of the kings of England, placed over the tomb of the said king's mother, within the King's College at Leicester, where she is buried and entombed." (Pell Records.) The Countess of Derby's monument in the Newarke Chapel would rather have resembled that of King Henry IV. at Canterbury, or the once magnificent group formed by the monuments of Catharine (Swinford) Duchess of Lancaster, Joan Countess of Westmerland, and the families of Cantilupe and Burghersh, in the Minster at Lincoln.

† See his statement in p. 102.

of Rothley.* He also held the less important offices of Registrar of the Court of the Peculiar of Evington, and of the Prebendal Court of St. Margaret's in Leicester, in both which he succeeded Beaumont Burnaby, esq. in 1839. In the same year, in consequence of the severance of the archdeaconry of Leicester from the see of Lincoln, his connection with that diocese ceased,† and he became dependent on the see of Peterborough.

On the 26th April, 1827, Mr. Stockdale Hardy married Miss Eliza Leach, youngest daughter of the late Mr. Thomas Leach, and sister to Mr. Thomas Leach, then of the Newarke in Leicester. This lady was three years his senior, and had no children. She died on the 2nd July, 1838, aged 48.

The deep religious sentiments of Mrs. Hardy had considerable influence on her husband's character. He resigned for her society many of the public and convivial engagements in which he had previously taken delight: and warmly sympathised with her in the obligations of the Christian life. During the years 1835 to 1837 he composed prayers in commemoration of various anniversaries

* In 1835 he expressed his thankfulness that his professional success had far exceeded his original expectations—"at first only hoping for my admission as a proctor, and never expecting to hold even that office without a competitor. I never dreamed of any office beyond the deputy registrarship, and never expected that, except as to one of the courts. What have I been allowed to become? Registrar of one court, Deputy Registrar of another, and sole unmolested Proctor of both; thus enabling me, before all the offices are swept away, to save a fortune, and retire from active life if I choose."

† On the morning of the 1st July, 1839, previously to leaving the house of Dr. Fancourt and taking his farewell of Leicester, Bishop Kaye addressed the following note to Mr. Hardy:—

"My dear Sir,—I send you my reply to the Address of the Clergy. Let me at the same time express my sincere regret at the termination of my official intercourse with you, and my best wishes for your health and happiness.

"*The Newarke,*
Monday Morning.

"Yours very truly,
"J. LINCOLN."

in the lives of himself and his predecessors, copies of which remain in one of his manuscript volumes : in the order of their composition, their occasions were as here enumerated :—

1835. Nov. 19. My uncle Harrison's death, 1826.
 ——— 26. My indenture executed as clerk to uncle William Harrison, 1807.
1836. April 11. Aunt's birthday.
 May 12. Great-uncle John's admission, 1763.
 July 23. Went to live at uncle Harrison's 1807.
 Oct. 28. My admission as Registrar, 1825.
 Dec. 20. My admission as Proctor, 1814.
1837. Jan. 6. Great-great-uncle James's death, 1767.
 Feb. 25. ————— admission, 1730.
 April 7. Great-uncle John Stockdale's death, 1804.
 ——— 26. My marriage to dear Eliza, 1827.
 Oct. 5. Uncle William Harrison's admission, 1786.
 ——— 7. My birthday.
1839. July 2. Dear Eliza's death, 1838.

On the recurrence of these anniversaries it was Mr. Hardy's custom to visit the scenes once frequented by the party he commemorated, or his place of burial, and then retiring into his closet to repeat the prayer he had composed for the occasion. The Editor has had some hesitation in determining to what extent he should reveal these secret outpourings of Mr. Hardy's devotional hours. He thinks it right, however, that some notice should be taken of this remarkable trait in his character, and the following example of these compositions has been selected for publication :—

A Prayer for the 19th November.

My Uncle Harrison's death.

Oh Lord ! on the solemn occasion of the anniversary of my dear uncle Harrison's death, may the recollection of his glorious life and quiet latter end stimulate me to pray for thy Holy Spirit

to follow his bright example: Oh! may I never be allowed to forget or set at nought his solemn conversations and advice repeatedly given me. What repeated, prolonged, and numberless mercies have I received from thee, thou Creator of all things! How forbearing and considerate hast thou been to me, and how ungrateful has been my conduct towards thee! Oh! for the future, dispose and incline me to study thy Holy Word and to attend to the things which belong to my everlasting peace, before they are hidden from my eyes! What repeated warnings have I experienced, and yet despite them have I continued in a very unsatisfactory course. Lord, I believe; help thou my unbelief! Impressed as thou knowest I am with the leading doctrines of the everlasting Gospel, oh! further and hasten the growth of grace within me, that in thine own way and good time I may be led into the path of everlasting peace, and never more deviate therefrom. Oh! my God, bless and protect my wife, aunt, and parents; may they be long preserved to me, and may I be, to comfort them. In directing my dear uncle Harrison to such a choice how didst thou mercifully minister to my happiness and prospects in life; let my return be to minister to her comfort in her declining years. And oh! may we all meet in that blessed region where sin and sorrow will be heard of no more, but all will be love, peace, eternal praise and joy.

J. S. H.

Mr. Stockdale Hardy was of a warm-hearted and affectionate disposition. An only son, and himself unblessed with children, he displayed this temper in a wider circle than ordinary men—to his distant relations, to his servants and dependants, and even to his domestic animals. He was devotedly attached to his parents, to his uncle and aunt, and, during the short time of his married life, he regarded his wife with the fondest and most partial estimation. He was a frank and cordial friend among his equals, and a charitable benefactor to his poorer neighbours. His conversational powers were considerable, and he had the somewhat rare tact of adapting them to familiar

intercourse with persons of every rank in life. His cheerful and social manners, his inexhaustible fund of anecdote, and his shrewd observation of passing events, made him generally acceptable in society as an agreeable and entertaining companion.

Mr. Stockdale Hardy resided for many years in the outskirts of Leicester, at a house in the London Road, situate nearly two miles from his office in Friar Lane. At length, in the year 1845, he became possessed of a mansion in the Newarke, a situation whose ancient busy recollections, and present peaceful repose, like that of a cathedral cloſe, had always offered a peculiar charm to one accustomed to dwell on the traditions of the past.* The old Register Office for Wills and other Ecclesiastical Archives is contiguous to the south or lesser gateway of the Newarke; this being the entrance that communicated with the ancient Castle, whilst the western or principal gatehouse led to the town. From early associations, as well as antiquarian taste, Mr. Hardy was induced to sustain the structure of this ancient gateway at his own expense; † and he thus preserved to Leicester one of the few existing memorials of its former state.

In his new residence, where he had this venerable relic immediately in prospect, Mr. Stockdale Hardy breathed his last on the 19th of July, 1849.

His body was consigned to its last resting-place in the chancel of Saint Mary in Castro, on the 24th of the same month. The pall was borne by the Venerable Thomas Kaye Bonney, M.A. Archdeacon of Leicester, the Rev. R. Burnaby, M.A. Perpetual Curate of St. George's, Leicester,

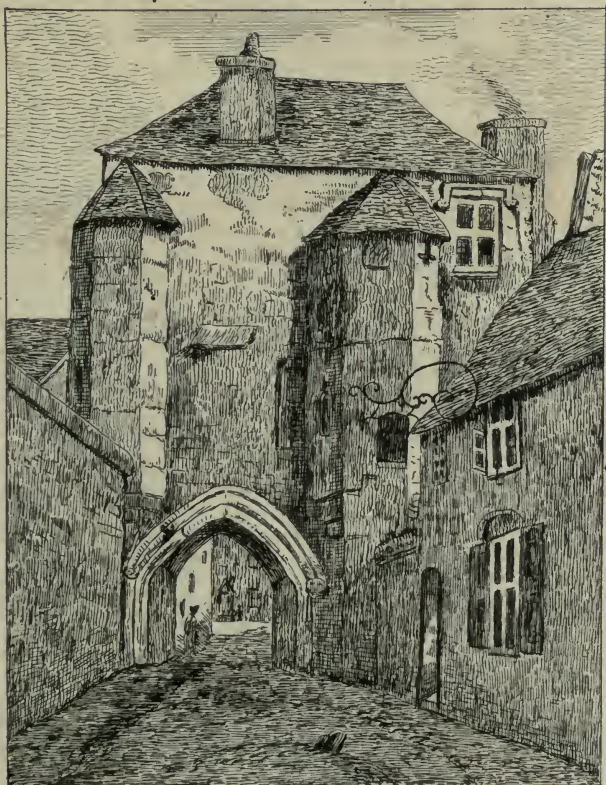
* See Mr. Hardy's reflections on this subject in p. 358, and again, more fully, in p. 394.

† Part of it had been removed as dangerous, as mentioned in the note at p. 359. It is now little more than an arch. Its former state is represented in the opposite page.

the Rev. J. Davies, Roger Miles, Esq., T. Cradock, Esq. of Loughborough, and W. Latham, Esq. of Melton.

Mr. Hardy left a considerable amount of real and personal property, which he distributed by his will among his numerous collateral relations. His library was bequeathed to Mr. Joshua Harrison Stallard. His executors were Joseph Johnson, Esq. and Halford Adcock, Esq.

The Portrait which is prefixed to this volume is engraved from a miniature taken by Mr. J. T. Mitchell in the year 1821, and which was exhibited at the Exhibition of the Royal Academy in the following year.



John Flower del.

H. E. N. sc.

In the Church of St. Mary de Castro, Leicester.

ADJACENT
to this Memorial
are interred
the remains of
ELIZABETH
the Wife of

JOHN STOCKDALE HARDY.

She was the second daughter
of Thomas Leach, of the Newarke, Gent.,
and departed this life
on the 2d July, 1838,
aged 48.

Constant and sincere in her devotion,
she "walked with God."
and through faith in a crucified Redeemer
left this perishable world
in humble expectation
of a glorious resurrection.

NEAR THIS PLACE
are also interred the remains
of

JOHN STOCKDALE HARDY, F.S.A.,
Registrar of the Archdeaconry of Leicester,
and Husband of the above named
Elizabeth Hardy,
who departed this life
on the Nineteenth day of July,
One thousand eight hundred and forty nine,
aged Fifty five years.

ESSAYS

RELATIVE TO

ECCLESIASTICAL LAW.

LETTER TO A COUNTRY SURROGATE,

CONTAINING

A SUMMARY of the LAWS relating to MARRIAGE LICENCES ; and SUGGESTIONS as to the line of conduct advisable to be pursued in granting those Instruments.

[*Published in 1818.*]

MY DEAR SIR,

UNDERSTANDING that you are on the eve of being appointed a Surrogate, and knowing that you have hitherto had but little experience in legal affairs, I take the liberty of giving you a few friendly hints as to the line of conduct which I think it would be advisable for you to pursue in the execution of the duties of your office, with respect to the granting of Marriage Licences. I do not mean to confuse you by leading you to the consideration of difficult and abstruse points of law; on the contrary, I merely intend to direct you in those cases which will, in all probability, come before you in your official capacity.

As soon as you have been duly appointed to your office by your ecclesiastical superior,* and have

* This appointment must be made in the presence of a notary public, who must attest it forthwith.

complied with the requisites required by law,* you are then legally empowered to grant licences. In entering upon the transaction of this business, you should always recollect the importance attached to it, the bad consequences which may ensue from neglect or ignorance on your part, and the losses which private individuals may sustain in consequence thereof. A remembrance of these circumstances should excite in you a desire of acquiring such a knowledge of the duties of your station, as may prevent you from bringing yourself, or those who may employ you, into trouble; and I hope that the perusal of these sheets will aid you in the acquisition of such a knowledge, so far as relates to their avowed subject.

Whenever a person applies to you for a marriage licence, it is your duty, before you proceed to the granting of it, to interrogate him respecting certain points; and as the hurry and confusion which business frequently occasions may in some cases prevent you from calling to your recollection those questions which you ought to ask, and those points which you ought especially to inquire into, I now present you with a string of questions which are applicable to almost all common cases, and to which you may refer whenever you find yourself at a loss. You should ask the person who applies for the licence,

1. What is your name?

* 26 Geo. II. c. 33, s. 7.

2. Where do you live ?
3. What is your trade, business, or profession ?
4. How old are you ?
5. Are you a bachelor or widower ?
6. What is your intended's name ?
7. Where does she live ?
8. How old is she ?
9. Is she a spinster or a widow ?
10. Is either yourself or intended wife already married to any person whomsoever ? *
11. Are you willing to marry, or are you obliged to do so by any species of compulsion ? *
12. [If the man be a minor and not a widower,] Is your father, or [in case of the father's death,] are your lawful guardians, or one of them, or [in default of them,] your mother, who is now a widow, or [in default of such,] a guardian of your person ap-

* These two questions are only intended to be put in peculiar cases, wherein you may have your suspicions awakened, and wherein you must act according to circumstances. In case the party does not answer these questions in a satisfactory manner, I would not advise you to *refuse peremptorily* the granting of the licence, as by so doing you might bring yourself into legal difficulties, in case your apprehensions should turn out to be unfounded. The manner in which I would advise you to act, would be, to decline the granting of the licence until you had consulted your legal advisers, with the result of which consultation you would acquaint the applicant ; or perhaps it would be as well to refer the applicant at once to the registrar's office. You will probably be called upon by parish officers to grant licences for the marriage of paupers, merely to serve the private purposes of parishes ; it is to this description of applications that the foregoing questions are chiefly applicable.

pointed by the Court of Chancery, now present, and doth or do he, she, or they, consent to this marriage ?

13. [If the woman be a minor, and not a widow, then *mutatis mutandis*, as above.]

14. Is there any consanguinity or affinity between you and your intended wife, or does any other impediment at this time subsist which is able to prevent you and her from marrying ?

15. Where do you intend to be married ?

16. Is there a church or public chapel in which banns have been usually published, in the place you mention ; if there is not, mention the name of the nearest place contiguous and adjoining to it, which has a church or such a public chapel ?

17. Have you or your intended wife usually lived in the parish or chapelry within the church or chapel of which you wish the marriage to be solemnized, for the last *four* weeks ?

18. Are you ready to swear to the truth of the answers you have given to these queries ?

If the party applying for the licence answer these questions in a clear and unequivocal manner, and there does not appear to be any difficulty in the case, you may proceed to fill up the licence papers, according to the directions sent you by the registrar of the court to which you belong.

After you have filled up the affidavit, you must direct the party who makes it (after having read it over, or having had it read to him,) to sign his name, or (if he be unable to write,) to make his

mark at the bottom of it; which being done, you must administer to him the following oath, he laying his hand on the Bible or New Testament.

“ You make oath, that all and singular the contents of this your affidavit are true, to the best of your knowledge and belief.

“ So help you God.”

Having administered this oath, you must cause him to kiss the Bible or New Testament, in testimony of the truth thereof; and then attest the administration of the oath by your signature, as follows: “ Sworn before me, *A. B.* Surrogate.”

After having finished the affidavit, you must proceed to prepare the usual bond, which having filled up, you must cause the applicant (after having signed his name opposite the first seal of the bond,) to execute in the following manner:— You must first make him put a seal upon the wax or wafer which you have previously put on the instrument, and, after he has lifted it up from the wax or wafer, you must deliver the bond into his right hand, saying, “ You deliver this as your act and deed?” to which address the applicant must signify his assent; and you must repeat the same forms, with respect to his surety, after he has signed the bond in the same manner as the applicant. These forms should be gone through in the presence of two indifferent persons, who, after they

are so gone through, should attest the execution of the bond.*

These requisites being observed, you may supply the blanks of the licence according to the circumstances ; which having done, you must sign the same just below the court seal, and deliver the same to the applicant, taking care to transmit the affidavit and bond to the registry of your court.

I have now given you a very short and rapid detail of the forms which you are to observe in the granting of licences ; but as what I have said only applies to cases wherein both the parties are supposed to be of age, and wherein no species of difficulty whatsoever is supposed to exist, I must now descend to more minute particulars, and endeavour to give you not only some idea of the *forms* which you are to observe in the execution of the above instruments, but also of the *law* which regulates them, and of some other matters closely connected with your office ; and I beg your serious attention to this part of my letter, as it is by far the most important and essential.

Before, however, I enter upon this part of my letter, it is necessary for me to remark, that I con-

* It is a very common practice for surrogates to attest the execution of these bonds, but this I think is improper ; as *quere*, if from the bonds binding the obligor to save harmless the surrogates, the latter do not become *interested parties*, and therefore incompetent of proving the execution of the bonds should they be disputed ?

sider myself as addressing an officer who has to transact business with parties coming before him, not in a captious spirit, but seeking information and guidance at his hands in one of the most important actions of life. It may be a question whether a licence can legally be withheld from a party who *chooses* to make the usual affidavit; but as the generality of applicants seek for instruction as well as assistance at a surrogate's hands, it strikes me that the information which I am about to communicate, (cursory as it is,) will not be wholly useless to you.

I. You must take care that the parties about to be married are authorised by law to contract matrimony and able to do so.

The age of puberty is fixed by Justinian, in the male at *fourteen* and in the female at *twelve* ;* the common law of England fixes the age of discretion at *fourteen* in both male and female, although it admits of Justinian's distinction as to the age of consent.†

You must recollect that if both or either of the contracting parties, at the time of their marriage, are or is *under* the age of consent, they can, when they arrive at that age, disagree, and declare their marriage void, without the aid of any formal divorce or sentence ;‡ and the reason of this is, because the marriage was celebrated at a time

* Swinb. s. 9.

† Burn's Eccl. Law, tit. *Wills*.

‡ Leon. Constit. 109.

when they were considered by law as incompetent to contract ; but that if they agree to live together *after* the age of consent, their former marriage will be valid, and there will be no need of a repetition of the ceremony.*

Lunatics and idiots are both prohibited from marrying, on account of their defective intellects ; for without a competent share of reason, no contract whatsoever can be good.† Whenever then you perceive any marks of imbecility or derangement in any parties who apply to you for a licence, I would advise you to adopt precisely the same line of conduct as I have directed you to pursue in certain other particular cases. (See note at bottom of page 5.)

Blindness, deafness, dumbness,‡ or any such corporeal infirmity, is no impediment to the solemnization of matrimony, and there are several curious instances mentioned in ancient records, in which we find persons who laboured under these disabilities contracting matrimony by signs, &c. But there are some descriptions of bodily infirmity which are sufficient to dissolve the *vinculum* of matrimony ; however, as you at the time of granting the license cannot with any degree of propriety inquire into them, and as no blame can lie at your door in case they are subsequently discovered, I shall pass them over without notice.

* Co. Litt. 79.

† 1 Roll. Abr. 357, and Ch. Bl. 1st vol. 15th edition, p. 438.

‡ Swinb. s. 15.

II. I must caution you against granting a licence to any persons who are already married.

That the laws of this realm do not admit of plurality of wives, is a fact of which you are of course apprized. I should not have thought it necessary to have troubled you with any observations on this head, had it not been likely that you will be requested to grant licences in cases where one of the parties has been confessedly married before, and there is no actual proof of the dissolution of the former marriage by the death of the other contracting party. You may perhaps think it improbable that such an application will ever be made to you, and be at a loss to know on what grounds, if made, it could possibly rest; these matters I will proceed to explain.

The statute 1 Jac. c. 11.* enacts, that "If any person within His Majesty's dominions of England and Wales, being married, shall marry any person, the former husband or wife being alive, every such offence shall be felony, and the person so offending shall suffer death, as in cases of felony." But this statute declares that its provisions shall not extend "to any person whose husband or wife shall be continually remaining beyond the seas for seven years together, or whose husband or wife shall absent himself or herself, the one from the other, for seven years together, in any part within his Majesty's dominions, the one of them not know-

* The above Act has been explained and amended by the 35th Geo. III. c. 67.

ing the other to be living within that time." There are several other exceptions, but I do not enumerate them, as there is very little probability of their ever coming before you. You will plainly perceive that the whole which this Act does is to save those persons who come within its exceptions *from the penalties which it inflicts*; it does not in any degree interfere with the law which existed previous to the passing of it, and by which law every second marriage which was celebrated during the existence of a former marriage was merely void; * it leaves this law precisely as it found it; and therefore if a person coming within the exception of this Act marry a second time, his second marriage will be just as void as if the Act had never been made, provided the first marriage were not dissolved at the time of such second marriage. Upon consideration of all circumstances, I do not see how you or any other surrogate can properly or legally grant a licence to parties who have been married, and who come within the exceptions (I have quoted) of the above statute: the applicant cannot safely make the necessary affidavit, and the church cannot consistently grant an indulgence contrary to her canons.

III. Before you proceed to supply the blanks of a licence, you must make particular inquiries as to the age of the parties intended to be married.

This point you must strictly interrogate the applicant upon, as a false answer respecting it, or

* 3 Inst. 88.

a mistake in the construction of an answer, may invalidate the whole of your proceedings.

Whenever the contracting parties are minors, and have never been married before,* you must not grant a licence without the consent of their fathers. But you must be told, that no father can give consent excepting “a natural and lawful one;” † consequently if the minors be illegitimate, the consent of their fathers to the marriage will be of no avail; and if you grant a licence under such a consent, it will be void, and the marriage illegal; because, as a bastard is considered by the law as *nullius filius*, ‡ he cannot be in the possession of any lawful parent.

When a father gives consent, he should appear personally before you for such purpose, and if he be unable by reason of some impediment so to do, I would advise you to go over to him (provided he resides within the jurisdiction of your court,) rather than to accept any affidavit of his consent; as I think that by so doing you will act more consonant to the meaning of the statute which regulates your proceedings, (26 Geo. II. c. 33.) than by adopting any other method. §

* If the minors have ever been married, they are regarded by the law as of full age; and therefore, although their parents be averse to their second marriage, you may nevertheless grant a licence, and the marriage will be good. (Vide 26 Geo. II. c. 33. s. 11.)

† Vide case of *Priestley v. Hughes*.

‡ Bl. Com. 1st vol. tit. *Parent and Child*.

§ Although the Act is so express in requiring the consent of

After you have questioned him respecting his consent, and he has satisfied you on the point, you may proceed in the business of the licence according to the instructions received from your registrar.

On this head, however, I must inform you, that if the applicant be a minor, he cannot execute the bond, as he is not empowered so to do by law; you must therefore, in the event of such minority, take the bond of his father, and some other person * of the age of twenty-one years, instead of his own; for if you dispense with the latter, it will be of no effect in law.† You must also take care that the surety is a person of respectability and property,‡ and I may as well tell you here, as anywhere else, that any responsible person

a father, guardian, or mother, to the marriage of a minor, it contains no provision as to the manner in which the consent shall be ascertained. After a marriage is solemnized, the courts will go a long way in presuming consent, and will not pronounce a sentence of nullity without the most conclusive evidence being adduced of dissent. As, however, I consider you as the adviser of the parties who may appear before you, I think the method above pointed out the best one to be pursued; and a party who is anxious to have no question arise as to the validity of his marriage, will not hesitate to compensate you for the extra trouble.

* Some courts require no surety, or at least merely a nominal one; but in this general letter I think it best to consider you as belonging to a court which strictly complies with the provisions of the canon.

† Ch. Bl. 1st vol. p. 465.

‡ Can. 101st.

may be a surety, except a minor or married woman.

If the father of the applicant (who is a minor) be dead, the persons who are, in this case, entitled to consent to the marriage, are the "lawful guardians" of the infant.

By the term "lawful guardian," you must understand not a person appointed by the minor himself, to defend or shield him during his minority, but one appointed by the "natural and lawful father" * of the minor. There are several descriptions of guardians, but no guardian can (except in a case hereafter mentioned) give consent to a marriage, except one nominated by the minor's father †

I would advise you, whenever an application for a licence is made to you, under consent of guardians, to request the production of the instrument which appoints the guardians, before you grant the licence. The words of this appointment you should then carefully peruse, as if they cannot be interpreted as appointing a guardian of the person of the minor, the person nominated as trustee will not be able to give consent to the marriage; and if after an inspection of the appointment you have any doubt of its legality, or as to its meaning, I would have you recommend the

* Who such a father is, I explained at p. 13.

† Vid. Sir A. Croke's Rep. of *Horner v. Liddiard, and Christ. Blacks.* 1st vol. 15th edition, pp. 437, 438, 459.

parties to consult some professional gentleman on the subject, and not hazard a circumstance of so much importance to their future happiness and interests.

Before I dismiss you from the consideration of the question under discussion, I must inform you, that in case the guardians of a minor be *non compos mentis*, or in parts beyond the seas, or unjustly refuse their consent to a proper marriage of their ward, equity will remedy this breach of trust on their parts, and, on application, proceed to the discussion of the business in a summary manner; and, if the proposed marriage appear proper, judicially declare the same to be so by order of court; which order will be considered by the law as good and effectual, to all intents and purposes, as if the guardians of the minor had consented to the marriage.*

If the father of the minor happen to be dead without having appointed any guardians over his infant children, you must not grant a licence without the consent of the natural and lawful mother of the minor.

To entitle the mother to give consent she must be a *widow*.†

You must remark, that equity will have recourse to the same line of proceeding, in case the mother be *non compos mentis*, or beyond the seas, or unjustly withhold her consent, as it will in case of

* Vid. 26 Geo. II. cap. 33, s. 12.

† 26 Geo. II. s. 11.

guardians under similar circumstances ; * and that if a father die without having appointed any guardians over the persons of his children, and there be no mother living, or qualified to give consent, it is permitted to nominate a guardian for that purpose.

And now to conclude, in cases of minority, take this as a general rule ;—that whenever a *father* is living, the consent of *guardians* is of no use ; and that whenever *guardians* are living, the consent of a *mother* is of no avail.

In case the minor has no father, guardian, or mother (being a widow) you cannot grant the licence except under the consent of a chancery guardian ; and in this case it is customary to have an official copy of his appointment exhibited and annexed to the marriage affidavit.

IV. You must take care that the contracting parties are not related within the PROHIBITED DEGREES.

The degrees of consanguinity and affinity you are no doubt already acquainted with, as they are generally to be found in churches and chapels ; † I shall not therefore insert them here, but only give you a little advice with respect to them.

In the computation of these degrees, you must always remember that the law will not permit those persons who are in the direct ascending line (as fathers, mothers, grandfathers, &c.) to marry with those who are in the direct descending line (as sons, daughters, grand-daughters, &c.) although

* 26 Geo. II. s. 12.

† Can. 99.

they be ever so distant the one from the other.* An husband must take his wife's relations in the same manner as his own, without any species of distinction ; and, therefore, the prohibition touching *affinity* must be carried as far as that respecting *consanguinity*.† You must also bear in mind, that the ecclesiastical laws look upon the *half-blood* in the same light as the *whole-blood*; and, therefore, that it is as unlawful for a person to contract with any of his *half-blood* relatives, as it would be were he to contract with those of his *whole-blood*.‡

You must take care, then, lest you grant a licence to an applicant who is related to his intended within any of the "prohibited degrees;" for if you do, and the parties be joined in wedlock under your licence, they will not only render themselves liable to the infliction of ecclesiastical censures for incest, but if their marriage be dissolved in the life-time of *both* of them,§ their children will be illegitimate.

V. You must be well assured before you grant the licence, *that the place in which the parties design to be married is a church, or a public chapel in which banns were usually published previous to the 25th March, 1754.*

Upon this point you must be very exact : although it is a point of the greatest moment, yet it has not

* Gibs. Cod. 498. Grey, 136.

† Gibs. 412. Burn, 2d vol. p. 11.

‡ Gibs. Cod. 498. Grey, 136.

§ Salk. 548. Ch. Bl. 1st vol. p. 435.

been attended to as it ought to have been ; and I entreat you to consider it, not as an indifferent or trivial matter, but as the basis upon which the validity of your licence reposes.

By the 8th section of the 26th Geo. II. c. 33, it is enacted, "that if any person shall, from and after the 25th day of March, 1754, solemnize matrimony in any other place than a church or public chapel where banns have been usually published, unless by special licence from the Archbishop of Canterbury, every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony ; and all marriages solemnized from and after the 25th of March, 1754, in any other place than a church, or such public chapel, unless by special licence as aforesaid, shall be null and void to all intents and purposes in law whatsoever."

It seems that the real meaning of this clause remained in doubt for a considerable number of years, and was not judicially ascertained until 1781, when the case of the King against the inhabitants of Northfield * came on for argument in the Court of King's Bench. The decision of the court in this case established the position, that all marriages were void, if celebrated in a chapel erected since the 26th Geo. II. although such marriages might have been *de facto* frequently celebrated there. In consequence of this, the act of the 21st Geo. III. c. 53, was passed, which esta-

* Douglas's Reports, 2d vol. p. 658.

blished the validity of all marriages which had been *then* solemnized in any church or public chapel erected since the 26th Geo. II. c. 33, and exempted the clergymen who had celebrated such marriages from the penalties of the latter statute.

Another Act to the same purport as the above * has also legalized all marriages solemnized in new erected churches and chapels prior to 25th March, 1805 ; but you must recollect that the *general* law is still the same as laid down in the 8th sec. of 26th Geo. II. and that all marriages solemnized in such churches or chapels since 25th March, 1754, under ordinary licences, are invalid. †

VI. Whenever the parties dwell in any extra-parochial place, *take care that you grant them a licence to marry in no other church or chapel than in that belonging to the parish or chapelry adjoining to such extra-parochial place.*

By an extra-parochial place is generally meant a place which is situate in no particular parish, and under the jurisdiction of no particular church, but a spot which is exempt from ordinary parochial

* 44 Geo. III. cap. 77.

† This is going upon the supposition that these new churches or chapels were not erected under Acts of Parliament giving them the privilege of having marriages celebrated therein, or that they were not erected on the foundation of old churches or chapels in which banns had been usually published, prior to 26 Geo. III. An Act of the 48th of the King, cap. 127 (precisely similar to that of the 44th of the King,) has legalised all marriages solemnized in newly-erected churches or chapels before the 23d August, 1808.

rates, and is something similar to a small peculiar ; this is the common meaning of the term : but the law will permit you in licence cases to deviate from the usual interpretation, by enlarging its limits ; and you are at liberty to consider any parish as an extra-parochial place which has no church or chapel belonging thereto, or none wherein divine service is usually celebrated every Sunday.*

When the contracting parties reside in an extra-parochial place, you are not to grant them a licence to marry where they please, because they are obliged by law to be married in the church or chapel belonging to the parish or chapelry adjoining to the extra-parochial place,† and consequently you have not the power of committing a violation of this legal regulation by giving them permission to marry in any other church or chapel.‡

VII. You must never license any parties *to marry in any other church or chapel than in that belonging to the parish or chapelry in which both or either of them has or have usually lived for the space of four weeks immediately previous to the grant of the licence.*

The point of residence is one particularly referred to in the affidavit leading to the grant of the licence, and it is your duty to make particular inquiries respecting it.§

* 26 Geo. II. cap. 33, sec. 5.

† 26 Geo. II. sec. 4.

‡ Burn's Eccles. Law, tit. *Marriage*, sec. 10. § Ibid. sec. 4.

It is not necessary that the marriage should be solemnized in a church, within the parish of which *both* the contracting parties have dwelt for four weeks immediately preceding the application for the licence ; but if the applicant prays your permission to marry in the church belonging to the place wherein either himself or his intended wife has generally lived for the time above described, you will act perfectly right in acceding to the request, and your licence will be quite consistent with the rules of law.*

VIII. I must caution you against granting a licence unless you are convinced *that the court to which you belong has jurisdiction over the church or chapel in which the marriage is intended to be performed.*

This particular you must be satisfied upon before you issue the licence ; as, if you exceed the boundaries of your power, by acting in places beyond the jurisdiction of your court, your licence will probably be of no effect in law, and consequently a marriage solemnized by virtue of it invalid.†

I have now, my dear Sir, given you the best in-

* 26 Geo. II. cap. 33, sec. 4.

† 26 Geo. II. cap. 33, sec. 8. I am not aware that this question has ever been judicially argued ; in a late case in the Arches, Sir John Nicholl admitted an article in a libel pleading the non jurisdiction of a court which granted a license, as a cause of nullity, but the marriage in suit was avoided on another ground, without entering into the question as to jurisdiction. The admission, however, of the article, shews that the learned judge thought the point worthy of consideration.

struction I am able to do, upon those important points to which I have directed your attention: I have told you how to proceed in *general* cases, and according to the *general* law, without perplexing you with a description and explanation of those exceptions which the customs and usages of particular places, and the favour which the legislature has been pleased to shew to particular sects, have made to that general law. I trust you will excuse the liberties which I have taken with you in the course of my correspondence; I am afraid lest you should think I have treated you as a clergyman less acquainted with law than the generality of your sacred order; but I can assure you I had no such intention, and that I have descended into more minute particulars than were perhaps necessary, merely from an anxiety to give you as thorough a knowledge of the subject as I could within the limited space of my present letter. I trust you will receive this explanation as a sufficient apology, and indulging a hope that my correspondence may be of some use to you,

I remain,

My dear Sir,

Yours very truly, &c.

A LETTER

Addressed to the Right Hon. the EARL of ELDON,
Lord High Chancellor, &c. &c. upon the
MARRIAGE ACT AMENDMENT BILL.

[*Published in 1822.*]

MY LORD,

As a Peer who strenuously opposed the recent adoption of what has been called "The Marriage Act *Amendment* Bill," perhaps your Lordship will allow an humble individual to address a few remarks to you upon that most extraordinary measure. I beg to be understood distinctly, that, in commenting upon the Act, any expressions which I may feel it necessary to have recourse to must not be considered as in the least applicable to the dignified assemblies through which it has passed, but as totally confined to the measure itself, as affecting the nearest and dearest interests of all classes of the community. With respect to a measure of such fearful importance, it is surely advisable that the most extended discussion should take place, in order to produce that ultimate benefit and legislation which the exigencies of the case so loudly demand. In addressing

your Lordship upon the present occasion, I trust I shall not be accused of presumption; as I only venture to address you from a desire to call the attention of the public to a Bill which your Lordship so firmly opposed. I should indeed be deserving of unqualified ridicule were I capable for one moment of harbouring the extravagant idea that it was possible for your Lordship not to have felt in tenfold force any valid objection that can have occurred to a mind like mine.

My Lord, it is not one of the least remarkable circumstances attending the Act to which I refer, that it received the adoption of the Legislature against the declared opinions of the greatest lawyers the age has produced. Parliament have usually paid that respect and deference to those who have devoted their lives to the study of the law—to those who have studied it to understand and administered it to satisfy—which are certainly due; but in the recent instance this respect and deference appear, from some unaccountable cause, to have been withdrawn, and the public have witnessed the novel spectacle of a Bill of the highest possible consequence to the peer and the peasant—to the comfort of the domestic circle and the well-being of the community—carried through both Houses against the decided and strongly expressed opinions of the highest legal characters in the country, and notwithstanding the open and fervent opposition of a Lord Chancellor, and that Chancellor Lord ELDON!—Doubtless, my Lord,

Parliament are not bound to be guided by legal opinions, nor would it be right to affirm that they did not consider them when given. In saying what I have, I only allude to what has been the usual practice ; and in observing upon its having been laid aside in the late case, I do not intend to impute to our Legislators either improper motives or irregular conduct. Every good subject is bound to believe that Parliament had some valid reason for the course it thought proper to adopt ; and I sincerely join in that belief. In a case, however, where it is understood, on all hands, that an Act is not a final one, but to be explained and amended by subsequent enactments, I apprehend that no irregularity will be committed in commenting rather freely upon it.

The recent Act begins with repealing that part of the statute of the 26 Geo. II. which required the consent of parents or guardians to the marriages of minors by licence. It is to be remarked that this repeal extends from *Monday* the (22d ult.) on which day the Bill received the royal assent. Now, my Lord, I should wish to be informed, under these circumstances, what is the law at this moment in England, with respect to the marriages of minors by licence ? I should like to know, my Lord, what is the law to be acted on until the 1st of September next ? The Act of the 26 Geo. II. is repealed—nothing, as I see, is substituted in its stead—and, unless the ancient canon law can be again brought into operation,

there is no law whatever applicable to the case. What! is there no express legislative enactment remaining on the statute book of England to meet so important a case, and one of such frequent occurrence? I believe, my Lord, there is none regulating the marriages of minors by licence, and fortunate indeed it is for the public that the 26 Geo. II. did not expressly repeal the canon law, or at this moment the country would probably have been left without directions on the point. I do not believe that the framers of the recent Act intended to revive the canons of 1603—they surely could never intend to leave the country exposed to the operation of provisions so confused and difficult of comprehension. I ask, too, whether it was their intention to render the consent of both the *father* and *mother* of a minor necessary before a licence for marriage could be obtained? This, however, is now the law of the land—is at least the law obligatory on the authorities who have the power of granting licences; and what is more, until the 1st of September next, any departure from the forms laid down by the canons for the granting of licences, will (as far as the canons are concerned) render those instruments void. I ask again, was *this* contemplated by the Act, and is it not directly at variance with its professed principle? If any one, my Lord, had affirmed, six months since, that we should have travelled back to the age of James I. for legislation, or rather for directions, on so highly im-

portant a subject, I fancy much attention would not have been paid to his assertion. The Act was professedly passed to obviate litigation and promote certainty; but there is only occasion to refer to the second and five following clauses to show how completely it is likely to fail in these objects. The number of questions which may be raised upon the second clause as to the cohabitation of parties whose marriages are intended to be validated by the Act are by no means few; and with respect to the third section, it is involved in considerable obscurity. It is as follows—“ Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend to *render valid* any marriage declared invalid by any court of competent jurisdiction before the passing of this Act, nor any marriage where either of the parties shall at any time *afterwards*, during the life of the other party, have *lawfully* intermarried with any other person.” As far as the clause goes to the principle of non-interference with marriages which had been declared invalid previous to the passing of it, nothing can be said; but the concluding part of the clause it is not very easy to understand. The difficulty arises upon the word “*afterwards*.” At first sight it does not appear very consonant with common sense for an Act of Parliament to declare that it is not to “*render valid*” a marriage *lawfully* solemnized before the passing of it. The question naturally arises, if the marriage had been *lawfully*

solemnized, why need the Act have alluded to it at all? As I said before, the difficulty arises upon the word "*afterwards*." If the clause is to be understood as confined to the cases of those whose first marriages have been declared void by a competent court, then undoubtedly the word "*afterwards*" must be taken as applying to the period which intervened between the passing of the sentence and the second marriage of both or either of the parties whose prior marriage had been declared void. The clause, however, will bear another construction; the word "*afterwards*" may refer to any period after the solemnization of a marriage *de facto*, clearly illegal, and where both or either of the parties marry again. The latter part of the clause is not so *exclusively* connected with the former part as to limit its operation to the first case I have mentioned; and therefore I conceive that a wide door for litigation is opened, in cases where parties, *presuming* on the *ipso facto* illegality of a first marriage, have ventured on a second connection.

I shall now proceed to make some remarks upon the 8th section of the Bill, which provides for the manner in which licences of marriage are to be granted from and after the 1st September next. It has always been held impolitic and dangerous to throw any unnecessary obstacles in the way of marriage, and every one is aware that the stamp duties and expense already attendant on obtaining a licence are so heavy as to render this description

of legal instrument not within the reach of all classes of society. Perhaps it may be said it was never intended that these dispensations should extend to all. I am not prepared to combat the question; but I will say it would be extremely difficult and invidious to draw a proper distinction. I beg, my Lord, to be distinctly understood as offering no opinion on the policy or impolicy of marriage by licence in general; all I wish to convey is, that, so long as such marriage is recognised by law, it ought to be put upon as moderate and cheap a footing as possible with respect to the public; otherwise the objectionable principle will be extended, of having one law for the rich, and another for the poor.

It is well known that hitherto, in cases where both parties have been alleged to have attained twenty-one years of age, it has been sufficient for the party seeking the licence to make affidavit of his own age, and his belief as to the age of his intended partner. The new Act requires each party to swear as to his or her age, and as to his or her belief of the age of the other party.* In addition to these affidavits, copies of the registers

* The Act provides, that, "if a licence shall be required for the marriage of parties, both *or either* of whom shall be alleged to be of the age of twenty-one years, such parties shall *respectively* make oath that *they are respectively*, and that each of them believes the other to be, *of the full age of twenty-one years or upwards!*" Supposing only one of the parties are alleged to be twenty-one, how can this provision be complied with?

of the baptisms of the parties are to be produced, and their authenticity, as well as the *identity of the parties*, established by the affidavit of a person who has examined such copies with the original registers. Now, my Lord, I cannot help thinking that the affidavit of the lady might have been dispensed with; I may be wrong—probably am—but to me there is an appearance of *absolute indelicacy* in the proceeding. A young lady, on the eve of forming the most interesting and delicate connexion that can be conceived, is to be hurried into the presence of an official person, to do what? why (*inter alia*) to swear that she believes her intended husband to be of age! The provision was probably intended to guard against fraud in cases of minority; but in such cases I fancy it will be found, on inquiry, that the female has generally been the party injured; it has not very frequently happened that a man of full age has been entrapped by a minor. Of what use, I ask, is it for a female to be sworn as to her belief with respect to the age of her intended husband? She at best can only swear as to her belief—according to what he has told her—and by being dragged into publicity in the way required by the Act, she will, in the event of any deception on the part of her intended husband, or of any undue ascendancy he may have gained over her mind, only render more certain that confiscation of property which the 10th section of the Bill will produce, and upon which I shall hereafter observe;

at all events, in cases of majority, where registers are to be consulted, this unpleasant proceeding, as far as the female is concerned, might have been dispensed with.

With respect, my Lord, to the production of the copies of registers at the time of granting the licence, I am fully convinced that the absolute impracticability of doing this in some cases, and the great trouble and inconvenience in all, have not been sufficiently considered. The Act provides, that no licence shall be granted (after 1st September next), where both or either of the parties is or are alleged to be of age, until there shall be produced to the person from whom the licence shall be required, an extract or extracts from the register of the baptism of such parties or party so alleged to be twenty-one (if such register be in England and can be found), such extract or extracts to be proved on oath by some other person or persons to be a true extract, &c. Now really, my Lord, allow me to direct your attention for a moment to the extreme inconvenience, and (under some circumstances) absolute impracticability, of all this. We will reduce the Act to practice, and suppose a party applying for a licence to a clerical surrogate in a provincial town or village. The applicant has perhaps travelled 100 or more miles to marry a person resident near the town or village. The marriage arrangements for probably the very next day are all completed, but an insurmountable barrier is at

once opposed to the grant of the licence. He must obtain a copy of the register of his baptism from a distance,—the affidavit of a friend to prove it a true copy,—and that the entry relates to himself before any further proceedings can take place; added to these inconvenient circumstances, the case will not unfrequently happen that no register can be found: then, according to the Act, a more circuitous method must be pursued; and in cases where parties of undoubted full age apply for licences, but whose baptisms were deferred until within the last twenty-one years (and which fact appears from the copies of registers produced), how are the provisions of the Act to be satisfied? With respect, also, my Lord, to the registers of dissenting baptisms; whatever may be the legal construction of the Act in consequence of the *copies* of such registers not being evidence, I fancy that some persons will feel considerable difficulty in making oath that there are no registers, &c. when a baptismal entry is in existence, the *original* of which is evidence to a certain extent. My Lord, the framers of the Bill appear to have been entirely ignorant of the manner in which licences are obtained in general.—They are usually procured from the clergy (surrogates to the different ordinaries) throughout the country; and, in numerous instances, parties have to come many miles to obtain them.* As the law stood before

* For my present purpose, I consider it sufficient to treat the above as the general practice pursued in obtaining licences, with-

the passing of the Act of the 22d ult. the parties seldom went away from the surrogate without having obtained their object—without taking home the licence in the pocket; and it is well known, the application for the licence is an act generally deferred until almost the moment of the solemnization of the nuptials. Now, what will be the inevitable consequences under the new system? The parties, when every preparation has been made for the nuptials, will have to retire in disappointment—either the female to swear she believes her intended husband to be of age—the father's and mother's certificates of consent in cases of minority properly sworn to—or the copies of the registers properly authenticated, will some or other of them not be forthcoming; and I hesitate not to say, that, from these causes, amongst certain classes of society, the most deplorable and ruinous consequences will ensue.

Perhaps, my Lord, it will be urged, that when the provisions of the Act come to be known, the greater portion of the inconveniences and mischiefs which I have anticipated will not arise, and that parties will come prepared with the necessary documents when they first apply to the surrogate. My Lord, amongst a certain description of parties I will undertake to say that this preparation will not be made.—Besides, my Lord, it can never be supposed, that, in the interval which will elapse before noticing any questions of law or expediency, which have been started with respect to it.

tween this time and the next session of parliament, the provisions of the Act will have become generally known throughout the country, or at least so known as to be generally understood; and it is not amongst the least singular provisions of the Bill, that it is *not* to be publicly read in churches and chapels *until a month after it has taken complete effect.*

The 9th section of the Act now presents itself. This declares, that, from and after the 1st September next, the consent of any person or persons, *whose consent shall be required by law*, to the marriage of any person under twenty-one, not being a widower or widow, shall be signified in writing signed by such person or persons; such signature to be attested by two or more witnesses, *and shall fully describe the person or persons giving such consent*, &c. &c. and that no licence shall be granted from and after the 1st September next, for the marriage of any person under twenty-one, not being a widower or widow, unless such consent in writing shall be delivered to the person granting the licence, and unless one of the witnesses attesting the consent shall make oath that he or she saw the party giving the consent sign his or her name thereto, and also his or her fellow witness sign the attestation, &c. and unless some person (not being one of the parties applying for the licence) shall make oath that the person or persons who have signed the consent to the marriage is or are the lawful parent or guardians, &c.

Under the late Act the usual method pursued was, for the parent or guardian or guardians giving consent, to appear personally for the purpose; and surely this was more satisfactory, far safer, than the circuitous method now rendered necessary. The recent Act says, the consent of certain persons "*required by law*" shall be given in a prescribed form. Who are these persons? Why, both father and mother, if living, according to the canon law of 1603, for all other law is repealed!—This was never contemplated by the supporters of the measure, for the word "*parents*" does not occur throughout the Bill. The provisions of the Act appear to me to open a wide door for the commission of fraud. The signatures of the parties giving consent may be fabricated—such fabrication was one of the great evils attending the execution of the canons of 1603—and it is now again possible, after a lapse of nearly 220 years, for an unhappy parent to be made the dupe of a vile combination. The Act has rendered the application for a licence, where both parties are minors (having both fathers and mothers living), no trivial affair. There will be no fewer than three (in many cases four) affidavits and four certificates of consent necessary; and the attendance, either in one stage or other of the proceeding, of not less than nine different persons! Where only one of the parties is a minor, the same number of affidavits and two certificates of consent (in case both the parents of the minor be living) will

be required, and the attendance of seven different persons; and even where both the parties applying for the licence are of age, and have not been married before, the affidavits of at least three persons must be made, and the attendance of four persons is required!

The 10th section declares who are the persons capable of administering the oaths required by the Act. These are the surrogates of the archbishops and bishops, or of judges holding commissions under them. The section also inflicts the punishment of perjury and felony on parties who wilfully swear falsely in order to obtain a licence of marriage, or who are privy to the procurement of any false instrument, &c. Had the section stopped here (though it is loosely worded and terribly severe in its operation, and though by the sentence of transportation, which it pronounces, a sufficient quantum of misery would have been occasioned), much perhaps would not have been said; the concluding part of it, however, will, in my view of the subject, be productive of great mischief. It is this—"And if the person convicted of such offence (*i. e.* swearing falsely or wilfully producing a false instrument) shall be one of the persons who shall have contracted marriage by means of such licence, such person shall forfeit and lose to the king's majesty all estate, right, title, interest, benefit, profit, and advantage, which such person may derive from, or be entitled to, by virtue of such marriage; and

such forfeiture shall and may be disposed of in such manner as to his majesty shall seem fit." Let only a case be put upon this clause. A young woman of fortune (a minor) is inveigled into a marriage with a worthless fellow, who does not scruple to perjure himself or assist in forging an instrument, in order to obtain a licence of marriage. The marriage is solemnized, and by that means the parties *become indissolubly bound to each other*. The fortune of the lady, if it happen to be personal estate in possession, and out of the reach of equity, becomes absolutely forfeited to the Crown, in case the husband be prosecuted to conviction. The woman is left without a shilling, and obliged to remain the wife of a felon, liable to transportation for life, without her friends being able to take any step to relieve her! Yes, my Lord, she will be obliged to remain the wife of a miscreant, who most likely married her for her money, and who, upon finding himself stript of it by this clause, will, in all probability, enhance the misery of the unfortunate girl by his brutal conduct. Perhaps, too, the parents of the female will have to be passive spectators of the heart-rending scene, without being able to take any steps to relieve their ill-fated child from so wretched a thralldom! What a picture of distress is here! It is not, however, an imaginary picture; the case will occur, and occur frequently, if the Act remain as it is—Many unfortunate women will, through its operation, be torn from the station in society where

birth and fortune had placed them, to subsist on eleemosynary aid—will be doomed to pass through life as the wives of convicts—and to traverse amid thorns that path which they had been led to suppose would have been strewn with flowers!—But to return. It is no argument in favour of the clause to say, that the Crown will not retain the fortune of the female, but apply it for her benefit, independent of the husband. There is no doubt this would be the case; but this would not obviate the unhappiness of the parties—this would not alleviate the distress of her, who, seeing her prospects blighted, her patrimony gone, and her reputation assailed, before she could be said to have entered upon life, must apply to the Treasury for that sustenance, which the exertions of her departed friends had placed within her power, and which, when closing their eyes in death, they had fondly hoped would have rendered her able to meet the frowns of the world! Surely, my Lord, placing it within due restraints, some power of interference on the part of parents or guardians ought, in such cases as these, to be reserved.

I shall probably be accused of looking at the question only in one point of view, so far as the female is concerned. But looking at it in another light does not improve it. However, let this be done. I will suppose a young man of fortune (for this was the case evidently to which the Act was intended more particularly to apply),

I will suppose him to be entrapped into a marriage with a worthless and abandoned woman, who does not scruple to make a false affidavit, &c.—what then?—Her claim of dower or thirds (supposing her entitled to any, but which in many instances she would not be,) becomes vested in the Crown. As to the confiscation of *her* individual property, the chances are that she has none to lose, and so she may smile at the section, except so far as the punishment of felony is concerned. The clause, my Lord, will most extensively affect young women of fortune (chiefly minors) who may be deceived into marriage by profligate and abandoned suitors. It is here that the tear of sorrow will trickle down the cheek where the smile of content was wont to beam; it is here that misery will penetrate into that domestic circle where happiness used to be the presiding deity!

In cases, too, where young men of family and title are concerned, the consequences of making marriages indissoluble, under all circumstances, will be truly distressing. What, my Lord, will be the feelings of a dignified and noble-minded father, when he reflects that the coronet which now glitters around an equally dignified and noble-minded consort, will, upon his death, descend on an unworthy and obscure object; on one who found her way to the noblest assembly in the world, through the disgraceful paths of intrigue and perjury?

As the consequences which I have just been deprecating will arise even more frequently in marriages by banns than by licence, under the Act, I must beg the observations which I have made to be considered as applicable to both cases.

I pass over the provisions of the Act relative to the persons who will be officially connected with the execution of it, although I think the provisions themselves extremely and unnecessarily severe, and by no means explicit as to the party or parties upon whom the punishment inflicted by them will fall. The comfort and safety of these persons are of trivial consequence when put in competition with the convenience and welfare of the public. I can, however, conceive cases of great individual hardship, which may and will occur under the Act to these gentlemen, but shall hasten to matters of more importance.

The 14th section provides, "that no person shall, from and after the passing of the Act, be deemed authorised by law to grant any licence for the solemnization of any marriage except the Archbishops of Canterbury and York, according to the rights now vested in them respectively; and except the several other bishops within their respective dioceses, for the marriage of persons, one of whom shall be resident at the time within the diocese of the bishop in whose name such licence shall be granted, &c." In this clause there is much more than meets the eye, and its operation will be attended with no minor con-

sequences. It is well known that throughout the kingdom there are a great number of peculiar jurisdictions, which have, for time immemorial, possessed the power of granting licences of marriage, and many of them are completely exempt from the jurisdiction of the suffragan bishop in whose diocese they are locally situate, and have their patent officers, &c. &c. My Lord, by the clause which I have just copied, the jurisdictions of these peculiars to grant licences of marriage is taken away as from Monday the 22nd ult. What *notice* did the officers of these courts receive, that their power of granting licences was annihilated from the 22nd ult.? None—and therefore, before an intimation of what the Act had done could possibly reach them, a great number of licences would have been issued under the authority of these courts—every marriage solemnized under which will be in jeopardy until Parliament interfere to render them valid! Surely, my Lord, it would have been far better for all parts of the Bill to have taken effect at one and the same time;—as it is, some of them take effect from the time of its passing, while others are dormant until the 1st of September next, and, in the instance to which I have just referred, the inconvenience and danger are apparent.—Who, too, I ask, is now to grant licences of marriages in royal peculiars, or in peculiars exempt from the jurisdiction of the local bishop, and where the appeal lies to the metropolitan?

The 16th section of the Act specifies the requisites which are to attend publication of banns on and after the 1st of September next. Nothing, my Lord, can be urged against the precautions which the Act has attempted* to provide in this particular; but what can be said to the tremendous—the sweeping confiscations of property which will attend any false statements or affidavits leading to the publication of banns? These, I take it, will be far more numerous than those which will be produced by licence; and, as precisely the same arguments apply to them as to those connected with marriages by licence, I forbear to dwell further on so painful a subject.—With respect, however, my Lord, to this part of the Bill, I cannot resist observing that the 19th section of the Act, which establishes the validity of marriages by banns, though the publication were *made under false or assumed names*, appears to render the publication perfectly useless. Correctness as to names, both Christian and surname, has hitherto been considered as of the “*essence of publication* ;” and surely this is reasonable; for, if *false* names are to be adopted, how can a parent or guardian exercise his right of forbidding the marriage at

* I say “*attempted*,” because an affidavit which is only to specify how long parties have resided in a parish *previous* to an application for publication of banns, and which neither states what length of time such residence shall extend to, nor is declaratory of any residence during *the time of publication*, cannot be otherwise than futile.

the time of the publication of the banns? What a cruel situation will an affectionate parent or provident guardian be placed in,—to be incapable of forbidding the banns through a want of knowledge of the assumed names of the parties, and then, when too late, obliged to witness his darling child or favourite ward, the object of his most fervent affection or most intense solicitude, dashed upon the stones of adversity by an imprudent marriage! Although the Act does not exactly use the term, yet I should conceive that a “false description” of the parties, or an erroneous place of residence stated in the affidavit, would not, after solemnization, vitiate a marriage. If this be so, and the false description be joined to the false or assumed names, how will it be possible in large and populous parishes (the places which will be invariably resorted to by parties having clandestine purposes in view,) for parents and guardians to exercise their right of dissent?

I now, my Lord, lay down my pen, having ventured to obtrude upon your Lordship what has occurred to me upon a perusal of the Marriage Act Amendment Bill. Clear it is that such an Act, without explanation or amendment, cannot long remain upon the rolls of an English parliament. What are the precise provisions necessary to be introduced, and the alterations to be made, it is not for one of my limited sphere in life to suggest. It is, however, tolerably obvious, that unless

parents and guardians are, in some degree, restored to the situation in which they stood previous to the passing of the late Act, the consequences to society will be such as can only be contemplated to be dreaded. I have purposely avoided remarking upon the effects attached to the retrospective clause of the Bill, as the protests which were entered by certain noble lords against the passing of it so clearly illustrate them, and as I do not conceive myself competent to trace its tendency through its various ramifications. Now that the law upon the subject has become a matter of deep consideration, and the danger and inconvenience of any thing like hasty or imperfect legislation are so apparent, a hope may surely be indulged, that the combined exertions of those best competent to appreciate and understand the various conflicting and majestic interests connected with the subject, will produce a "consummation devoutly to be wished" in the shape of a legislative enactment, which, while it will protect the rights of the parent and the interests of the child, the comfort of the ward, and the authority of the guardian—will diffuse extensive benefit, give stability to property, and satisfaction to the community at large. Foremost in the ranks of those to whom the English nation will naturally look for an accomplishment of these desirable ends your Lordship appears; and indulging an earnest hope that you may long

be spared to your country as a powerful assertor and vigilant guardian of her laws, liberties, and religion, I have the honour to subscribe myself,

My Lord, your lordship's faithful
and obedient servant,

J. STOCKDALE HARDY.

Aug. 20, 1822.

LETTER TO LORD STOWELL

On the MARRIAGE ACT AMENDMENT BILL, 1823.

Craven Hotel, Strand, 22d Feb. 1823.

MY LORD,

THE very condescending and kind manner in which your Lordship was pleased to receive a Letter which I took the liberty of addressing to the Earl of Eldon on the subject of the Marriage Act passed last year, will, I humbly hope, be a sufficient apology for my now venturing to submit to your Lordship's consideration a few observations upon the Bills in progress for an amendment of that measure.

Most cordially do I rejoice that the House of Lords have referred the important subject of the Marriage Laws to a Committee, as now, from the united exertions and deliberations of both Houses, every hope may be cherished that such an Act will be framed as will give satisfaction to the community at large, and place the matrimonial law of the country upon a permanent and equitable basis.

In venturing to make any observations to your

Lordship on a subject with which your Lordship is so much more deeply conversant than an obscure individual like myself, I know well to what deserved ridicule I should expose myself did I obtrude such observations in any spirit except one of unfeigned humility, and did I not confine them as much as possible to points arising out of my practice as a provincial deputy registrar. Now, my Lord, that a statute will probably be enacted, the execution of which will embrace a most extensive field of practice, the few remarks of which I shall beg the favour of your Lordship's kind reception will, I trust, be deemed neither impertinent nor improper.

The first point to which I had intended most respectfully to call your Lordship's attention, is anticipated by a Bill which, from the papers of to-day, I perceive has been introduced into the Lords by his Grace the Archbishop of Canterbury, for the validation of the Marriages solemnised under Archdeacons' and Peculiar licences, before such authorities were aware that the late Act had taken away their power of issuing such licences.

The second has reference to the method pursued in granting licences by surrogates in the country. Your Lordship is fully aware that the general practice has been for licences to be sealed in blank and delivered out from the different registries to the surrogates, who then fill them up as applications arise. It seems doubtful from the case of Mr. Herbert in Peere Williams, whether this prac-

tice is at present legal, although I do not see how it could be dispensed with consonantly with anything like general convenience; the present, however, appears a fit opportunity to have the point considered. If, suitably to general convenience, surrogates were to fill up the bonds and affidavits, see them executed, &c. and transmit them to the register office before the sealed licence issued, it might obviate some mistakes, and give the registrar an opportunity of seeing that the provisions of the Act had been complied with before the licence issued, and at the same time of stopping the licence from issuing in case any caveat be entered; but, in the case of caveats entered against licences, it would operate favourably. Previous to the passing of the late Act, however, the mistakes made were few comparatively speaking, and, let what will be determined on, I am certain your Lordship will agree with me in thinking that the clergy should not be deprived of any advantages they have hitherto derived with respect to licences.

With respect to *Peculiars*, as far as my limited information goes, I believe that the chief business in these courts is confined to the mere routine of granting licences, &c. in common form. Suits are very rare, and if they arise are hereabouts removed by letters of request. Upon the general question of the propriety or impropriety of the retention of these jurisdictions, it would be presumption in me to offer an opinion; but your

Lordship will perhaps permit me to say that I am a decided advocate for the restoration of episcopal rights wherever infringed upon. So far as public convenience is interested, the question must be left to Parliament; and I think your Lordship will acquit me of anything resembling interest upon this point, as I am not in any manner connected with any Peculiar jurisdiction, my practice being confined entirely to the Court of the Commissary of the Lord Bishop of Lincoln for the Archdeaconry of Leicester.

The objections which I urged in my printed Letter to the Earl of Eldon against females being compelled to appear at the time of granting marriage licences, continue unabated. I however feel great embarrassment on the point, as I perceive Dr. Phillimore still retains this part of the Act in the Bill introduced by him into the Commons, and my opinion of the talents of that learned counsel is such that I feel a conviction he would not retain that clause except he thought it indispensably necessary. So far as my practical experience has gone, the evident distress and acute feelings evinced by females when attending to obtain licences, have been such as could not be viewed without emotion and pity by bystanders. With regard to the production of the registers, Dr. Phillimore has certainly, in a great measure, removed the sting out of this part of the Act, and probably the extracts may be useful at some future periods as evidence of identity. All these points, however, will, no

doubt, receive great consideration ; as, to adopt the words of a noble Lord, "The less unnecessary difficulties are thrown in the way of obtaining marriage licences, the better for morality, the revenue, and the public." That Dr. Phillimore wished to avoid such difficulties I firmly believe, and the hesitation I feel in observing on the above points arises from a conviction that the learned gentleman had substantial and cogent reasons for retaining what perhaps the want of a more extended sphere of action may have prevented me from discovering.

With respect to the transmission of the copy of the licence, &c. to the diocesan registries, I would most humbly submit to your Lordship that this is not necessary, and would be found inconvenient in those dioceses which *have a Commissary appointed by the Bishop for each archdeaconry*. In this extensive diocese (Lincoln) for instance, there are substantial registry offices in each county, viz. Lincoln, Leicester, Huntingdon, Bedford, Buckingham, and part of Herts. Each county (or rather archdeaconry) has a separate Commissary appointed by the Bishop, and the patent held by him is as extensive as the Chancellor's (except as to deprivation of clerks). The diocesan registry (Lincoln) is 120 or 130 miles distant from some parts of the diocese, whereas the commissary registries are pretty central in each archdeaconry. Besides, licence papers (in the country) are less searched for than any other species of documents,

and your Lordship will perhaps be surprised when I say that in this archdeaconry not more than four searches in a year have been made for the last fourteen years, although the Bishop's Commissary has jurisdiction throughout the whole county, excepting ten parishes.

With respect, my Lord, to the affidavits preceding the publication of banns, may I be allowed to suggest that it should be deemed sufficient for each party to make affidavit singly and before the minister of the parish in which he or she resides? The greatest inconvenience has been felt when parties have resided in different and perhaps remote parishes, from *each* of them being obliged to swear to the affidavit before the minister of *each* church (as many would not appear before a magistrate for the purpose); and, as the amended Bill now proposes to limit the power of swearing these affidavits to the ministers alone, the inconvenience I have pointed out will arise in every case where parties reside in different parishes.

With respect to the Bill which has been introduced into the House of Lords (with the best intentions I am confident) by Lord Ellenborough, it would be ridiculous in me to attempt a comment upon any part of it. I only beg to join with (I am confident) the entire population of England in one general feeling of satisfaction that the measure (altering so materially as it purposes to do the general marriage laws of the kingdom, and particularly that relating to marriage by banns,) will

receive from your Lordship that due and scrutinizing attention and discussion which its magnitude so obviously demands.

In conclusion, allow me, my Lord, to tender once more my sincere apologies for the great liberty I have taken in addressing your Lordship and I have the honour, &c. &c.

At the same time Mr. STOCKDALE HARDY addressed some observations on this subject to Dr. PHILLIMORE, in which, after reviewing the propositions of the projected Bill in nearly the same terms as in the preceding Letter, he introduced the following statement of his own experience in the diocese of Lincoln:—

Without Commissaries, I will venture to affirm the business of the diocese could not be transacted. They have equal powers with the Chancellor of the diocese, and any appeal from the decisions of their courts lies to the *Arches*. I am also happy to say the Commissaries in this diocese are well qualified for their situations. Now, under these circumstances, why need the licence papers be sent to Lincoln? Our register offices are good—in this archdeaconry we had one built last year perfectly insulated and fire-proof. The inconvenience to the country in searches would be felt very greatly were such searches numerous; but there has been more said on this matter than need have been, for in a practice of nearly twenty years I never had

more than six licences searched for out of between 200 and 300 granted every year. They are less looked after than any other species of document, and this you will find confirmed by others besides me. If, instead of "*Registrar of the Diocese,*" the word "*Registrars*" is substituted, it will be an improvement, for to give a Commissary a right to grant a licence, and then not entrust him with the documents connected with his own act, is an inconsistency.

SUBSTANCE OF A PAPER

Read by JOHN STOCKDALE HARDY, Registrar of the Archdeaconry of Leicester, at a Meeting of the Committee of DIOCESAN REGISTRARS, held at Richardson's Hotel, Covent Garden, on Wednesday, the 26th February, 1834.

WITH respect to the Circular which has called us together, I beg to say, that I am adverse to any application to Parliament on our part at the present time. Indeed, I do not exactly see how any petition from us could be received in the existing stage of the business. I never heard of such a thing as a petition against the Report of a Committee being carried into effect; and it is quite clear we can introduce no Bill embracing the principle of compensation, except with the sanction of the Treasury. But if these obstacles did not intervene, I should still be against any parliamentary application of ours; it is even on the cards that no Bill—or such a Bill as we should not materially object to—will be introduced. In my view, the disunion or dispute, or whatever it may be termed, between the Ecclesiastical and Real Property

Commissioners will be of infinite service to us.—“It is a mighty pretty quarrel,” as Sir Lucius says, “and ought not to be spoilt.” Doctors’ Commons for once has got into Chancery, and the difference of opinion may lead to the non-introduction of any very sweeping measure. My reasons for thinking so are principally these: supposing the recommendations of the Ecclesiastical Commissioners for taking away a large proportion of the jurisdiction of the Ecclesiastical Courts be acted upon, and an issue—a jury—and *vidé voce* evidence be directed in matrimonial and testamentary causes, there will be little or no employment for a bar in the Commons, except the administration of assets, and some other subjects, be added to their business. The two proposed new judges could not subsist without a bar, and business for a bar; after all the inferior tribunals had been destroyed, the salaries of these judges would be no trifle; they would be paid out of the Consolidated Fund, and, in the present state of public feeling, the House of Commons would never allow two such judicial sinecures (for they would be nearly such) to continue long. Some active member of the House would get up, as Mr. Hume did last year with respect to the Court of Admiralty, and move for a return of the number of causes entered and brought to a sentence, and the number of hours the judges had sat in court each term, and the matter would end in an explosion. Doctors’ Commons would be annihilated, and all

the wills in the Country being then lodged there, probably a system of mere registration would be adopted in place of a system of probate; for it is impossible that the practitioners could exist without a court, a bar, and business for a bar. These are the principal reasons which induce me to think it would be unadvisable for us to bring our case before parliament in the first instance. Let us see the Bill, and we shall then be better able to decide what to do. At the same time I am quite for keeping the subject alive in our local districts, for the feelings generated there are the real conduit-pipes to the House of Commons; we must be prepared for action, as we know not in what hour we shall be attacked. I wish to speak, however, with every respect of the practitioners in Doctors' Commons; I number amongst them some of my oldest and most valued friends, and I am certain many of them never dreamed of such a sweeping alteration being proposed as we have had the misfortune to see.

The proposed "Local Courts Bill" of the Chancellor is another "God-send" for us, although I think it would not be prudent to mix up our case with it. It has now become a *Government* and a *political* measure, and we should endeavour to steer as clear of politics as possible. Our principle is, that old established and conveniently situated local courts should not be removed. We do not meddle with the question, whether or not new local courts should be created. I confess I would

sooner be associated with a metropolitan court than with any new scheme of local courts ; and I feel that, next to being allowed to remain as we are, the most advantageous situation for us to be placed in would be to be permitted to retain our domiciles, and still practice in the metropolitan court ; through our local friends we should obtain a large proportion of the country business ; and as attornies, although officers of a court in London, are still not obliged to reside there, why should we ? These remarks, however, are merely made *en passant* ; and now to resume the business of the day.

We complain of not having been sufficiently heard ; but I take a very different view of this part of the subject to what I dare say almost all those who are present do. It has so happened that upon the minutes of evidence as they now stand almost all our important points appear ; where they do not, the inferences are decidedly favourable to us ; and there is such a thing as giving too much evidence ; a skilful counsel seldom or never calls all the witnesses mentioned in his brief. The all-important calculation as to searches is in evidence ; the difference between the charges in the country and in London is in evidence, both before the commissioners and the committee ; the returns as to the places of custody for wills in all the courts are in evidence, and shew that in almost all the dioceses they are considered secure. Mr. Protheroe speaks to a decided

improvement having taken place in the method of keeping the records in the country ; Mr. Gwynne to the superior knowledge of *local* practitioners as to *identity* of parties (one of the grand points made for the establishment of the new scheme) ; Mr. Freshfield and Mr. Maule to the loose manner of transacting business in the superior courts, and to frauds having been the results. Now all this is positive and decisive evidence in our favour. With respect to inferences in our favour, we have offered ourselves for examination before the Committee, had they chosen to have called us ; we have presented to them our Memorial and offered to substantiate it by evidence, and no evidence of frauds having been practised on the country courts appears on either the minutes of the Ecclesiastical Commissioners or the Committee of the House of Commons. I candidly tell you I am content to stand upon the evidence as it is—at all events, if further evidence is called for, we are not the parties to give it. We object to the evidence received by the Commissioners and the Committee, because it was given by interested parties—would not the same objection apply to our evidence ? I placed our Memorial* in the hands of a friend of mine, a very rising man at the Chancery Bar ; and, on my reading that part of it

* “ Memorial of the Registrars of the Courts of the several Dioceses in the Province of Canterbury, 1833,” royal 8vo. pp. 34. This Memorial, it is believed, was written chiefly by Ralph Barnes, Esq. Deputy Registrar of the Consistory Court of Exeter.

to him which complained that only two diocesan registrars had been examined, and no question put to them calculated to extract their opinions as to the policy of a General Registry for Wills, he stopped me by saying, "No, you could not expect such a question to be proposed to them; you are inconsistent in your argument there—you complain of interested parties having been examined against you, and still wish yourselves, who are equally interested parties on the other side, to be examined; nothing but disinterested witnesses will serve you." These observations very forcibly struck me, and led me to the conclusion that, if further evidence was necessary, none except that of independent parties would serve us. Now I think great good might be done in a quiet way by this system. I would invite the nobility, members of parliament, and influential gentry of our respective counties, to inspect our registries; and I would have briefly explained to them the method pursued as to searches, filing of wills, &c. The approaching assizes would not be an ineligible time for the purpose. The impression made, I am convinced, would be great; many of the nobility, &c. are not aware that there are such establishments as local registries. The plan proposed would get the subject discussed in the country; our friends in parliament would be strengthened by the evidence of their own senses; and many who would not take the trouble of reading a pamphlet would feel an interest in the case. At the same time the local public might be kept

interested by short paragraphs in the local papers from time to time; and, should further evidence be called for, we should have no difficulty in procuring some leading attornies, and men extensively engaged in executorships, to speak in favour of the local system. Another thing too I fancy would have a striking effect; a calculation as to the number of wills and records of administration which would have to be removed to London in case the recommendations of the Ecclesiastical Commissioners and of the Committee be adopted; my calculation is, that from my little archdeaconry I should have to send up from 35 to 40,000; several millions would have to be sent up from the aggregate local registries. And nothing perhaps would have a greater effect on the local public mind than this; they would begin to think *why* all these documents should be removed, and of the "perils and dangers" of the removal.

I now come to the consideration of a scheme as to our jurisdictions. The more I consider this, the more I am convinced we should take our stand on Lord Stowell's Bill of 1812. The very name of Lord Stowell is a "tower of strength" to us; the name of the man who for years gave a character to the courts in Doctors' Commons they otherwise would never have obtained, and whose decisions on points of Maritime Law were, and still are, regarded with the most profound respect by all the nations of Europe. The question at the period to which I refer was very fully gone into, and the debate in

the House of Commons was a most interesting one. Lord Folkstone (now Earl of Radnor), Sir William Scott (now Lord Stowell), Mr. Pascoe Grenfell, the Hon. Dr. Herbert, Sir Samuel Romilly, Mr. William Smith, Sir John Nicholl, and the then Attorney-General Sir Vicary Gibbs, were the principal speakers ; and the debate terminated in Sir William Scott being requested by the House to draw up a Bill. In that Bill, as I stated yesterday, two species of courts were retained ; one for common-form business, another for the exercise of contentious jurisdiction. It provided that no courts should exercise any species of contentious jurisdiction beyond the reception of a libel, except they sat under the immediate commission of an archbishop or bishop (this you will perceive would include episcopal commissary courts, but not archdeacons' courts) ; and that with respect to other courts the simple common-form business should be preserved. The Bill further provided, that the judges of the episcopal courts should be either civilians or barristers of a certain standing. Now I contend that this scheme cannot be amended, further than to confine all contentious jurisdiction to the episcopal consistorial court of each diocese. The plan would then be, that in courts of archdeaconries, where registries existed, the power of proving wills, granting administrations, marriage licences, faculties, and the progress of a cause as far as the reception of a plea, would be reserved, and when the matter assumed an appearance of litigation, the

assistance of the judge of the consistorial court, the civilian, or barrister, would be called in. The idea of the archidiaconal court proceeding as far as the reception of a plea no doubt arose from a wish not to put parties in trivial cases to the expense in the first instance of resorting to the episcopal consistorial courts. I am convinced the scheme would work well for the public; nearly all the episcopal consistorial courts have jurisdiction over probates and administrations sufficient to sustain them: there may be some few exceptions, and those would have to be provided for.

The great danger of abolishing all except episcopal consistorial courts for purposes of probate or administration lies here: it sanctions the principle of a *general registry*, and would lead in many instances to grants being obtained from London and not from the consistorial court. Take the diocese of Lincoln:—who in Hertfordshire, Bucks, Hunts, Beds, and even Leicestershire, would not find it more convenient to have a grant from Doctors' Commons than from Lincoln? The distances in many cases would not be half, or even a quarter, and in all the method of conveyance would be more direct. Besides, I feel convinced that such portions of the public as have hitherto enjoyed the advantages of archidiaconal registries where the cathedral establishment is at a distance would not submit to be put to such inconvenience, and, if we refer to the returns laid before parliament, we shall find that the grants made by other courts than

episcopal consistorial courts run the latter very hard as to number. I should say, abolish all peculiars if existing in counties where cathedrals are situate, and merge them in the consistorial courts; if in archdeaconries where registries are provided, and at a distance from the cathedral establishments, merge them in the archdeaconries. The ecclesiastical commissioners at first never intended to abolish any courts except those below bishops' commissary courts; then they decided on only retaining consistorial courts, and from thence they proceeded to a system of general registry in the metropolis, finding, no doubt, as they did in several instances, that a general metropolitan registry would be as convenient, or more so, than one established at the seat of the see.

I say again, stand on Lord Stowell's Bill—what better? Here is a system at once sanctioned by his high name—a system sanctioned by the House of Commons (for the Bill passed there, and was rejected as to the judicial qualification clause by the Lords only by a majority of 4 :) Lords Eldon and Redesdale, however, speaking in favour of the Bill, and the late Lord Ellenborough, and his brother the Bishop of Chester (now Bath and Wells), opposing the qualification clause, and by Sir John Nicholl and the Doctors' Commons bar.

With respect to *bona notabilia*, no doubt it must undergo a thorough revision, but there must be a superior court in the metropolis. I take it to be of the highest consequence that a civilian bar

should be preserved, and that cannot be effected (as I observed before) without a sufficient number of practitioners, and business for them. The prerogative court is certainly unknown to the common law of the land, and is the creature of the canons. It arose out of the inconvenience felt when each bishop made a grant for effects in each diocese. That this was the original jurisdiction there can be no doubt; and it would be an interesting employment for the registrarial antiquary to make a calculation as to the quantum of business formerly transacted in the consistorial courts as compared with the present times. I once saw a document which proved that no less than five advocates were once resident in Lincoln. This was doubtless when all business in that extensive diocese was transacted at Lincoln, and all wills proved there; and the inconveniences experienced by this, undoubtedly the primary practice, led to the appointment of the archdeaconry chancellors, the *officiales foranei*, or commissaries, in each archdeaconry. The prerogative court may be assimilated to one who, having served his apprenticeship to a wealthy merchant who afterwards became reduced, made his fortune principally by transactions in the public funds, then purchased the mansion and grounds formerly the property of his unfortunate friend, and, it is said, is now attempting the ejection of the latter from a cottage and a curtilage bordering on his own once splendid domain, and the sole remnant of his shattered fortune. Such ingradi-

tude was certainly scarcely ever heard of, and I trust the report will prove unfounded. But to return. I consider our "Memorial" binding upon us—it is our only conjoint authorised publication. It distinctly recognizes Lord Stowell's measure, quotes it, and asserts the principle that a court may be a good and convenient court for common form business which would not be fit to exercise contentious jurisdiction. As to *bona notabilia*, our Memorial does not propose its abolition, but its enlargement to suit the altered circumstances of the times. The Memorial advocates the retention of the Prerogative Court, and I feel strongly that, except that court and a civilian bar be retained, the system of probate must fall altogether, and a mere country or metropolitan system of registration be substituted. Without a competent civilian bar, the public will not consent to pay the expense of a system of probate—there would not be a sufficient *quid pro quo*.

My idea is, we cannot act too much on the defensive; that was the line of tactics agreed on at our first meeting in April, 1832. It is all very well to be prepared with some scheme, but as to anything further, I should say, wait until we are attacked in the shape of some legislative measure, and do not let us expend all our ammunition before the hour of real conflict.

OBSERVATIONS

ON THE

ECCLESIASTICAL COURTS CONSOLIDATING BILL,
1836.

I.—THE following is the third section of the above Bill :

“ And be it enacted, that all courts at present exercising Ecclesiastical Jurisdiction in England and Wales, save and except the courts of the vicars-general of the archbishops and bishops respectively, and of the master of the faculties of the archbishop of Canterbury, shall, from and after the _____ be abolished, so far as relates to any Ecclesiastical Jurisdiction, and that the functions of the judges, registrars, deputy-registrars, and other officers of such first-mentioned courts, so far as they relate to Ecclesiastical matters, shall thenceforth cease and determine, and that the Ecclesiastical Jurisdiction heretofore exercised by such courts, and not by this Act expressly abolished or transferred to his Majesty’s Court of Probate hereinafter mentioned, shall be transferred to and exercised by the courts of the vicars-general of the archbishops and

bishops respectively in as full a manner as it could heretofore have been exercised by the courts so to be abolished as aforesaid."

OBSERVATIONS.

Should this be enacted, no licences for marriage can in future issue, except from the Faculty Office in Doctors' Commons, or from the courts of the vicars-general of dioceses, which courts are almost invariably situate at the cathedral establishments.* Thus, in the existing state of dioceses, (except a party apply at the Faculty Office in London,) a person residing at Leicester will be able to obtain no licence for marriage except from Lincoln, or one resident at Nottingham none except from York. The proposed new arrangement of dioceses would, in some cases, decrease this inconvenience, but still very great inconvenience would remain under the new arrangement; the party resident at Leicester would be able to obtain no licence except from Peterborough, and the one resident at Nottingham none except from Lincoln. It should be stated, that, under the existing law, documents of the description referred to can be granted both at

* The dioceses of Ely and St. David's, I fancy, are exceptions. The episcopal Consistory and Vicar-general's Courts for the diocese of Ely are held at Cambridge, and there are branch Consistory and Vicar-general's Courts for the diocese of St. David's at Caermarthen, Brecon, Haverfordwest, and Cardigan.

Leicester and Nottingham, and also at various other places in the kingdom—the seats of arch-deaconries or diocesan commissary districts,* and these pass under the seals of the several archdeacons, or of the commissaries of bishops, who hold patents authorising them to issue such documents. In all these instances there is no occasion for any reference to the seat of the see.

It is the practice, in many dioceses, to issue licences in blank to surrogates, but this is illegal; and so strong was the opinion given upon it by Dr. Lushington, in reply to cases stated to him, that in several dioceses the practice has been discontinued.—(Vide paper annexed, No. I.) The late Dr. Arnold, when Chancellor of the diocese of Worcester, stopped the issuing of licences in blank in that diocese, on the passing of the Marriage Act of 1823, and issued a Circular (vide paper annexed, No. II.) explaining his reasons for so doing; the principal of which was, that, as the Act gave any interested party the power of entering a caveat in the registry, and provided that, in case of such caveat being entered, no licence should issue until the matter of the objection had been examined into by the judge, it was absolutely necessary that surrogates should not hold sealed licences in blank to be filled up and issued without previous communication with the registrar.

The course pursued in those dioceses where

* Among others Bury St. Edmund's, Bedford, Huntingdon, Aylesbury (for Bucks), &c.

sealed licences are not now issued in blank, is for the surrogate to swear the applicant to the contents of the necessary affidavit, to return the affidavit into the registry, and then for the registrar, in case he finds no caveat entered, and all correct in the affidavit, and in cases of minority the proper consent or consents deposed to, to send the licence properly drawn up and sealed to the surrogate, to deliver to the party.*

This subject is deserving of great additional attention, taken, as it now must be, in connection with the Bill at present before the House of Commons, intituled, "A Bill for Marriages in England." Under this Bill licences for the celebration of marriage, not according to the rites of the Church of England, are to be granted by certain officers called "Superintendent Registrars of Districts," and at the offices of these registrars caveats against the grants of such licences are to be lodged in the same manner as caveats may now be lodged at the offices of the various ordinaries, whether vicars-general, chancellors, commissaries, or archdeacons, and no such licences are to issue until the matters of the caveats have been inquired into.

* In Ireland no licences for marriage are issued in blank to surrogates; an official or surrogate, with an attendant registrar, are stationed in the city of the diocese or principal town of the archdeaconry, and by them are all licences decreed, prepared, and completed.—Vide extract from the Rev. R. Maunsell's letter. (No. III.)

The above provision, if carried into effect, will, in case the clause also to which I have adverted in the Ecclesiastical Courts Consolidating Bill, be adopted, place those who prefer being married by licence *not* according to the rites of the Church of England in a far more advantageous position than those who may wish to conform to such rites. The officers—the “superintendent registrars”—who, in the former case, will have the power to grant the licences, will be invariably resident either in or at a short distance from the populous towns of the empire; whereas, in the latter case, the officers—“the registrars of the vicars-general,”—who will have the sole power of granting the licences, will, with the exceptions I have mentioned, be resident at the seats of the sees, and it is notorious that the English cities are very frequently thinly populated, and far removed from the densely inhabited districts of the dioceses attached to them.

With reference also to caveats against the grants of marriage licences, it will surely be more convenient for parents and guardians to enter these at the offices of the superintendent registrars than at those of the vicars-general of the dioceses. As to these, however, no system can be rendered complete, as far as members of the Established Church are concerned, so long as the master of the faculties of the archbishop of Canterbury is allowed to issue marriage licences for all parts of the kingdom, upon affidavits made in the present form.

This is a power, as is well known, conferred on the archbishop by the statute 25th Henry VIII. c. 21, as having been theretofore exercised by the papal see. It is at perfect variance with the present marriage laws, and with the system of caveat established by the Act 4th Geo. IV. c. 76, s. 11, and ought either to be abrogated or placed under regulations applicable to existing circumstances.

Supposing the third clause in the Ecclesiastical Courts Bill to be adopted, and none except the vicars-general of the several dioceses to have the power of granting licences, it may be fair matter for consideration, whether the various archidiaconal or diocesan commissary establishments and registries now subsisting in most dioceses, or such of them as are conveniently situate as to counties or districts, might not be made available for the grant of marriage licences, under district seals granted by the vicars-general—a system, it is believed, now in operation in the diocese of St. David's.

This would obviate much of the inconvenience which would otherwise arise, and the registrars attached to these establishments would be found fully competent to perform the duties entrusted to them. Surrogates within the districts would then have to transmit the affidavits leading to the grant of licences to these district registrars, instead of to the seat of the see, while those resident in the district attached to the seat of the see would have, of course, to send them thither.

In these district registries also, caveats might be entered, and on their entry an instant notification of their having been lodged ought to be made by the district registrar to the registrar of the diocese, and, in case the Faculty Office of the archbishop be preserved, to the master also of that establishment.

II.—The Report of the Select Committee to which the various petitions presented against the probate clause in the Ecclesiastical Courts Bill were referred, proposes (*inter alia*),

“ That the registrar of each diocese shall be appointed by the General Court of Probate to be established in London to act as an officer and be a surrogate of such court; that he shall receive all wills brought to him for probate, and the applications for letters of administration when the personal effects are under £300; that such officer shall retain all such wills for fourteen days, and then transmit them, with all necessary papers, &c. to the Court of Probate in London; that, after the probate has been prepared and sealed in London, it shall be transmitted to such registrar for the purpose of being delivered out to the interested party, and that with the said probate shall be sent an official copy of the will to be retained by the registrar for inspection in the country at the diocesan registry.

“ For the accommodation of persons living at a distance from the offices of the registrars in the

different dioceses, the Committee suggest that surrogates should be appointed by the court in London in such places as should be thought advisable, to administer the usual oaths, and, if required by the party, to transmit to the registrars the will and papers necessary for obtaining probate and letters of administration."

OBSERVATIONS.

It is to be remarked, that the recommendations made by the Committee lose sight of all except registrars of dioceses. The officers of district, commissary, or archdeaconry registries within dioceses (and who are as numerous as the registrars of dioceses) are quite passed over. It is true, the officers belonging to these latter registries might, under the recommendation, be appointed surrogates of the General Court of Probate, but they would have to transmit to the registrars of the dioceses the wills and papers necessary for obtaining probates and administrations. The report says, this transmission is to be made *if required by the parties*; but it does not go on to say, that the registrars or surrogates of the districts shall be empowered, in like manner as the registrars or surrogates of the dioceses, to send the documents forthwith to London in order to the completion of the probates or administrations. From what fund also are the registrars or surrogates of the districts to be compensated for their trouble and responsi-

bility? It would appear from the report, that the sums of £500 per annum, allotted to each diocese, are to be applied exclusively amongst the registrars of the several dioceses, "in proportion to the income now arising from the performance of the duties proposed to be abolished—such annual payments to be received by them, in diminution of the compensation which they would otherwise be entitled to receive."

If I am correct in my construction of the report of the Committee, a will proved before a district surrogate at any other place in a diocese than the cathedral city will have to be transmitted to the registrar of the diocese resident in the cathedral city, before it can receive probate in London; at all events, the probate, when made out, will have to be transmitted from London to the registrar of the diocese, and the copy of the will which is to accompany it is to remain in the registry of the diocese. Now let attention be directed to the practical working of such a system.

Either branch diocesan or archidiaconal registries, with proper officers attached thereto, have for centuries existed in most of the dioceses in England, and are placed for the most part in eligible situations. These were no doubt founded upon considerations of public convenience; and, to obviate the hardships which the community endured when applications for probates and administrations and for the inspection of original documents could alone be made at the cathedral registries,

they would have to be sent by the registrar or surrogate of the diocese to London; and lastly, the probate would have to be sent by the officer of the Court of Probate in London to the registrar at Lincoln, to be delivered to the interested party! It is also clear from the report, that the copy of the will which is to accompany the probate from London, would have to travel to Lincoln, and be detained in the registry there, upwards of eighty miles from Bedford, where the executor and the parties interested reside, and that at no other place than Lincoln could they have access to such copy!

The proposed new arrangement of dioceses would certainly lessen the inconvenience and injury above pointed out—but still very great inconvenience and injury would remain. Take a few examples: The proposed diocese of Peterborough is to consist of the counties of Northampton, Rutland, and Leicester. There are now three distinct registries where wills, &c. are lodged, and probates and administrations granted,—at Peterborough, Northampton, and Leicester. Under the system recommended by the Committee, a will proved at Northampton, or Leicester, must be sent to Peterborough before it could *officially* reach London; the probate, when passed in London, would have to travel *vid* Peterborough to Northampton or Leicester, and the copy of the will must be retained in the diocesan registry at Peterborough. Of what service would this copy be to the inhabitants of Northampton or Leicester? A reference to Lon-

don would be more convenient. The population of the three places is about as under :—

The city of Peterborough	.	5,553
The town of Northampton	.	15,351
The town of Leicester	. . .	39,306

The proposed diocese of Lincoln is to consist of the counties of Lincoln and Nottingham. A will therefore proved at Nottingham would have to travel to Lincoln, and from thence to London, before probate could be granted—and the copy sent from London with the probate would have permanently to remain at Lincoln.

Population of the city of Lincoln	.	11,892
Ditto of the town of Nottingham	.	50,680

In the proposed dioceses of Lichfield, Llandaff, Worcester, &c. the effect would be equally inconvenient.

Were district registries retained or placed in convenient situations in the larger dioceses, and the officers of such registries made surrogates of the General Court of Probate, and authorised *quasi* the districts to transmit at once to London the wills and necessary papers leading to probates, to receive the probates, &c. from the metropolitan court, and to retain in the district registries the copies of the wills to be transmitted with the probates, the inconveniences and anomalies above pointed out, would be obviated.

The preceding OBSERVATIONS have been drawn up by one who presumes to think, nay, who feels thoroughly convinced, that no system of probate will work well for, or be satisfactory to, the country, which takes away the custody of the original wills and records of administrations permitted to be proved or granted out of the metropolis, from registries situate in the dioceses and districts.

In venturing therefore to solicit attention to the remarks he has submitted, he would wish not to be understood as having in the slightest degree changed any opinion he ever held on the general subject, and he trusts that he will not be deemed impertinent in making this avowal; he can truly say, it is in the remotest degree removed from his intention either to give offence, or to assume a tone which might be deemed indecorous. The spirit which has dictated the observations above made, is one which, acting in conjunction with an impression that Parliament may view the subject in a far different light to what the writer does, and may see fit to apply a metropolitan centralization system to the cases of wills and records of administrations, would, in case of such an event, strive to decrease the great public inconvenience and injury which he humbly conceives would be occasioned.

A very few words introduced into certain clauses of the Bill would secure all the conveniences and advantages contemplated by the writer.

APPENDIX.

No. I.—CASE.

A CHANCELLOR of a diocese, wishing to conform as strictly as possible to the last Marriage Act, drew up an order that no licences in blank should be delivered out to the surrogates in the country, but that the affidavits in blank should only be sent to them by the registrar, and that upon an application being made to any of such surrogates for a licence the surrogate should fill up the affidavit and swear the party, and forthwith transmit the affidavit to the registrar, who, immediately upon the receipt thereof (should there be no caveat entered against it), should fill up the licence and transmit it to the surrogate.

Before the above order is issued, your opinion is requested,

First, whether, in case the practice of issuing licences in blank to surrogates were retained (it having subsisted for nearly time immemorial in the above diocese), in case any error should be committed by the surrogates in granting such marriage licence, or in case it should turn out that a caveat had been properly entered pursuant to 4 Geo. IV. c. 76, s. 11, and the parties should marry pursuant to the licence, and before the registrar could apprise the surrogate of the caveat, any action for damages or other proceedings would lie against the chancellor of the diocese (supposing him to be aware that licences were issued in blank), or against the registrar or his deputy?

OPINION.

I am of opinion that the chancellor has acted perfectly right in prohibiting the issue of licences in blank. Sir Joseph Jekyll, a most eminent judge, declared in Herbert's case (3 P. W. p. 118) his opinion that such licences were void. I think, if the practice of issuing the licences in blank continues, and any mischievous consequences arise, the chancellor who allowed of such practice would be responsible. Whether an action would lie against him depends so entirely on the injury any party might receive in a particular case, that I cannot answer that question generally. I am of opinion that the chancellor might be prosecuted in the ecclesiastical courts for breach of duty, and I am inclined to think that, in certain cases, he might be indicted.

(Signed) STEPHEN LUSHINGTON.

Cromer, Oct. 17, 1825.

No. II.

CIRCULAR LETTER of Dr. ARNOLD, Chancellor of the
Diocese of Worcester.

Doctors' Commons, 7th Nov. 1823.

SIR,

CONSIDERING that the New Marriage Act of the 4th Geo. IV. c. 76, s. 11, enacts, that if any caveat be entered against the grant of any licence for a marriage, with the forms there specified, no licence shall issue till reference has been made to the judge, and a certificate obtained from him, or till the caveat be withdrawn; and that such caveat can be entered only in the registry; and that if surrogates were to grant licences without communication with the registry, then, notwithstanding a caveat were entered, a licence might

be obtained by application to a surrogate residing at a distance from the registry, he not being apprised of the caveat, and so the effect intended by the Legislature to be given to the caveat might be defeated; I think that, for the future, a surrogate, on application being made for a licence, should, in the first instance, only take the affidavit of the party, according to the form lately sent from the vicar-general's office, and that the same should be transmitted to the registry; and then, if no caveat has been entered, the licence should issue from thence; and I will be obliged to you to carry this suggestion on my part into effect: and upon any caveat being entered be pleased to follow the directions of sec. 11 of the Act with respect to it.

I am, &c.

J. H. ARNOLD.

To the Deputy Registrar of the
Diocese of Worcester.

No. III.

EXTRACT of a LETTER addressed to J. S. HARDY, Esq. by the Rev. RICHARD MAUNSELL, Chaplain to the Lord Bishop of Limerick.

Castle Island, co. Kerry,

April 13th, 1836.

“The diocese of Ardfert and Aghadoe is united with that of Limerick. The bishop resides entirely and constantly in the city of Limerick. His lordship appoints a vicar-general for Ardfert and Aghadoe, and if he does not reside he appoints a surrogate. Alexander Hamilton, Esq. LL.D., a distinguished civilian, is the present vicar-general, and resides in Dublin. His surrogate, and the sole acting official of this diocese, is a constant resident in Tralee, the county

town, where he holds his court, and performs all the duties of his office. It is not the practice in this diocese, nor I believe in any diocese in Ireland, to issue licences in blank. Here the licence is prepared and filled up by the registrar, in which are introduced the names, station, and residence of the parties, and then brought to the surrogate, who administers the oath, and makes every possible necessary inquiry.

(Signed) RD. MAUNSELL."

OBSERVATIONS

UPON THE JURISDICTIONS OF THE VICARS GENERAL, OFFICIALS PRINCIPAL, and COMMISSARIES OF BISHOPS, and upon those of ARCHDEACONS and their OFFICIALS.

[*Published in 1848.*]

CONSIDERABLE misconception having prevailed with respect to the jurisdictions of the Vicars General, Officials Principal, and Commissaries of Bishops, and of those of Archdeacons and their Officials, the following brief observations upon the subject may possibly be of some service.

The *voluntary* jurisdiction of a bishop is either exercised by himself or by his vicar-general; a bishop is bound to appoint an official principal for matters of contentious jurisdiction,* but with respect to voluntary jurisdiction, it is said, he may either retain it, or grant out such portions of it as he thinks proper to a vicar-general; † universally however, as I believe, the practice runs, to appoint both a vicar-general and an official principal. The jurisdiction of a bishop extends, generally speaking, at all times, over his entire diocese, and this is

* Gibs. 986.

† 1 Stillingfleet, 330.

usually exercised by his vicar-general and official principal. A commissary of a bishop (except in cases of probates of wills and administrations of the personal effects of persons dying within the commissariate or archdeaconry, and in which cases, should his patent be sufficiently extensive, grants of probates or administrations are valid for any personal property within the diocese left by deceased parties,)* only exercises jurisdiction within the limits prescribed to him; but both the vicar-general and official principal of the diocese, and the commissary of the commissariate or archdeaconry, usually (at least as far as their patents extend, or unless some special circumstances interfere) possess the authority of the bishop, the former throughout the entire diocese, the latter within the commissariate or archdeaconry, inasmuch as they hold commissions for the exercise of such authority directly from the bishop. With respect to archdeacons, their jurisdictions appear to stand upon a very different footing.

Sir John Nicholl, in the case of *Parham v. Templar*,† said, “that archdeacons may have ‘their peculiars, and in that case are not bound by the stat. 24 Hen. VIII. c. 12’ (which regulates appeals).‡ “This statute,” the learned judge ob-

* *The King v. Yonge*, D.D., 5 Maule & Selwyn, 119.

† 3 Phill. 243.

‡ The object of this statute was principally the prevention of appeals to Rome; and under it, and the stat. 25 Hen. VIII. c. 19, it is provided, that in all cases ecclesiastical the final decision shall

served, “applies to the ordinary cases of archdeacons, presiding in jurisdictions where they are subject to the superior jurisdiction of the bishop, and not to cases of peculiars;” and in the same case of *Parham v. Templar*,* the learned judge said, “There is a third description of peculiars which are still subject to the bishop’s visitation, and, being so, are still liable to his superintendence and jurisdiction.” Wood, in his “Institute,” mentions these: he says, “There the bishop visits at his first and at his triennial visitations: here the appeal lies from the peculiar to the diocesan, but the right of appeal and the right of visitation seem almost necessarily to go together; and in a case that has been quoted in argument,† Lord Chief Justice Holt said, that there were three sorts of peculiars, the first, royal peculiars, where the appeal is directed to the king; the second, peculiars having exempt jurisdictions, such as that of a dean and chapter; and the third, where the jurisdiction is not exempt, but under the control of the diocesan.” With respect to the last description of peculiars, in the case of *Beare and Biles v. Jacob*,‡ in which the question arose, whether the jurisdiction of the

be of the king’s authority; that the first appeal (if it began in his court), in every such cause, shall lie from the sentence of the archdeacon to his diocesan, from his diocesan to the archbishop of the province, and from the archbishop to the king.

* Phill. 246.

† *Johnson v. Lee*, *Skinner’s Reports*, 589.

‡ 2 *Haggard*, pp 262, 263.

sub-dean of Sarum was co-ordinate with that of the bishop of Sarum, or only subordinate, Sir John Nicholl said, "The instrument of the appointment of the sub-dean has been exhibited, and is merely subordinate and archidiaconal: the bishop visits and inhibits: during his visitation, the sub-dean's jurisdiction is wholly suspended, and is merged in, and exercised by, the bishop, as in ordinary arch-deaconries."

In general, the jurisdiction of an archdeacon is founded on immemorial custom, and is subordinate to that of the bishop: such jurisdiction vests in the archdeacon by virtue of his collation to, and his taking possession of, the dignity; hence, there is no necessity for any commission to be granted by the bishop delegating to the archdeacon any authority; he becomes invested with the authority by virtue of his office, and not by any instrument of delegation from the bishop; and some archdeacons whose archdeaconries were formerly connected with bishoprics of the old foundation, exercise a far more ancient jurisdiction than the bishops presiding in the dioceses with which such archdeacons are now associated. A bishop, upon the confirmation of his election by the archbishop of the province, and previous to his consecration, becomes possessed of spiritual jurisdiction;* but the bishop receives no delegated authority from the archbishop, and the latter does not, in obeying the royal mandate for the confirmation of the

* Gibs. 114.

dean and chapter's election of the bishop, lose his right of visiting the diocese—of inquiring into the conduct of the bishop, clergy, and others resident therein—of punishing the bishop, if guilty of irregularities or crimes—or of exercising, by his vicar-general, his concurrent jurisdiction of granting licences for marriage throughout the province. The bishop also takes an oath, at his consecration, of canonical obedience to the archbishop and the metropolitanical church of the province;* and during the vacancy of a see all ecclesiastical jurisdiction, until the confirmation of the new bishop, generally vests in the archbishop,† much in the same manner as would the jurisdiction of an archdeacon, acting without an official, on his death or resignation, vest in the bishop of the diocese, where no special commissary of the archdeaconry had been appointed by the diocesan. In the case of *The Churchwardens of St. John's, Margate* ‡ (being a faculty case), against the Parishioners of the same, Sir William Scott, the then official to the archdeacon of Canterbury, said, that “the archdeacon of Canterbury, by ancient composition with the archbishop, exercised his episcopal jurisdiction in a great part of that diocese;” and so Lyndwood § says, “but, besides these, archdeacons have likewise their officials to exercise their ecclesiastical jurisdiction in certain parts of

* Form of Consecration. † God. 39, 42. Ayl. Parer. 125.

‡ 1 Consistory Reports, 198.

§ Part 16.

the diocese, having acquired jurisdiction from their bishops, either by an express composition or grant, or else by prescription and length of usage, time out of mind." In the case of *Prankhard v. Deacle*,* it was urged by Dr. Lushington and Dr. Addams, in argument, that "there are many archdeacons who enjoy a peculiar jurisdiction." In the case of *Robinson v. Godsolve*,† upon motion for a prohibition to stay a suit in the Bishop's Court, upon suggestion that a party lived within a peculiar archdeaconry, it was resolved by the Court that, "where the archdeacon hath a peculiar jurisdiction, he is totally exempt from the power of the bishop, and the bishop cannot enter there and hold court; and in such case, if the party who lives within the peculiar be sued in the Bishop's Court, a prohibition shall be granted, for the statute intends that no suit shall be *per saltum*; but, if the archdeacon hath not a peculiar, then the bishop and he have concurrent jurisdiction, and the party may commence his suit, either in the Archdeacon's Court or the Bishop's, and he hath election to choose which he pleaseth, and, if he commence in the Bishop's Court, no prohibition shall be granted; for, if it should, it would confine the Bishop's Court to hear nothing but appeals, and render it incapable of having any causes originally commenced there."

The law makes a wide distinction between

* 1 Haggard, 175.

† Lord Raymond, 123.

ordinary and *delegated* power; ordinary power supposeth a person to act in his own right, and not by a deputation from another, which no chancellor or official doth pretend to;* the former acting under a commission granted by a bishop, the latter under one granted by an archdeacon, for the latter can, generally speaking, delegate to an official the jurisdiction conferred upon him by his collation, and his taking possession of the dignity, in the same manner as a bishop can his episcopal jurisdiction, to a vicar-general, official principal, or commissary; thus an archdeacon is an *ordinary*, and is recognised as such by the books of common law.† In cases where a bishop has a concurrent jurisdiction with an archdeacon, where he visits the archdeaconry and inhibits the archdeacon from the exercise of jurisdiction during his primary and triennial visitations, the appeal from any decision of the Archdeacon's Court would, under the statute of the 24 Hen. VIII. c. 12, lie to the Consistorial Court of the diocese, but except an appeal was brought, notwithstanding the concurrency of jurisdiction of the bishop with the archdeacon, the official principal could not interfere, unless where, in consequence of the vacancy of an archdeaconry during the progress of a suit, the aid of the Consistory Court of the diocese was invoked.‡ Even where a bishop has powers of visitation and inhibition within an archdeaconry,

* Stillingfleet, 330.

† Gibs. 970.

‡ Prankard v. Deacle, 1 Hagg. 189.

a question may arise, whether he could sustain a general concurrency of jurisdiction in a case where an ancient, special, and valid composition or agreement to the contrary could be brought forward, or an immemorial custom adverse to such concurrency of jurisdiction (from which such composition or agreement would be presumed) be established. Dr. Swabey, in argument in the before mentioned case of *Parham v. Templar*, said, "I take the jurisdiction of the dean and chapter to be derived from the bishop; then, if there is no *composition* or *custom*, the right of the bishop remains."* Stillingfleet is to the same effect.† Dr. Phillimore, in the same case, said, "It is not intended to deny that in general the appeal lies from the archdeacon to the bishop, or that it can only be taken from the bishop by composition or custom."‡ In most particulars the jurisdictions of bishops, of their vicars-general, and officials principal, of their commissaries for commissariates or archdeaconries, and of archdeacons and their officials, are regulated, as to their extent and power, according to the special usages and customs which govern the dioceses to which they are attached. In the case of *Parham v. Templar*,§ Sir John Nicholl, speaking of the court of a dean and chapter, which he considered as exempt from the jurisdiction of the bishop of the diocese, said, "There may indeed have been specially and

* 3 Phill. 231.

† Ecclesiastical Cases, 346.

‡ 3 Phill. 237.

§ 3 Phill. 249.

originally reserved to the bishop some particular acts, such as granting probate to the wills of persons of higher degree, and the granting of licences, and certainly, as far as these exceptions go, the peculiar does not exclude the bishop. But if the peculiar has the hearing of causes, as well *ad instantiam partis* as *ex officio*, and is exempted from visitation, it should seem in common propriety that the superior is not the bishop, but the metropolitan."

With respect to probates of wills, administrations of the effects of intestates, marriage licences, &c. a bishop cannot interfere, even where there is a concurrency of jurisdiction, if parties choose to resort to an archdeacon authorised to issue such documents to obtain them,* nor can they be granted by the official of an archdeacon in the name of a bishop. Upon this point Dr. Lushington, in a case stated for his opinion, and which is hereafter referred to, wrote as follows:—"The surrogates of the officials of archdeacons do not derive any authority from the archbishops or bishops, and consequently cannot, in my opinion, grant licences in the name of the bishop." Another great distinction between a bishop and an archdeacon is this: the former is bound to appoint an *official principal* for the exercise of contentious jurisdiction, whereas the latter is not bound to

* Some archdeacons have not the power of granting probates, &c. while others can grant marriage licences and not probates and administrations, and some cannot issue any of these documents.

appoint an official, inasmuch as he is expressly recognised as an ecclesiastical judge by the 128th canon of 1603. This canon relates to the "Quality of Surrogates," and I give that portion of it affecting the present subject:—"No chancellor, commissary, *archdeacon*, official, or any other person exercising ecclesiastical jurisdiction, shall at any time substitute in their absence any to keep any Court for them, except he be a grave minister and a graduate, or a licenced public preacher, and a beneficed man near the place where the Courts are kept, or a Bachelor of Law, or a Master of Arts, at the least, who hath some skill in the civil and ecclesiastical law," &c. Wood, too, in his "Common Law,"* says, the judge of the Archdeacon's Court (where he doth not preside himself), is called the official. In the case of *Prankard v. Deacle*, quoted before, the citation is given in Dr. Haggard's Reports,† and it runs in the name of the Archdeacon of the archdeaconry of Wells; and in a case from the archdeaconry of Leicester, in the year 1812, having reference to the appointment of surrogates by the then Archdeacon of Leicester, in which the late Lord Chief Baron Richards and Dr Swabey were consulted, they gave opinions in which an archdeacon was treated as an ecclesiastical judge under the canon of 1603, and therefore capable of appointing surrogates. I have been rather more particular on this point

* Wood's Com. Law, b. 4, c. 1.

† 1 Hagg. 169.

than I otherwise should have been, as I am aware it has been contended that an archdeacon is bound to appoint an official, and cannot personally preside as a judge. A bishop, according to the Common Law, cannot be a judge in his own consistory, except in some particular cases.*

Previous to the recent changes in dioceses, the archdeacons of Leicester, Buckingham, Bedford, and Huntingdon were collated to their respective archdeaconries by the bishops of Lincoln, and installed by the Dean and Chapter of the Cathedral Church of Lincoln; they exercised jurisdiction in testamentary matters, in granting administrations of the personal estates of intestates, and licences for marriage; they also possessed general ecclesiastical jurisdiction (with some few exceptions) throughout these archdeaconries. Mr. Swan, the Registrar of the Diocese of Lincoln, in his "Practical Treatise on the Jurisdiction of the Ecclesiastical Courts relating to Probates and Administrations," says, "They," the archdeacons within the diocese of Lincoln, "exercise testamentary jurisdiction, but it is not known whether they have derived it by composition or usage only; it is, however, inhibited for three months once in three years, and in the same manner as that of the commissaries, and is subordinate to the Bishop." †

That the peculiar or jurisdiction, whichever it

* Ayl. Parer. 161, and *vide* Dr. R. Phillimore's Burn's Ecc. Law, vol. 1, p. 293, and the 122nd canon of 1603.

† Swan's Treatise, 71.

may be termed, of an archdeacon, although subordinate to, is still separate from the bishop's, is clear. The canon law makes a distinction between an archdeacon-general who had no archdeaconry distinctly limited to him, and him who had; with respect to the former, it says, "*sed tanquam vicarius fungitur vice Episcopi universaliter,*" and such archdeacon doth represent the bishop;* otherwise it is in him who hath a distinct limitation of his archdeaconry, for then he hath a jurisdiction separate from the bishop. which, where it is by custom, may be prescribed for.† Lord Chief Justice Hale, too, in his "History of the Common Law," says, "Every bishop, by his election and confirmation, even before consecration, hath ecclesiastical jurisdiction annexed to his office, as *judex ordinarius* within his diocese: and divers abbots anciently, and most archdeacons at this day, by usage have had the *like jurisdiction* within certain limits and precincts."‡

Godolphin, speaking of archdeaconries, says, some are by prescription, some by law, and some by covenant.§ In the case of *Walker v. Sir John Lambe*,|| in a matter relative to the commissaryship and officialty of the archdeaconry of Leices-

* Constit. Othonis de Offic. Archidiacon.

† Gloss. in ver. Visitant. dict. Const. Otho, and *vide* Dr. R. Phillimore's Edit. Burn's Ecclesiastical Law, vol. i. p. 96 b.

‡ Hale's History of the Common Law, L. 27.

§ Godolphin, p. 61.

|| Jones's Reports, 8 Caroli, Banco Regis, and Godolphin, p. 30.

ter, temp. Charles I. it was held by the Court that the jurisdictions of both bishops and archdeacons were derived from the Crown by usage and prescription. In the case of Woodward and Fox,* it was said by the justices of the Common Pleas, "That, although it might be supposed originally that the jurisdiction within the diocese was lodged in the bishop, yet the Archdeacon's Court had, time out of mind, been settled as a distinct Court, and that the stat. 24 Hen. VIII. c. 12, takes notice of the Consistory Court, which is the bishop's, and of the Archdeacon's Court, from which there lies an appeal to the bishop's."

The separate nature of an archdeacon's jurisdiction from that of a bishop, although subordinate, and where the archdeaconry was subject to the visitation and inhibition of the bishop, was strikingly exemplified in the case of the Marriage Act of 1822,† when those archdeacons who had theretofore the power of granting licences for marriage were most suddenly deprived of it, and all such documents were issued in the names of the archbishops or bishops, their vicars-general, or commissaries, until an alteration in the law took place in the early part of the year 1823, which restored the power of granting licences for marriage to the archdeacons and to those ordinaries (other than bishops) who had exercised such power previous to the Act of 1822.‡ The clause which was con-

* 2 Ventr. p. 269. Blackstone's Com. vol. i. p. 383.

† 3 Geo. IV. c. 75.

‡ 4 Geo. IV. c. 17, s. 1.

sidered as having taken away the right of archdeacons and ordinaries, other than the archbishops or bishops, to issue licences, and as having confined such right to the archbishops and bishops, was the 14th sec. of the Act 3 Geo. IV. c. 75, and ran as under :

“ And be it further enacted, that no person shall, from and after the passing of this Act, be deemed authorised by law to grant any licence for the solemnization of any marriage, except the Archbishops of Canterbury and York, according to the rights now vested in them respectively, and except the several other bishops within their respective dioceses, for the marriage of persons, one of whom shall be resident at the time within the diocese of the bishop in whose name such licence shall be granted, such residence to be proved in manner hereinbefore directed; and such archbishops and bishops shall make such orders and regulations for the observance of their respective officers, within their respective jurisdictions, as they shall deem necessary for the more effectual performance of the duties of their several officers within the true intent and meaning of this Act, and if any such officer shall not duly observe all such orders and regulations, such officer shall be deemed guilty of a misdemeanor, and, being thereof duly convicted, shall be subject to punishment as guilty of a misdemeanor.”

Now had an archdeacon been considered as an *officer* of a bishop, or as exercising the *same autho-*

rity as a bishop in granting licences for marriage, his jurisdiction, whether only subordinate to that of the bishop, or co-ordinate, would not have been treated as annihilated ; in either case it was regarded as a *completely separate jurisdiction from that of the diocesan*. The following questions were submitted to Dr. Lushington as to the construction to be put upon the 14th section of the above mentioned Act, and the replies stated underneath were given :—

Question.

“ Whether the surrogates appointed by the officials of the Archdeacons of the archdeaconries within the diocese of Lincoln (and not appointed by the Chancellor and Vicar-general of the diocese) can grant licences in the name of the Bishop, under the new Act ? ”

Answer.

“ *The Act has taken away the power to grant licences from all except the Archbishops and Bishops ;* thence, I think, it necessarily follows, both from *principle* and from the terms of the Act, that no person can act as surrogate with relation to marriage licences who does not receive his appointment either immediately or mediately from the Archbishop or Bishop. The surrogates of the officials of Archdeacons do not derive any authority from the Archbishops or Bishops, and consequently

cannot, in my opinion, grant licences in the name of the Bishop.

(Signed) "STEPHEN LUSHINGTON.

"Doctors' Commons, August 15th, 1825."

The above opinion was given by Dr. Lushington, he not being aware at the time, that there were commissaries appointed by the Bishop for each archdeaconry in the then diocese of Lincoln.

The following additional question was therefore submitted to him, and his reply is given:—

Question.

"Whether marriage licences may run either in the name or be under the seal of the commissary as heretofore, and whether surrogates appointed by the commissary, and thus receiving their appointment mediately from the Bishop, are not qualified to act as surrogates under the new Act?"

Answer.

"I am of opinion that marriage licences may be granted under the seal of the commissary, but that it is advisable that they should be in the name of the Bishop. I think surrogates appointed by the commissary are authorised to act as surrogates under the new Act.

(Signed) "STEPHEN LUSHINGTON.

"Doctors' Commons, August 22nd, 1822."

During the existence of the Act 3rd Geo. IV. c. 75, (at least during the continuance of such portions of it, as related to our present subject,) licences for marriage were granted in the diocese of Lincoln in the name of the bishop and under the seal of his vicar-general, or commissary of an archdeaconry, and the jurisdiction of the archdeacons and their officials to issue such documents was considered as abolished. In archdeaconries in other dioceses, and which had not commissaries of the above description, I believe licences were granted in the names of the bishops of such dioceses, and under the seals of their vicars-general and officials principal, the parties applying for the licences being sworn to the affidavits leading to the grant of them, before surrogates appointed by such vicars-general and officials principal; indeed, in some archdeaconries so situated, I know this was the practice.

An Act of last Session (11 Vict. c. 98) has made an important alteration with reference to the authorities authorised to grant marriage licences. The fifth clause of the Act abolishes the power of the bishop of a diocese, any portion of which had been or might thereafter be taken away and added to another diocese, under the provisions of the Act 7 Wm. IV. c. 77, to grant marriage licences within such portion of his diocese so taken away; and this provision extends to the vicars-general and officials principal of a diocese so situate, and to any commissary appointed by the bishop for an archdea-

conry or district within the diocese which had been or might thereafter be dissevered from it. The other authorities, within such transferred portion of a diocese, who exercised the power of issuing licences for marriage previous to the Act 7 Will. IV. c. 77, as I read the clause, till retain their jurisdiction. The object of this part of the clause was, to prevent the anomaly of a bishop granting marriage licences (connected as such documents are, in the estimation of the Church of England, with a religious ceremony,) within the diocese of another bishop—a power which, under the temporary provisions of the Act 7 Will. IV. c. 77, the first mentioned bishop could exercise. The reservation at the end of the clause is to this effect: “ Provided always that nothing herein contained shall be construed to interfere with the jurisdiction, or concurrent jurisdiction, as the case may be, of the bishops of the several dioceses in England, to grant marriage licences in and throughout the whole of their dioceses, as such are now, or hereafter may be, limited or constituted.” This reservation does not, as I consider, confer upon the bishops any new jurisdiction; it merely, in cases where no alterations of dioceses have taken place, confirms the power they formerly exercised with reference to marriage licences, and extends them, in cases of alterations of dioceses, to the bishops of the dioceses to which any portions of the old dioceses had been or might hereafter be thrown, under the Act of 7 Will. IV. c. 77, and by

schemes and orders in council incorporated with that Act. As I view the matter, the clause does nothing more than substitute one class of bishops for the other. Except an Act be passed during the present session of parliament, the provisions contained in the fifth clause of the Act 11 Vict. c. 98, will, with the majority of the other provisions in that statute, expire on the 1st of August next, or at the end of the present session of Parliament.*

The conclusions, then, to be drawn from the preceding observations, are, that the power of an archdeacon, whether it be co-ordinate with that of a bishop or subordinate, is *perfectly distinct* from that exercised by a bishop—that it is not a delegated power in the usual acceptation of the term, but one which becomes vested in an archdeacon on his collation and taking possession of his dignity, without any commission from a bishop, much in the same manner as a bishop derives his spiritual jurisdiction from the confirmation of his election by his metropolitan; that an archdeacon is an ecclesiastical judge, and can hear causes which a bishop cannot do, and that the latter cannot preside in his own consistory, except in some particular cases; that an archdeacon is not bound to appoint an official, whereas a bishop is bound to appoint an official principal to despatch general

* During the progress of this sheet through the press, a Bill has been introduced into the House of Commons, by her Majesty's ministers, to continue the temporary provisions of the above-mentioned Act for a limited period.

business of a contentious description ; that general episcopal authority (except such portions of it as it is requisite for a bishop personally to execute) is usually vested by patent in a vicar-general and official principal ; that where parties choose to resort to an archidiaconal jurisdiction, subordinate to episcopal authority, to have their grievances redressed, the officers of a bishop cannot interfere, except an appeal be interposed ; and that where an archidiaconal jurisdiction is co-ordinate with that of a bishop, any appeal from a decision of an archdeacon's court lies to the court of the metropolitan, and, where the jurisdiction is subordinate, to the consistorial court of the diocese.

MEMOIR

On the Offices of COMMISSARY and OFFICIAL of
the ARCHDEACONRY of LEICESTER.

It appears by numerous instances that the Archdeaconry of Leicester is governed by a Commissary and Official. The former of these judges exercises a concurrent jurisdiction* with the latter in general cases, and presides in a separate court† from the official, where he not only hears those causes which the official has a right of hearing, but also others which the other judge cannot decide, as divorces,‡ &c. &c. The commissary, agreeably to the definition given in 4 Inst. 338, is appointed by the Bishop of the diocese, and exercises the authority of Official Principal and Vicar-general within the archdeaconry of Leicester. That this is the case is clear from the circumstance of an appeal lying from the commissary to the Arches Court of Canterbury, and not to the Episcopal Consistory Court of Lincoln.§ This circumstance shews that the jurisdiction of the commis-

* This is shewn by the bishop's inhibition.

† See the Commission Book of 1757.

‡ See some of the old Commission Books.

§ See the old books.

sary is an episcopal jurisdiction, not subservient to the archdeacon, but superior to him,* and that the commissary is the representative of the bishop, and has the same jurisdiction within the archdeaconry of Leicester as the chancellor of the diocese has through the whole of the bishop's jurisdiction pending the inhibition. A certificate of a party's excommunication is also forwarded directly by the commissary to his Majesty, without the intermediate assistance of the bishop of Lincoln, which is another strong proof of a complete episcopal jurisdiction distinct from the official, who has merely an ordinary archidiaconal authority, and from whom an appeal lies not to the Arches (as in the case of the commissary) but to the Consistory Court of Lincoln.† If the office were carefully searched, I think it would be found that in former days a very considerable portion of the contentious jurisdiction was heard before the commissary. It seems that it was some time about the year 1386 that patents were first granted to the commissary to inquire of and correct crimes, prove wills, grant administrations, and sequester benefices; before the above period the commissary was called sequestrator, and the first mention of this officer at Lincoln is said to be

* In all cases where the same person has been both commissary and official, the name of commissary stands first, and in the inhibition it even precedes the name of the archdeacon.

† It was the opinion of Dr. Harris that an appeal from the official lay to the commissary and not to Lincoln.

in May 1295, when Bishop Sutton granted to the Rev. Robert Bernard this office within the archdeaconries of Lincoln, Leicester, and Stow.

Until of late the offices of commissary and official have been united in one person, but this was merely fortuitous, as they have very frequently been held by separate persons, who have both exercised concurrent jurisdiction within the archdeaconry. The number of wills proved and administrations granted before these officers, clearly shews that at some periods of time the fees were not equally divided between them, but that the Court belonging to each endeavoured to execute as much business as they could acquire: thus, in 1660, 129 wills and administrations were despatched in the name of the commissary (Sir Edward Lake, Baronet), while 231 were despatched in the name of the archdeacon (Henry Ferne, D.D.); in 1661, 298 were despatched in the name of the commissary (Sir Edward Lake), whilst only 56 were despatched in the archdeacon's name. This clearly shews the division of the Court at the above time; and the Court continued so divided until the year 1675, when William Foster, Esq. was both commissary and official. In 1708 the Court was also divided, and continued so till Dr. Grey was, in the year 1746, appointed both commissary and official. Previous to 1660, wills, &c. were despatched for several years solely in the name of the commissary (Robert King, D.LL.), and in the

latter end of the reign of Queen Elizabeth it appears from the Court books that Dr. Chippendale was the commissary of the archdeaconry, and presided in the Commissarial Court. William Rudyard, clerk, (who was one of Dr. Chippendale's surrogates,) presided in the Court in the absence of the commissary on the 17th February, 1589. That Mr. Rudyard was surrogate to the commissary is clear from the circumstance of his decreeing, on the day above mentioned, a significavit to her Majesty's Court of Chancery relative to the contempt of one Richard Cope, who had stood excommunicated forty days after denunciation. In 1526 Robert Poulet, B.LL. was commissary and official. Correction Courts were held in the year 1523 before Richard Parker as commissary and official. In 1516 there is a curious Act, from which it seems probable that the Court of Leicester was then only in possession of a commissary and archdeacon; the commissary's name was John Sylvester, Bachelor of Laws, and the archdeacon's name was Henry Wilcock, Doctor of Laws.

The registrar of the commissary is appointed by the bishop. In 1747 considerable disputes arose as to this point, and the registrars of the two Courts agreed to act separately; the archidiaconal registrar (Mr. Frank) officiated in person, whilst the commissarial registrar (Mr. Hoendorff) appointed James Stockdale, Not. Pub. (by the

direction of the then bishop of Lincoln) his deputy. In the year 1748 the commissary and official (Dr. Grey) required that an equal number of instruments should pass under his two seals, which was accordingly done.

With respect to surrogations the case is clear from original documents now in the office. Upon the death of official Newell (who was also Chancellor of Lincoln) in 1741, Dr. Trimnell (the then archdeacon) executed a surrogation which bears date the 19th Sept. 1741; this surrogation was succeeded by another executed by the new official (Dr. Richard Grey) which is dated on the 2nd November, 1741; and on this last day another surrogation is filed which is signed by Frederick Reynolds, M.A. "Commissary General and Official Principal of the Bishop of Lincoln in and for the county and archdeaconry of Leicester;" this last surrogation also bears date on the 2nd Nov. 1741. On the 26th March, 1728, a surrogation is also executed by Charles Reynolds, M.A. the then commissary, Mr. Newell being the official and having previously executed a regular surrogation.

[The annexed paper was apparently compiled early in the last century, and the information it contained was partially employed by Mr. Hardy in the preceding memoir.]

THE ARCHDEACONRY OF LEICESTER IN THE DIOCESE OF
LINCOLN.

In 1564 Thomas Larke, A.M. was commissary and official. Where the same person was commissary and official, commissary is always first named.

In 1567 Anthony Anderson, LL.B. commissary and official.

In 1568 Thomas Mowndford commissary, and in 1569 John Lowndes.

In 1576 and 1582 John Chippendale* commissary and official. In 1580 and 1581 John Randolph.

In 1639 Sir John Lamb was official of the archdeaconry of Leicester.

In 1640 Sir John Lamb, Knight and Doctor of Laws, was commissary of the Most Reverend Father in God William Lord Archbishop of Canterbury, within the archdeaconry of Leicester, during the suspension of the Bishop of Lincoln.

In 1640 and 1641 Robert King, clerk, Doctor of Laws, was commissary, and proved wills and granted administrations.

Henry Ferné, clerk, D.D. was archdeacon, and proved wills and granted administrations.

In 1642 wills were proved and administrations granted in the joint names of Dr. King, commissary, and Sir John Lamb, Knight, Doctor of Laws, official.

* An old citation in the Detection and Visitation Book of 1600 shews that Dr. Chippendale held his Courts in St. Mary's Church, probably being nearer his place of residence (the Newarke) than St. Martin's, and he being then getting old.

The Detection Book, 1590, shews that the then registrar (Fra. Presgrave) resided at West Cotes.

In 1643, 1644, and 1645 the business was despatched in the joint names of the said Dr. King and Sir John Lamb.

In 1646, 1647, 1648, and 1649 the wills were proved and administrations granted in Dr. King's name solely, as commissary.

No wills proved nor administrations granted from 1649 to 1660.

In 1660 Sir Edward Lake, Bart. Doctor of Laws, was commissary; Henry Ferne, clerk, D.D. was archdeacon.

From 1660 to 1665 the Court was divided.

The following is an account of the wills and administrations despatched before the said commissary and archdeacon separately.

1660. 129 before the commissary.

— 231 before the archdeacon.

1661. 298 commissary.

— 56 archdeacon.

1662. 109 commissary.

— 77 archdeacon.

1663. 65 before the chancellor or vicar-general.

— 108 commissary.

— 59 archdeacon.

1664. 16 before the chancellor on a primary visitation.

— 111 commissary.

Archdeacon vacant.

In 1665 Clement Breton, D.D. was archdeacon.

From 1665 to 1670 the business was despatched jointly in Sir Edward Lake's and Dr. Clement Breton's names.

In 1670 William Foster, Esq. L.B. was official.

From 1670 to 1675 the business was despatched in the joint names of Sir Edward Lake, commissary, and William Foster, Esq. official.

From 1675 to 1700 the business was carried on in the name of William Foster, Esq. L.D. commissary and official.

From 1700 to 1708 the business was despatched in the name of George Newell, Esq. L.B. official.

From 1708 to 1715 the business was despatched in the joint names of John Rogers, clerk, A.M. commissary, and George Newell, Esq. L.B. official.

From 1715 to 1727 inclusive the Court was divided, James Johnson, Doctor of Laws was commissary ; George Newell, Esq. L.B. was official.

The administration granted by the official, the bonds were always, till very lately that the official agreed with the commissary for his share of the fees, given to the bishop ; which shews that, in the eye of the law, the jurisdiction continued in the bishop, though allowed by him to be exercised by the archdeacon's official.

Administrations granted by Dr. Johnson, the commissary ; the bonds are given to him.

L. M. bonds given sometimes to Dr. Johnson and sometimes to Mr. Newell the official.

So that it shews that the office of commissary is an office of power, and not merely a nominal office, as Mr. Frank called it.

Note.—A full biographical list of the Archdeacons of Leicester will be found in Nichols's Leicestershire, vol. I. pp. 463—466.

HISTORICAL ACCOUNT

Of the PROCTORS of the COURT of the ARCH- DEACONRY of LEICESTER.

1649. PREVIOUS to the time of the Commonwealth, the business in these courts was so considerable as to employ a large body of officers; the judges were also usually in the habit of attending the courts in person; they were also very frequently the judges of superior courts, and were in the practice of bringing their own officers to transact the business at Leicester. At the time of the death of Charles the First, Sir John Lambe, Knight, D.LL. was the judge; * the court appears to have been conducted with the most rigid severity under his auspices; and indeed this is not to be wondered at when we recollect that he was the bosom friend of Archbishop Laud, and that it was through his influence and information that the then Bishop of Lincoln (Williams) was brought before the Star Chamber, and subsequently suspended from his bishopric, for not quite approving of this judge's conduct towards the Non-conform-

* Sir John Lambe began to be judge about 1628.

ists, and under the pretence of revealing the King's secrets.* During the suspension of the Bishop, Sir John was invested with the total direction of the diocese, and is described in the books as "Commissary lawfully constituted of the Most Reverend Father in God William by divine Providence Archbishop of Canterbury, to whom all and all manner of spiritual and ecclesiastical jurisdiction in and throughout the whole diocese of Lincoln during the suspension of the Bishop of the same of right belongs." (Vid. Instan. 23 Sept 1639, Kipling.) At this time the business was amazingly great, and was transacted by proctors from various quarters; the courts were holden in the presence of an actuary (Mich. Kipling), and were so notorious for their extortion and partiality that they had become the general hatred of the country. Thus things continued until the Commonwealth, when Cromwell struck the blow that proved then fatal to the ecclesiastical power; and there are no traces of any proceedings until the Restoration, when these courts began to have proctors regularly admitted of their own, and the business to be transacted in the same manner (or nearly so) in which it is at the present day.

As the ecclesiastical jurisdiction had fallen into such disuse during the time of the Commonwealth, there were not, immediately on the Restoration,

* See a tolerably full account of this extraordinary matter in Sir R. Baker's "Chronicle," p. 457.

competent persons at Leicester to supply the requisite offices in the court; and consequently we find that what little business was done here for several years after the Restoration, was transacted by the officers of the consistory at Lincoln, who came over to Leicester for that purpose. Bartholomew Willocke, N.P. was deputy registrar of Lincoln at this time, and the proctors who attended the courts at Leicester from thence were Thomas Levett, N.P., Thomas Saville, N.P., Edward Noell, N.P., and John Brewin, N.P.* The Bishop's Chancellor was Sir Edward Lake, Bart., and who was also appointed judge of the Leicester Court immediately after the Restoration. The courts continued to be holden at Leicester in the Chancellor's name for some time, and it is not clear when they ceased to be so; most probably about the year 1672,† when, for the first time, the court of Leicester became possessed of a senior and junior proctor, viz. John Birkhead, N.P. (who was the first *archdeaconry* proctor that was admitted ‡) admitted 6th

* This gentleman was admitted at a consistory holden at Leicester on the 15th May, 1667.

† On the 27th March, 1672, a court was holden in the parish church of St. Mary, Leicester, before the Rev. Thomas Stanhope, M.A. surrogate of Sir Edward Lake, Bart. D.L.L. Commissary, and of William Foster, D.L.L. Official. (Vid. Liber Instantiarum incipiens die Mercurii, xxvii die Martii, Anno Domini 1672.)

‡ Mr. Birkhead did not practise for some time after his admission; Levett and Saville (Lincoln proctors) appear to have engrossed the almost total practice until the year 1675, when Mr.

April, 1670, by the then Official (William Foster, D.LL.) and the above-mentioned Bartholomew Willocke, N.P. who was admitted 5th June, 1672, by the said Official. Thus the Leicester court became possessed of what was then considered its sufficient quantum of officers. Thomas Levett, N.P. (who was never admitted in the Leicester court), however, still continued to attend the courts, and continued to do so till his death as after mentioned. This attendance was not objected to at first, as there was no resident proctor except Mr. Birkhead, who was a young man and one not much used to practise, but afterwards it became the subject of much dissatisfaction to both the judges and court.

JOHN BIRKHEAD,* N.P. and BARTHOLOMEW WILLOCKE, N.P. practised as senior and junior proctors until the year 1682, when the former died,† and very soon afterwards the latter ceased to practise.

Saville appears to have withdrawn from the Leicester attendance, and Mr. Birkhead and Mr. Willocke (the two Leicester proctors) began to practise together pretty regularly.

* Mr. Birkhead had a probate court at Harborough, which, on the 6th May, 1679, was removed to Melton.

† See his admission, 1682, No. 17. He appears to have been ill some time, and considerable inconvenience appears to have been occasioned thereby, as Mr. Willocke (the junior archdeaconry proctor) for some cause or other did not attend the courts thenabouts; a friend of Mr. Birkhead's (John Gascoigne, N.P. of Bedford) attended to his business for a few courts, but he was never admitted a proctor at Leicester, nor did he succeed Mr. Birkhead in his situation as the senior archdeaconry proctor.

THOMAS WADLAND,* N.P. succeeded Mr. Birkhead as the senior archdeaconry proctor upon the 8th March, 1682, when he was admitted by Dr. Foster, the judge. The office of junior proctor remained vacant until the 18th April, 1683, when WILLIAM DAGNALL, N.P. was appointed to it by Dr. Foster. - Mr. Dagnall only practised one or two court days, and then retired. No other archdeaconry proctor was appointed until the 1st March, 1687, when JOHN GOODHALL, N.P. of Bedford was admitted senior proctor (Mr. Wadland having either died or retired). Mr. Goodhall only practised a few years, viz. until the 18th Dec. 1689, when JOHN BURDETT,† N.P. succeeded to the situation of senior proctor through the favour of Dr. Foster, who shortly afterwards conferred the office of junior proctor upon JOHN BARKER, N.P. of Bedford, who was admitted, 9th Oct. 1693, by the judge himself sitting in court. This Mr. Barker only practised a very few years, and on the 13th Oct. 1697, he was succeeded in his office by John Ward, N.P. who was resident at Leicester.

John Burdett, N.P. and JOHN WARD,‡ N.P. practised together as senior and junior proctors

* Wadland had a probate court at Melton. See will of T. Stevens, of Rearsby, stated to have been proved at Mr. Wadland's probate court at Melton.

† Burdett had his probate court at Melton. See Roll No. 4, p. 53.

‡ Ward had his probate court at Melton. His uncle then kept the White Swan at Melton.

until 23rd March, 1703, when SMITH NEWELL,* N.P. of _____, was appointed junior proctor.

John Burdett, N.P. continued to practise until the businesses in which he was employed were concluded, and then retired from the courts; the last court he attended was one holden before Archdeacon Rogers on the 23rd May, 1705. Smith Newell, N.P. was appointed to the situation at the above period on account of Mr. Burdett's frequent ill health, which rendered him so frequently incapable of attending to business. He died almost immediately after his retirement as proctor; as we find Thomas Lovett, N.P. alleging him to be dead at a court holden 28th June, 1705.†

John Ward, N.P. and Smith Newell, N.P. continued to practise as senior and junior proctors until the 26th April, 1716, when Mr. Newell ceased to practise at Leicester, and was succeeded by Samuel Carte, B.LL. N.P. in his attendance at the courts—no record of whose appointment to the situation of junior proctor can, however, be found, and who, in all probability, was never appointed, as he appears merely to have been allowed

* George Newell, B.LL. (a proctor of the consistory) attended a few courts about this time for the purpose of conducting an important will cause (Glover and Glover against Woodland, 1699) and one or two others; but he did not (like Levett) interfere with the general practice. He lived at Lichfield, and afterwards became Official of Leicester and Chancellor of the diocese of Lincoln.

† John Burdett, N.P. was resident; he is described in his will (proved 1705, No. 122) as of the Newworks in Leicester.

to practise until the judge had filled up the office. The business was now grown very inconsiderable, and as Thomas Levett, N.P. (whom we have more than once mentioned before) was now grown old and nearly past business, Mr. Carte (who was a particular friend of his) appears to have been resorted to by him as an assistant in business, and for the purpose of keeping his Leicestershire clients together. The office of junior proctor remained vacant until the 30th April, 1724, when it was conferred upon EDWARD TURVILLE, B.LL. N.P.; soon after whose admission Mr. Carte withdrew from the courts—Mr. Levett having withdrawn several years before.

John Ward, N.P. and Edward Turville,* B.LL. N.P. practised together as senior and junior proctor until the death of Mr. Levett (which happened in 1726; see his will proved in that year before the Official). Upon this event, the judge (Mr. Newell) appears to have laid the foundation for what had so long been desired (and which would have been accomplished soon after the Restoration, or at least in 1672, had it not been for the obstinacy of Mr. Levett in insisting upon his privilege as a proctor of the superior court of practising at Leicester, viz. that the senior and junior proctor of the Leicester court should not be disturbed in the practice of that court by any other proctors whomsoever. This point would most

* Turville had his probate court at Hinckley.

undoubtedly have been gained at a very early period, had it not been for Mr. Levett, whose conduct lost him the good opinion of the Bishop, and, being deprived, very soon after Mr. Newell's possession of the cancellate seal, of his Lincoln business, this obstinate yet intelligent proctor was driven in his old age to Leicester for business (of which he then could do but very little), where he died at the time above mentioned, having lived the greater part of his life at or near Louth, in Lincolnshire, from whence he was in the habit of coming to attend the Leicester court.

As the judge was Chancellor of the diocese, he had a much better opportunity of protecting the senior and junior proctor of his Leicester court from the interference of his Lincoln proctors than he otherwise would have had. It had been long wished that both the senior and junior proctors of the Leicester court should be *resident* at Leicester; but as the experiment had already been tried, and it had been found that the business was not adequate to support a deputy registrar and the two proctors, it was in vain to try it again, especially at a period when the business had so materially decreased. Thus things stood at the death of Thomas Levett, N.P. shortly after which Edward Turville, B.LL. N.P. (the junior proctor) retired from his office, having taken orders; this being the case, the Leicester Court was left in a very forlorn condition; the deputy registrar (Richard Stephens, N.P.) knew nothing of a

proctor's business, having never been brought up to it, and, as he was growing old, it was in vain to think of appointing him to succeed Mr. Turville; and John Ward, N.P. (the senior and only proctor) was very infirm, and incapable of attending to much business. As there was no person in Leicester who had been regularly brought up to a proctor's business, and as the judge would not appoint any person to the office of junior proctor but who had, THOMAS BENNETT, N.P. of Nottingham, was on the 6th May, 1726, appointed to the situation of junior proctor.

John Ward, N.P. and Thomas Bennett, N.P. practised as senior and junior archdeaconry proctors until the 12th Nov. 1730, (which was the last court Mr. Ward attended previous to his death, which happened almost immediately afterwards,*) when THOMAS CUMBERLAND, N.P. was appointed the junior proctor.

Thomas Bennett, N.P. and Thomas Cumberland, N.P. practised as senior and junior archdeaconry proctors until 5th February, 1730, when Mr. Bennett retired; and his late clerk, JAMES STOCKDALE, N.P. of Nottingham, was appointed the junior archdeaconry proctor, and exhibited his proxy for Mr. Bennett's clients on the above day.

* See his will proved 1730, wherein he is described as a book-seller; the fact was, during the greater part of his time there was another resident proctor in the Leicester court besides him, and, as the business was not sufficient to maintain *two*, he was allowed to have recourse to another business to support his family.

Thomas Cumberland, N.P. and James Stockdale,* N.P. practised as senior and junior proctors until the 25th Nov. 1731, when the former retired from the court.

After Mr. Cumberland's retirement, no person was appointed to the situation of junior proctor by the judge, as there was no young man at Leicester who had been brought up to a proctor's business, and, therefore, capable or eligible to succeed to that office. The business would, therefore, have been at a stand for want of officers, had it not been relieved by the kind assistance of CHARLES HOWARD, N.P. of Lichfield (who had been admitted a proctor of the diocesan court at a consistory holden at Leicester by Chancellor Newell, on the 6th May, 1726 †), and who practised with James Stockdale, N.P. (the senior and then *only*

* James Stockdale had a Probate Court at Melton.

† It will, perhaps, appear strange that the Official should have chosen to admit Mr. Howard a proctor in his Consistory Court as Chancellor of Lincoln, and have permitted him to practise in that capacity in his Leicester court, seeing that he was so disgusted with Mr. Levett for so doing previously; but the fact was (as I have heard my great-uncle state it) that the Official wished to keep the office of junior proctor vacant until the death of the then Deputy Registrar (Mr. Stephens), when it was known Mr. Stockdale was to come and reside at Leicester as senior proctor and Deputy Registrar; and the Official would then have appointed a junior and resident proctor, and thus have accomplished what had so long been wished; but the Official's death in 1741 deranged this scheme, as will be seen hereafter. It may be observed that a proctor resident at Lincoln was never suffered to practise at Leicester after Levett's death.

archdeaconry proctor,) until the death of Richard Stephens, N.P. in 1745,* which afforded an opportunity of executing the long fostered intention of the late judge, had not an unfortunate coolness between his successor (Richard Grey, D.D.) and James Stockdale, N.P. (who immediately upon Mr. Stephens's death was appointed deputy registrar,) prevented its being carried into effect. Upon Mr. Stephens's death, Mr. Howard had expected that any further attendance of his at the courts would have been unnecessary; but in this he found himself mistaken, as it was intimated to him by the judge, that, on account of Mr. Stockdale's having been appointed deputy registrar, he (Mr. Stockdale) would not be permitted to practise as a proctor; and that it was the judge's intention to appoint an archdeaconry proctor directly. Accordingly, on the 4th Oct. 1745, PHILIP HACKETT, N.P. was appointed archdeaconry proctor, and for some short time Mr. Howard and Mr. Hackett practised together, and James Stockdale, N.P. took down the acts as deputy registrar. Early in the year 1746, for some cause or other, Mr. Howard withdrew from the Leicester court; and thus it became in want of a junior archdeaconry proctor to Mr. Hackett; but, as the experiment had been more than once tried, and it had been found that the business was never capable of maintaining a resident deputy registrar and resi-

* See his will, proved 1745.

dent senior and junior proctors, recourse was had to the old practice of appointing a proctor from some other court (other than the Lincoln one) to the situation of junior archdeaconry proctor; and, consequently, on the 15th May 1747, BENJAMIN BLOXSIDGE, N.P. of Nottingham, was appointed junior archdeaconry proctor.

Philip Hackett,* N.P. and Benjamin Bloxsidge, N.P. practised as senior and junior archdeaconry proctors until the 11th January, 1749, when the latter withdrew from the court.

The cause of Mr. Bloxsidge's retirement was this: the business had become very trivial, and the judge was of opinion that, as there was no possibility of having resident senior and junior proctors, excepting the deputy registrar was permitted to be either the one or the other, it would be much better that he should be so permitted than that the court should be obliged to have recourse to a proctor from a different jurisdiction, especially as, upon search, it was discovered that so early as 1590 the deputy registrars had been permitted to practise, and that the practice had only been the contrary during the Stephens's time, which was probably owing to their knowing nothing of a proctor's business. Accordingly, on the 11th Jan. 1749, Mr. Stockdale resumed his duties as the senior proctor, when the acts were taken down

* Hackett had his probate court at Melton. Bloxsidge had his at Loughborough.

by the registrar (Mr. Frank) who was present. Mr. Bloxsidge continued to attend the courts until the businesses in which he was employed previous to Mr. Stockdale's resumption of office as the senior proctor were disposed of ; * after which he withdrew from the courts.

James Stockdale, N.P. and Philip Hackett, N.P. practised together as senior and junior arch-deaconry proctors until the beginning of the year 1767, when the said James Stockdale, N.P. died. JOHN STOCKDALE, N.P. (who was the nephew of Mr. James Stockdale, and had also succeeded him as deputy registrar), was then appointed junior proctor, and on the 5th Feb. 1767, John Stockdale exhibited his proxy in court for his late uncle's clients, having not been permitted by the judge (Dr. Grey) to practise in his uncle's lifetime (al-

* The last court Mr. Bloxsidge attended, was one held 29th March, 1750 ; at this time the business had very considerably increased to what it was a few years before, and Mr. Frank continued to take down the acts as registrar for a short time *regularly* (viz. until 25th Oct. 1750), when he ceased to take them down *regularly*, and an actuary assumed (Val. Pyne, N.P.) took them down until 9th Oct. 1751, when Mr. Frank began again to take them down, until 22d Nov. 1753, when Samuel Heyrick, N.P. took them down as actuary, and so has been the invariable practice ever since. The following is a correct list of the actuaries, with the dates when they commenced and ceased taking down the acts. Samuel Heyrick, N.P. 1753 to 30th June, 1764 ; John Stockdale, N.P. 30th June, 1764 to 5th Feb. 1767 ; Samuel Heyrick, N.P. 5th Feb. 1767 to 9th Nov. 1774 ; John Heyrick, N.P. 9th Nov. 1774 to 20th March, 1806 ; Samuel Miles, N.P. 20th March, 1806, to the present time.

though he had been admitted as a supernumerary archdeaconry proctor upon the 12th May, 1763), on account of the court being *full* of both a senior and junior proctor.

Philip Hackett, N.P. and John Stockdale, N.P. continued to practise together as senior and junior archdeaconry proctors until the year 1770, when the said Philip Hackett died, and the said John Stockdale became of course the senior proctor. THOMAS HACKETT, N.P. then became the junior proctor. (This latter gentleman served his clerkship with his father, the said Philip Hackett, N.P. and was admitted a supernumerary archdeaconry proctor on the 6th Oct. 1763; but, as there was not a vacancy of either senior or junior proctor until the death of the said Philip Hackett, the said Thomas Hackett was not, by the rule of the court, allowed to practise until then.) The said Thomas Hackett, N.P. exhibited his proxy for his father's clients in court, on 25th Oct. 1770.

John Stockdale, N.P. and Thomas Hackett, N.P. continued to practise as the senior and junior archdeaconry proctors until the year 1781, when the said Thomas Hackett died.

Upon Mr. Hackett's death there was no person at Leicester who had been brought up to the business capable of succeeding Mr. Hackett in his office; this being the case, an attorney named * applied to the then judge (Edward Taylor, B.LL.)

* No name is mentioned in the MS.—EDIT.

for admission as the junior proctor ; but was refused on the ground that no one had ever been allowed to practise in the Leicester court except a regularly educated proctor, and one who did not combine the business of an attorney with that of a proctor. The judge then ordered the office to be searched for precedents, and, having discovered that it had been the invariable practice in cases like the present to admit a proctor from a neighbouring court to make up the quota, WILLIAM MOTT, N.P. (a proctor at Lichfield) was admitted as the junior proctor upon the 11th Oct. 1781 ; and, in order that the public might not be put to any additional expense by reason of this admission, the official required Mr. Mott to stipulate that he would not make any charges to his clients for journeys to and from the courts.*

John Stockdale, N.P. and William Mott, N.P. continued to practise together as the senior and junior archdeaconry proctors until some time about the latter end of 1801, when Mr. Stockdale retired from business as a proctor (reserving his deputy registrarship), and Mr. Mott became of course the senior proctor. WILLIAM HARRISON, N.P. who had been admitted as a supernumerary proctor on

* Mr. Mott was appointed merely to act in the case of contested suits ; and Mr. Stockdale Hardy has left a memorandum in another paper that he was never called to Leicester from the 2nd April, 1789, to the 8th Oct. 1807, a period of about eighteen years and a half, nor again from Jan. 1808 until his resignation in 1814.—EDIT.

the 5th Oct. 1786, but who (as the court was then full of a senior and junior proctor) had not been allowed to practise until a vacancy occurred, then became the junior proctor.

William Mott, N.P. and William Harrison, N.P. (who in 1804 was also made Deputy Registrar) continued to practise together as the senior and junior archdeaconry proctors until the 17th Dec. 1814, when the said William Mott, N.P. resigned his office as senior proctor by a formal instrument under his hand and seal. This resignation having been admitted at a special court, holden on the 19th Dec. 1814, William Harrison, N.P. became, of course, the senior proctor.

JOHN STOCKDALE HARDY, N.P. was admitted as the junior proctor upon the 20th Dec. 1814.

William Harrison, N.P. and John Stockdale Hardy, N.P. practised together as the senior and junior archdeaconry proctors until the 19th Nov. 1826, when the said William Harrison died, and the said John Stockdale Hardy became senior proctor.

JOHN MOTT, of Lichfield, N.P. was admitted as the junior archdeaconry proctor at a special court holden at Atherstone on the Feb. 1828.

It is hoped that the above narrative will be considered as sufficiently proving that the number of exercent proctors in the Leicester court has been limited to *two* ever since the year 1672, when

proctors began to be first regularly admitted therein; and that no *attorneys* have ever been allowed to practise as proctors, there having uniformly been a succession of proctors who, for the most part, were regularly trained up to the business; who were not allowed to infringe upon attorneys' practice, as the attorneys were not allowed to infringe upon theirs; further, that, whenever there has not been two regularly educated proctors at Leicester, recourse has been invariably had to the assistance of one from an adjacent court to make up the number.

ESSAYS AND SPEECHES
ON
POLITICAL QUESTIONS
AND
PUBLIC BUSINESS.

ON THE LAW OF LIBEL.

[To the Editor of the *Leicester Journal*, in 1811.]

MR. EDITOR,

SOME recent prosecutions for libels having excited a considerable degree of public attention, and the grounds upon which these prosecutions were conducted having been called into question by some of our public writers, I have been induced to think that a few remarks on the Law of Libel will not be wholly unacceptable to your readers.

There are two methods of bringing a libeller before the courts of his country; viz. Civil Action and Criminal Prosecution: the one punishes him for the *private* injury which he has inflicted upon the reputation of another;—the other for the *public* injury which he has or might have occasioned.

When the injured party prosecutes by way of Civil Action, he gives the accused a much better opportunity of vindicating himself than he affords him when he institutes a Criminal Prosecution; as, in the former species of procedure, the libeller is at liberty to prove the correctness of his assertions—a liberty which is not allowed him in the latter species of proceeding. The reason why this

immunity is tolerated in one case and not in the other will be our next consideration ; and, in the progress of this inquiry, the excellence—the lenity—and the justice of our legal code will be quickly perceived.

It must appear evident to all, that every person who comes into a court of justice, and demands redress for an alleged grievance, should be a man who has been actually wronged, and a man whose character has been traduced by the vile efforts and detestable inventions of detraction ;—a man who does not answer the description which his calumniator has designated, and whose reputation or interest has been materially hurt by the slander of which he complains. If the accuser cannot make out his case under such circumstances as the above, our laws have very properly refused to lend him their assistance ; and, consequently, if the defendant in a Civil Action is able to prove that the matter contained in the libel of which the plaintiff complains is true he will be dismissed, and his antagonist non-suited.

If the injured party proceeds by way of Criminal Prosecution, the law is very different from what has been before laid down ; and, indeed, the present is quite a different proceeding from that which we have just been considering—the one being an *action*, the other an *indictment*—the one being commenced for the obtainment of private emolument, the other for the promotion of public good. As I before observed, a Criminal Prosecu-

tion is grounded upon the injury which the libeller by his conduct either actually has or else might have done to the commonwealth by occasioning a breach of the public peace ; and, in this instance, the truth of his assertion will afford him no protection from punishment, as his offence consists not in the propagation of a false assertion, but in the advancement of a criminal accusation, in a manner forbidden by the laws of the realm, and discountenanced by the regulations of a civilised community.

Now, upon a retrospect of the preceding brief sketch of the law concerning the particular subject under consideration, I would ask, is not justice strictly allied to every part of it ; or, is it that cruel, illiberal, and persecuting law which some have had the audacity to represent it ?—What ! can it be supposed for a moment that our ancient rulers were so lost to all sense of duty and decency as to patronise and enact a law which was likely to be a disgrace to their native land and oppressive to their fellow subjects ? Can any man of common sense and common reason for a moment suppose it ? Most surely not ; and I am pretty confident that every man who possesses that common sense and common reason, will join me in thinking that a man who sues for a pecuniary compensation ought to be less favoured than he who sacrifices his interests and personal gratification on the altar of national advantage ; and that the man who asperses the character of another ought to be

punished with the utmost severity when brought to the bar of his country by a Criminal Prosecution, when it is recollected that a way was open for him in which he might, with honour to himself and with benefit to his native land, have exposed and punished his accuser, if he were conscious that he had committed any crime which might have rendered him amenable to the laws of the realm.

It would be nothing more nor less than an absolute waste of time to notice some of the objections which have been advanced against the method of the judicial administration of libel law at the present day; these objections are so truly frivolous that they are not worthy of any notice. One objection, however, has been started, which I think it my duty to mention, as it is closely connected with a point of the utmost importance to the liberty of the subject and to the welfare of the kingdom. It has been said that the recent prosecutions have injured the liberty of the press; but the assertion has not been substantiated, and I am inclined to be of opinion that, instead of having injured the freedom of the press, they will ultimately tend to render the press much more respectable than it formerly was; its licentiousness had advanced to an insufferable height—a public character was by no means secure, and a private individual scarcely so; to curb that licentiousness has been the object of our present most excellent Attorney General,* a man who is an honour to his

* Sir Vicary Gibbs.

profession, and who has done more real good to his country in his official capacity than any of his predecessors—a man who has firmly maintained his ground against the malevolence of the discontented and the clamours of the factious. Let those who have been instrumental in promoting this objection compare the present times with those in which no publication could be issued without the approbation of a licenser—let them draw a line of comparison between the privations then in use, and the privileges which they now enjoy, and let them say whether they have any just reason to complain!

I remain yours very truly,

BRITANNICUS.

A SERIES OF LETTERS,

Addressed to a Friend upon the ROMAN CATHOLIC
QUESTION. By BRITANNICUS.

[*Published in 1820.*]

ADVERTISEMENT.

These Letters first appeared in the *Sun* evening paper, and formed part of a lengthened correspondence which took place between the writer and a friend who professed Whig principles. Hacknied and exhausted as the Roman Catholic question is, the writer may perhaps be thought both obtrusive and ridiculous in giving to the public the result of his limited observation upon it. The reasons which induced him to do it were simply these; he conceived that, although so much had been said upon the question, *a summary of the principal arguments* was still a desideratum, and that the subject itself had been generally treated more as a party topic and as an annual trial of strength between two contending interests, than as one, above all others, interwoven with our civil and ecclesiastical polity. He therefore respectfully solicits those who profess to adopt the Revolution as their political model, to give the Letters a candid peru-

sal. In the discussion of the important matters to which they refer, he has endeavoured to avoid an unchristian or an illiberal spirit; and however defective the execution may be thought—(and defective it must necessarily be from the writer's confined sphere of action)—he trusts that those with whom he conscientiously differs in opinion as to the *application* of Revolution principles, will excuse him for attempting (however feebly) to direct their steps to the altar of Constitutional Whiggism, and to recal them to the exercise of those first principles of our constitution which were indebted to the Revolution for their legitimate line of operation, but which have been most lamentably infringed upon by the SPURIOUS LIBERALITY and MISTAKEN CANDOUR of more modern days.

The writer has only to repeat that the Letters cannot boast of much originality, as they are little more than a recapitulation of the observations which have been made upon the subject by the ablest men of both parties, whose comments have come under his notice.

Introductory to the Letters is subjoined a brief notice of the reign of King James II. extracted chiefly from Smollett.

A SUMMARY of the PRINCIPAL EVENTS which
took place during the REIGN of KING JAMES
THE SECOND.

(*Extracted chiefly from Smollett's History of England.*)

A.D. 1685.—The Duke of York, who succeeded his brother (King Charles II.) by the title of King James the Second, had been bred a Papist by his mother, and was strongly bigoted to his principles.

He went openly to mass with all the ensigns of his dignity, and even sent one Caryl as his agent to Rome to make submissions to the Pope, and to pave the way for the re-admission of England into the bosom of the Roman Catholic Church.

The next step taken was, *to allow a liberty of conscience to all sectaries*; and the King was taught to believe *that the truth of the Roman Catholic religion would then, upon a fair trial, gain the victory*. He therefore issued a declaration of general indulgence, and asserted that non-conformity to the *established religion* was no longer penal.

James, knowing how popular his son-in-law, the Prince of Orange, was among the Dissenters in England, and that the nation in general revered

the Princess as presumptive heir of the crown, resolved to procure, if possible, his concurrence in repealing the penal laws, believing this would dispose the Parliament to a compliance with his will in confirming the declaration. In order to sound the Prince, he employed one Stewart, who was acquainted with Fagel the Pensionary, to assure this counsellor in a letter, that the interest of England, as well as of the Prince, required the abolition of the Test and Penal Laws. As Fagel made no reply to this address, Stewart renewed the attack in a second and third letter; till at length, tired by the Pensionary's silence, he gave him to understand that the King had employed him to write, and desired to know the sentiments of the Prince on this subject. Then Fagel, by direction of the Prince, wrote an answer, which was published. He said the Prince and Princess would willingly agree to indulge the Roman Catholics with liberty of conscience, and ardently wished the Protestant Dissenters were allowed the free exercise of their religion; but they would never consent to the abolition of the Test and Penal Laws, which were enacted to exclude the Roman Catholics from Parliament and public employments, that they might never be in a condition to overturn the Protestant religion. Their opinion was supported by several clear and convincing reasons, which, while they irritated the King against his son-in-law, served to confirm great part of the nation in the good opinion which they formed of the latter.

James, notwithstanding all discouragements, still persisted in his favourite design of converting the three kingdoms.

To complete his work, he publicly sent the Earl of Castlemaine ambassador extraordinary to Rome, in order to express his obedience to the Pope, and to reconcile his kingdoms to the Roman Catholic communion. Never was there so much contempt thrown upon an embassy that was so boldly undertaken. The court of Rome expected but little success from measures so blindly conducted. They were sensible that the King was openly striking at those laws and opinions which it was his business to undermine in silence and security.

The Jesuits soon after were permitted to erect colleges in different parts of the kingdom; they exercised the Roman Catholic worship in the most public manner; and four Roman Catholic Bishops, consecrated in the King's chapel, were sent through the kingdom to exercise their episcopal functions, under the title of Apostolic Vicars.

A.D. 1688.—A second declaration for liberty of conscience was published, almost in the same terms with the former; but with this peculiar injunction, that all divines should read it after service in their churches. The Protestant clergy were known universally to disapprove of these measures, and they were now resolved to disobey an order dictated by the most bigoted motives. They therefore determined to trust their cause to the favour of the people. The first champions on

this service of danger were Lloyd, Bishop of St. Asaph ; Ken, of Bath and Wells ; Turner, of Ely ; Lake, of Chichester ; White, of Peterborough ; and Trelawney, of Bristol ; these, together with Sancroft, the Primate, concerted an address, in the form of a petition, to the King, which, with the warmest expressions of zeal and submission, remonstrated, that they could not read his declaration consistently with their consciences, or the respect they owed the Protestant religion.

The King in a fury summoned the bishops before the council, and there questioned them whether they would acknowledge their petition. They for some time declined giving an answer ; but, being urged by the Chancellor, they at last owned it. On their refusal to give bail, an order was immediately drawn for their commitment to the Tower, and the crown-lawyers received directions to prosecute them for a seditious libel.

The twenty-ninth day of June was fixed for their trial ; and their return was more splendidly attended than their imprisonment. The cause was looked upon as involving the fate of the nation, and future freedom, or future slavery, awaited the decision. The dispute was learnedly managed by the lawyers on both sides. Holloway and Powel, two of the judges, declared themselves in favour of the bishops. The jury withdrew into a chamber, where they passed the whole night, but next morning they returned into court, and pronounced the bishops, Not guilty. Westminster Hall instantly

rang with loud acclamations, which were communicated to the whole extent of the city. They even reached the camp at Hounslow, where the King was at dinner, in Lord Feversham's tent. His Majesty demanding the cause of the rejoicings, and being informed that it was nothing but the soldiers shouting at the delivery of the bishops, "Call you that nothing?" cried he; "but so much the worse for them."

It was in this posture of affairs that all people turned their eyes upon William Prince of Orange, who had married Mary, the eldest daughter of King James.

Every individual, whether Whig or Tory, who knew the value of liberty, and was attached to the established Protestant religion, now plainly saw, that, without an immediate and vigorous opposition to the measures of the King, the nation would be reduced to the most abject state of spiritual subjection. The principal persons of both parties began to reflect with remorse upon the mutual animosity which had weakened the common interest: they perceived the necessity of having recourse to foreign aid: and they looked upon the Prince of Orange as their natural ally and protector. As a previous step towards an application to this auxiliary, they saw it would be necessary to compromise all their domestic disputes. Some moderate men of each faction exerted their endeavours for this purpose. Their efforts were crowned with success, and the Whigs and Tories,

for once, united by the common ties of religion and liberty, agreed in private to lay aside all contention.

The Prince of Orange having taken leave of the States, embarked on the 19th October, 1688, with the Earls of Shrewsbury and Macclesfield; the Lords Mordaunt, Wiltshire, Paulet, Elan, and Dunblaine; Admiral Herbert, Mr. Sidney, Mr. Russel, Dr. Burnet, and many other English subjects. His fleet consisted of fifty sail of the line, twenty frigates, as many fire-ships, and about four hundred transports, on board of which twelve or thirteen thousand soldiers were embarked. Admiral Herbert led the van; the rear was conducted by Evertzen, and the Prince commanded in the centre, with a flag displaying his own arms, circumscribed "THE PROTESTANT RELIGION AND THE LIBERTIES OF ENGLAND!"

The time when the Prince entered upon his enterprise was just when the people were in a flame at the recent insult offered to their bishops. He had before this made considerable augmentations to the Dutch fleet, and the ships were then lying ready in the harbour. Some additional troops were also levied, and sums of money raised for other purposes were converted to the advancement of this expedition.

It was given out that this invasion was intended for the coast of France, and many of the English, who saw the fleet pass along their coasts, little expected to see it land on their own shores. Thus,

after a voyage of two days, the Prince landed his army at the village of Broxholme in Torbay, on the fifth of November, which was the anniversary of the Gunpowder Treason.

But, though the invitation from the English was very general, the Prince for some time had the mortification to find himself joined by very few. He marched first to Exeter, where the country people had been so lately terrified with the executions which had ensued on Monmouth's rebellion, that they continued to observe a strict neutrality. He remained for ten days in expectation of being joined by the malecontents, and at last began to despair of success. But just when he began to deliberate about re-embarking his forces he was joined by several persons of consequence, and the whole country soon after came flocking to his standard. The nobility, clergy, officers, and even the King's own servants and creatures, were unanimous in deserting James. Lord Churchill had been raised from the rank of a page, and had been invested with a high command in the army, had been created a Peer, and owed his whole fortune to the King's bounty; even he deserted among the rest, and carried with him the Duke of Grafton, natural son to the late King, Colonel Berkeley, and some others.

The King, alarmed every day more and more with the prospect of a general disaffection, was resolved to hearken to those who advised his quitting the kingdom. To prepare for this he

first sent away the Queen, who arrived safely at Calais, under the conduct of Count Lauzun, an old favourite of the French King. He himself soon after disappeared in the night time, attended only by Sir Edward Hales, a new convert; but was discovered and brought back by the mob.

But shortly after being confined at Rochester, and observing that he was entirely neglected by his own subjects, he resolved to seek safety from the King of France, the only friend he had still remaining. He accordingly fled to the sea side, attended by his natural son the Duke of Berwick, where he embarked for the continent, and arrived in safety at Ambleteuse in Picardy, from whence he hastened to the court of France, where he still enjoyed the empty title of a king, and the appellation of a saint, which flattered him more.

No sooner had James left the kingdom than the Peers, as possessed of hereditary jurisdiction, resolved to act as the guardians of the public. They entreated the Prince of Orange to send orders to all the places that were vested with the right of electing members, to choose representatives within ten days from the service of the notice, who might compose a Convention, which might act as a Parliament in settling the nation. Before, however, the Prince would take this step, he resolved to be authorised by the Commons as well as by the Peers. He accordingly published an order, requiring all those who had served as members of Parliament in the reign of Charles II. together with

the Lord Mayor, Aldermen, and fifty Common Councilmen of London to meet at St. James's on the 26th day of December, 1688, that he might consult them on the present posture of affairs. This Convention met at the appointed time, and, having adopted an address beseeching the Prince of Orange to take upon himself the charge of the administration of affairs, they adjourned until the 22d January following, when they again met, and, having chosen a Speaker, a letter from the Prince to both Houses was read to this effect: That he had complied with their desires in re-establishing the peace and public safety of the kingdom, and now it was their business to secure their religion, laws, and liberties, upon a certain foundation. He observed that the DANGEROUS SITUATION of the PROTESTANTS IN IRELAND required immediate relief; and that, except a disunion amongst themselves, nothing could be more fatal to foreign connections than a delay in their deliberations.

On the 28th January Mr. Dolben in the Lower House undertook to prove that the throne was vacated by the King's desertion. After a long debate, the Commons voted, by a great majority, that "King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract betwixt King and People, and having by the advice of JESUITS, and other wicked persons, violated the fundamental laws and withdrawn himself out of the kingdom, had abdicated the government; that the throne was thereby

vacant, and that experience had shewn a PROTESTANT KINGDOM COULD NOT SUBSIST UNDER THE GOVERNMENT OF A POPISH SOVEREIGN."

Great debates arose between the Upper and Lower Houses whether a Regent or a new Sovereign should be preferred ; and, after several very violent discussions between the Tories and Whigs, the Upper House concurred in the vote of the Commons — " That King James had abdicated the government, and thereby the throne was become vacant."

It now remained for the Houses to fill the vacant throne, and, upon the House of Peers proceeding to deliberate upon an expedient to do this, the Marquess of Halifax proposed that the Prince of Orange should reign alone, and the Princesses succeed in order, at his death. This motion gave rise to violent debates ; and the two Houses were completely divided into parties. The Earl of Danby sent an express to the Princess of Orange, with an assurance that, if she chose to reign alone, he had interest enough to carry that point in her favour. She replied that she was the Prince's wife, and would never cherish a separate interest from that of her husband, to whom she transmitted the Earl's letter. At length, the two Houses agreed, and each voted apart, that the Prince and Princess of Orange should reign jointly as King and Queen of England ; and that the administration should be in the hands of the Prince alone. Then the Convention, after some disputes, reduced the

oath of allegiance to its original simplicity, of being faithful to the King and Queen. On the 12th day of February, the Princess of Orange arrived in London. Next day the Members of the two Houses went in a body to the Banqueting House, Whitehall, where the Prince and Princess sat in state; and the famous BILL OR DECLARATION OF RIGHTS having been read, the Marquess of Halifax, as Speaker of the Upper House, made a solemn tender of the crown to their Highnesses, in the names of the Peers and Commons of England. The Prince replied in gracious terms of acknowledgment; upon that very day he and the Princess were proclaimed by the names of WILLIAM AND MARY, KING AND QUEEN OF ENGLAND; and thus the most important REVOLUTION which ever took place, was effected in the most peaceable and satisfactory manner.

LETTER I.

MY DEAR SIR,

AFTER the correspondence which has taken place between us upon the Roman Catholic question, it will not perhaps be disagreeable to you if I attempt to analyse the arguments which have been used on both sides, and take a general review of the reasons which have induced you, as an advocate of Whig principles, to support the present claims of the Roman Catholics. Previous to doing these matters, it will be necessary to consider, what are the general principles upon which we deem this great national question as reposing, and what the *data* upon which our mutual opinions are founded.

You tell me that it is from a firm conviction of the *justice* of a repeal of all *civil* disabilities imposed in consequence of a difference in *religious* sentiments, that you are induced to favour the Roman Catholic claims.—Now, I am as great an advocate for religious liberty as you can be, and think that its cultivation and extension in a free country ought to be promoted by every possible means. A direct recognition of this principle is given by the British Constitution: that inimitable system regards religious liberty in the light of direct *natural* liberty, and most wisely draws the distinc-

tion between it and *civil* privilege. A certain portion of *natural* liberty must be conceded by those who enjoy and claim *civil* protection; and this concession our Constitution requires of her subjects before she extends her protection to them; as to *religious* liberty, however, *that* she regards as being free as air—she therefore leaves it unfettered—and permits all to adopt their own peculiar modes of faith without molestation from civil authority.

In perfect conformity with these general axioms, the Constitution of England admits of, and identifies itself with, a religious establishment; it having been found from the experience of ages, that without a rallying point of this description no system of civil government could long sustain its authority. As a member of the Church of England, you do not object to this establishment, but admit its necessity; you nevertheless disapprove of those Tests which I conceive form the necessary bulwarks of its security, and which exclude from civil power those who dissent from the religion of the state. Upon this point we are at issue; and, as I have professed myself a warm friend to religious liberty, it is incumbent upon me to shew the necessity of any laws which *primâ facie* interfere with that invaluable blessing. It is this part of the argument which connects our subject with the Roman Catholic question, and I trust I shall be able to convince you, that a continuance of Test Laws is necessary, to protect the

civil and religious liberties of Englishmen from Roman Catholic attacks and foreign interference.

It would be impossible for any *Protestant* religious establishment to subsist without some species of *civil* protection; and this is perfectly accounted for in the difference subsisting between Protestantism and the Roman Catholic religion: the latter is a Test Act in itself, as it admits of no toleration to conflicting opinions; whereas the former, by admitting of full religious toleration, requires some *civil* aid to protect its ascendancy. Without some species of Test it must follow from the very nature of Protestantism and of mankind, that no religious establishment founded on its principles could long subsist; the multiplicity of religious opinions would be so great, and the multiplicity of *civil* interests and influence arising from the honest exercise of those opinions so various, that, if engrafted into the state or admitted into the council chamber, no definite plan of action would ever be agreed upon;—all would be confusion and disorder; for it must be universally admitted, that religious opinions (if arising from conviction and *honestly* entertained) will ever form the mainsprings of action, whether in the cabinet, the senate, or the closet. If therefore any particular system of Protestantism were to lose the support of the civil power, the religion itself being divided in interest, and each division struggling for predominance in the supreme government, a spirit of enmity, mistrust, and cabal would be ex-

cited, which would eventually destroy that zeal for liberty of conscience which now so happily subsists amongst us, and to which, I make no hesitation in saying, we are indebted for the Revolution of 1688.

You however tell me "*that this is strange reasoning, and that every species of test is contrary to the natural rights of man, and part of a system of persecution.*" In opposition to this opinion, I would refer you to the history of past experience, and an attentive consideration of human nature. You will not I think be disposed to say that the Revolution would have been brought about had not the executive power been bound down by Test Laws, which prevented the sovereign from bestowing office upon his Roman Catholic favourites. In this memorable instance, at least, what you now please to denominate a system of intolerance saved for England her civil and religious liberties. King James, when so anxious to repeal the Test Laws adopted by his predecessors, acted from a conviction that until that repeal took place, and until he had, through its medium, been enabled to fill the higher offices of the state with his creatures, he should never be able to restore Popery as the established religion of England.* Could he however have carried the repeal which he sought, many seasons would not have passed over this country before his ulterior object would have been effected. The advisers of that monarch clearly perceived

* Vide p 115.

that it was the *establishment of a particular form of religion* which was the chief obstacle to the accomplishment of their designs; and that consequently a virtual *dissolution of that establishment, by the taking away of those bulwarks in the shape of Test Laws which supported it*, was a necessary preparatory step towards the restoration of their domineering and oppressive system. Such a repeal would have produced the disunion and contention to which we have before alluded; and thus a door would have been opened for the introduction of a religion imposing in itself—forming a more combined system of union and energy than any other, and supporting its own ascendancy by its own intolerant principles.

Surely, my dear Sir, the times are not so much altered as to justify us in believing that the same consequences which were dreaded at the Revolution, and guarded against by the legislative statutes passed at that glorious event, would not ensue, were a deviation now to take place from the policy then established. I, for one, can never admit that the general principles established and acted upon at the Revolution were mere measures of temporary policy. The very idea strips it of all its importance; it dwindles it into a mere secondary event in history, and robs it of all claim as a precedent. We may adopt in some respects, a different *application* of the principles upon which the Revolution proceeded. You may consider it favourable to an *elective* monarchy; I to a *limited hereditary*

one; but I trust we do not differ in our opinions as to the grand cause which produced it, and the main object which it had in view. These considerations I shall discuss in my next, and, as you have kindly favoured me with the particular reasons which have induced you to support the pretensions now urged by the Roman Catholics, you will, I am quite certain, allow me to comment upon them, and explain those reasons which induce me to consider yours as erroneous, and as contrary to *genuine Whiggism*.

And I remain, dear Sir,

Yours ever sincerely, &c. &c.

LETTER II.

MY DEAR SIR,

IN my last Letter I endeavoured to shew that some species of Test Laws was necessary, not only for the preservation of a Protestant establishment, but for the general security of *Protestantism* of all descriptions, in a country possessing a constitution similar to our own. I shall now proceed to discuss the Roman Catholic question as connected with the Revolution.

One great object the Revolution had in view was

the security of a Protestant establishment, combined with a system of full religious toleration to those who might dissent from it. Toleration can scarcely be said to have been understood previous to the Revolution. It is true the Protestant religion had subsisted in the empire for more than a century antecedent, but it had subsisted rather in name than in fact : its energies had been almost completely destroyed by the restless and malignant spirits of those who still mortally hated the Reformation, and who were therefore obliged to be bound down by most severe penal laws, in order to produce any degree of tranquillity. It may readily be conceived, that, under such untoward circumstances as these, Protestantism had no opportunity of evincing its mild and beneficent effects ; upheld as it was by the severe statutes of Charles and Elizabeth, it merely had an exotic existence, and it was reserved for the Revolution to place it upon a firm and sure basis, and to give it an opportunity of evincing its real principles.

The constitution had been undergoing a most serious change ever since the Reformation—a change hostile to Popery, but favourable to liberty. Through many trials, dangers, and impediments, this change had been slowly making its way, and that work (no matter from what motives) which was begun by an Henry was completed by the legitimate authorities of the country, aided by a beloved sovereign. The Protestant establishment founded at the Revolution was one raised upon the

ruins of Roman Catholic power. It had been found that Popery on the one hand, and fanaticism on the other, were alike inimical to English freedom, and the establishment as then settled was therefore esteemed the happy medium upon which English freedom could alone repose for security. This discovery and conviction were the more valuable, since the Revolution might strictly be called the act and deed of the people; it was not the work of any turbulent or factious demagogues, who were prompted to embark in it from a hope that they might rise into consequence upon the ruins of fallen majesty; on the contrary, "it was an event brought about entirely through the imprudence of Majesty itself, by an attempt to abolish the Protestant religion, for which such great calamities had been suffered." *

The circumstances attending the reign of James, and the internal broils which had existed ever since the Reformation, had clearly established the position, that an union of Church and State must take place, and that any disjunction of the one from the other, or any control over the former by a foreign power, was fatal to English liberty. The character of the Revolution was therefore an arduous and a firm struggle against a Popish sovereign supported by Popish advisers and foreign interference, and the triumphant result of that struggle secured for us religious, civil, and political

* De Lolme, p. 54.

liberty conjointly; it gave us a Protestant Church and State and a Limited Monarchy. It is clear from the very nature of things that these could never have been secured for us had not the influence of the Roman Catholics been previously bound down and crippled by restrictive statutes; for, with a monarch of that persuasion, surrounded by advisers of the same description, the standard of despotism and persecution must have waved over that country which is now so highly distinguished for civil and religious liberty. The legislative records of this distinguished period are strongly corroborative of this opinion. The Bill of Rights sets out with telling us, that "the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and and the laws and liberties of the kingdom." Here we have a direct and forcible recognition of the intimate connection which was then considered as subsisting between Protestantism and English liberty; and, as if to warn succeeding generations against the adoption of any measures calculated either to compromise or weaken the Protestant ascendancy, this explicit declaration is contained in the preamble (or key to explain the motives) of the first legislative act which took place after the Revolution. The Act of Settlement, passed some years afterwards, adopts the same line of recognition, and is particularly cautious in guarding the succession against the possibility of

either falling into Roman Catholic hands or being controlled by Roman Catholic influence.* I have thought it right to be rather minute in noticing these particulars, because I perceive you have adopted an opinion that the Revolution and the Bill of Rights are not so intimately connected with the Protestant religion as some imagine. You tell me that the "*thirteen declarations contained in the Bill are equally true whatever is the form of religion, whether Protestant, Catholic, or even Mahometan.*" Now I will admit the declarations themselves do not directly allude to the subject, because they are confined to a mere statement of civil privilege; but, taken in context with the preamble and other preceding matter, I will boldly defy any one to say that the establishment of Protestantism was not considered as the grand basis upon which the Revolution rested for support.

I perceive you are also one of those who give Runnymede the credit for every atom of English liberty. Far be it from me to slight or undervalue the glorious trophies which were then gained. They certainly laid the foundation of what we now enjoy; but they did little more. English liberty, though it dawned at Runnymede, and was fought

* By 12 and 13 Will. III. c. 2, the succession to the Crown was settled upon the Princess Sophia (granddaughter of King James I.) and the heirs of her body, BEING PROTESTANTS; and by the same statute it is enacted, that, whosoever should thenceforth come to the possession of the Crown should join in the communion of the Church of England as by law established.

for at Cressy, Poitiers, and Agincourt, was not established upon a basis sufficiently strong to admit of toleration to conflicting religious opinions until 1688. I am not surprised at any one who professes Whig principles, and who nevertheless supports the Roman Catholic claims, wishing to draw a veil over what passed in 1688, and dwelling with rapture upon the field of Runnymede and the exploits of Cressy. This affords him a specious opportunity of attributing our liberties to the exertions of Roman Catholics, and of fanning into an enthusiastic flame the romantic ideas which are necessarily connected with those glorious eras. It is true that the struggles were great, the results glorious. They however prove nothing as to our present question; they were indeed partly occasioned by that overbearing religious power which it was always the duty and interest of Englishmen to resist, but which they had no means of resisting until the Reformation—and none of effectually doing so until the Revolution. If we look back to the reigns preceding the Reformation, we shall almost invariably find that, during the sway of a valiant and politic monarch, the State has been distracted with the cabals of the Court of Rome; and during that of a weak one, that the Papal See has trampled upon the rights of both prince and people.* It was the religious establishment, as

* The reigns of John and Henry II. are remarkable instances of this.

settled and protected at the Revolution, which alone obviated these inconveniences, and gave to English subjects liberty of conscience in conjunction with personal freedom.

I shall now proceed to consider how you, who profess yourself to be a warm admirer of Revolution principles, and a WHIG OF 1688, can consistently support the present claims of the Roman Catholics, and in the interim remain,

Yours ever sincerely, &c.

LETTER III.

MY DEAR SIR,

IN my last Letter I endeavoured to shew the intimate connection subsisting between the Revolution of 1688 and the Roman Catholic question. I shall now proceed to inquire, how you, who profess to be guided by the principles of that Revolution, can consistently support the present claims of the Catholics.

What the principles were which the Roman Catholics entertained at the period of the Revolution is evident; the Bill of Rights declares them to be inimical to the liberty of English subjects, and destructive of the British constitution. It therefore becomes us to inquire, whether any

change has taken place in these principles—whether those tenets which were esteemed politically dangerous in 1688 have become harmless in 1820. Strictly speaking, however, the *onus probandi*, in this respect, lies upon the Roman Catholics, and it is for them to shew, not for Protestants to point out, why all the securities which were established at the Revolution, to guard our liberties and religious establishments, should be swept away. In entering upon the discussion of this part of our subject, I have always felt considerable difficulty. Living, as I have done, and still continue to do, in the strictest intimacy with several members of the Romish communion, whom I most sincerely respect, it is difficult to bring forward the discussion of a subject which cannot fail in some degree to excite unpleasant feelings. I hold it, however, as an incontrovertible maxim, that English liberty ought never to be sacrificed for private friendship. Sincerely do I believe that amongst the Roman Catholics there is every thing good, great, and noble, but as sincerely do I believe that many of them are utterly ignorant of the lengths to which their principles would carry them, and would shudder at the acts which they would be compelled to perform in a case of emergency. Indeed I am inclined to think that the Ecclesiastical subjection under which Roman Catholics are placed is not so much known to them as it is to Protestants; because the latter have been induced to make the necessary inquiries for their own security, and be-

cause the former are not fond of recurring to a subject which places them so completely under sacerdotal influence.

In resuming the consideration of our subject, it will be necessary to consider what was the situation of the Roman Catholics previous to the Revolution, and what was the state of things established at that period with respect to them. The state of the Roman Catholics previous to the Revolution was one of complete proscription, brought about by their own conduct in the reigns subsequent to the Reformation. Their properties, their religion, their means of defence, and their rights of action, were taken away from them ; indeed, such was the severity of these laws, that the President Montesquieu has observed, " That they were so rigorous, though not professedly of the sanguinary kind, as to do all the hurt that could possibly be done in cold blood." (Sp. L. 6, 19, c. 27.)* These laws,

* Formerly persons professing the Roman Catholic religion were disabled from inheriting or taking lands by descent or purchase, after eighteen years of age, until they renounced their errors—they were disabled to teach school under pain of perpetual imprisonment ; and, if they willingly said or heard mass, they forfeited the one two hundred, the other one hundred marks and a year's imprisonment. A number of other severe laws were also in force against them, which might be attributed to the various attempts that had been made in different reigns to annihilate the Protestant establishment. " The restless machinations of the Jesuits during the reign of Elizabeth, the turbulence and uneasiness of the Papists under the new religious establishment, and the boldness of their hopes and wishes for the succession of the Queen

however, were merely enacted as emergencies arose, and were never intended to form a permanent system of legislation. At the Revolution the restless conduct of the Roman Catholics rendered it necessary that they should still be retained; they were accordingly so until the causes which produced most of them had ceased to exist. Such of them were then repealed as did not immediately affect the constitution of the country, and all that are now retained are those which exclude Roman Catholics from parliament, from holding certain civil and ecclesiastical situations, from presiding in our courts of law or equity, and from rising to certain rank at the bar.* The properties, the worship, and the civil rights of the Catholics have now as much protection as those of the Protestants; and all from which they are excluded are those situations which would give them a *political* influence over our *Protestant* constitution, and a

of Scots, obliged the Parliament of that day to counteract so dangerous a spirit by laws of a great, and then perhaps necessary, severity. The Powder Treason in the succeeding reign struck a panic into James I. which operated in different ways: it occasioned the creating of new laws against the Roman Catholics, but deterred him from putting them into execution. The intrigues of Queen Henrietta in the reign of Charles I., the prospect of a Popish successor in that of Charles II., the Assassination Plot in the reign of King William, and the avowed claim of a Popish Pretender to the crown in that and subsequent reigns, will account for the extension of the penalties at those several periods of our history."—BLACKSTONE.

* 18th George III. c. 60—31st George III. c. 32.

legislative control over our *Protestant* establishment.

Having thus premised, I shall proceed to consider *seriatim* the reasons which you admit have induced you to second the efforts of the Roman Catholics at the present period to obtain political power in our Protestant State. You tell me, “*That the present Test Laws, by which the Roman Catholics are excluded from power, did not originate at the Revolution, and that they are inconsistent with the toleration that was then established.*” Now let us for a moment refer to the Act of Toleration itself (1st W. and M. c. 18.) The Preamble to that Act runs as follows: “*Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties’ PROTESTANT subjects in interest and affection.*” Thus it appears, that it was merely for the relief of the “*scrupulous consciences of PROTESTANTS in the exercise of religion,*” that this Act was passed. The Act goes on to exempt Protestant Dissenters from those severe laws which had been passed against Non-conformists in prior reigns, but at the same time contains *two most remarkable exceptions*—exceptions which speak volumes upon the present question, and clearly shew that King William’s *general* ideas of toleration never extended to Popery. So jealous were the Parliament that passed this Act upon this point, and so apprehensive were they that a Roman Catholic might take advantage of a

law which was intended exclusively for the relief of a Protestant Dissenter, that the Act of 25th Charles the Second, (which was made "*to prevent dangers which might happen from Popish recusants,*") and the Act of 30th Charles the Second ("*for the more effectually preserving the King's person and Government, by disabling Papists from sitting in either House of Parliament,*") were especially excepted in the Act of Toleration; and no Protestant Dissenter could take the benefit of that Act unless he took the oaths and subscribed the declarations which the two excepted Acts contained, and which were in the strongest degree inimical to the Roman Catholic religion and to papal encroachment. How can it therefore be maintained, that the ideas of toleration, as entertained at the Revolution, were favourable to the claims now urged by the Roman Catholics, when we see that it was made an especial condition with those who availed themselves of that toleration, that they should distinctly recognise the legislative enactments which excluded Roman Catholics from Parliament and from filling any civil offices in the State? The Revolution did indeed reconcile liberty with a Protestant Government, but it effected this by driving Popery and intolerance to their native shades, and by erecting the standard of civil freedom upon the wreck of tyrannical usurpation.

You say, however, that "*The toleration, as established at the Revolution, was incomplete, and that it was the commencement, not the completion, of a*

system.”—I am at a loss, however, to know upon what grounds you have been induced to form this opinion. It has been said that, when the Act of William was passed, a Catholic exile King was living, who possessed the affections of a great portion of his late subjects, among whom were men of the first talents and property, and that even many of the bench of bishops were then Jacobites; but what has this to do with the subject?—Were all that were called Jacobites favourable to the Roman Catholic religion? Were not many of them Jacobites from principle, and who conceived themselves so bound, by having sworn allegiance to James, that they could not *conscientiously* take the oath to William? What was Archbishop Sancroft, and what were Bishops Kenn, Lake, White, and Turner? *—Were they Roman Catholics? No! *Bis martyrizati!*—they were the very men who were imprisoned for resisting the dispensing power claimed by King James for releasing the

* Vide p. 117. After the accession of William and Mary, Archbishop Sancroft, with Bishops Turner, Lake, and some others, retired from Parliament, from a conscientious belief of the absolute power and divine hereditary indefeasible right of sovereigns. These prelates had taken every possible step, both before and after their memorable trial, to induce King James to act as became an English sovereign; finding these efforts useless, they then joined the association in favour of the Prince of Orange; but nevertheless, when success had crowned the efforts of that association, they refused to take the requisite oaths to William, and eventually became martyrs (as to their preferments) on account of their principles!

Catholics from the operation of the penal laws and the Test, but who suffered themselves to be deprived of their sees rather than take the oath to William. These were men who suffered for conscience-sake; and is it to be now contended that *they* were advocates for the repeal of the Test Laws, who suffered imprisonment for opposing that repeal; and that statutes, which Judge Blackstone calls "*the bulwarks of the constitution,*" * are to be now abrogated because *Jacobites* have ceased to exist, and because some political doctrines have been exploded?—If any additional proof were wanting that the present claims of the Roman Catholics are not comprehended in the principles of Revolution toleration, the celebrated letter which was written in 1687 by Pensionary Fagel to Mr. Stewart, by command of the Prince and Princess of Orange, (afterwards KING WILLIAM and QUEEN MARY,) as illustrative of the principles which placed them upon the throne of England, must set at rest the question.† This was a letter written in answer to one sent by King James, requesting their Highnesses to aid him in his attempts to abolish the Test Laws. The following are extracts from this memorable document:—"Their Highnesses could by no means agree to the repeal of the Test, and those other penal laws *that tended to the security of the Protestant religion, since the*

* Black. Com. vol. iv. p. 58.

† Kennet's History of England, vol. iii. p. 466.

Roman Catholics receive no other prejudices from these than their being excluded from Parliament and public employments; and that by them the Protestant religion was sheltered from all the designs of the Roman Catholics against it, or against the public safety: that neither the Test nor those other laws could be said to carry any severity in them against the Roman Catholics upon account of their consciences, being only provisions qualifying men to be Members of Parliament, or to be capable of bearing office, by which they must declare before God and men that they were for the Protestant religion: so that, indeed, all this amounted to no more than a securing the Protestant religion from any prejudice it might receive from the Roman Catholics. Their Highnesses were convinced in their consciences that both the Protestant religion and the safety of the nation would be exposed to most certain dangers, if either the Tests, or those other penal laws of which he had made frequent mention, should be repealed; therefore they could not concur with his Majesty in those matters; for they believed they should have much to answer to God, if the consideration of any present advantage should induce them to consent to things which they believed would not only be very dangerous, but prejudicial to the Protestant religion." *

This memorable document clearly shews what

* Vid. p. 115.

King William's ideas of toleration were ; and shall we, who live at so remote a period from times when the operation of Roman Catholic principles was manifested, adopt a different line of conduct ? Shall we learn nothing from that *experience* which was bequeathed to us by our ancestors ? Shall no earnestness be excited in us to preserve the liberties and religion which they have bequeathed to us ? "O that I had words to represent to the present generation the miseries which their fathers underwent ; that I could describe their fears and anxieties, their restless nights and uneasy days, when every morning threatened to usher in the last day of England's liberty. Had men such a sense of the miseries of the time past, it would teach them what consequences they were to expect from any successful attempt against the present establishment." †

The only true criterion which we can adopt, whereby to form an accurate judgment of any measures proper to be pursued under circumstances of peculiar emergency, and with which our ancestors have successfully struggled, is, to observe attentively what were the measures adopted by them after the struggle had ended, and what were the means devised to perpetuate the benefits obtained by the contest. This is the standard to which I would bring the present question ; and I shall endeavour to show, in my next, whether

* Bp. Sherlock's Discourses.

Roman Catholic principles have so much altered as to render any change in legislation necessary. I trust I have shown that the toleration granted by William was not one which opened a door to all sects without restraint, and disregarded an establishment as necessary to the welfare of a country; on the contrary, that it was a toleration which was not indifferent to a particular religion, and that it was one which encompassed the throne with Test Laws, and vested the civil authorities of the country in those who professed the religion of the State. These are very different principles of toleration to those about which we hear so much at the present day. Some of the latter, I am greatly apprehensive, have originated in that disregard of all religious institutions which characterised the French revolution. Establishments were then considered as unnecessary; a spurious religious liberty was the order of the day, and everything which was deemed sacred by our ancestors was ridiculed by their puny descendants. Far, very far, am I from insinuating, and as far from believing, that any improper motives are harboured by the leading parliamentary supporters of the Roman Catholic claims; many of them, however, entered into life when the French revolution was almost the only topic, when it was the object of panegyric, and was holden out as an example for imitation. Its dire effects had not then been seen; the slavish chains which were afterwards manufactured at the Republican forge had not then bound down the liberties of

the people. May we not therefore be allowed to suggest the propriety of an inquiry being made by some of the present supporters of the Roman Catholic claims, as to the period when the principles of toleration upon which they now advocate those claims first began to take effect upon their minds, and whether any ideas of universal freedom have not been mixed up, or at least confounded, with the system of our National toleration?

In my next letter I shall resume the subject, and endeavour to show *how far the idea of Roman Catholic principles being changed is founded in fact.*

And I remain, dear Sir,

Yours ever sincerely, &c. &c.

LETTER IV.

MY DEAR SIR,

HAVING shewn, I trust, that the toleration which was established at the Revolution was decidedly opposed to the claims now made by the Roman Catholics, I shall proceed to consider whether a sufficient change has been wrought in Roman Catholic tenets since that event to justify any deviation from the principles then established.

The advocates of the claims have very judiciously endeavoured to treat the subject simply in a religious point of view; and they have done this because most of the religious prejudices entertained by Catholics are prejudices which do not directly interfere with the civil government of the country. A man may worship as many saints as he pleases, may adore the Virgin Mary, believe in purgatory, indulgences, and extreme unction, and yet be a good British subject. It is not the holding of these doctrines (however absurd) which renders restrictive measures necessary; but it is the holding of other doctrines, which directly interfere with civil government, that renders Roman Catholics unfit subjects to be trusted with the administration of a civil power in a Protestant State. It is a mixture of civil and religious authority in the Roman Catholic church itself, that has made an exclusion necessary, and which still makes such exclusion imperative. The doctrine of *Infallibility*, as maintained in that Church—the authority of general councils, and the Foreign allegiance created by the supposed supremacy of the Papal see, are the dogmas which connect politics with the Roman Catholic question, and strike at the very root of the constitution of England as established at the Revolution. These, then, form the *kernel* of this part of our subject, and I shall therefore consider them separately, having first established the fact that they are still holden by the members of the Church of Rome. In order to do this, we have

only occasion to refer to a "Pastoral Letter" of the present titular Archbishop of Dublin, published in 1793.* Dr. Troy there tells us, that "it is a fundamental principle of the Roman Catholic faith, that the Pope or Bishop of Rome is successor to St. Peter, Prince of the Apostles;" that "in that see he enjoys, by divine right, a spiritual and ecclesiastical supremacy, not only of honour and rank, but of real jurisdiction and authority in the universal church;" and that "Roman Catholics conceive this point as clearly established in the Scriptures, and by the constant tradition of the Fathers in every age, as it is by the express decisions of their general councils, which they consider as *infallible* authority in points of doctrine." Here then we have a plain authoritative recognition of the doctrine of *infallibility*, of the authority of general councils, and of the Papal supremacy. It will now be for us to consider how far these received opinions affect the civil and ecclesiastical constitution of this country.

The doctrine of *infallibility*, as maintained in the Romish church, has been justly considered as "the grand pillar of Roman Catholic despotism."† It has been truly declared to be as incompatible with freedom of research in religious matters, as

* Dr. Troy is one of the most celebrated Prelates resident amongst the Irish Roman Catholics.

† Vid. "The Claims of the Roman Catholics considered, with reference to the safety of the Established Church and the Rights of Religious Toleration."—*Cadell and Davies*, 1812

with the civil and religious liberties of the English people. It is well known how difficult it is in all cases to draw the line between civil and religious obligations, and this difficulty has been considerably increased amongst the members of the Romish church, by the extraordinary connection subsisting between Roman Catholic tenets and the domestic affairs of life. It has ever been the policy of that church to insinuate itself into the private concerns of families; in the doctrine of auricular confession it here finds a most powerful auxiliary, and its priests are thereby made, in a great measure, complete masters of the honour, the properties, and the influence of their flocks. Here, then, the dogma of infallibility most powerfully operates; the priests, in subordination to the bishops, are regarded as the local dispensing authorities of that infallibility, and by the disclosures necessarily made to them in confession they have a wide field laid open for the exercise of their supposed jurisdiction. Should a doubt arise whether any certain obligation were a civil or a religious one, a Roman Catholic would apply to his priest for a solution of his scruple. Should the priest feel a difficulty, he would apply to the bishop; and the bishop to the sovereign pontiff. Were catholics admitted into Parliament, or into the higher offices of the State, they would frequently have to decide upon questions essentially connected with the Protestant establishment; and could it be endured that, were a doubt to cross their minds whether the

point involved a civil or a religious obligation, that an appeal should be made in the first instance to an authority not recognized by the constitution, and in the appointment of which the State is not even suffered to have a negative, and in the dernier resort to a foreign authority at direct variance with the temporal power of the Government, whereof the Roman Catholics would then form a part? Would not this lead to the most dangerous, the most frightful consequences?

All these apprehensions would be groundless were a Roman Catholic permitted to reason on the justice or injustice of any particular decree of his holy church; but this is not likely to be the case; if it were so, the name of *Roman Catholic* would be lost—the slavish chains with which his mental powers are now fettered would lose their galling influence; he would become accustomed to think for himself; and the splendour of that rational “*Emancipation*,” which would be hailed with triumph by the true friends of civil and religious liberty, would burst upon our view with all its attendant recommendations. As, however, this can never be, so long as the doctrine of infallibility is maintained, we can only lament that those who are in other respects every way calculated to assist their country in a legislative point of view, must *necessarily* be *excluded* from her councils, inasmuch as they maintain a doctrine which would produce an *external* influence upon the discussions of her legislature. A Roman Catholic is not

allowed to judge for himself—his priest is the keeper of his conscience ; and he may be obliged, under particular circumstances (however his better judgment may incline him to the contrary), to adhere implicitly to certain directions, and to repose his vindication for so doing upon the *infallibility* of his holy church ! Surely, with principles like these, there could not possibly be a Roman Catholic legislature and a Protestant King, or a Protestant King and a Roman Catholic keeper of his conscience ?

With respect to general councils, their authority is certainly still recognised by the Roman Catholic body. The doctrine of infallibility, which we have just been considering, rests (in some measure) upon these ; but as to the extent of operation which is given to them by the Roman Catholics of the present day there may be considerable difference of opinion. Most sincerely do I believe that several of the most objectionable tenets promulgated by these Synods are not now holden. Every one, however, knows, that the most horrible and persecuting doctrines have been sent forth to the world in their decrees, and it is clear from the oath of supremacy that several of them were considered to be in force at the time of the Revolution ; and I could have wished that, instead of general questions having been put to foreign universities with respect to this subject, the most objectionable declarations which remain upon record had been expressly specified, and an express de-

claration of their being considered no longer obligatory having been insisted upon being given by an authority capable of recognition by the whole Roman Catholic body.*

However, I am content with resting my decided opposition to the Roman Catholic claims upon the acknowledgment by the Catholics of a foreign jurisdiction—upon their disinclination to allow the English crown a veto upon the appointment of their bishops, and upon the general hostility of their church to civil and religious liberty. But let me not be misunderstood; I do not intend to say that a time may never come when, under the influence of an aspiring and designing pope, aided by an intriguing clergy, an use may not be made of the dogma of *infallibility*, to recall into action decrees at which humanity shudders, and which are now reposing in merited oblivion. Enough is now recognised of these decrees to shew that the Roman Catholics, though our fellow-subjects, profess a religion hostile to our own; and which, consistently with its own principles, must always labour at exclusive ascendancy. Enough remains of them to shew that every man who professes

* In 1789, when the Roman Catholics first began to urge the measure of general concession, Mr. Pitt submitted certain questions to the universities of Paris, Douay, Louvain, Alcala, Salamanca, and Valladolid, relative to the Pope's power of absolving subjects from their allegiance, and as to Catholics keeping faith with heretics, &c. The universities denied that these dogmas were holden by the then Roman Catholic church.

the Roman Catholic religion must believe every church except his own to be schismatical and heretical : and we need not recur to ancient councils to know that toleration is inconsistent with the principles of the Roman Catholic religion ; since a recent decree of the present pope has expressly declared the fact, and held it out to be as impossible for the Roman Catholic church to ally with the Protestant, as it would be for Christ to form an alliance with Belial. This was contained in a declaration to the French Government, whereby his holiness refused his assent to an ordinance published by them, on the plea that in that ordinance certain sects dissenting from the Roman Catholic church were tolerated. Indeed any recognition of the authority of these councils is incompatible with English ideas of liberty. The subjects of this realm are not bound by any laws except those made by its Parliament or its Convocation ; the decrees of a foreign assembly (unless they be adopted by England as a part of her *Lex non scripta*) can never be received as laws for Englishmen, and it would be an anomaly indeed, for a judge on a bench to recognise an authority as binding him in an ecclesiastical point of view which did not equally bind every subject of that country in which he was an administrator of justice ! It has always been holden impolitic to lodge power in the hands of those who are not friendly to the existing establishments of the country in which such power is to be exercised. This, according to Mr. Hume,

was the great fault of James II.—“He certainly was deficient in a due regard and affection to the religion and constitution of his country.” *

Mr. Fox, in his History of the Reign of James, has also adopted this principle; and with these great authorities before us—the latter of which, amongst Whigs, I should conceive would be indisputable; what a singular feature would be presented to our view in a Roman Catholic judge presiding at the trial of a tithe suit commenced at the instance of a Protestant clergyman?—Would the learned judge—indeed could he—forget the decrees of the councils of his church on such an occasion as this? It is true he would be compelled to act according to the existing laws; but would he not be placed in a most painful situation, when charging a jury of his country to find a verdict for a plaintiff whom, in his conscience, he must believe had no ecclesiastical right to the matters in litigation? In my next letter, I shall consider the subject of foreign allegiance, as connected with the supposed supremacy of the Pope.

And I remain, dear Sir,

Yours ever sincerely, &c. &c.

* “Had he been possessed of this (continues Mr. Hume) even his middling talents, aided by many virtues, would have rendered his reign honourable and happy. When it was wanting, every excellency which he possessed became dangerous and pernicious to his kingdoms.” *Hume's Hist. vol. 8, p. 306.*

LETTER V.

MY DEAR SIR,

WE come now to consider the foreign allegiance produced by the supremacy of the Pope, and this I have ever looked upon as a grand and abundant source of opposition to the Roman Catholic claims.

The supremacy of the Pope is one grounded upon the supposed supremacy of St. Peter amongst the Apostles; I shall not stop to expose the fallacy of this claim, but merely consider the effect which the recognition of it must necessarily have amongst Roman Catholics who live in a Protestant country. We may, however, be allowed to remark, that the doctrine of the Papal supremacy was not always holden even in the church of Rome; and that it was never exercised or claimed until the seventh century, when it was conceded to the then Bishop of Rome by a tyrannical usurper. Previous to this period, Rome was regarded by the Christian church more as an *Episcopal* than as a *Papal* see, and had not assumed to itself the high pre-eminence amongst the catholic churches which it now supposes was given to St. Peter by our Saviour, and which the Pope now conceives himself entitled to assume as the successor of that apostle. In the earlier ages of the church the

priesthood were in subjection to the imperial power; they, indeed, exercised their Divine functions under apostolic sanctions and apostolic successors, but it is clear from the memorable letter of Pope Gregory I. to the Emperor Mauritius that in his day the Roman Pontiff was not considered as the general or œcumenical bishop. That amiable prelate (whose election to the see of Rome was confirmed by the emperor,) upon the occasion of the Bishop of Constantinople having assumed the title of *Universal Bishop*, in consequence of the removal of a portion of the Roman authority to that city, says, "It is a blasphemous title, and none of the Roman Pontiffs have ever dared to assume so singular an one;"* and in another letter, addressed to the Bishop of Constantinople, upon the same occasion, this amiable and learned prelate says, "What wilt thou say to Christ, the head of the universal church, in the day of judgment, who thus endeavourest to subject his members to thyself by this title of *universal*?" It is clear that the Papal supremacy originated in a great measure in the removal of the seat of empire from Rome to Constantinople: previous to that event, the Bishops of Rome certainly enjoyed a precedence amongst the Christian bishops; but this was merely one of *honour*, not of *jurisdiction*, and was similar to the precedence claimed and exercised by our Bishops of London, Durham, and Winchester, over

* Greg. Epist. Lib. iv. Ind. 13, p. 137.

the other English bishops. It arose from Rome being the original seat of imperial authority. At this period the emperor exercised the same control over the church which the British Monarch now does over the English branch of it; but, after the removal of the seat of empire to Constantinople, the Popes were left in the sole possession of the ancient Roman capital, and, having no imperial authority to control them, very soon became entire masters of its territories.* Here then was laid the foundation of that immense power which it is so much the fashion at the present day to represent as trivial and insignificant; but which was so far from being so at the period to which we are referring, that "it very soon compelled the emperors to be confirmed by the Popes instead of the Popes being confirmed (as was the custom before the seat of empire was removed) by the Emperors."† Having thus premised, we shall proceed to the more immediate object of this letter.

It has been laid down as a general rule by one of the most powerful advocates for the concession

* It is very remarkable that Pepin (an usurper of the French throne) was the first who aided the Pontiffs in their designs upon Italy; in return for which, he was crowned and anointed as King of France by a Romish archbishop; and that Buonaparte (another French usurper) should have deprived the Pope of the Italian States, after the Pontiff had placed the French Crown on his head!—*Melancthon's Third Letter, Rot. Adv.*

† Machiavel's History of Florence, Lib. 1.

of the Roman Catholic claims,* “that all citizens of the same State are entitled to the same privileges, and that, if any exceptions are deemed requisite, the *onus probandi* lies on those who propose them to shew their necessity.” I do not dispute this axiom in a general point of view; but surely, when any particular class of persons refuse to take the benefits of a constitution through the same medium which others do, the *onus probandi* why such refusal is made, and what are the conscientious scruples which give rise to it, lies upon them. This is precisely the case with the Roman Catholics of the United Kingdom; and, whilst they acknowledge the supremacy of a foreign see, look up to a foreign authority for direction, and labour under a blind submission to their priesthood, they cannot well expect to obtain a share in the Government of a country which possesses a constitution similar to our own. It is well known that one essential difference between the Church of England (considered as a religious establishment) and the Church of Rome, consists in the one church declaring the King to be its head, and the other the Pope. The right of the King of England to be the head of the Church of England has been secured to him by a solemn act of his legislature, in which act it is also expressly declared that the Bishop of Rome shall have no jurisdiction within these realms. †

* Mr. Canning.

† Art. 37.

Here then the constitution of England and the Papal supremacy are at issue. It is observable that the legislative statute to which I have just referred is not content with merely declaring the English Sovereign to be the head of the English Church, but thinks it necessary to go further, and to enact that "the Bishop of Rome shall have no jurisdiction within these realms." The King of England, supported by the legislature, is here therefore at issue with the Pope of Rome, supported by his cardinals—the decrees of ancient councils—and the traditions of Fathers. Matters would never have come to this in the United Kingdom had not the severe laws against the Roman Catholics been repealed; but, as such repeal has taken place, (and I am far from questioning the propriety of it,) the Roman Catholics have been placed in a situation to assert their spiritual allegiance to the Romish see in the face of an English Parliament, and at a period in which they appear as petitioners at its bar. The only question therefore is, which of the two parties is to give way? Is the King to admit the Roman Catholics into places of trust and power without a renunciation being made by them of their allegiance to a Foreign potentate, and without taking those oaths which other subjects are obliged to take; or is he, by admitting them, virtually to acknowledge their right of allegiance to the Papal throne, and to give up a proportionate share of his own? To this standard I would therefore bring

the subject, and I shall now proceed to consider the nature of the supremacy which the Pope claims, and its probable effect upon the Roman Catholics.

And I remain, dear Sir,

Yours ever sincerely, &c. &c.

LETTER VI.

MY DEAR SIR,

IT has been invariably asserted by the advocates of the Roman Catholic claims, that the allegiance which the doctrine of the Romish supremacy creates is merely *spiritual*, and does not extend to *temporal* concerns. When, however, we reflect that the influence of the Pope extends over the most domestic and social ties, over marriages, divorces, legitimacy, &c. and that his influence is considered equal to any civil law on these subjects; that his excommunications deprive the subject of all his civil rights, and subject him to imperative temporal punishment; it is impossible not to admit that what is called a mere *spiritual* allegiance, is, in point of fact, in a great degree, a *temporal* one also. This was abundantly proved during the late war, since it is notorious that the Pope gave

Buonaparte more trouble than any person besides, notwithstanding the complete ascendancy which that despot lorded over him in a personal point of view, and the degraded situation in which his holiness was then placed.* The Pope, under such untoward circumstances as these, could not possibly have any political influence (in the general acceptation of the term) over the belligerent powers. He had no boons to confer upon them, no extent of territory to offer, no means of plunder or aggrandisement to suggest. From what then could the difficulties which Buonaparte experienced arise, but from a certain "*imperium in imperio*," from a secret, lurking allegiance, a superstitious veneration, which was felt for the Sovereign Pontiff? Was it not this which frequently prompted the French General to adopt lenient where otherwise he would have adopted the most rigorous

* It is quite clear that the Pope had great power during the war, and gave Buonaparte infinite trouble. When General Moore was in Spain, a Report from the Minister of Police to Buonaparte happened to be found, and was sent over to this country. The deliberate opinion of Fouché then was, that the French Emperor would surmount all his great difficulties if he relaxed his severity to the See of Rome. The advice of Fouché was followed, and it produced the desired effect; but, after his successes against Austria, Buonaparte renewed his severities towards the Papal See.—In his speech to the Conservative Senate, in 1809, Buonaparte made use of the following remarkable language:—"It has been demonstrated to me, that 'the spiritual influence exercised in my States by a Foreign Sovereign is contrary to the independence of France—to the dignity and safety of my throne.'"

measures? Buonaparte was too great a tyrant not to have annihilated the popedom if he dared to have done it; he indeed did all he could towards producing such annihilation, but he was suddenly arrested in his efforts by a secret influence—an invisible, but sure and powerful influence—which stepped between the Vatican and the projected blow, and proclaimed, “Thus far shalt thou come, and no further.” We were indeed exultingly asked during the war, what danger could possibly arise from an allegiance due to a prisoner, as the Pope then was? But surely those who asked such a question had not paid much attention to the scenes which were passing around them; if they had, they would have known that the Pope’s imprisonment was indispensable to the success of Buonaparte’s plans, and that, had his holiness been in the full exercise of all his functions, the imperial eagles would have moved but slowly. Whatever arguments, however, might be drawn in favour of the Roman Catholic claims from the situation of the Pope during the war, they can certainly have no weight under our present circumstances; indeed, they now tell the contrary way, and become reasons for rejecting, instead of conceding, those claims. If the idea of the allegiance due to the Pope was ridiculed because the Pope was a prisoner, is it equally an object of ridicule now that he is reinstated in his dignities—in his capital—in the exercise of his divine functions? It is remarkable that amongst the

first measures which the Pope adopted after his reinstatement were, the restoration of the Order of the Jesuits*—the prohibition of the Scriptures without a comment—and a restraint upon the liberty of the press. Now, it is but reasonable to conclude that a mind like that of Pius VII. would not be idle when in confinement. He, no doubt, had there considered what would most conduce to the benefit of his church and the re-establishment of his authority should he ever return to Rome, and there can be little doubt that the measures which were decided upon at Fontainebleau were merely carried into execution at Rome. This certainly is but a reasonable supposition, and it is remarkable that the measures to which I have alluded had a more direct tendency to uphold and extend the Papal supremacy than any others which could have been adopted.

Nothing could so clearly prove the importance of the allegiance which the Roman Catholics owe to the Pope as the conduct which was evinced

* The numbers and influence of this dangerous order in England are little known. At Stonyhurst, near Preston, in Lancashire, there is a spacious college principally occupied by Jesuits. The studies at this place are conducted upon the same system, and to the same extent, as at the Catholic universities abroad: and there are regular professors in divinity, mathematics, philosophy, astronomy, &c. The college, which is a very large building, is capable of containing at least four or five hundred pupils, independently of professors, managers, and domestics. It is supposed to contain at this time five hundred or more individuals of various descriptions.—*Blair's "Revival of Popery,"* p. 30.

when the memorable Veto was discussed in the year 1808. Certain members of the legislature had been authorised to bring forward the claims upon the principle of conceding to the Crown a veto upon the appointment of Roman Catholic Bishops. This veto had been distinctly recognised by some of the most respectable Catholics in the kingdom, and was proposed in the House of Lords by the Duke of Norfolk, and in the House of Commons by Mr. Grattan. The subject was debated upon the principle to which I have alluded, which was not a new one, but one which had been recognised by almost every European State, whether Protestant or Roman Catholic.* The affairs of the Roman Catholics were therefore supposed to be going on prosperously; and the long-wished-for goal appeared to be in view. But mark what followed. The Prelate (Dr. Milner) † through whose medium the proposition had been made to

* In the Austrian dominions (Hungary included) the Bishops are appointed by the Emperor, and confirmed by the Pope. In Portugal and the Brazils the prerogatives of the crown have uniformly been asserted; so in Spain, Russia, Sweden, and Prussia.—(Vide “Report of the Committee of the House of Commons on the Laws for regulating the Roman Catholic Subjects of Foreign States, 1816.”)

† This prelate is (what is termed) Vicar Apostolic of the Midland district, and generally resides at or near Wolverhampton, in Staffordshire. He stands very high in the opinion of the Roman Catholics and is a man of great attainments. In the matter of the *veto*, Dr. Milner was employed as the agent of the Irish Catholics to conduct their concerns in England.

the Duke of Norfolk and Mr. Grattan, thought proper to withdraw it, and to withdraw it with a public declaration that he would shed the last drop of his blood rather than consent that the King should have any influence direct or indirect in the appointment of a Roman Catholic Bishop.* This certainly was strange conduct, and the more so as the measure of the *veto* did not in the least interfere with the rights of the Pope as to ordination, ecclesiastical jurisdiction, and other spiritual matters, and as neither the Apostolic chain, nor the discipline of the Roman Catholic church, would have suffered from the adoption of it. Why should, therefore, that privilege have been refused to the King of England which the schismatical Sovereign of Russia, and the heretical King of Prussia were allowed to exercise? Possibly we have here the solution of the difficulty; the proposers of the *veto* had, perhaps, looked round to foreign countries, and seen something of the same kind adopted there, and had therefore thought of applying it to the Sister Island; but no sooner did it occur to them that Ireland was more under the direct influence of the Pope than any other country, and that the spiritual allegiance which Roman Catholics owed to him *flowed directly to the inhabitants without any intervention of the existing Government*, than the cases were found to be dissimilar. I look upon the circumstances

* "Tour in Ireland," 2d edition, p. 309.

attending the veto as vitally important to a right understanding of this part of our subject. Supposing there had been 100 Roman Catholic Members in the House of Commons in 1808; under Bishop Milner's sanction, they certainly would have agreed to the veto when proposed by Mr. Grattan; when, however, their prelates had declared that such a measure was impracticable and inconsistent with the doctrines of their church, will any one undertake to say that the Honourable Members would not have altered their opinions and voted against the measure? The probability is, that, as true Catholics, they would have done so, and what a scene would this have exhibited! A portion of the English legislature would have been thrown at the foot of a Roman Catholic Bishop, and its votes in Parliament would have been controlled by a secret power, grounded on a secret allegiance, equally unknown and repugnant to the open and defined principles of the English Constitution!!

As things stand, therefore, the Roman Catholics require everything to be conceded to them, without making any concessions themselves.—Protestants are called upon to relinquish all the safeguards which the wisdom of their ancestors had devised to protect their establishments, (and especially to protect them against the influence of the allegiance which we have been considering,) and yet the applicants for these great concessions will do nothing—will not abjure the allegiance

complained of—or even allow a British Sovereign to have a negative voice upon the appointment of one of their bishops within his own dominions, although such a voice is allowed to the Emperor of Russia and King of Prussia!! Surely, if the Roman Catholic claims be conceded under such circumstances as these, Roman Catholics will be placed in a far more advantageous situation than Protestants, inasmuch “as they will be entitled to the same privileges without submitting to the same conditions.”

Volumes might, indeed, be written upon this part of our subject; but I find that I must stay my pen, as my letter has already run to a length which I did not intend. In my next I shall consider the question upon the alleged ground of *expediency*.

And I remain, dear Sir,

Yours ever sincerely, &c. &c.

LETTER VII.

MY DEAR SIR,

WE now come to discuss the question of the concession of the Roman Catholic claims upon the ground of *expediency*.

The term *expediency* implies that some strong

and almost invincible necessity exists for the adoption of a measure, the propriety of which would otherwise be questionable. Hence it naturally follows, that, previous to such adoption being made, the utmost satisfaction should be afforded, not only that the measure, if carried into effect, would be attended with immediate and certain beneficial results, but also that immediate and certain evils would arise from its not being adopted. How far the above reasoning is applicable to the case before us I shall therefore proceed to consider, and for that purpose shall examine some of the principal arguments which have been adduced in favour of the concession of the Roman Catholic claims upon the plea of expediency.

In the course of our correspondence you have repeatedly referred me to the situations of foreign countries, and argued that such a reference would clearly shew the policy of the claims being granted. I trust however I shall be able to shew that the instances at least to which you have referred me do not apply to the case of the United Kingdom, and that no measures of toleration adopted by continental powers can be fairly cited as precedents for England to follow.

The toleration of Protestants in France, and in several other Roman Catholic countries, (particularly that granted by the great princess Maria Theresa,) have been mentioned by you as strong grounds for the concession of the claims urged; and you have argued from these instances, that, by

not conceding them, we are upholding a system of intolerance unknown even in Roman Catholic countries. A moment's reflection will however shew that these cases do not apply to our own country, and that Ireland, in particular, is a completely insulated case. It is quite a different matter to confer political privileges upon Roman Catholics living under a Protestant Government, and to confer the same privileges upon Protestants living under a Roman Catholic Government. A Protestant has only one allegiance, namely, that due to the sovereign in whose territories he locally resides; whereas a Roman Catholic (as we have seen) has a divided allegiance, a temporal one to his temporal sovereign, and a mixed one to his supposed ecclesiastical head. However earnest, therefore, a Roman Catholic may be for the welfare of the country in which he is resident, and however great his stake may be in it, he can never be a fit person to make laws for a Protestant State so long as he holds certain dogmas of his church which are irreconcilable with the civil and ecclesiastical polity of a *Protestant* Government. Several of the countries, however, which you have quoted as precedents for England to follow in the case under consideration are placed under circumstances which completely vary the question as to the policy or propriety of the measures pursued. With respect to Prussia and Silesia, Russia and her Polish provinces, the relation between these is far different to that subsisting between England

and Ireland. The provinces added to the crowns of Prussia and Russia were Roman Catholic previous to the additions being made; and, with respect to these, the countries to which they are annexed have a paramount power of revision and correction, and of preventing the adoption of any measures which might be dangerous to their own individual interests. The connection subsisting between England and Ireland is far different from this; it is one indeed which stands almost without a parallel, and can only be judged of or regulated by its own peculiar circumstances. Ireland has a Protestant establishment, with a population the majority of which is Roman Catholic. She has Members of Parliament who are exclusively Protestant, with electors who are not so—and as her legislature, by a solemn act of its own, united itself to that of England, she therefore now forms an integral part of a nation whose civil and religious establishments are Protestant, and the great majority of whose inhabitants are also Protestant.

The case of Holland and the Netherlands you triumphantly quote as exhibiting an union of Protestants and Roman Catholics well worthy of imitation in this country. You say that in this case there are two governments, the one Protestant and the other Roman Catholic, which form together one State, and in which all classes of the community (whether Protestant or Roman Catholic)

are eligible to every office.* Whatever measures, however, may have been adopted with respect to the union of these countries at the present day, it is clear from history that such an union was not always thought advisable. Bishop Burnet tells us that King William III. rejected the idea of it upon the very ground *of a difference of opinion in religion subsisting between the two States*, and the causes which have probably produced the present union may be traced to the countries in question having been rescued from the fury of the French Revolution, and to a system of temporary policy

* Although the Treaty by which the Netherlands were annexed to Holland has been so much extolled by a distinguished Whig leader (Earl Grey), and described "as having been framed upon the soundest principles of policy, and as furnishing an example worthy to be followed with respect to the Roman Catholics of the United Kingdom," it seems that this opinion is not universal amongst the members of the Whig party. Lord John Russell, in his recent "Letter to Lord Holland on Foreign Politics," in speaking upon this subject, observes—

"Here is an instance of two nations, possessing no attraction, but rather a very great repulsion to each other, pounded together in the great mortar of the chemists of Vienna. What is to result from *the mixture of two equal parts of Catholic bigotry and Protestant freedom*—of land and commerce, of French and Dutch, of polished stupidity and vulgar ability, of natural servility and ancient love of freedom, no man can guess. It may be supposed, however, *that one of the parts will fly off as soon as it can join any foreign matter.*"

Here certainly is a strange difference of opinion between the noble houses of Grey and Bedford; and, were the latter to carry the above sentiments into Parliament, I should have no fear as to the vote which they would give on the Roman Catholic Question.

having been mixed up with their civil legislation. It would not, perhaps, have been wise to have insisted on restraints in States the connections of which were Roman Catholic in the highest degree, and which had been snatched from the horrors of republican despotism. The situation of the United Kingdom is, therefore, very far different. It is still in the possession of a constitution which has stood the test of ages, and which is as insulated, as to policy, permanence, and excellence, as England itself. If we infringe this, we may as well set the island afloat, and tow her into the harbour of one of those powers which has so frequently asked her advice as to the framing of a constitution, and implored her assistance in an hour of danger! It ought to be recollected that England is the model which her superiors in territory, but inferiors in government, have ever resorted to in cases of emergency. Shall we, therefore, give up the honourable and well-merited pre-eminence which has been procured for us by our ancestors, and consent that England shall be an *imitator*, and not an *example*? Were our constitution proved to be wrong, it would then be stupidity, and not a love of country, which would prevent an alteration of it being made; until, however, that proof be afforded, we may hope that the Roman Catholic claims will never be conceded, because a *real expediency* for such a concession may have existed in countries which are placed in situations perfectly different to our own.

You assert, as another reason why the claims should be conceded, "*that the laws sought to be repealed were merely made for temporary purposes, which have long since ceased to exist, and that it is unjust any longer to retain them.*" The authority of Judge Blackstone has been quoted for this opinion, but a reference to the works of that eminent lawyer will not justify the appeal. His words, when speaking upon this subject, are the following, and the caution displayed in them is particularly remarkable. After having explained the reasons which had induced the legislature to enact several severe laws (which are now repealed) against the Roman Catholics, the learned judge proceeds:—"But if a time should ever arrive, and perhaps it is not very distant, when all fears of a Pretender shall have vanished, *and the power and influence of the Pope shall have become feeble, ridiculous, and despicable, not only in England, but in every kingdom of Europe,* it probably would not then be amiss to review and soften these rigorous edicts; at least till the *civil* principles of the Roman Catholics called again upon the legislature to renew them."* Had Judge Blackstone lived at the present day, I think there can be little difference of opinion as to what his sentiments would have been on the Roman Catholic question. It is seen that, when the rights of Englishmen were entirely denied to the Roman Catholics, when their

* Vide ante, p. 146.

persons, their religion, their properties, and their means of defence were withheld from them, he still entertained some doubts as to the policy of repealing the existing laws, and evidently considered himself as treading on tender ground when hinting at such a repeal being made. The wish of the learned judge has been accomplished, as to the revision and amelioration of the rigorous edicts which were in force when he wrote his book ; and none are now left, except those which, in the almost immediate subsequent page to that wherein the above extract appears, he has denominated as "*bulwarks of the constitution.*"* The authority of Sir William Blackstone is therefore decidedly in favour of the existing system ; the Penal Laws have been reviewed—they have been mitigated—those which were passed for temporary purposes have been repealed—and such only are left as are necessary for the preservation of the Protestant constitution.

You have also attempted to connect the name of Mr. Pitt with the Roman Catholic claims, by representing that great statesman—that true Whig of 1688—as an advocate for their concession upon the grounds we are now considering. I am aware that some have gone so far as to assert that a distinct pledge was given to the Roman Catholics at the time the Union was projected that their claims should be granted ; but this assertion has

* Bl. Com. vol. IV. pp. 57, 58, 15th edit. and ditto, p. 59.

been met by a direct contrary one on the part of a noble Lord (Castlereagh), who took a very active and leading part in that memorable question; and it has been clearly shewn that a pledge of mere *consideration* and *discussion*, not of *concession*, was given.* One of the great objects which Mr. Pitt had in view when he projected the union of the two countries was, a fair, temperate, and statesmanlike discussion of the Roman Catholic claims.† His vote would have been given for their consideration, but by no means for their unlimited concession. That distinguished individual wished to feel the pulse of the English people on the subject; and had he lived to have done so effectually, to have seen the almost universal disinclination which evinced itself to the measure, and the circumstances which attended the general election of 1807, he never would have sanctioned a proceeding to which he perceived the English nation were so averse, and which was so little likely to be attended with benefit to the country. Mr. Pitt would never have supported the measure of concession without most adequate securities being given;‡ and had he been spared to have witnessed

* Vide printed Report of Lord Castlereagh's Speech in the House of Commons, 25th May, 1810.

† Vid. Mr. Pitt's speech in the House of Commons, 31st January, 1799, on introducing the proposition of the Union between Great Britain and Ireland; and Gifford's Life of Pitt, vol. VI. p. 545.

‡ Vide Mr. Tomline's speech, delivered in Trinity College chapel, Cambridge, December 17th, 1806.

the temper and disposition which were evinced, when securities much inferior to those which he would have probably required were proposed by the professed parliamentary advocate of the claims—to have seen them represented as indispensable *within* the House of Commons, and reprobated as unnecessary, degrading, and insulting *without*—I think there can be little doubt as to the vote which the Right Honourable Gentleman would have given.* His support to the measure would have

* It is well known that the Marquess Wellesley and Mr. Canning are supporters of the measure of concession upon adequate securities being given. In 1812, when a motion of the Right Honourable Gentleman was carried in the Commons for going into a committee on the claims by a very great majority, and a similar one (made by the noble Marquess) was lost in the Lords by only one vote, the following proceedings took place at a Catholic aggregate meeting, which was held in Dublin immediately on the result of the motions being known. The account given underneath is extracted from the *Dublin Evening Post*, a paper much in the confidence of the Irish Catholics:—

“*Dublin, July 2.*—The aggregate meeting of this day (Earl Fingal in the chair) was more numerously attended than any preceding assemblage of the depositaries of the wealth and power of the Catholics of Ireland. At one o’clock the Earl of Fingal took the chair, amidst the enthusiastic applause of his countrymen.

“Mr. M’Donnell, seconded by Counsellor O’Connell, proposed that the Petition should be read,—it was accordingly read, and it appeared to be a transcript of the petition, *mutatis mutandis*, of the Dissenters of England to Parliament for universal religious freedom.

“The following Resolutions were then proposed—

“*Resolved*—That the petition now read be recommended to the board of the Irish Catholics, to be presented to the legislature the

been given under an idea of its forming a means of strength and alliance ; to do which it must *necessarily* have been supported by the unanimous assent of the nation at large. When, however,

first favourable opportunity, so that the same may be presented before the close of the second week of the ensuing Sessions of Parliament.

“ *Resolved*—That the Catholics in the different counties and towns in Ireland be again requested to use their best exertions to procure the success of our petition.

“ Chevalier M‘Carthy, after an introductory speech, which was frequently interrupted by the most unequivocal marks of disapprobation and distrust, moved the two following Resolutions, as an Amendment to the second Resolution proposed by Mr. M‘Donnell.

“ *Resolved*—That, with heartfelt gratification, we observe the daily progress of liberality among our Protestant countrymen—a liberality we consider as an earnest of the speedy fulfilment of our hopes, and rapturously hail as the cheering dawn of speedy Emancipation.

“ *Resolved*—That, determined to persevere in demanding a total repeal of the laws and disabilities by which Catholics are affected, we are, nevertheless, ready to listen to any conciliatory overture which, by removing the prejudices of many and the alarms of some, may lead to a final arrangement satisfactory to both parties !

“ The first part of the Resolutions was highly approved, but the Chevalier M‘Carthy had hardly uttered the word ‘arrangement,’ when the feelings of the people were vented in marks of the strongest disapprobation.

“ Counsellors Finn and O‘Gorman answered the last speaker ; but the Resolutions were not read from the chair, as out of the 3,000 Catholics in the house a single person could not be found to second so insidious and so fatal an Amendment.”

that lamented personage had found that this was not likely to be the case, and that it would neither satisfy the Protestants on the one hand nor the Roman Catholics on the other, he would never have opened a source of broils and dissensions, which would in all probability have concentrated themselves into a focus, from which nothing but angry passions, mutual recriminations, and harassing recollections would have issued.

I have yet another view to take of this question of *expediency*, which I shall defer for a concluding letter.

And remain, dear Sir,

Yours ever sincerely, &c. &c.

LETTER VIII.

MY DEAR SIR,

I SHALL now resume the consideration of the question how far the plea of *expediency* can be urged in favour of the concession of the Roman Catholic claims.

You assert, "*that things cannot remain as they are, and that the Penal Laws must either be re-enacted or some further concessions be made.*" But this is certainly a most singular argument ;

and it surely can never be seriously urged, that, because the legislature have chosen to make certain concessions, and thereby placed the Roman Catholics in a more imposing attitude of solicitation, that still further concessions must be granted. If this principle were once admitted, to what a monstrous and unreasonable length would it extend. Roman Catholics might then insist upon a national restoration of the pomp and splendour of their religion; they might petition to be allowed the payment of tithes exclusively to their own clergy, upon the grounds of its being an hardship and a violation of their religion to pay them to Protestant incumbents; and concession after concession might thus be made, until an English Vicar Apostolic, or an Irish Titular Bishop, approached the woolsack in the House of Peers! * I look upon this argument (if argument it can be called), of the necessity of further concessions being made, as mere intimidation. It may as well be said that all the claims ought to be granted because a large number of persons have petitioned that they should be; but this surely can be no reason for their concession. Extorted privileges are merely indicative of the weakness and degradation of those who grant them, and can never be attended with any beneficial effects. You, in conjunction with other advocates for the claims, are too apt, when

* Vide a Pamphlet entitled "Catholic Emancipation, and the only way in which it can be effected, pointed out."—Second Edition.

urging them upon the ground of expediency, to forget the Protestant interest altogether. It is held out that if they be not granted certain ruinous consequences will ensue ; but has it never occurred to those who so zealously urge them, that consequences equally as ruinous may ensue should the claims be granted ? Will the great PROTESTANT MAJORITY of the nation be satisfied in case they should be conceded ; and would it be wise policy to disoblige old friends in order to purchase the favour of new ones by a surrender of laws which have hitherto been considered as fundamental parts of our constitution ? You insinuate that if the claims be not conceded *a virtual separation between this island and the sister country will take place* ; but is this likely ? The offices from which the Roman Catholics are excluded could only be filled by a few of them, and by a few only of the wealthiest and most powerful, and no real interest can therefore be felt by the great body of the Roman Catholics of Ireland in the decision of the question. Is there not reason to believe that it is merely kept alive for party purposes, and to serve as a stepping-stone to power for disappointed ambition ? It is a libel upon the people of Ireland to suppose that their allegiance sits so light upon them as has been insinuated, and that so trivial a cause as the one imputed to them would fan the embers of party into the flames of rebellion. I, indeed, formed a very different estimate of Irish loyalty. Sincere in its origin—enthusiastic in its

progress—and beneficial in its results, it is not to be impeded by a mere struggle for power, which, if granted, would confer no benefit upon the peasant—no blessing upon the cottage, but would confine its effects to the lofty dome and the baronial domain. Ireland has evils to encounter—she has wrongs to be redressed—but the concession of the Roman Catholic claims would neither avert the former nor obviate the latter. It would neither increase nor cement the union which now subsists between Protestants and Catholics; and, until certain principles are renounced, that union will not advance in its operation; “like the Rhone which flows through the Lake of Geneva without mixing its waters with those of the calm lake,” it will never so far extend its effects as to promote a perfect reciprocity of interest between the two parties.

The measure of concession has been urged as a means of *bringing all parties into the Temple of Concord*; but are those who urge this as a reason quite confident that the time is come “*when the lion and lamb may repose in peace together, and when our swords may be beaten into ploughshares?*” On the contrary, is there not reason to fear that while any disabilities remain there will still be heartburnings and discontent amongst those who are interested in the removal? Experience certainly speaks in favour of this opinion, and has shewn that a partial concession of claims has had only the effect of increasing expectations without

satisfying them, and of placing the legislature in a situation where it is more difficult to resist additional claims than it would have been to have absolutely rejected former ones. A stand must be made somewhere, and where can it be made more properly than at the doors of the legislature and of the council chamber? If these be thrown open the Rubicon may well be said to be passed, and a Constitution which Revolutions have hitherto only served to render more perfect by their convulsions, will be virtually annihilated!

I may possibly be mistaken in my conjectures, but I write the sentiments which I feel, and describe the consequences which I anticipate. I know that many of the Roman Catholics would as much dread and deprecate the fulfilment of my expectations as I can do; and it will not be owing to them if they prove realities. If, however, they value times of peace and personal safety they will not endeavour, by attempting to gain ephemeral advantages, to put in jeopardy the happy times in which they now live. Oh! that they would throw off the yoke of foreign allegiance, and discard some other dogmas of their church, and join in one universal church for the propagation of the Christian religion, and for the security of a Christian establishment! Possibly this time may come; and, should it ever, it will be a period dear to liberty and social order. Until, however, it arrives, we must hold to our restraints, and not suffer our existing institutions to be injured by dangerous

experiments or menacing coalitions. I repeat it, there are many amongst the Roman Catholics whom, as men, no one can more admire or revere than myself; and who, as subjects, have proved themselves entitled to every confidence. But here I must stop, and lament that political power must still be withheld from those who are every way worthy of possessing it, until they can be induced to renounce dogmas which are utterly inconsistent with the amiable tenour of their lives, and the still more amiable nature of their dispositions.

I shall now lay down my pen, sincerely hoping that I have written nothing in an uncandid nor unchristian spirit. Should I be supposed to have done so I shall be extremely concerned, and should it be proved that I have erred in this respect no one will be more willing to express the most sincere contrition for the offence. I am perfectly aware that the question is one to be argued, not upon abstract, but national policy. As far as my humble abilities extend, I have endeavoured to take a combined view of it; and, while I wish never to see the time when every subject of the English empire may not be allowed to worship his Creator in the manner which his conscience dictates, I cannot avoid expressing an earnest hope that the legislature will never shake those foundations upon which our present establishments repose for safety. I trust I have shewn that the present claims of the Roman Catholics are inadmissible as the constitution was established in

1688, and that the time has not yet arrived when it would be either safe or expedient to concede them. I will not say that the time may never arrive, but I will say that it must be brought about *by the Roman Catholics themselves*. Until, therefore, it present itself, I trust Protestants will be found at their posts, and that those who profess to be WHIGS of 1688 will not so far forget their principles as to be dazzled and led away by the *mistaken liberality* of 1820.

I remain, dear Sir,

Yours ever sincerely,

BRITANNICUS.

LETTER

ON THE ROMAN CATHOLIC MARRIAGE BILL.

[7 July 1823.]

To the Editor of the Sun.

MR. EDITOR,

THE Protestant cause is greatly indebted to our venerable and venerated Lord Chancellor, for his expressed intention of opposing the Bills which have for their object an extension of further political privileges to Roman Catholics.

That the loyalty, property, and respectability of many members of the Roman Catholic communion are deserving of unqualified eulogy I am quite disposed to allow; there is every thing good, great, and noble amongst that body; but, as their admission into an extended arena of political power would be a recognition of a principle highly dangerous to our constitution, I feel gratified that the measures to which I have alluded are not likely to be adopted as mere matters of course. The proposal of putting the English Roman Catholics upon the same footing as the Irish is certainly very plausible; but if the parliament of one country have passed an injudicious law, is it any reason why the

parliament of another should follow a bad example ? In point of fact, attempts appear to be making to carry by *particles* what it is well known cannot be effected *piecemeal*.

The notice, or rather Bill, introduced by Dr. Phillimore, for allowing Roman Catholics to be married in their own chapels, and by their own priests, I look upon as of extreme importance: should it pass, it will be the height of injustice to deny a similar indulgence to all classes of Dissenters who may think proper to come forward and request it; and, if this be so, in what a humiliating situation will our venerable and peace-preserving Church be placed. Stripped of her authority in one of the most solemn and important engagements of life, her tolerant altars will become the objects of ridicule, and memorials only of that dignity and connection with the laws which they once possessed. If the Legislature give way to the wretched principle of despoiling the Church of the privileges which were gained for her by the blood of those who opposed rebellion and popery, and whose exertions placed her lofty spires and towers as so many beacons to warn succeeding generations against popery on the one hand and fanaticism on the other, I, for one, say, that the system has commenced which will eventually lead to a repetition of those national misfortunes—the pressure of which our ancestors so severely experienced.

We hear much said against Orangeism and political associations; but what is so likely to drive

the friends of the Establishment into institutions of this description as the weakening of that connection with the subjects in general of the country which the Church of England has hitherto possessed? Let each one choose his own creed, and pay his worship where he pleases; but, should he dissent from the national religion, let him feel, that, although he is free to dissent, it is necessary for him once to approach the national altars and recognize their existence. The principle contended for in the Bill to which I have referred would, if pursued, extend to church rates, tithes, and every other species of church revenue. No doubt the Roman Catholic feels a conscientious objection not only to entering, but to contributing to the support of (what he believes) an heretical establishment: and Dissenters, aided by the reflection of Northern luminaries, begin to see that they ought not to support a Church from which they blindly conceive they receive no benefit, but which, in point of fact, is the keystone of the arch which upholds every description of Protestantism in this country.

I am, Sir, your obedient servant,

BRITANNICUS.

Leicester, July 7th, 1823.

SPEECH AND PETITION

AGAINST THE ROMAN CATHOLIC CLAIMS.

[8 *March*, 1825.]

ON Tuesday the 8th of March, 1825, a meeting of certain parishioners and inhabitants of the parish of St. Mary in Leicester was held at the vestry room, for the purpose of taking into consideration the propriety of promoting Petitions to both Houses of Parliament, against any further concessions being granted to the Roman Catholics of the United Kingdom.

The Reverend the Vicar being called to the chair, Mr. Stockdale Hardy suggested that a committee should be formed for the purpose above stated. This line of proceeding he submitted was more advisable than having recourse to any public meeting, since the Roman Catholic question was one neither to be advanced nor retarded by illegitimate popular excitement, but by a "still, small voice" emanating from the conscientious feelings and convictions of the English people. No real friend to the interests of the country would fan a spark

which might lead to a repetition of the horrid and disgraceful events of 1780 ; and great caution was necessary in calling public attention to the Roman Catholic claims, lest angry feelings should usurp the place of that constitutional expression of deliberative sentiment which could alone weigh with the Legislature upon such an important subject. For these reasons, in any opposition offered to the claims, the more any thing approaching to unnecessary irritation was avoided the better, since, as Protestants and friends to liberty of conscience, they were bound to believe that the Roman Catholics were sincere in the principles which they professed, however erroneous they might consider such principles to be. The next suggestion he intended to make to the meeting was, that a small fund should be raised amongst themselves sufficient to defray the necessary expenses of any petition which might be adopted (should such be deemed proper), and of dispersing a copy of it as a printed handbill throughout the parish ; thus the subject would have " fair play," as the parishioners would have an opportunity of perusing and considering what they were requested to sign previous to affixing their names. He should next propose that the petition should lie at the vestry room a certain number of days for signatures, and be then forwarded for presentation ; and, should Parliament consent to its appearance in the Votes of the Houses, it would stand a chance of being read by

those to whom it was addressed. For this reason, he should submit that it would be more advisable to embody the argument against the claims in a petition, rather than in the transitory blandishments of a speech. He deprecated any thing bordering upon a perverse opposition to the declared wishes of Parliament, and felt confident he was addressing those who would desire to conform most strictly to the views of the Legislature; and therefore, although the "unlawful Association Act" did not (as he believed) extend to this country, he should not propose that the committee he had suggested should be a permanent one,—it could be revived whenever necessary. If a system of petitioning by parishes were effectively established, little apprehensions need be entertained as to the concession of the Roman Catholic claims—so decisively would the voice of the country be expressed. He hoped to see this system adopted in country villages as well as in large towns, and the two Houses of Parliament literally inundated with petitions. Surely the Protestant faith was deserving of these exertions; from "a grain of mustard seed" it had arisen to a magnificent tree, the branches of which had long cast a protecting shade over civil and religious liberty, and he trusted that those who had so long enjoyed the benefits of its friendly protection would, in the mild and tolerant spirit which actuated its genial influence, use their best efforts for its preservation.

Upon the motion of Mr. Stockdale Hardy the following Petition was afterwards read, and unanimously approved.

To the Right Honourable the Lords Spiritual and Temporal of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of the undersigned Inhabitants of the Parish of St. Mary in Leicester, Sheweth,

That your Petitioners are decidedly opposed to any further concessions to the Roman Catholics of the United Kingdom, those already granted having not only failed of accomplishing their avowed objects, but having led to periodical attacks upon the constitution and laws of the country, prejudicial to the best interests of society, and calculated to bring the safeguards founded by the wisdom and protected by the vigilance of our Protestant ancestors into ridicule and contempt.

That your Petitioners have viewed with the greatest regret the advance of a policy adverse to a recapitulation of the leading grounds of distinction between Protestantism and Popery. Under the influence of this regret, and anxious, as far as in them lies, to impede the progress of error, and

advance the march of truth, your Petitioners trust that the oath of supremacy, and the declarations against transubstantiation and popery, will not be removed from the Statute Book; inasmuch as these tests give to conscientious and upright Protestants an opportunity of openly declaring their sentiments upon entering Parliament, or upon the performance of certain important offices.

Your Petitioners consider it a great mistake to suppose that any material change has taken place in the principles of the Roman Catholic Church. Judging from the public declarations of her leading functionaries, it appears that the same aversion to Protestantism—the same arrogation of exclusive faith and salvation—and the same desolating system of intolerance, are still upheld at her altars, which were so much dreaded and guarded against by our Protestant forefathers. Under such circumstances, may it not be reasonably asked, how can Roman Catholics be admitted to legislate for a Church which they believe to be heretical and schismatical, or for the maintenance of that religious toleration which it is the interest, as well as the duty, of a Protestant government to foster and support?

In early periods of English history, when Roman Catholicism was the religion of the country, it was invariably found that, during the reign of a valiant and politic prince, the kingdom was distracted with disputes between the crown and the

papal see, and that, during the sway of a weak and pusillanimous sovereign, the pope trampled on the rights of both the crown and the people. If, then, these were the results in unenlightened days, and when no difference of opinion existed as to the authenticity of the Roman Catholic religion, your Petitioners venture to ask your Lordships, what may be expected in these enlightened times, should attempts ever again be made to bind in the galling chains of religious slavery this once free and happy country? and, supposing such attempts as unlikely to be made, or, if made, as improbable of success, your Petitioners venture further to ask, whether it is not the bounden duty of Parliament to render them *impossible*, by maintaining inviolate the laws enacted when similar efforts were made, aided by the intrigues of foreign courts, and the arbitrary proceedings of popish or popishly-inclined princes?

Your Petitioners cannot close their petition without imploring your Lordships to withhold your assent from measures at variance with the conscientious feelings of the English people, and the adoption of which (it is to be feared) would occasion the very dissensions which the measures themselves have been represented as intended to obviate. For the sake of speculative or ephemeral advantages, your Petitioners trust that your Lordships will not put in jeopardy the happy days which now cast their meridian splendour around this prosper-

ous country; and, from motives by no means of hostile aversion to Roman Catholics as fellow-men and fellow-subjects, but of self-preservation—from an earnest wish to protect and uphold liberty of conscience and the sacred rights of religious toleration—and from a desire to see buried in oblivion past differences and religious feuds, your Petitioners most humbly but earnestly pray, that no further political privileges be granted to the Roman Catholics of the United Kingdom.

And your Petitioners will ever pray, &c.

SPEECH AND PETITION

AGAINST THE ROMAN CATHOLIC CLAIMS.

[20 *Nov.* 1828.]

At a meeting of the Leicestershire Pitt Club, held at the Three Crowns, Leicester, on the 20th Nov. 1828, Mr. Stockdale Hardy, in rising to propose the adoption of a Petition against the concession of the Roman Catholic Claims, begged to congratulate the meeting upon the probability of a measure in favour of Protestant ascendancy originating from a Pitt Club; for, notwithstanding the sneers and cavils which had been hurled at them, he thought they were perfectly correct in sending forth an appeal to the Legislature on that all important subject at the present moment. Great misapprehension having prevailed with respect to the opinion of Mr. Pitt on the Roman Catholic question, and a direct charge of inconsistency having been preferred against his admirers for taking steps similar to what he trusted they were about to do, he should, perhaps, be allowed to say a few words in reply to the accusation. One of the great objects which Mr. Pitt had in view was to maintain the effect of the Revolution which established liberty in this country, and to stay the

ravages of the Revolution in an adjacent country, which threatened to destroy liberty throughout Europe: in other words, to prevent Robespierre extinguishing in torrents of gore what glorious William fought for and achieved at the waters of the Boyne. To the exertions of Mr. Pitt he had no hesitation in ascribing the preservation of their civil and religious liberties; and he denied that, had Mr. Pitt been now living, he would have ranged himself under the banners of modern liberalism. Their venerated champion never advocated the Roman Catholic claims except accompanied with securities and restrictions, and except a general demonstration in their favour was exhibited on the part of the English people; this he declared in 1805, in almost the last speech he ever delivered. Mr. Pitt was not spared to see any decisive expression of feeling on the part of the English nation with respect to the question; and, since his lamented death, might it not fairly be asked whether any securities had been devised which had been found satisfactory, or any approbation shewn by the English people of the measure of concession? He (Mr. Hardy) contended that an answer in the negative must be given to both these inquiries, and they would see in a moment upon what a flimsy ground the assertion of Mr. Pitt's general support of the Catholic claims rested. The royal correspondence which his late Majesty held with Mr. Pitt, and which was published some time since, viewed in the above light,

explained a seeming inconsistency ; and there was the authority of one of the ablest and most steadfast supporters of the Roman Catholic claims (the late Marquess of Londonderry), for stating that no pledge was given by Mr. Pitt to the Irish Roman Catholics at the period of the Union that their emancipation (as it was termed) should be granted ; all then promised was, a full, fair, and free consideration of the subject in an imperial and united Parliament ; a consideration which had since been repeatedly given it, and which had invariably terminated in one result—a conscientious rejection of the claims preferred. It would, indeed, have been passing strange if Mr. Pitt had consented to an alteration of the constitution he so much loved, to gratify a part of its subjects, against the wishes of the great majority. It was really ludicrous to observe with what avidity some of the journals of the day were endeavouring to enlist the name of Mr. Pitt in support of their matin-song and vesper-chaunt, Catholic Emancipation. It was really laughable to remark with what earnestness those who ridiculed and contemned Mr. Pitt when living were striving to bring him forward as a “tower of strength” in support of their Utopian schemes, now that he was removed to another and a better world ; and he (Mr. Hardy) conceived it was the duty of all who venerated Mr. Pitt’s memory to do their utmost to prevent an unholy alliance of its glory with what its kindred spirit would reject, were it per-

mitted to visit the scenes which, when abiding in its earthly mansion, it protected by its vigilance, and enlivened by its intellectual splendour.

He (Mr. Hardy) was one of those who thought that the modern Whigs had robbed the Whigs of 1688 of some of those holds upon the public mind which fairly belonged to them. An eminent writer, and an acute observer of passing events, once said, "Let me compose the ballads of a nation, and I will control the people." This was no less true in the present day with respect to toasts and sentiments; and he saw no more reason why the modern Whigs should have the exclusive possession of some of these than did a celebrated Dissenter that profane places should always have the best tunes. He congratulated them, however, that times were changing with respect to this; the sentiment "May the King never forget the principles which placed his family upon the throne of these realms," was becoming popular amongst the bigots; the sentiment "Civil and religious liberty throughout the world," was now echoed along the halls of the Tories—and why not? As Protestants and supporters of the principles which placed the House of Brunswick upon the throne, they must of necessity be friendly to liberty and opposed to despotism; Protestantism was the only foundation upon which civil and religious liberty could repose for security, and they who admired it were, although advocates for caution with respect to any national interference, as much opposed in senti-

ment as modern Whigs could be to the restoration of a system of domination and superstition in certain parts of Europe, in unison only with the darkest vapours which ever cast their pestilential influence over the human mind.

With respect to the Petition which he held in his hand, he must leave it to speak for itself ; in it were embodied the arguments upon which its prayer against Catholic Emancipation rested. Before he sat down he must be allowed to say, that he conceived the country had very great confidence in his Majesty's present administration ; for his own part, he would almost as soon believe that the splendour of the sun would illumine the gloom of midnight, as believe that Wellington would tarnish his fair fame by casting the trophies which had so long adorned the tomb of the immortal Orange chief into the channel of mock liberality. At the same time he thought it was the duty of the Protestants to stand forward at the present period and declare their sentiments. If his Majesty's government (but which he did not believe,) intended to adopt any measures calculated either to injure or compromise the Protestant ascendancy, the country had a right to speak out through the constitutional medium of petitions ; and, if ministers had discovered a system of legislation which could be adopted with respect to the Catholic question, and which would not violate the integrity of the constitution, (but which he feared experience had shewn to be impossible,) should that legislation

not be met by the Roman Catholics in a proper spirit, it would be the duty of the Protestants to rally round the cabinet, and, adopting as their watchword that of the 'prentice boys of Derry, shout, No surrender!

Mr. Hardy concluded with submitting the following Petition to the meeting for its adoption—

To the Right Hon. the LORDS SPIRITUAL and
TEMPORAL, &c. &c.

The humble Petition of the undersigned Freeholders and Inhabitants of the county and town of Leicester,

Sheweth,

That your Petitioners, in approaching your Lordships with an earnest request that no further political privileges may be conceded to the Roman Catholics of the united kingdom, beg unequivocally to disclaim any hostile feelings towards the Roman Catholics as fellow subjects and fellow men.

That your Petitioners found their opposition to the claims urged, upon the grounds that the members of the Romish Church are already in the enjoyment of the free and uninterrupted exercise of their public worship, and are eligible to all civil offices, except such as would give them, directly or indirectly, a control over the Protestant institutions of the country; that, being in possession of full religious toleration and civil privileges to the above extent, their exclusion from political power is justifiable, upon the principle that every state

has a right to prescribe the boundaries within which civil office shall be held by such of its subjects as decline submission to certain defined conditions; and that any further concessions would be against the feelings and wishes of the great majority of the nation, at the same time that they would not benefit the majority of those for whom they would be intended.

Valuing, therefore, the peaceful days in which their happy lot has been hitherto cast,—viewing with great alarm the unconstitutional proceedings of a body calling itself the “Roman Catholic Association,”—persuaded, too, that any further concessions would be attended with imminent danger to Protestantism in general, and would inevitably lead to another struggle for civil and religious liberty in this favoured land,—your Petitioners earnestly pray that no further extension of privileges may be granted to the members of the Church of Rome; but that your Lordships, acting upon those principles which called the illustrious House of Brunswick to the throne of these realms, will continue inviolate their operation, convinced, as your Petitioners are by the proceedings of the Roman Catholic Association, that the ultimate tendency of what they advocate is the extinction of the Protestant Church in the sister country, and the destruction of the essential character of the British constitution.

And your Petitioners will ever pray, &c.

Earl Howe seconded the adoption of the Peti-

tion, and subsequently moved the thanks of the meeting to Mr. Stockdale Hardy for his excellent speech.

The Petition to the House of Lords, signed by 17,535 persons, was presented by the Duke of Rutland; and that to the House of Commons, which was signed by 19,203 persons, by Mr. Legh Keck.

ESSAYS

On the POOR LAWS, and the FRAMEWORK KNITTERS' RELIEF SOCIETY.

To the Editor of the Leicester Journal.

(1819 or 1820.)

SIR,

WE live in times of no ordinary moment—in times when (partly owing to a superabundance of machinery, partly to a glutted market, and partly to a want of confidence and union amongst our manufacturers), the wages of the labouring poor have been most lamentably depressed, and themselves and families thrown upon those laws for support which were never intended to operate except in cases of old age or an actual deficiency of labour. We live, Sir, at a period in which the state of education amongst the poor has also most materially varied the picture. Instead of ignorance and rags being concomitants, as they were once thought to be, we now see attainments (and no inconsiderable ones too) entering confines where formerly it was thought impossible they should ever enter—expanding where distress reigns within

and abject poverty shivers without—and control-

East W. Leicester
29th August 1862

Mr. Stockdale

Dear Sir

Yours of yesterday I
received this morning. I beg your
acceptance of the Book. I had no
thought when I sent it of your returning
it to me. I am in possession of
another Copy

I am Dear Sir
Yours truly
William Harrison

and abject poverty shivers without—and controlling with majestic power events and circumstances of no ordinary moment. Whatever difference of opinion may exist as to whether this state of things be or be not desirable, this is the state, and I, for one, am sorry to see the bud of genius only blossom to be blighted.

It is quite clear, from the evidence given before the Select Committee of the House of Commons last Session, that the distressed state of the Framework Knitters was chiefly attributable to the cut-up work; and I never can sufficiently lament the failure of a bill which struck at no private interests, and violated no rules of political economy. To that baneful system may be traced the distressed condition of the Framework Knitters—the discredit of the trade in the foreign markets—the disunion amongst the masters—and last, not least, the destruction of that sterling principle of independence which formerly cheered the workman while it benefited the employer. But, as the legislative application to which I have referred was unsuccessful, the question naturally occurs, what is to be done? It is true a large proportion of masters and men have come to an arrangement equally creditable to both; but, as things stand, is there not too much reason to suppose that, except some effort be made—some plan adopted—things will return into their old channel, and a repetition of that distress ensue which filled our streets with misery and crowded our poor-houses with inhabitants? The

Framework Knitters' Relief Society appears to me calculated to do considerable good in this respect. I understand it originated entirely with the workmen, and, under proper regulations and restraints, I think that if it is efficiently supported it will confer great benefit on the men, while it can inflict no injury on the employers. In my conscience, were I of an opinion that it would inflict any injury, it should not even have my good wish; but I can conceive none. So long as the men can live by their labour, it does not operate; and when from any circumstances the masters are unable or unwilling to give them that remuneration for their labour by which they can support themselves and families, it steps in to aid the landed interest in the support of those who are no longer able to support themselves. I am quite convinced that the articles of the proposed society will bear, and must undergo, revision; this however must be reserved for the gentlemen who have so kindly and nobly expressed their willingness to act as trustees in case a fair chance is afforded of establishing the society upon a permanent basis. My present remarks are confined solely to the principle of the measure, which is calculated to destroy the anomaly of a pauper in full employ, by giving the landed interest an opportunity of assisting the men (when unable to live by their labour) without aiding that most destructive of all practices—the making up any deficiency of wages from the poor rates.

In conclusion, Mr. Editor, allow me to say that, having been touched by the distresses, the poignant distresses, of so large a body of my fellow-countrymen as the Framework Knitters—having seen the tear of sorrow trickle down that cheek where the smile of content used to beam—having seen sedition and treason stalk around us, and yet not been able to penetrate into our fortress, although designing men have hovered about ready to wave the flag of rebellion over the couch of misery—I, like many others, have been induced to throw in my feeble mite for the relief of sufferers so eminently deserving of assistance; and I trust that no efforts which can be legally used will be wanting in their behalf. From the altered condition and circumstances of the trade, as more particularly detailed in the evidence given before the Commons' committee, an annual scene of distress seems likely to take place. To meet that gloomy period the society to which I have alluded is designed; and, should it meet with sufficient public support to render it instrumental in doing this, much good will have been effected.

I am, Mr. Editor,

Yours very obediently,

A CONSTANT READER.

To the Editor of the Leicester Journal.

SIR,

THE success which has attended the efforts of those benevolent individuals who have so actively exerted themselves on behalf of the suffering Framework Knitters, must be highly gratifying to every reflecting mind. While other districts are witnessing the most heart-rending scenes of distress—are borne down by enormous contributions, and enveloped in local misery—the county of Leicester stands nobly pre-eminent for its support of an institution which has for its objects the comforts of the poor, and which, in extensively diffusing those comforts, I trust will be eventually injurious to no one.

It certainly is much to be lamented that other districts have not more extensively co-operated with the society in its general designs. No doubt such a co-operation would have greatly assisted the objects in view, and would even now be a “consummation most devoutly to be wished.” It is equally clear that, for want of this combined union, some temporary inconvenience may ensue; but I would entreat those who make this an argument for opposing the society, to look seriously into the present situation of those districts which have either declined or neglected to support it.

Is the state of things in those districts likely to continue long? Is it reasonable to suppose—is it rational to assert—that when the poor cannot

obtain wages by which they can live, these wretched indigents, who have been thus brought to the brink of misery, will not be led on to desperation? Every writer that has yet treated upon political economy, has invariably maintained that all rules cease to have effect—that all theories vanish into “trifles light as air”—when wages become so low as to be incompetent to afford a decent maintenance to the mechanic. Let it be recollected an English mechanic is not to be driven into an Irish cabin, or into those wretched habits which usage, and perhaps choice, have rendered familiar to the labourers of the sister country. An English mechanic wants no extravagances, but *he must* and ought to have those comforts which his constitution requires and his forefathers experienced.

To assert that it is in the power of any particular class of manufacturers to raise the price of labour, or to throw the odium of a decline in wages upon any such particular class, is as unjust as it is to charge those who support the Framework Knitters' Society with a wish to benefit one part of the community at the expense of the other. A permanent rate of wages can only be obtained by an union amongst the masters in general; and I sincerely lament that the thoughtless and absurd system of throwing the entire obloquy arising from the late extreme low price of labour upon the manufacturers, without distinction, has extended to the lengths which it has done. Many

of them, we know, are friends to the Statement, and would gladly support it, without discharging a single workman, could they be upon anything like a certainty with regard to the sale of their goods; but, so long as any manufacturer declines to aid the general purposes of the Society, so long will that uncertainty prevail, which is destructive of confidence, and which forbids speculation.

Thus far it may be said I am arguing against the Society of which I have professed myself so warm an advocate. Let it be so: I have only discharged a duty which I feel is owing to a meritorious body of men whose views and sentiments have been grossly misrepresented: but, having performed this act of justice, allow me to advert to another part of the argument, drawn, indeed, from the premises, but (as I view it) futile in origin and erroneous in application; this, however, I shall reserve for another letter:—in the interim,

I am yours very truly,

A CONSTANT READER.

To the Editor of the Leicester Journal.

SIR,

I CONCLUDED my letter last week upon the important subject of the Framework Knitters' Relief Society with an allusion to the uncertainty which at present exists with regard to the price of manufactured goods.

We are told that one grand effect of this uncertainty will be the transfer of a considerable portion of the trade of this town and neighbourhood to an adjacent district. What district is this? Surely not the one which has lately, through its Representative, laid before Parliament such an appalling picture of distress and misery?—Is this the Leviathan which is to swallow up poor Leicester and its trade? What! is a district where one parish alone is £6,000 in arrears in its poor's rates—where any attempt to enforce such rates would occasion a general panic, and render sixty warrants of distress daily necessary,—is this a district to be holden up as one which can permanently undersell the fair and liberal manufacturer of another? It may, indeed, do so for a time—but, even for that limited period, it is only enabled to injure its neighbours by the ruinous system of almost reducing to pauperism all classes of its inhabitants, and compelling them to leave a place endeared, perhaps, by many a tender recollection, because they find themselves incapable of meeting the heavy contributions demanded of them. The argument, therefore, comes within a very confined circle. To say that the Framework Knitters' Relief Society may not produce inconvenience would be wrong; but to say that greater and far more extensive inconvenience would not arise in case it were abolished would be much more incorrect. Were it to fall, it is my firm conviction that our town and neighbourhood

would rival (if I may use the term) the most distressed district in England, in embarrassment and misery. The suffering would then be general:—an enlivening sympathy does now subsist between the more opulent and their poorer neighbours—but then how dark the picture! Squalid distress and radical discontent would enter the abode of poverty, ruin would annihilate mediocrity, and the rich would have to contemplate a picture of devastation which their spacious mansions and extensive domains would only render more painful to the contemplative mind by the dismal contrast. If, therefore, the Society should ultimately fail, it will have failed in a noble effort. The poor *here* will, at all events, have been convinced that the rich have done every thing in their power to alleviate their distress, and that, if they have been unable to accomplish their wishes to their utmost extent, they at least did all which example and interest were capable of effecting to promote the object in view.

It would embrace too wide a field of discussion to trace the existing distress to its various sources. Much of it has undoubtedly arisen from a diminution of capital, but this has by no means been the principal cause; for, although capital may have been withdrawn to a certain extent, there still has been a considerable demand for labour, but such an one as, from the limited circle of those who made it, did not afford the usual advantage to the men, of making any thing like terms with those

who stood in need of their assistance. Instead of an endeavour to raise, there was a competition to fall the price of goods, and the employers were obliged to abridge the comforts of life to make anything like a profit. Thus the trade, by being driven into a corner, ceased to confer those benefits upon its dependents, and the community in general, which it once was in the habit of doing, and, on the contrary, had to seek a species of eleemosynary assistance from classes which had no connection with it. Brighter days and fairer prospects, I trust, are opening upon us, and it is to be hoped the period is not very remote when that good understanding will prevail between the employers and employed which once so happily subsisted, and produced such beneficial effects.— While disaffection has stalked around us, ready to invade our citadel and throw its malignant torch amongst us, we have seen a most distressed population endure most grievous miseries without a murmur, and evince no feelings but those of thankfulness and peace. We have seen an institution formed by the ingenuity, conducted by the skill, and kept strictly within its original bounds by the persevering industry of men who, with scarcely bread to eat, have displayed abilities worthy of a nobler, though not a more laudable pursuit. Having philanthropy as its object, and Christian benevolence as its principle, the Framework Knitters' Society has pursued its course, cheered by the smiles of conscientious approval

from the rich, and bedewed with the tears of grateful poverty. The storm having been weathered thus far, let us indulge the hope that the wished for haven may soon appear, and that, while other and neighbouring districts are drinking deep of the cup of sorrow, Leicestershire may eventually reap the benefit of that noble and humane policy, which has been so extensively adopted by her nobility, gentry, clergy, and inhabitants in general.

I remain very truly yours,

A CONSTANT READER.

Leicester, 13th March.

SPEECH ON Mr. SCARLETT'S POOR LAWS BILL.

ON the 1st June, 1821, in pursuance of a requisition presented to the churchwardens, a meeting of the inhabitants of St. Mary's parish in Leicester was held at the Vestry, to take into consideration the propriety of presenting a Petition to Parliament upon the subject of Mr. Scarlett's proposed bill for an alteration of the Poor Laws. The Rev. the Vicar having taken the chair, and the requisition having been read—

Mr. STOCKDALE HARDY said that, as one of the persons who had signed that requisition, he begged to direct the attention of the meeting to as important a subject as any which had occupied the

attention of Parliament for many years. The bill to which the meeting referred had for its object the almost total annihilation of those laws which had regulated the affairs of the poor for nearly two centuries and a half; and laws which had existed so long ought neither to be trifled with nor repealed without the utmost deliberation and the most extended discussion; since, although very great defects might exist in them, our ancestors ought, at all events, to have the credit of having some substantial motives for their acts, and as the real excellencies of our old laws had frequently not been discovered until the inconveniences arising from their repeal had shewn them. Mr. Hardy then proceeded to comment, clause by clause, upon the bill of Mr. Scarlett as amended by the Committee. The clause as to removals was most objectionable, since it went to do away with the liability of parishes in which paupers were now legally settled. As to removals themselves, he was no friend to them, since it was hard that when a poor man had left his place of nativity for a number of years, and had formed many interesting connections elsewhere, that he should be transported (as it were) to another and perhaps distant district for no other crime than his poverty. The original place of settlement must however be still made liable, or there would be a breach of faith not easily reconciled with the principles which had hitherto regulated British legislation. As to the establishment of a maximum as to poor rates, this seemed really a

most Utopian scheme. They all knew the price of provisions and the demand for labour always regulated the poor man's stock and comforts. To say, therefore, that under no circumstances whatever more than a certain sum should be raised, was to go upon the supposition that the rate of provisions would always be the same, the demand for labour invariable, and the state of trade not affected by those fluctuating circumstances which it has generally been supposed and known to be. A most striking instance of the impolicy of any such measure as this was contained in a representation which had been lately made by the city of Norwich in reference to the bill now before Parliament. It appeared that last year (the amount of the rates raised in which is the maximum of Mr. Scarlett) there was about 18,000*l.* raised for the support of the Norwich poor; in 1818 there required 28,000*l.*; and in 1802 (the year of scarcity) there required no less a sum than 41,000*l.*! If Mr. Scarlett's maximum had been then law, what must have been done with the poor at Norwich? The same circumstances might again arise, and could not be provided against; and they only need to picture the horrid condition in which a populous town or city would be placed, surrounded with claimants requiring upwards of 40,000*l.* to satisfy them, having little beyond a third of the sum to give them, and the claimants themselves increased and hourly increasing through the emigration from the adjacent country continually pressing upon the

place in consequence of the first clause of the bill to which he had alluded. That part of the measure which denied any relief to any one marrying after the passing of the act, except aged or impotent, was extraordinary, and could never be adopted, except its supporters were prepared to say that all could obtain employment and obtain it upon terms by which they could live. Now what had been the case in this district? At one period during the last winter 2,000 framework knitters had been receiving relief from the Friendly Relief Society, because they could not obtain work. What must have been the case had the bill of Mr. Scarlett been in operation? It was a most singular fact, that since the establishment of the Framework Knitters' Society (a period of about twenty months) there had been no less a sum than 17,000*l.* paid from it to unemployed workmen, although latterly only 3*s.* 6*d.* per week could be afforded to a man and his family. It was no less singular that 9,000*l.* of this 17,000*l.* had been raised by the workmen themselves, and wrung from their scanty pittance. These circumstances, while they showed the utter impracticability of the bill, yielded also a forcible answer to those who maintained that the poor were averse to, or careless of, providing for contingences. At all events this stigma could not attach to our provincial poor. The bill upon the whole was as injurious to the landed as the commercial interests of the country; inasmuch as, if passed, at no distant period, when the one interest

was borne down, a most ruinous reaction would necessarily take place upon the soil of the country—its noblest boast and strongest palladium. The Petition he was about to propose did little more than entreat for time to weigh the provisions of the bill. This surely was nothing but reasonable, considering the magnitude of the interests concerned. Amendments might be made, and perhaps a bill unobjectionable to all parties framed; but the time which would elapse before the close of the present Session of Parliament was far too short to allow of any such hope. Mr. Hardy then read a Petition to the House of Commons, and moved its adoption by the meeting.

To the Editor of the Leicester Journal, 1826.

“Blessed is he that considereth the poor and the needy.”

“Is Israel a servant, is he a home-born slave?”—Jer. ii. 14.

MR. EDITOR,

I DO most sincerely hope that the humane suggestions thrown out by a “Constant Reader,” in your last Journal, will not be lost sight of in the present season of suffering and distress. I am one of those who attended the meeting at the Castle the other day, and who returned home with the impression that the eloquence and erudition there shewn would have been far better exercised in support of our poor at home, than in travelling, as they did, for objects of distress beyond the At-

lantic. Slavery, as a principle, can never find shelter in an English bosom, but it is made too much in the present day, and on the eve of a general election, a mere catch-word, and I am convinced that there are objects of as much misery in this town as in any colony in the West Indies. His Majesty's Government are doing all they possibly can, consistent with vested rights and honest policy, to ameliorate the condition of the slaves; and why therefore should they be goaded to do what it will be impossible to effect, unless it can be proved that *black* is *white*, or the country has made up her mind to be divested of her colonies? Let us then turn our attention to our "home-born slaves." I must however not be misunderstood; I use the term in no objectionable or inflammatory sense, but simply as connected with the subject to which I have alluded; for I am amongst those who think that a large proportion of the misery now experienced by the working classes is occasioned by causes quite out of the control of their employers, at least of those employers who are men of capital. I repeat it, then, let us turn our attention to our "home-born slaves," let us put our hands in our pockets and relieve these poor creatures, instead of exciting hopes abroad which never will be realized, and rousing (but unintentionally, I firmly believe) the worst feelings of the Negro population. I sincerely hope that some gentlemen of influence in the town will take the lead in this local cause of charity and love, and that the best

means will be devised to alleviate the distresses of our poor neighbours, and to enable us to dispense our bounty at the thresholds of our own houses. If the object cannot be attained without, let us have a public meeting, at which a subscription may be opened, and a committee appointed to regulate the distribution of the bounty.

Yours, &c.

CORIANDEK.

Leicester, January 24, 1826.

To the Editor of the Leicester Journal, 1834.

SIR,

CONSIDERING the immense importance of the measure introduced into Parliament, by his Majesty's Ministers, for the alteration of the Poor Laws, I cannot avoid expressing my surprise and regret that it has hitherto attracted such little notice in this place and neighbourhood.

The measure, as I view it, is at direct variance with the known and recognised principles of the British constitution, oppressive towards the poor, and destructive of the rights of property in populous towns and villages. The powers proposed to be bestowed upon a board of commissioners are of the most appalling description—powers to examine on oath or declaration—to commit for contempt—to require the production of all parish books and

accounts—to issue summonses and warrants, to run into all parishes in England and Wales—to make rules for the management of the poor, the government of workhouses, and the education of the children therein—for the apprenticing poor children, and for the guidance and control of all guardians, visitors, and parish officers—powers to attend all parochial meetings—to order workhouses to be enlarged or altered—to form unions of parishes for the common use of a workhouse—but I stop; the detail is revolting, and I boldly say such powers were never attempted to be conferred on any body of men since the reign of the Stuarts—since the days of the Court of Star Chamber.

The proposal to make the place of birth in all cases the place of settlement after the age of sixteen must eventually have the effect of driving the poor, when in need of relief, to populous towns and villages, where, of course, the larger portion of them were born. And only let us contemplate on the one hand the immense depreciation of property in those places which must inevitably be produced, and on the other the injustice and cruelty of dragging a fellow-creature perhaps from Truro in Cornwall to Leicester—from a place which for years has enjoyed the benefit of his labour—of dragging him, I say, from attached friends and interesting connections to the place of his birth, when all his early associates have probably ceased to exist, and where every object that meets his careworn eye only tends to produce in his mind sensations of

melancholy and despair! I firmly hope the people of England will let their rulers know that they are not yet prepared to be taxed without having the control of the funds to which they contribute, nor to see the poor of the country in their old age, or when unable to obtain wages by which they can live, transported, (in a sense,) when the only crime of which they can be accused is either impotence or misfortune.

There are other portions of the bill fully as objectionable as those I have pointed out, but I forbear allusion to them, as I have already trespassed upon your columns at greater length than I had intended. I only hope that the parish officers and vestries of this town will give their serious attention to the subject, and not leave it to be inferred by their silence that they either approve of or are indifferent to the measure. That the existing system of poor laws stands in great need of revision no one can deny; I am convinced however of this, that those who have introduced the present bill have proceeded in total ignorance of the wants, the feelings, aye, and the temper, of the people; and that, unless they retrace their steps, consequences will ensue of the most disastrous description.

Yours, &c.

BRITANNICUS.

Leicester, 22nd May, 1834.

POOR LAWS AMENDMENT BILL, 1849.

To the Editor of the Leicester Journal.

SIR,

THAT odious and impolitic measure, the Poor Laws Amendment Bill, to which I some time since called your attention, is fast progressing into an Act, and will, perhaps, ere these remarks meet the public eye, have become the law of England—have become the law of a country hitherto governed by far different principles than those contained in this precious receptacle—this “pet-project,” of modern and unfeeling political economy.

The measure, as I view it, is based upon utterly false assumptions. None, except a few infatuated disciples of the Malthusian school, disapprove of the laws already in force for the relief of the poor; it is the erroneous administration, not the principle of those laws, which is the theme of complaint, and it does not appear the most eligible moment for their virtual repeal—at all events, for the application of an un-English and anti-social machinery to them, when it is admitted on all hands that improvements in their administration are progressing with giant strides.

I have ever regarded the Act of the 43rd of Elizabeth as the Magna Charta of the English poor. It is a human provision strictly in accordance with the doctrines inculcated in Holy Writ, and dark will be the cloud which will lower upon this country should honest poverty ever be treated

as a crime, or the innocent victim of penury branded as an outcast!

The principal objections to the Bill to which I have referred may be stated in a few words. The placing funds of no less an amount than between seven and eight millions (the estimated annual amount raised by poor rates) indirectly under the control of the minister of the day, and directly under the superintendence of salaried commissioners, is a most fearful and unconstitutional arrangement. Hitherto, those who raised these funds have had the power of applying them, or of electing those who have done so; and by this means, in well regulated parishes, a wholesome check with respect to the expenditure has been established on the one hand, while on the other local means of information have had a most salutary effect in dispensing the bounty. Under the proposed law, the officers and vestries of parishes will become the mere *fantoccinis* of a board of (to adopt an expression of a man of fearful importance, Mr. O'Connell,) *Saxon* Commissioners—of individuals who, however talented and respectable, will be unknown to the districts over which they are to stretch forth the rod of power—will be unacquainted with the wants, the feelings, and the habits of the people, and with the peculiar circumstances as to trade, &c. affecting the subjects of their new-fangled jurisdiction. Let us glance for a moment at some of the authorities with which these Commissioners are to be in-

vested. They are to have the power of granting or withholding allowance to the poor—of deciding whether to get that allowance the pauper and his family are to go into the workhouse or not—of regulating the mode in which the pauper is to be fed, or in whatever other way he is to receive his miserable pittance. “Talk of slavery in the West Indies,” exclaimed a noble and learned Lord (Wynford) the other day, in his place in Parliament,—“talk of slavery in the West Indies, for the abolition of which we are about to pay so large a sum, I say pass this Bill, and the condition of the poor of this country will be worse than that of the serfs in any part of Europe—than that of the villeins who belonged to the soil of this kingdom in former times, or than that of any of our Negro slaves in the colonies!” And for what are all these evils to be encountered? Why, for the sake of a French-dandyfied scheme of (what is affectedly called) centralisation—a scheme at variance with all our venerated and long-cherished institutions, and which proceeds on the impertinent—the utterly unfounded and pragmatistical assumption, that “the metropolis is *everything* and the provinces *nothing*!” Centralisation is a system revolting to the feelings of an Englishman, foreign to his preconceived notions and opinions, and destructive to his independence. It may suit, indeed, the atmosphere of a country like France, where, to use the words of an able writer, “The people are accustomed to look to Government for

everything—for their roads, their canals, their bridges,” &c. but it is not in unison with yet “merrie England,” and thank God! *London* is not yet *England*, although *Paris* may be *France*!

The power proposed to be given the Commissioners to form unions of parishes, without the consent of vestries, is highly objectionable, if not tyrannical. The idea of crowding the poor of several parishes into large and perhaps distant workhouses, is both impolitic and cruel. These are times in which a man, able and willing to work, cannot, in many cases, obtain wages by which he can live; and for this—no fault of his—he and his family are to be sent to a workhouse, there to be exposed to all the disgrace, demoralisation, and contamination consequent on such establishments. It is said, however, that the Bill will annihilate the allowance system, which it must be admitted has operated most injuriously in depressing the poor man's capital—his labour; it will, however do no such thing, as the 49th clause gives the Commissioners a discretionary power of making up wages from poor rates.

With reference to that clause in the Bill which casts the entire onus of maintaining an illegitimate child upon the mother, leaving her seducer and deceiver perfectly free from any consequences, if we did not live in days when a system of cold and calculating, but miscalled philosophy, had steeled the human heart, and rendered it, in a great degree, impervious to the claims of benevo-

lence, we should be “planet-struck” at the rank injustice of the proposition. But so it is! and hear it! members of a Christian community! that a clause founded on the assumption—at least so far as the lower orders are concerned—that “*female chastity is a nonentity in England*”—has repealed the axiom, or rather the “law of nature,” that “a child, until emancipated, depends on its parents,” and has consigned the unfortunate female, who, in nine cases out of ten, is the seduced party, to the horrors of a workhouse, in case she is unable to maintain her child, while he whose persuasions and perhaps perjuries have caused her misfortunes, is to be allowed to stalk abroad—deride his fallen victim—and select fresh objects for disgraceful conquest and hard-hearted caprice!! May not fears be reasonably entertained, that an enactment like this, instead of decreasing, will increase incontinency, and importantly add infanticide to the catalogue of crime?

We are, however, as I observed at the commencement of this letter, probably entering on a period when the Bill upon which I am commenting will become the law of the land, and when, as good subjects, we shall, so long as it remains on the Statute Book, be bound to obey it. Deeply do I lament that the Legislature have not consented to delay its adoption until another Session, as, in the interim, information might have been collected, and suggestions made, which would, in all probability, have led to the most beneficial

results. It is said that the Act is, as to the Commissioners, to have only a temporary effect, and to operate as an experiment. Experiments, however, are always more or less dangerous, and, although none will be more gratified than those who have stated their sentiments in opposition to the measure, should their conjectures prove unfounded, yet they cannot avoid entertaining a presentiment that the enforcement of some of the provisions of the Bill in certain districts will lead to consequences of the most frightful description. Let us hope, with the Duke of Richmond, "That both Government and Parliament will watch over and superintend the conduct of the Commissioners, and take care that nothing be done hastily, or without waiting for the results of practical experience." With these remarks I take leave of the subject, but under the firm and settled conviction that extensive and important alterations must be made in the Act before it can ever settle down into the permanent law of a great, a glorious, and a free country.

Yours, &c.

BRITANNICUS.

Leicester, August 4th, 1834.

On the ELECTION OF POOR LAW GUARDIANS,
1849.

To the Editor of the Leicester Journal.

SIR,

THE numerous acts of Parliament, having reference to the management and relief of the Poor, which have passed since Her Majesty's accession to the throne, will convince every unprejudiced mind that the existing general Poor Law must, ere long, undergo very considerable alteration, non-productive as it has avowedly been of its predicted results, and based as it is on a most objectionable principle.

I cannot avoid arriving at the conclusion that no system can be long acted upon which attempts to provide in one building an asylum for the aged and infirm, a nursery for the children of paupers, and a place of refuge, or perhaps of punishment, for those who, either from untoward circumstances, or their own improvidence, are compelled to resort to parochial relief. Honest poverty and indigent old age ought never to be punished as crimes, nor ought children to be exposed to the abominations of a general workhouse, or be rendered liable in future life to be taunted with the exciting assertion that they were brought up under such circumstances. The three objects before mentioned can, as I view it, alone be effected by the placing in en-

tire and separate establishments the classes referred to; and these objects—now that buildings, and especially those of considerable extent, can be purchased so cheaply—might be accomplished at a comparatively trifling expense. The existing workhouses would be amply sufficient for the reception of able-bodied and adult paupers, and a distinction would thus be made between the three classes standing in need of parochial assistance.

With reference to a workhouse on an enlarged scale, it would be an act verging on insanity voluntarily to erect such a building under the existing circumstances of the town of Leicester. Are there not burdens enough now pressing on the inhabitants? and, viewed in perspective with reference to additional burdens, are not the prospects of the place most discouraging and gloomy? Besides, as I previously observed, it may almost be regarded as a certainty that the general poor law will be revised and altered; and the probability therefore is, that if the building of a new workhouse be now commenced, it will have to be remodelled to suit any changes in the law which may be made by the legislature. Calculations, and confident ones too, may be promulgated with reference to the expense of the new building; but I defy any one to say, when the work has once commenced, what the eventual cost will be. Almost every public building in Leicester will attest the truth of this remark; but in making it I am far from intending to cast any reflection upon those who have been intrusted

with the erection of our public edifices, as the additional expenses—very frequently, if not generally—are attributable to causes over which architects and builders have no control.

One of the principal arguments for the erection of an enlarged workhouse in this place is, that it will lessen the poor rates, by decreasing, if not utterly abolishing, out-door relief; but in seasons of distress and scarcity of employment this species of relief cannot altogether be abolished in populous places situated as Leicester is, and it surely is deserving inquiry whether in those towns which are placed under similar circumstances to our own, and where new and enlarged workhouses have been built, under an idea that the existing poor law could therein be carried out in all its details, the rates have decreased? I am informed that the rates have increased, instead of decreased, at Nottingham, since the erection of a most spacious workhouse. If this be so, what benefit has accrued from the additional outlay to which that town has been subjected? Let us therefore in this place do all our limited means will allow to prevent any more expense being incurred than is absolutely requisite, until it has been seen what the effect arising from these new establishments has been in other places.

As good citizens we are bound to obey any bill which receives the sanction of the legislature; deeply however do I lament and condemn the practice which has of late prevailed, of the legisla-

ture surrendering their powers to various classes of commissioners, and of conferring upon the orders and regulations of these commissioners the authority of laws. It is almost useless to read some modern acts of parliament, those relating to the poor among the number, except the orders and regulations of the commissioners appointed under the acts are also perused; for, without these latter be referred to, the actual state of the law cannot be arrived at. The modern poor law is also founded upon a most objectionable basis—that of metropolitan centralization. This is a most un-English system; it is a French-dandyfied scheme, which makes the metropolis everything, and the provinces nothing. Centralization is a system at variance with the preconceived opinions of an Englishman, and destructive of his independence. I am happy to observe however it is fast on the wane, and, thank God, London is not yet England, however Paris either is or was France.

Yours, &c.

BRITANNICUS.

Leicester, April 2nd, 1849.

SPEECH

On the PLAN for WATCHING and LIGHTING the
TOWN of LEICESTER in 1822.

MR. STOCKDALE HARDY said that he was decidedly opposed to any legislative measure being applied for under existing circumstances, and indeed under any circumstances whatever, unless it could be carried into effect by dispensing equal benefits to all classes of society in the place. An application to Parliament upon any other grounds was manifestly unjust, and he thought that, if the scheme must be carried into effect, the rich ought to raise the requisite funds by private subscription, without imposing a permanent and general tax in a case where no permanent and general benefit could be dispensed. Insinuations had been thrown out, accusing certain gentlemen of personal considerations in the opposition which they had felt it their duty to give to the measures in agitation. He was confident that he spoke the sentiments of those gentlemen when he said that a free and open discussion of the question, and a calculation which might be relied on as to the probable expenditure, had been their principal object; and he begged the meeting to look at what the exertions and

interference of those gentlemen had effected. Instead of the ruinous proposal which was first made, and which, had it been carried into effect, would have levelled a great number of houses, rendered several bridges necessary, and, in point of fact, have turned the ancient and loyal town of Leicester almost upside down — instead of this utopian scheme, they had now the more reasonable proposition submitted of lighting, watching, and cleansing the town. As, however, the egregious bantling to which he had just alluded died in its infancy, before it was expressly filiated, he was not quixotic enough to quarrel with its remains.

An attempt had been made to persuade the poor that their interests were not connected with the proposed measure. He thought they had more to do with it than any other class, and he would ask them whether, in case the town were borne down by enormous rates, those charitable institutions would be supported which in seasons of adversity had clothed the naked, fed the hungry, and dispelled the tear of sorrow from the eye of the industrious mechanic when unable to obtain wages by which he could live? In times, too, when an alteration of the poor laws was thought of, and when an Act had been proposed which, if carried into a law, would drive the poor from residence in villages into large towns, he would ask them whether it was politic to cripple the means which had hitherto rendered them assistance by a heavy local tax, and one which might, except great

caution were used, render those means wholly inadequate to afford that assistance which hitherto humanity had dictated and the laws enforced? He thought they were quite sufficient political economists to see that, under such circumstances as these, it was bordering upon insanity to impose voluntarily any additional burthens upon real property in a town like Leicester. Supposing too the Bill was to pass, what benefit would the poor man derive from it? If the published calculations were to be abided by, all the gratification he would have would be to pass the door of his more opulent neighbour amid a glare of light, and then retire in darkness to his humble cottage. A great deal had been said and written of the excellence of gas as a light. No one could say that it was not a most excellent light; it had illuminated this part of the country amazingly. Things were seen necessary now which their forefathers never thought of. It was seen that we could not enter the town in the same way that we used to do, and that it was necessary to have our streets paved, lighted, and watched, by parliamentary authority. He confessed that he was one of those old-fashioned people who had not been convinced of the necessity for these matters, and, for the reasons which he had previously stated, he decidedly opposed any application to Parliament. He wished to speak of the Corporation as a body with the utmost deference. They had the highest and most sacred trusts reposed in them, and were entitled to the respect

of their fellow-townsmen. As, however, upon the present question they were almost equally divided, he did not conceive it necessary to maintain the same reserve when speaking of the two contending interests, as he should have felt it his duty to have done in case the body had been united on the question. He was not prepared to enter into the weighty matters contained in the resolutions which had been moved by the gentleman who preceded him (Mr. Paget), but he must be allowed to say, that he considered them in a great measure irrelevant to the business of the day. All he wished to press upon the meeting was, that there was no necessity for an Act of Parliament, and that it would be highly impolitic, under the present circumstances of the town.

Mr. Hardy concluded with hoping that any trivial misunderstandings which the business might have created would be buried in oblivion, and all recollection of them effaced from the minds of all parties.

R E P O R T S

Relative to the ERECTION of ST. GEORGE'S CHURCH, Leicester.

[The particulars of Mr. STOCKDALE HARDY'S great exertions in this business will be found stated in the Biographical Memoir prefixed to this volume.]

REPORT of Mr. Stockdale Hardy, as Secretary of the District Board for the Archdeaconry of Leicester, to the Right Honourable the Lords Commissioners appointed under the Acts for Building and promoting the Building of additional Churches in populous parishes.

IN making this Report to your Lordships, as to the most eligible site for the intended New Church at Leicester, the Secretary of the district board of that Archdeaconry begs to state, that, in recommending a spot, he has endeavoured to select a central one, in the new part of the parish of Saint Margaret—where the clay has not been excavated, and in which the chancel end will be east (or nearly so), at the same time that the church will face some public road.

The piece of ground, to which allusion is made, is a close situate on the eastern side of a modern

street, called Rutland Street. The land belongs to the prebendal stall of Saint Margaret, and is now in lease. The Secretary had a legal doubt whether this property could be alienated; but, under the 34th and 39th clauses of the 58th of the King, he submits to your Lordships that this can be done. The selection of this property is strongly supported, not only by the circumstance of its coming within the scope of those funds which the liberality of the county and town has raised, but also because, in consequence of the nature of the property itself, and of its not being capable of being made freehold for any other purpose, nearly double the quantity of land can be purchased there, that can be obtained in other quarters for the same price.

The part of the close proposed to be taken is the south-west side, and this is recommended in preference to the other part, not only because the clay has not been disturbed—(which has been the case in the other division)—but because, if the church be erected there, a road will be given by the proprietor of the adjoining property (Thomas Miller, Esq.) which will enable the inhabitants of the London Road, and the adjoining neighbourhood, to get to the Church by a much nearer and more convenient access than they could do in case the building were carried lower down. The object in view has been to place the church midway, or thereabouts, between the principal new parts of the parish; and it is decidedly reported

to your Lordships, that in the situation described the inhabitants of the southern outskirts of the parish, as well as those in the new streets, will receive more accommodation than in any other. It may also be necessary to observe, that the church will be at but a short distance from the principal streets of the old town, which are,—Gallowtree Gate, Humberstone Gate, and part of the Belgrave Gate.

The close in question has been surveyed, and regular plans, &c. are herewith transmitted to your Lordships. It ought not, perhaps, to be disguised, that there are other situations more elevated than the one described; but they are, for the most part, far beyond the scope of the funds subscribed, and, what is more objectionable, would, if taken, afford but a limited accommodation, being too near the extreme boundaries of the parish.

J. STOCKDALE HARDY, Secretary.

Leicester, November 26th, 1819.

REPORT to a Meeting of the SUBSCRIBERS, on
the 18th of January, 1821.

Mr. STOCKDALE HARDY said, it was his duty, as Secretary of the District Board, to state to the meeting the precise situation in which the business stood. The funds, which had been raised by sub-

scription, amounted to between 1000*l.* and 1100*l.*, and these would be sufficient to purchase a site for the Church, and to cover all incidental expenses up to the present period. In selecting a site, a central situation, in the new part of the parish of Saint Margaret, had been the chief object; and the one which had been chosen combined certain requisites laid down by Government, with the additional advantage of being prebendal property, which would enable the District Board to purchase a much more extensive quantity of land than could otherwise be obtained for the same price. The Commissioners had no power to assist in purchasing sites, except in cases of very particular emergency, and he felt no hesitation in stating, that the one which had been taken was perfectly satisfactory to their Lordships. The extent of parliamentary assistance and a site having been decided upon, it remained for the Commissioners to specify what further funds they would require to be furnished by local means; and, to enable them to do this, plans and estimates of the projected Church were laid before them, and, after an inspection of these, the business was brought to the point at which it then stood. The Commissioners would make a total grant for the erection of the Church; but, before this could be done, there would be about 1200*l.* required to be furnished by additional subscriptions. This sum would be wanted for the fencing of the site—to meet certain contingent expenses attending the progress of the building—

and several requisites which would not be included in the grant of the Commissioners. As the meeting might wish to know the circumstances under which the church (if erected) would be placed, he would take the liberty of briefly stating them. The District Board decided upon a division of the parish being made, and a church built capable of holding two thousand persons. Of this number, it was intended that there should be one thousand free seats, for the exclusive use of the poor. During the incumbency of the present vicar, the parish, as to ecclesiastical matters, would remain the same, and after his death the division of the parish would take place—but this division would not in the least affect the poor's rates, which would remain the same as if no such separation had taken place. After the death of the present incumbent, the two churches would become distinct vicarages. In the interim, the new church would be served by a curate, whose income would arise from pew-rents, and whose appointment would lay with the incumbent of the mother church. From this statement it would appear that no additional burthens would be cast upon the parish with respect to the new church, and that the Legislature had taken special care to avoid injuring the private rights of the existing vicar. He had, however, taken the liberty, in thus introducing the subject to the attention of the meeting, to make the statement he had done: this would have been laid before the subscribers at a much earlier period, had not a

certain protracted parliamentary investigation prevented the Commissioners from meeting, upon the business of the new churches, until very recently, and had it not been thought advisable to interfere as little as possible with some local contributions, which had, with so much justice, demanded the attention of the public. He should leave the business in the hands of the meeting, but was ready to give any further explanation which might be thought necessary. He might be allowed to observe, that, were an additional subscription decided upon, it should be commenced without delay, as the application to the Commissioners were very numerous, and in case the requisite funds were not raised here the grant would probably go elsewhere. The case of St. Margaret's was the only one in the county of Leicester, and, he believed, in the whole extensive diocese of Lincoln, likely to receive the assistance of their Lordships, and the subscription which had been raised was the smallest in respect of which they had made a total grant. The proceedings of that day would be laid before the Commissioners at an early opportunity, but would not, of course, be submitted to the notice of the public until their Lordships had made their report to Parliament upon the subject of their Commission.

EXPOSITION OF THE MOTTO

“ LIBERTY, EQUALITY, FRATERNITY ! ”

BY BRITANNICUS.

[Feb. 1848.]

BEHOLD the motto emblazoned on the tri-coloured standard of the French Republic ! It is doubtless the expression of a lofty and ennobling sentiment—the response of a divine oracle. It speaks of mysteries which lie deep in the moral constitution of man. It mutters not an unintelligible jargon from the dust, but soars on wings of light. It is not composed of cabalistic sounds, which convey no meaning to the ear, but speaks the eloquence of natural chords, striking the heart. It includes a combination of all that is grand in the hopes and anticipations of man as a social being, and is an enlarged, generous, and beneficent exposition of all that has ever occupied the attention of historians, philosophers, and philanthropists,—but it is an *impossibility* !

It speaks of truth, but conveys a falsehood. It dazzles as if with heavenly light, but is the glare

of an infernal fire. It is a threefold cord which can never be united in one : it is an union of reason, insanity, and imbecility ; an alliance of wisdom, ignorance, and folly. It proposes to exalt man, but, in reality, casts him down—to ennoble, but degrades him—to enrich, but impoverishes him—it demands a liberty which is not human—an equality which is unnatural—and a fraternity which has no earthly habitation. It proposes a social liberty without restraint—a social equality without distinctions—a social fraternity without harmony—a liberty to do what is agreeable—an equality to share what is convenient—and a fraternity to dispense with what is troublesome—a liberty to encroach on other men's rights—an equality to share in other men's goods—and a fraternity to despise other men's claims—a liberty which consigns to thralldom—an equality which dooms to servitude—and a fraternity which destines to anarchy.

Behold this motto, famous at once and infamous : a liberty to defy God—an equality to share His judgments—and a fraternity to sympathise with the apostate. It emblazons a liberty which God hates—an equality which nature abhors—a fraternity which angels weep over ; a liberty which heaven frowns upon—an equality which the earth heaves under—and a fraternity which hell triumphs in. It is a well-conceived motto for the banner intended to wave over the banquet of passion, the

feast of the appetites, and the orgies of fanaticism. Its enactment is a blot on the universe, for it proclaims a curse to society, and an opprobrium on man : a liberty which enchains reason—an equality which debases the understanding—and a fraternity which violates the affections. It is, in fine, a confederacy against order, an association against property, and an union against freedom. It is the war of labour against money—trade against capital—poverty against supply, and industry against employment. In a word, it is the offspring of selfishness and the plaything of infidelity, and will find its punishment in the distractions of anarchy, or in the chains of despotism.

THE COMMENTARY.

The accuracy of this exposition is confirmed by the accounts which every day reach us from France. “ Public faith,” says the Times, “ is tampered with. Credit is gone. Trade is at a standstill. Every man with a little money is trying to hide it, or to run off with it. Every decent-looking citizen is stopped outside his own town and searched, to discover whether he has more than 20*l.* about him—if he has, the surplus is taken from him, and applied to arming national guards, paying vagabonds who refuse to work, and other such follies. Mills are everywhere stopped, and the poor work-people are wandering about in thousands. No debts can be collected. Bank notes are immedi-

ately depreciated. The depositors in the savings banks are allowed to draw out 4*l.* in silver, but all above that sum, whatever it is, they are paid in comparatively worthless paper. Confiscation by threats, insecurity, and a well-founded apprehension of evils to come, constitute the present state of France, and come home to the door of every artisan, farmer, and peasant."

BIOGRAPHICAL ESSAYS.

CHARACTER

OF THE

Very Reverend ROBERT BOUCHER NICKOLLS,
LL.B., Dean of Middleham, and Rector of
Stoney Stanton, Leicestershire.

THE Very Reverend Robert Boucher Nickolls, LL.B., died at his rectory-house, Stoney Stanton, Leicestershire, October 11, 1814, in his 72nd year, when the following biographical notice of him was given in the Gentleman's Magazine. This gentleman, a native of the West Indies, was presented, in 1779, to the rectory of Stoney Stanton, by the Earl of Huntingdon; and, in 1786, to the collegiate deanery of Middleham in Yorkshire, by the Duke of Northumberland, for his services as Chaplain to the Fifth Regiment of Foot in America, and for his loyalty in that war. He published, in 1782, a Discourse preached at Leicester, May 6, at the visitation of the Archdeacon, from 1 Timothy iv. 15, under the title of "The general Objects of Clerical Attention considered, with particular Reference to the present Times;" in which the peculiar doctrines of Christianity are inculcated with great energy, in opposition to the principles of Hobbism; and he distinguished himself honourably, in 1788, by a very humane pamphlet on the Slave Trade, under the title of "A Letter to the Treasurer of the Society insti-

tuted for the purpose of effecting the Abolition of the Slave Trade.”—In answer to a request of Mr. Nichols, to be furnished with a list of his publications for his “History of Leicestershire,” the good Dean said, “I have done nothing of importance enough to merit notice; and the things I have published, about half a dozen sermons, and nearly twenty anonymous tracts, I have set so little value upon that I have not even kept copies by me, except of a very few of the printed ones. The MSS. were left in the hands of the different printers, and I have not even a list of the titles. Some of the last things, small pieces, were published in the Anti-Jacobin; one upon the Dissolution of Parliament—Considerations on the Rejection of the Catholic Bill, printed at Hinckley, and inserted by the Anti-Jacobin (not by my desire) for April, or May, or June, 1807; another on the Curates’ proposed Bill, in the same Review, in one of those months in the next year, 1808; another, on the Authenticity of St. Matthew’s Gospel, in answer to Evanson, December 1808; the last, signed Eusebius, in the same Review for May 1809, on the Growth of Schism in the Church, and the Means of checking it.”

Mr. Nichols was indebted to this gentleman for some interesting memoirs of the Rev. John Bold, formerly curate of Stoney Stanton (see “History of Leicestershire,” vol. iv. p. 975.) These Memoirs have been adopted by Mr. Chalmers in his “Biographical Dictionary.”

By the death of this worthy Divine, the cause of true religion and of the Church of England has been deprived of a most valuable friend and advocate; and all the poor, with whom he was in the remotest degree connected, have sustained a severe loss.

After the appearance of the foregoing biographical notice in the Gentleman's Magazine, Mr. Stockdale Hardy addressed the following letter to the Editor, which was inserted in the number for March 1816, and reprinted, with some additions, as a Pamphlet in 1819.

Leicester, February 12th, 1816.

MR. URBAN,

IN fulfilment of a promise made to you when last in town, I shall proceed to enlarge the account which you have given in vol. LXXXIV. ii. 405, of the late Very Rev. Robert Boucher Nickolls, LL.B. Dean of Middleham, &c. &c.

It is much to be regretted, that sufficient materials for a regular biographic memoir of the lamented deceased do not appear to exist; since, had they so existed, the public would doubtless have been favoured with such a memoir from an abler pen than the one which now ventures to direct the attention of your readers to the shrine of departed worth.

It would be impossible to delineate a complete character of the late Dean without occupying too

large a portion of your columns ; indeed, I shall not presume to attempt what I know I am utterly incapable of performing ; and I shall, therefore, in the present instance, totally confine myself to that point of view wherein he furnished us with so striking an example of the union of the sacerdotal and citizen characters—an union which in his person was of great advantage to both Church and State, and proved him to be an orthodox divine, while it shewed him to be a loyal and active member of the community.

When that enemy of society and mankind, the French Revolution, began to disperse its specious but baneful principles, the Dean was among the foremost of those truly patriotic citizens who raised their warning voices in exposing its dangerous tendency and ultimate object ; like Themistocles, he preferred “ nipping the bud to stemming the torrent,” and in the prosecution of his object he enlisted all his physical and intellectual powers. In this revolution he read not only a barefaced attempt upon social order and decorum, but a direct attack upon Christianity itself. As a citizen, he repelled the first ; and, as a presbyter, he defended the Church against the second. The press teemed with the labours of his pen, while the pulpit echoed with the sound of his voice ; and when the monster dared to erect its crest with additional boldness, like a faithful sentinel, he grappled with it in its very den, refuted the assertions of its friends on their own data, and en-

deavoured to bring into public odium those principles which, while they spoke "smooth things" to the face, were secretly aiming a fatal stab at the dearest privileges of his country, and the sacred institutions of his ancestors. Unlike the general rule, the nearer the object approached the greater were his apprehensions; "he feared more who feared more nearly;" his exertions redoubled as the crisis drew on; his "acts" not his "tears" spoke for him, and, bursting like a lion from fetters which naturally bound him, his load of exertion became light, he cheerfully bore it, and triumphantly waved the standard of loyalty and order over the region of disaffection and confusion. Convinced that civil society was of Divine appointment, and that its various ramifications were necessary to its due preservation, the Dean manfully unmasked those flattering, deceptive insinuations which were thrown out by designing men, and the object of which was to render the lower classes of his countrymen discontented with that station in life which an all-wise Providence had assigned them.

"There must be wisdom and virtue in the higher orders of the community," said the Dean at this eventful period, "to connect and preserve, to defend and direct, the several parts of the machine of civil society; while the patient labours and endeavours of the meanest are equally requisite, though subservient, to the prosperity of nations; the foundation of the noblest build-

ing, though laid deep and low, and composed of the coarsest materials, has yet the merit of sustaining the whole work, and is no less essential to it than the stateliest and most beautiful pillars.”*

No one was better able to expose the fallacy of the arguments used by the abettors of the Revolution than the Dean; “*Causa latet, vis est notissima*,” was the motto he culled from the Roman poet; he knew the texture of the curtain which hid these pseudo-patriots and their acts from the light of day—he suffered it to be used for a certain period, and contented himself with delineating the effect of the measures adopted, leaving their projectors under its protection; but, when he had traced these measures to their proper source, he suddenly rent asunder the flimsy blind, and obliged those with whom they originated to stand forward in all their native deformity, as the enemies of mankind and the abettors of murder and sedition;—he shewed those to be tyrants whose pretended attribute was mercy; and that to be a space filled with noxious weeds which it had been pretended was a garden enriched with fragrant flowers—was a second Elysium, where man might rest free from care, stretch his weary limbs on beds of roses, and forget, in the enjoyment of

* See “The Duty of supporting and defending our Country and Constitution; a discourse preached in the Collegiate Church of Middleham, February 10th, 1793, on the prospect of a war.”

present felicity, past suffering and monarchical tyranny.

The Dean's labours in the above respects were not in vain; he had the gratification of knowing that his addresses and his writings contributed in several instances to arrest the progress of some who were preparing to shake hands "with the abettors of French politics and the vindicators of French Atheism,"* and to recal others, who had formed so dangerous an union, to a proper sense of their civil and religious duties. Although his personal conferences possessed much of the *fortiter in re*, yet they stood much in need of the *suaviter in modo*; his zeal, however, for the success of the cause in which he had embarked, and his manifest sincerity in his wishes for the welfare of those whom he addressed, supplied, in a great measure, this defect, and induced them to listen to advice communicated in an earnest, though uncouth form, but of such a nature as to furnish ample food for the reflection of the sober hour, and to induce them to forsake the inauspicious convoy under which they either had sailed or were preparing to embark;—to those who yet retained their scruples as to the propriety of a monarchical government, he would apply the observation of Tacitus; and, while he told them to remember the many blessings which they enjoyed under the happy

* See his "Essay on the Principles of French Civism," published in 1792.

government of their own country, he would remind them, in the words of that historian, "*Reipublice forma, laudare facilius quam evenire; et si evenit, haud diuturna esse potest.*"

When the memorable question of the Abolition of the Slave Trade was brought under the consideration of a British Legislature, and before the view of a British public — when the towering eloquence of a Pitt supported the persuasive eloquence of a Wilberforce in this great cause of humanity and justice—the Dean was not idle. The abolition of the above traffic had been an event which he had fondly cherished the hope of witnessing ever since his personal observation, when abroad,* of the inhumanity of Guinea captains, and (generally speaking) the avaricious temperament of West India planters, had convinced him of the unhappy state in which the African negroes were placed; † torn frequently, when adults, from their native soil, to serve the private purposes of others—obliged to be fellow-labourers with those who had been accustomed to

* The Dean was a native of the West Indies.

† The above is the substance of what he once mentioned to me in conversation; probably, however, the Dean entertained by far too harsh an opinion of the Guinea merchants and West India planters;—it is well known that many of the latter were men possessing the best notions, and of the most humane habits; and, with regard to the former, candour compels us to hope, that amongst them there were many whose employment had not so steeled the heart as to render it impervious to the calls of humanity.

the occupation from earliest infancy—he commiserated these wretched creatures, who were impelled, contrary to nature, to follow an employment to which they felt no attachment, to the due performance of which no moral or social ties urged them, and in which their instructors were the Creoles, and their incitement to labour the fear of chastisement:—yes! he commiserated these wretched creatures, who, contrary to all laws, human or divine, were bound to the obsequious service of a superior, and not allowed to question the justice or rectitude of that superior's decree. Incapable of union—deprived of that mental cultivation, as necessary to the mind as food to the body—he pressed forward to the succour of victims, held by no human ties but those of oppression and injustice! As a freeman of a nation professing to rank the highest in the scale of nations, as the supporter of freedom and the friend of humanity, the Dean felt it his duty to protest against the continuance of a traffic which was a stranger to the name of the one, and a daily violator of the laws of the other; and, as a presbyter of the Christian Church, he felt himself no less imperiously called upon to raise his voice against a system at direct variance with the fundamental doctrines which she preached—doctrines which taught men to “love one another,” and which told them that “all things whatsoever we would that men should do unto us, we should do even so to them.” Alike unmoved at the reproach

of being a religious enthusiast, which was cast upon him at the one hand, and at the charge of inconsistency as a favourer of republican principles, which was alleged against him on the other, the Dean steadily pursued his object; telling the one party, that, if a fellow-feeling for the sufferings of fellow-creatures, and a desire of alleviating those sufferings, could be called religious enthusiasm, he acknowledged himself as labouring under that disorder;* and the other, that, if the desire of civilising a nation rendered unprincipled and barbarous by intestine commotions, occasioned by resistance to illegal captures, savoured of revolutionary principles, he was proud in entertaining them. The endeavours of the Dean to bring the West India planters to a sense of their true interests were tantamount to those which he used to impede the progress of infidelity and disaffection; reminding them of Nature's laws, of their illegal use of power, and of their degradation in the scale of civil society, he exhorted them to forsake the blandishments of a situation acquired by unnatural custom; he exhorted them to bend

* As his reply to the above cavil, I could fancy our lamented friend adopting the celebrated sentiment of the Roman comedian—" *Homo sum, humani nihil a me alienum puto* "—a sentiment which is said to have been received with reiterated plaudits by a Roman audience, and which has been handed down to posterity as one " which speaks with such elegance and simplicity the language of Nature, and supports the native independence of man."

before reproof, to reflect, to lay their hands on their breasts, and to fan the embers of humanity into the flame of African Emancipation—to fan them into a flame which, while it reflected eternal honour upon those who cherished it, shewed forth in its brightest colours and proudest array the triumph of *Christian feeling over interested ambition!*—Numerous were the journeys which he took to forward this great cause of national justice and retribution; and the value of his services may be collected from the public vote of thanks with which he was honoured, from the society that was formed to assist in accomplishing the great object which Mr. Wilberforce and his parliamentary associates had in view.* The publications on this subject which owed their appearance to his prolific pen were numerous; and it is greatly to be regretted, that our lamented friend never kept an accurate account of the pamphlets and incidental tracts which on this, as on other great questions, he gave to the world. Happily he lived to see the fruits of his labours in the abolition of this detested traffic—an abolition, produced not by the blaze of eloquence or the trick of declamation, but by solid, well-founded conviction, wrought on the minds of our legislators by a slow, yet sure progress, and which terminated, as it was certain of doing, in their “breaking the bonds” of Afric

* I believe the ever-to-be-remembered Granville Sharpe presided when the above vote was passed.

slavery, and “throwing away” from their native country the stigma with which she had so long been branded. He regarded the ultimate decision of the Legislature on this never-to-be-forgotten question as a triumph, the splendid trophies of which were borne by those who had been raised from a state of servile and unlimited dependence—from a state which threw reason into the shade, and nipped her “earliest bud”—to one where liberty presided, reason assisted, and humanity protected;—he regarded it also as the approach of a season of happiness which he had long contemplated—he hugged the prosperity of his country to his breast, and was not “afraid of foreign foes whilst internal justice guarded her citadel!”

When the Roman Catholics petitioned our legislators for what was called Catholic Emancipation—when they boldly asked for a repeal of those laws which have been justly denominated “the bulwarks of our constitution”—the Dean was found at his post. Convinced that a compliance with the above request would be equivalent to the extinction of the Protestant ascendancy in this country, and that it would give the Roman Catholics political power, while they only professed to seek religious freedom, he considered himself called upon, as a presbyter and a citizen, to stand in the breach, on behalf of the Protestant Church and State, to which he belonged; and, with all his ability, to protect them from the infliction of so mortal a wound as a concession of

Roman Catholic Claims could not have failed of giving them. Perhaps no one, in an historical point of view, was more competent to argue this great national question than the Dean; and, although it was to be lamented that his zeal sometimes exceeded his prudence pending the discussion, yet his firmness in resisting what he thought to be wrong, and in supporting what he conceived to be right, was deserving of universal admiration.—Believing that the Roman Catholic Question had never been sufficiently considered by many who had the Protestant cause thoroughly at heart, he endeavoured to excite their attention to it, as a question of the utmost consequence, and as one upon the decision of which depended either the maintenance or the downfall of our civil and religious privileges. With every respect for the Church of Rome, as a true branch of the Catholic Church, he did not hesitate to expose those corruptions which in the latter periods of ecclesiastical history had crept into her pale, and robbed her of that purity which he believed the Church of England had retained. While he detested the modern Pope, he venerated the ancient Bishop of Rome, and his opposition to the claims of the Roman Catholics arose from his dread of the operation of those principles which teach them to persecute and domineer, instead of to convince and unite.* The Dean was in

* It is unfortunate for the discussion of the Roman Catholic Claims, that, unless great care be taken, the party opposing them

the habit of viewing the Roman Catholic Claims as a question incapable of being discussed upon general principles ; he considered it as one pregnant with the most important results, inasmuch as he viewed the concession of the Claims urged as the first step towards the restoration of a sacerdotal influence, which had at all times been inimical to the existence of a civil government—impatient of contradiction, and indignant at restraint. Knowing that it was easier to deal with a suppliant enemy than with one who had been placed in a partial situation of defence, the Dean opposed the concession of *any* claims ; and, while he disdained to insult a fallen foe, he did not fail to remind her of her conduct when in power : he was aware that “*semper eadem*” was still the maxim of the Roman Catholic Clergy, and that absolute conformity to the religious opinions of

is very frequently betrayed into the use of expressions which are calculated to wound the feelings of most honourable and respectable characters. It would be absurd to deny, that amongst the Roman Catholics there is every thing good, great, and noble ; and this is most sincerely to be regretted, when it is considered, that those who are otherwise every way calculated to be the ornaments and pride of their native country, are *necessarily* excluded, by the fundamental laws of that country, from directing her affairs, or assisting at her legislative councils. It would give me great pain if, in the general observations which I have above made, I should hurt the feelings of any member of the Roman Catholic body ; but it would have given me far greater pain if, to avoid hurting those feelings, I had hoodwinked the consideration of a great national question.

the ancient Catholics was their chief glory and pride. While he sincerely respected many members of the Romish Church, he never permitted that respect to interfere with his duty, or to impede his acting in opposition to them upon points wherein he conceived they were completely ignorant as to the extent their principles would carry them. He was an admirer of those who disdained to temporize on this great national question, and was of opinion that "the only way of dealing with it was, to meet—resist—and set it at defiance at once,"* instead of waiting until repeated concessions had produced indifference to any established form of religion, and the question might have again been raised, whether the cross or the crescent should be placed on the walls of Oxford.

In that memorable year (1812), when this country was placed in so awful and novel a situation—when the mighty legions of France were preparing to enter the austere clime of Russia, and, by a conquest of her vast domains, to pave the way for a general subjugation of Europe; then was it that the Dean so greatly distinguished himself in his exertions against the claims of the Roman Catholics. Though far beyond the meridian of life, and sinking fast into the "vale of

* Vide Sir John Nicholl's speech in the House of Commons on the 3d Feb. 1812.

years," yet the urgency of the occasion, and the peculiarly threatening aspect of public affairs, aroused his yet active spirit, and induced him once more to enter the "tented field" on behalf of all that he held dear and sacred upon earth—the civil and ecclesiastical constitution of his country! His time, at this moment, was entirely devoted to the service of this sacred cause, and his labours to produce a general consideration of the subject amongst his Protestant countrymen, and to arouse them from that fatal lethargy into which they appeared to have fallen, were unremitting;* but his success in these particulars was by no means equal to his expectations; and he was almost going to sit down in despair—was preparing to write "Ichabod" on the gates of that Church in which he had delighted, when the ever-memorable Charge of the Bishop of Lincoln burst upon the view of the public, and carried with it a conviction highly favourable to the Protestant cause. Happily the archdeaconry of Leicester was amongst those districts which first acted upon this conviction; and the Dean was amongst the most active of those clergymen who assisted in directing its energies.

* The tracts, &c. which the Dean wrote and dispersed upon this, his favourite question, were (I had almost said) innumerable; at the period above referred to, a week seldom passed without one of them making its appearance, and his sitting-room bore a greater resemblance to a compositor's study, than the apartment of a private clergyman.

In the month of November, in the above year, a meeting of the clergy was holden for the purpose of petitioning the Legislature against any further concessions being made to the Roman Catholic body; and early in the month of December a very spirited and able petition was presented from them to the Lords by their esteemed diocesan; and to the Commons by their county representatives. From this time until the great question received its decision, the Dean remained in a state of the most anxious suspense: but when the intelligence arrived, that the House of Commons had virtually rejected the claims, he gave a vent to his joy, and improved the subject by a very able discourse, preached a few Sundays afterwards.

Subsequent to this period, and during the life of the Dean, no attempts worth noticing were made by the Roman Catholics to obtain their favourite object; notwithstanding this, he bore the subject in mind; and it was one of his latest requests to an intimate friend, never to neglect an opportunity of calling the public attention to the point. In a letter written a few weeks previous to his decease, speaking upon this topic, he remarks, that "it may seem improper to introduce any subject which may have the slightest tendency to provoke discussion, or revive the disputes of former days, at a time when the welcome appearance of peace has been universally hailed

with the most fervent rejoicings by a delighted people—when the honours of a grateful country have been heaped upon the heads of returning victors, and nothing has been heard but the cheerful sound of congratulation ;”—[alluding to the rejoicings occasioned by the Peace then lately concluded]—“ but,” continues the Dean, “ when it is recollected, that our dearest interests may be materially injured by our silence, and that an interval of tranquillity may be made use of to lull our suspicions and destroy our energies, by inviting our attention to the ephemeral scenes of present gaiety, when we should be engaged in making preparations for the repulsion of a future attack upon our national liberties ; I hope you will not consider my present allusion to the Roman Catholic question as either unseasonable or improper.”—The Dean had his request granted, in not living to see the constitution of his country, in his opinion, either altered or infringed upon ; and I am quite sure, Mr. Urban, that I am echoing your sentiments, when, in allusion to that constitution, I exclaim *ESTO PERPETUA !*

Until, therefore, Sir, sufficient materials be found to enable a more powerful pen to rescue the memory of Dean Nickolls from the wreck of time, by giving the world a regular memoir of his life and writings—this sincere but feeble tribute to that memory may serve to shew posterity that in his person civil society has lost an able

advocate, humanity a firm friend, and the constitution of his country a faithful presbyter and citizen!

THE following is the inscription placed on a monumental tablet in the church of Stoney Stanton :

Underneath
are deposited the mortal remains of
The Very Reverend
ROBERT BOUCHER NICKOLLS, LL.B.
Dean of Middleham, and
Rector of this parish.

His Christian zeal and extensive learning were shown by numerous publications in Defence of Religion; and a diffusive charity, the fruit of his faith, shone forth in his daily example. After a long life, spent in the service of his Saviour, in whom alone he trusted for acceptance with God, he was removed by a short illness to eternal rest,

on the 11th day of October, 1814,
in the 75th year of his age.

This monument was erected by his afflicted surviving Brother, James Bruce Nickolls, of Alexandria, in Virginia, in grateful remembrance of his private virtues and public usefulness.

' The memory of the just is blessed.'

MEMOIR

Of the Ven. THOMAS PARKINSON, D.D., F.R.S.
Archdeacon of Leicester.

[*Published in the Gentleman's Magazine for January 1831.*]

ON the 13th of November 1830, died at the rectory, Kegworth, Leicestershire, in the 86th year of his age, the Venerable Thomas Parkinson, D.D., F.R.S., Archdeacon of Leicester, Chancellor of the Diocese of Chester, a Prebendary of St. Paul's, and Rector of Kegworth.

Dr. Parkinson was born at Kirkham in the Fylde, in Lancashire, on the 14th June 1745. His father being engaged in pursuits which called him much from home, he was brought up chiefly under the guidance of his mother, who was a most affectionate parent, zealously solicitous for the best interests of her family, continually watching over them, and who ensured and enjoyed, as the reward of her amiable exertions, the gratitude and love of her children. Dr. Parkinson was sent at an early age to the Free Grammar School in Kirkham, where he received the rudiments of a classical education. When there he was always considered a youth of promising talent and great application. Contrary

to the wishes of his father, he formed an early desire to obtain an university education, and the opposition which he experienced no doubt delayed his removal to college beyond the usual period at which young men were then accustomed to enter the university. The difficulties, however, which he had to encounter in this respect were at last obviated, and at the age of nineteen years he was entered as a Pensioner at Christ's College, Cambridge.

Mr. Parkinson had trials of no ordinary nature to undergo when at college; the same spirit which opposed his entrance at the university in the first instance, induced his father to refuse him all pecuniary assistance when there. An octogenarian friend of the subject of our memoir has recently expressed his belief, that, beyond common necessities, Mr. Parkinson never occasioned his father to expend more than 20*l.* in the whole course of his life. He left the school at Kirkham for college with an exhibition of 34*l.* per annum.

It was the denial of all pecuniary assistance on the part of his father which probably compelled Mr. Parkinson, after engaging closely in the routine of college studies, to spend much time in abstruse calculations, and seldom allow himself more than five or six hours for repose. On the recommendation of Dr. Shepherd, Plumian Professor of Astronomy and Experimental Philosophy, (the senior tutor of Christ's College,) he was employed by the Board of Longitude in the calcula-

tion of tables of the series of parallax and refraction. He was assisted in this labour by Mr. Lyons, the author of a treatise on Fluxions. By their united efforts (the greater portion of the fatigue, however, devolving upon young Parkinson,) the volume, a tolerably thick quarto, closely printed, was completed in two years. At this period it was highly creditable to the subject of our memoir, that, although suffering under grievous disadvantages, he annually remitted a sum for distribution amongst the poor of his native town, and educated his brother Robert at Emanuel College.

In the outset of life Mr. Parkinson's worldly disappointments were great, and his prospects gloomy. Independently of receiving no aid from his father in his college pursuits, he had the mortification of seeing a property which he had been always taught to expect would have been his own bestowed elsewhere. What would have operated as a severe affliction upon some, had not that effect upon him; he regarded the privation as a mercy, and has been frequently heard to remark, that, had affluence smiled upon his early career, indolence would probably have claimed him for her own.

The time spent in the calculations above referred to, must have materially impeded his private studies, preparatory to taking his Bachelor's degree; he, however, gained the first mathematical honour of his year, and that against a competitor of great reputation in his day as a mathematician. Mr. Parkinson took his degree of B.A. in January in

1769, having commenced his residence in college in October 1765.

On the 25th May 1769 he was ordained Deacon by Dr. Terrick, then Bishop of London, at Fulham; and on the 4th February 1771, Priest, by Dr. Law, then Bishop of Carlisle, at Cambridge. At the end of 1773 he succeeded Dr. Law (late Bishop of Elphin, and brother of the late Lord Chief Justice Ellenborough,) as one of the Tutors of Christ's College, and some years after became Senior Tutor on the retirement of Dr. Shepherd. He officiated as Moderator in the examination of the young men for their degrees in the year 1774, when the late Dr. Milner (Dean of Carlisle and Master of Queen's) was Senior Wrangler. The other Moderator of the year was Mr. Kipling, afterwards D D. and Dean of Peterborough. On the 29th June 1775 he was presented by the Dean and Chapter of Ely to the vicarage of Meldreth, in the county of Cambridge. He served the office of Proctor of the University in 1786-7.

In 1789 he published a large quarto volume on Mechanics and Hydrostatics, a branch of practical mathematics upon which he had thought deeply. This volume has been frequently and most extensively used as a work of reference.

In the year 1790 he was instituted by Bishop Pretyman to the rectory of Kegworth, Leicestershire, upon the presentation of the Master, Fellows, and Scholars of Christ's College: and consequently avoided Meldreth, by cession.

On the 16th April 1794 he was collated by his contemporary at college, Bishop Pretymán, to the archdeaconry of Huntingdon. In 1795 he took his Doctor's degree. For the prebend of Chiswick, in St. Paul's Cathedral, he was indebted, in 1798, to the late learned and respected Bishop Porteus; and on the 12th October, 1804, Bishop Majendie conferred upon him the chancellorship of the diocese of Chester. The selection of Dr. Parkinson for these varied preferments, by three contemporary prelates of the Established Church, was no small tribute to the excellence of his character and the extent of his acquirements.

In 1812 Dr. Parkinson resigned the archdeaconry of Huntingdon, and was collated to that of Leicester by Bishop Tomline (formerly Pretymán). Dr. Middleton (afterwards the memorable Bishop of Calcutta) succeeded Dr. Parkinson as Archdeacon of Huntingdon.

On Dr. Parkinson's assumption of office as Archdeacon of Leicester, he, at the desire of the diocesan, convened a public meeting to take into consideration the best means of educating the children of the poor, according to the plan of national education adopted in the metropolis. A meeting of the gentry and clergy was accordingly held in the castle of Leicester, on Thursday the 4th of June 1812, when the subject was introduced by the Archdeacon in a very elegant and animated address. The result was the establishment of an extensive school in Leicester, upon the Madras sys-

tem, and which, according to the last printed report of the secretary and committee under whose direction it is managed, contained 284 boys and 102 girls, and had educated, from its commencement in 1818, no less than 3,480 children.

In November 1812 a requisition, most respectably signed, was sent to the Archdeacon, soliciting him to convene a meeting of the clergy of his Archdeaconry, to take into consideration and to form a petition to Parliament against the Roman Catholic Claims. The Archdeacon complied with the requisition, and a meeting was held, at which, after considerable discussion, a petition drawn up by Dr. Parkinson was adopted, which was afterwards presented to both Houses of Parliament. The Roman Catholic Question was one upon which the Archdeacon had thought much, and in which he felt deeply interested. Firmly believing that no change had taken place in the principles of the Roman Catholic Church, and that the same aversion to Protestantism, the same arrogation of exclusive faith and salvation, and the same desolating system of intolerance, were still upheld at her altars, which had in former times excited the just dread, and produced the protecting laws of our Protestant forefathers, he scrupled not to stand forward in opposition to any repeal of statutes, the maintenance of which he conscientiously believed to be essential to the very existence of the country as a Protestant state. The idea of conciliating

the great body of the Roman Catholics by concessions he treated as utterly chimerical; he had narrowly watched the effects produced by former concessions, and had found that, instead of giving satisfaction, and leading to ultimate peace, they had only produced fresh demands, to be repeated till nothing was left to be conceded. The chief ground, however, of Dr. Parkinson's opposition to the grant of the Roman Catholic Claims was a dread of exciting the anger of the Deity, and the consequent outpourings of wrathful judgments upon the country for relinquishing what he conceived had been, under Divine Providence, the only means of enabling Britain so long to protect and cherish the Protestant faith. With respect to the Roman Catholics as fellow-men and fellow-subjects, the right hand of friendship was never withholden by Dr. Parkinson. It was not against them, but against their principles and their priesthood, that he warred.

In August 1813 Archdeacon Parkinson presided at a meeting held at Leicester, when a Society was formed for the County of Leicester in aid of the London Society for promoting Christian Knowledge. He also took an active part in the establishment of Savings Banks within his jurisdiction. He interested himself very warmly in the erection of an episcopal chapel on the newly-inclosed forest of Charnwood, and on Sunday the 18th June 1815 (the very day, and at the very hour, the battle of

Waterloo was raging in full fury,) a very commodious chapel* was consecrated by Bishop Tomline, for the use of the inhabitants of the immediate district. A sermon was preached on the occasion by Mr. (now Dr.) Bayley, then Sub-Dean of Lincoln, now Archdeacon of Stow and Prebendary of Westminster. In 1818 a District Board was formed for the Archdeaconry of Leicester, at the request of his Majesty's Commissioners for Building New Churches. The Archdeacon was appointed Chairman of the Board, and through its agency an elegant Gothic church, capable of containing 2000 persons, was erected in the parish of St. Margaret, Leicester.† Dr. Parkinson never omitted attendance at the Board when his health permitted, was a liberal subscriber to the fund for purchasing and fencing the site of the church, and, during the entire progress of the undertaking, evinced the liveliest anxiety for the completion of the object in view.

During Dr. Parkinson's incumbency of the Archdeaconry of Leicester several other petitions were presented to Parliament from the clergy of Leicestershire, against the concession of the Roman Catholic Claims. Some of these were warmly attacked in the House of Commons by Sir James Mackintosh, Mr. Barham, and others. On one occasion Mr. Legh Keck, M.P. for Leicestershire,

* See an engraving of the Chapel in the Gentleman's Magazine for 1815, vol. lxxxv. part i. p. 209.

† St. George's: see before, p. 275.

spoke at considerable length, and with great spirit, in defence of the course pursued by his clerical constituents. It was in 1825 that the Archdeacon once more furnished a petition which, with some alterations, was adopted and presented. This petition was rather singular in point of form. One of the reasons it assigned why the claims should not be granted had reference to the Archdeacon's dread of the dispensations of Divine Providence. This part of the petition was commented upon with great severity by Lord King in the House of Peers. The Archdeacon was gratified at the notice bestowed on the passage, and frequently declared that, unless a similar view of the subject was introduced into a petition having reference to the Roman Catholic Question, and emanating from a body of Protestant clergy, he should feel no pleasure in affixing his signature.

Subsequently to 1825 the infirmities of age pressed so heavily upon Dr. Parkinson that his journeys never exceeded a few miles from home. His intellects were, however, unimpaired, and he was remarkably punctual in replying to any communications which were addressed to him. The loss of some early associates deeply affected him, and he was not an inattentive observer of what was passing in the world around him. Occurrences which took place there seriously agitated him, and while as a loyal subject he bowed with the utmost submission to the decisions arrived at by the Legislature on some vitally important ques-

tions, he deeply lamented the fatal errors into which he conceived that Legislature had fallen, and trembled for the consequences. He had been visibly declining for about a year previous to his death. The natural vigour of his constitution, however, enabled him sometimes to rally in such a manner as to excite hopes in the breasts of his friends that he might be spared to them for some time longer. These hopes were completely dissipated for a month or six weeks previous to his death; his appetite had failed him, his rest had become disturbed, and it was clear that, without some material change for the better, he could not long sustain the unequal combat. The trying scene was now rapidly approaching, and for the last week or ten days of his life he took scarcely any nourishment. He waited in patience the close of his mortal career, and his "end," like his "life," was marked by "peace." He merely ceased to breathe when the body and spirit parted—not even a sigh escaped him at the awful moment!

He was interred in the chancel of Kegworth church, on Saturday the 20th November, 1830, amidst the deep regrets of a numerous circle of friends, and the heartfelt sympathies of the village poor, who attended in great numbers on the melancholy occasion.

The character of Dr. Parkinson may be comprised in a few words. His disposition was mild, obliging, patient, humble, and serious; his habits were temperate; benevolence was a leading feature

in his composition, and had manifested itself in beautiful operation through every stage of his life. His perception of what was agreeable and what painful to others was remarkably acute, and (when duty did not interfere) he was extremely cautious of wounding the feelings of those with whom he had to hold intercourse. Truly might it be said, that he participated in the joys and entered into the griefs of all around him. The attachment of his pupils to him was strong and permanent, and evinced itself in various instances. Indeed it was impossible to know him thoroughly and not feel the liveliest regard for him. The honours which he had gained at college, and the rewards which resulted from his literary career, enabled and induced him to extend his sphere of usefulness to his relatives, and to redouble his exertions on behalf of the friends above whom success had far placed him; he had not so "drunk of the world" as to be intoxicated with the alluring potion. The contributions of the Archdeacon to charitable institutions were very large and numerous, and splendid were his acts of private beneficence. Although in the receipt of a large income, and living at a moderate expense in comparison with it, the small property he has left behind him speaks volumes as to the extent of his liberality. There was, undoubtedly, a great want of discrimination with respect to the objects to which his bounty was bestowed. Distress, in whatever shape it presented itself, was almost certain of being

relieved by him. The conviction that a fellow-creature was undone, or in want, was a sufficient passport to his heart.

“ Here did soft charity repair,
To break the bonds of grief,
To smooth the flinty couch of care,
And bring to helpless man relief !”

To his servants he was a considerate and indulgent master, an adviser and benefactor in seasons of difficulty, and a protector when any attempts at either imposition or oppression were made upon them.

Dr. Parkinson was about the middle stature ; his countenance bland and ingenuous ; his eye keen and piercing, and strongly demonstrative of the active and fertile mind which reigned within. On a first interview, something bordering on austerity might have occurred to a party as existing in the Doctor's composition ; but this almost instantly disappeared, and his natural suavity of demeanour evinced itself. His disposition to think well of others sometimes produced a want of firmness when decision was desirable, and punishment highly necessary. This failing, however, principally betrayed itself in cases attended with either palliative or highly afflictive circumstances, which called into exercise the amiable qualities we have been feebly attempting to delineate.

The publications of the Archdeacon were not numerous. In addition to those I have mentioned, he printed “The Duties and Qualifications of the

Christian Minister," a sermon preached in Chester Cathedral on the 20th Sept. 1801; "What is Truth?" a sermon preached in the same cathedral on occasion of a General Ordination, 29th Sept. 1816; "A Charge delivered to the Clergy of the Archdeaconry of Leicester, A.D. 1822. I believe there were several other occasional Charges and Sermons published by Dr. Parkinson, but I have neither the titles of them, nor any means of ascertaining their dates.

J. S. H.

LITERARY AND MISCELLANEOUS
ESSAYS.

ON THE AUTHORSHIP OF
"THE BEGGAR'S PETITION."

To the Editor of the Gentleman's Magazine.

Leicester, August 3, 1809.

MR. URBAN,

I DO not know of a piece which has met with more popularity than the well-known and pathetic production entitled "The Beggar's Petition;" but it is extremely singular that *two* competitors should claim the distinction of being its author! This is a circumstance which has seldom occurred in the literary world, and several gentlemen have felt themselves quite at a loss to account for its origin; it has given rise to various conjectures, and some have expressed their surprise that a poem so familiar to every reader of taste should thus remain apparently unappropriated.

In the "Universal Magazine" of April last, a question was proposed relative to the subject, by a London Correspondent, who wished to know whether Dr. Joshua Webster was the author of the piece to which I allude, or the Rev. Mr. Moss; as the former was stated to possess that honour in a preceding number.

I happened to take up accidentally, very shortly

after the perusal of this query, one of your Magazines for the year 1799, and I there found a communication dated from "CHELSEA,"* which affirmed that the Doctor was *actually* the *composer* of the affecting lines in question, and that *they were written at St. Alban's in the year 1764.*† These assertions were ably contradicted

* This was the place where the Doctor was stated to reside, and it is rather extraordinary that the letter inserted in the "Universal Magazine" of December 1807, should be couched nearly in the *identical words* which were made use of by your Chelsea Correspondent at this time.

† MR. URBAN,

Chelsea, Oct. 24, 1799.

I DO myself a pleasure in sending you some account of a well-known and much admired poem, entitled "The Beggar's Petition."

This very pleasing and pathetic poem is the production of Dr. Joshua Webster, M.D., and was written at St. Alban's in the year 1764. It refers to an aged mendicant named Kinderley, or Kinder, who had once lived on his little paternal estate near Potter's Cross, between St. Alban's and Berkhamstead, in Hertfordshire, and was for many years a farmer in decent circumstances. His ruin was occasioned by the artifices of what Pope calls a "vile attorney;" yet, at the time of the above elegant composition, he had dragged on a sorrowful existence to the great age of 83, and he continued to live some years after. The ingenious author of the stanzas is now (in 1799) resident in Chelsea, and, like his subject, is far advanced in years; *animi autem maturus Alethes, crudæ viridisque senectûs.*

Dr. Webster has a drawing of Kinderley in water-colours, representing him as begging at the door of a cottage or farm-house, designed by the Doctor himself, and to which he has affixed the beautiful lines in MS.

That justly celebrated picture of "The Woodman," painted by Gainsborough, from which an admirable print has been engraved

by another Correspondent in your publication for the ensuing month, who proved, beyond all possibility of doubt, that the Rev. Thomas Moss, minister of Brierly Hill, and of Trentham in Staffordshire, was the *genuine* author, and described the *time* when *he* wrote them, the *person* to whom he sold the MS., together with several other important particulars relevant to their composition.* No

by Simon, was done from a hale woodcutter, who worked for Dr. Webster at Chigwell Row, in the parish of Chigwell, Essex.

In early life Dr. Webster was very intimately and professionally connected with Dr. Nathaniel Cotton, of St. Alban’s, author of “Visions in Verse for younger Minds;” and of a variety of other pieces, which are highly esteemed.

B*.*.

* MR. URBAN,

Jan. 12, 1800.

IN vol. LXIX. p. 1014, I find it positively asserted, by an anonymous writer, in a letter dated from Chelsea, that Dr. Joshua Webster, M.D. is the author of the poem which has been generally, though not at its first publication, entitled “*The Beggar’s Petition*,” and so circumstantial is the account which he gives, both in regard to time, to places, and to names, that his opinion, as a *primâ facie* evidence, would almost induce an uninformed person to believe it authentic and decisive. But, if we examine the letter of this writer a little more minutely, it will appear that the only reason on which he grounds his assertion is, that Dr. Webster has in his possession a drawing, in water-colours, of an aged mendicant, with the said poem affixed to it in manuscript: which, it must be confessed, is a very curious reason for a very curious assertion, because, for the very same reason, the tendency of his letter would have been as applicable to twenty other persons as to Dr. Webster. But the truth is, that Dr. Webster had not the least concern in the composition of that little poem; and, whatever may be its merits, or whatever honour may on that account attach to the real author of it, I can confidently

answer was given to these allegations by the "Chelsea Correspondent," and they remained totally unnoticed — NO REFUTATION OF THEM BEING ADDUCED, AS I CAN DISCOVER!!!

affirm that it is the entire production of the Rev. Thomas Moss, minister of Brierly Hill, and of Trentham in Staffordshire; and I have his authority further to say, that he wrote it at about the age of twenty-three, that he sold the manuscript of that, and of several others, to Mr. Smart, printer, in Wolverhampton, who, from the dread which Mr. Moss had of criticism, was to publish them on this condition, that only twenty copies should have his name annexed to them, that these copies should be presented to his relations and friends, and that they may now, if thought necessary, be seen at any time.

I think it proper, however, here to observe, that the poem, as printed by Dr. Enfield in his *Speaker*, and from which most of the copies in circulation are literally taken, is in some respects different from the original, and I know that the author did not think himself obliged to Dr. Enfield for the alterations he had made in it. Thus for example: the author simply denominated his poem *The Beggar*, and not *The Beggar's Petition*, and he added to it this motto,

—————inopemque paterni
Et laris et fundi—————

Hor.

The author used the expression *stream* of tears, and not *flood* of tears, which, in his opinion, is not only less harmonious, but absolutely improper, because it is said before,

And many a furrow in my grief-worn cheek
Has been the *channel* to a *stream* of tears.

And it is well known that *floods* do not flow in *channels*, though the same cannot be said of *streams*; but, besides this, the alteration of *stream* into *flood* does, as it seems to the author, entirely destroy the beauty of the sentiment, because the word *flood* implies that the beggar's grief arose merely from a sudden impulse, as a

Now, Mr. Urban, I wish to know, through the medium of your respectable columns, what Dr. Webster has to say in his own defence against the charge of plagiarism which he has already been accused of, on account of his remarkable behaviour in this transaction, for the most convincing and indisputable evidence must be brought forward on his part before the opinion which the public have formed of the affair will be effectually eradicated. I assure you that I should peruse nothing with more pleasure than a satisfactory vindication of the Doctor’s conduct; and I trust that this

flood arises from a sudden shower, and soon subsides; but the word *stream* implies that his grief was silent and lasting. The author wrote,

Here, craving for a morsel of their bread;

which he thinks runs smoother than, as Dr. Enfield expresses it,

Here as I crav’d a morsel of their bread.

The author wrote,

A pamper’d menial *forc’d* me from the door;

but the word *drove*, as used by Dr. Enfield, is a downright vulgarity, and carries with it the horrid idea that the beggar was treated with some kind of severity.

The last alteration is, instead of

Should I reveal the source of every grief,

Dr. Enfield says,

Should I reveal the sources of my grief.

But whether this is any real improvement to the line, I must leave to those who are better judges than myself to determine. If any further information should be thought necessary for the conviction of your correspondent, it may be had from the Rev. Tho. Moss, minister of Trentham.

Yours, &c.

address will call forth a reply from him or some of his friends; but if he and they are determined to “shelter themselves in silence,” his guilt will be considered as sufficiently proved, and I shall be prompted to entertain an unfavourable estimate of a character which may be highly respectable.

J. S. HARDY.

In the same volume of the *Gentleman's Magazine*, at p. 1187, is a letter from Mr. Joseph Smart, stating that the Rev. Thomas Moss's poems were “printed at Wolverhampton by my father, George Smart, in the year 1769, under the title of ‘Poems on various Occasions,’ but without the author's name; having, as publishers in London, the respectable names of Mr. T. Longman, Paternoster-row, and Mr. R. Dodsley, Pall Mall. The latter gentleman thought so well of the poem called *The Beggar*, as to introduce it into the poetical department of the *Annual Register*, published shortly after; and from thence it was copied into most of the periodical publications of that time: if I am not very much mistaken, into your own, Sir, though I cannot positively assert it.*

“Mr. Dodsley's extensive knowledge of poetical composition will not be doubted; and his paying such honour to this piece is, in my opinion, a convincing proof of its originality. It was afterwards introduced in *Enfield's Speaker* as anonymous; but in later editions with the name of Moss; and few, if any, poetical selections from the period of its publication by my father have been without it. That it ever appeared in print before, I believe, is not in the power of any one to prove.

“These circumstances alone are, I conceive, sufficient to entitle the late Rev. Thomas Moss to whatever praise the poem of *The Beggar* merits; nor can I think its superiority to the others that

* It is inserted in the *Gentleman's Magazine*, vol. lxi. p. 820; but that was not until the year 1791. A Latin version, signed E. T. D. is printed in the *Magazine* for 1798, vol. lxxviii. pp. 331, 426.—EDIT.

accompanied it any real ground for suggesting the contrary. I believe it is generally acknowledged that Fielding never equalled his Tom Jones, nor Smollet his Roderick Random.

I have a perfect recollection of Mr. Moss calling upon my father with the copy of his poems, and can aver that they were all of the same handwriting; and that, with respect to *The Beggar*, a small alteration then took place. The last line of the first verse was written “And Heaven *shall* bless your store.” After a short conversation between them, *shall* was changed to *will*.

In 1824 Mr. Stockdale Hardy returned to this subject in the following letter:—

MR. URBAN,

Leicester, August 9, 1824.

IT is very singular that such contradictory statements should have been made with respect to the author of the well-known and pathetic poem entitled “*The Beggar’s Petition*.” During the last twenty or thirty years the lines in question have been several times attributed to a Dr. Webster of Chelsea, while on the other hand the claim of the Rev. Thomas Moss* to them has been repeatedly and distinctly asserted. In 1809 I took part in a correspondence upon the subject, which was carried on through the medium of your publication, and which it was conceived had fully settled the point in favour of Mr. Moss; the pretensions, however, of Dr. Webster having been again brought forward by a correspondent in the “*Monthly Magazine*,” it may perhaps assist the investigation

* Late Minister of Brierly-hill and of Trentham in Staffordshire, where he died in 1808.

to recapitulate what has appeared in your pages upon the subject.

So long back as the year 1799 (during Mr. Moss's life-time) Dr. Webster was represented as the author of "The Beggar," and it was stated in a communication dated from "Chelsea," and addressed to yourself, that "he wrote it at St. Alban's in or about 1764, and that it referred to an aged mendicant named Kinderley or Kinder, who then resided near that place" (vide vol. lxix. p. 1014). The Doctor's title was forcibly disputed by a Correspondent in a subsequent Magazine (vide vol. lxx. pp. 40-41), who stated some very strong facts in support of Mr. Moss's claim to the poem. No reply to this gentleman appears to have been made, and thus matters remained (as far as I am aware) until December 1807, when a letter, couched nearly in the identical words made use of by your Chelsea Correspondent in 1799, appeared in the "Universal Magazine," and which of course asserted Dr. Webster to be the author of "The Beggar." In April 1809, a Correspondent in the same Magazine renewed the inquiry, and in reply to him I addressed a letter to the editor, inclosing copies of the two letters which had appeared in your Magazine in 1799, and these, with my communication, were inserted in the "Universal Magazine" for May 1809. The matter being brought to this point, it was thought advisable by some literary gentlemen that the question should be then set at rest; and accordingly,

in your Magazine for Aug. 1809 (vol. lxxix. pp. 726-727), Dr. Webster was distinctly called on to substantiate his pretensions. No answer to this appeal was given either by the Doctor or his friends, and after some further correspondence on the subject, Mr. J. Smart, of London, addressed a letter to you, which appeared conclusive. In this letter (vide Suppl. vol. lxxix. pt. ii. p. 1187) Mr. Smart asserted the *exclusive* claim of Mr. Moss to the lines in question, in the most positive manner. He stated himself to be the son of the gentleman who first printed the poem, and that he was present when Mr. Moss delivered the MS. to his father for publication, at which time a verbal alteration was made in the last line of the first verse. Mr. Moss had written it "And Heaven *shall* bless your store;" after a short conversation between Mr. Moss and Mr. Smart, sen. the word "*shall*" was changed to "*will*."

Nothing further appears to have transpired on the subject since 1809, until the re-assertion of Dr. Webster's claim recently made in the "Monthly Magazine." It is, indeed, most extraordinary that the claim of the Doctor to the beautiful and affecting lines alluded to should be thus periodically asserted, and that the assertion should invariably give rise to a counter-claim on the part of Mr. Moss, which is no sooner made than tacitly admitted. This is a circumstance which has seldom occurred in the literary world, probably never with

the peculiarities attending it in the present instance.

Yours, &c. J. STOCKDALE HARDY.

In the Magazine for October following another writer made these further remarks :—

MR. URBAN,

Sept. 27, 1824.

That a question, supposed to be at rest, should be revived at stated intervals, is, as your excellent Correspondent observes, "most extraordinary." Surely there can be no need of further witness, or *myself* could testify, that upwards of thirty years ago, and when an undergraduate of Worcester College, Mr. *Moss* favoured me with a visit; and the conversation happening to take that turn, *he distinctly avowed himself to be the author* of the lines in question ("The Beggar's Petition"), and proceeded to *rehearse them* in my hearing. I think he also added, "that some one had endeavoured to deprive him of this child, &c. *tulit alter honorem,*" or something to that effect; and that "he regretted he had sent it forth anonymously." Of these last particulars I am not so sure, but of the former I am positive; and, though at this distance of time, both his manner and remarks (for they were somewhat peculiar) are still comparatively fresh in my recollection.

In consequence (and *before* I had heard or read a syllable of controversy on the subject), I erased the word "*Anon.*" affixed to this poem in my copy of "Elegant Extracts," and inserted the name of *Moss*, nor do I conceive it possible that I should alter it to that of *Webster*; for however an author may be allowed to demur or even to mystify an inquirer, as to the owning or denying any anonymous production, no man, one would hope, of *literary*, much less of *moral* character, would *deliberately claim* what himself has never written.

W.

ON THE PUBLICATION OF BANNS.

[*Published in the Gentleman's Magazine.*]

Leicester, Feb. 11, 1810.

MR. URBAN,

A LATE assertion, relative to the Publication of Banns, &c. having occasioned a considerable degree of surprise amongst the Clergy, I trust the subject to which it more particularly refers will experience that portion of attention which its magnitude imperiously demands.

The letter* of "Senior" afforded me no small share of amusement; but, as several of our most eminent ecclesiastical lawyers have been divided in opinion upon the point in question, I am inclined to think that it is of more consequence than this respectable gentleman apprehends; and I therefore flatter myself that your legal correspondents will favour us with some remarks upon it.

The questions which naturally present themselves, upon a review of the matter in dispute, are the following:

I. Whether or no, the assertion is authorised by the Act of the 26th of Geo. II.?

II. If it is not so authorised, whether or no it receives the sanction of any Constitution or Ecclesiastical Canon, which was made *prior* to the above-mentioned statute, and not *abrogated* by it?

* In the Gentleman's Magazine, vol. LXXIX. p. 1213.

There is an article in Archbishop Parker's Table of Prohibited Degrees, published in the year 1563, which favours the assertion alluded to : but I rather think that the mandates issued by this prelate have not the *force* of a *Canon* : they are described by Doctors Gibson, Grey, Burn, and other ecclesiastical writers, as being "set forth by authority," but I cannot find that they were ratified by virtue of the Great Seal, or agreed upon in Convocation. Some of your readers will perhaps be able to satisfy me upon this point ; as, if they have the force of a Canon, they are binding upon the Clergy, although not upon the Laity ; if, on the contrary, they do not possess such a power, I should suppose that no Court of Judicature would choose to pronounce a sentence which rested its validity upon them.

Indulging the hope of seeing the preceding queries noticed, I remain,

Yours, &c.

J. S. HARDY.

ON THE WANT OF PAROCHIAL CHAPELS.

[*Published in the Gentleman's Magazine.*]

Leicester, August 13, 1810.

MR. URBAN,

I PERUSED the letter * of your respectable cor-

* These remarks were as follow :

MR. URBAN,

June 4, 1810.

EVERY friend to religion, and consequently to the best interests

respondent S. E. with sentiments of admiration and delight ; and I hope that, ere long, the formidable evil of which he complains will be effectually

of society, cannot but observe with the deepest regret that in several inclosures of extensive fens and commons, which have of late taken place, the holy claims of Christianity have been swallowed up and lost in the overwhelming flood of self-interest. A large tract of common has been lately inclosed in the neighbourhood of Spalding in Lincolnshire ; and I think the Commissioners richly deserve the thanks of their country for carrying into execution a plan of great national benefit. But it is much to be lamented that care was not taken for the erection and endowment of Chapels of Ease to Parochial Churches, which, in my humble opinion, were requisite even before the time of the inclosure. How much more necessary, therefore, are they now, when several thousand acres of land, before uncultivated and bare, are brought into a state of tillage, and already begin to be built upon and inhabited ?

What advocate in the cause of true piety and good morals can travel from Spalding to Deeping,* a distance of nearly twelve miles, without feeling mingled emotions of sorrow and indignation, at not meeting with a single Church or Chapel of the Establishment ?

I cannot forbear adding, so extensive are some of the parishes

* This defect has now been partially remedied by the erection of the church of St. Nicholas, Deeping Fen, which was consecrated in 1846, (see the Gentleman's Magazine, New Series, vol. xxvi. p. 526,) but there are still large tracts of land in the counties of Cambridge and Huntingdon as destitute of sound religious instruction in 1850 as they were in 1810. They are penetrated only by itinerant preachers of the least educated class : but it is a remarkable fact, that a neat Wesleyan chapel, which had just been erected near the site of the new church of St. Nicholas, was relinquished in a good spirit to form a church school.—EDIT.

removed. I am astonished that it has not earlier met with the attention of the Legislature, as it is a point of the greatest magnitude : there can be no doubt but that the most pernicious effects have been already produced by it ; and if we look around us, and remark the apathy which is frequently manifested with respect to the welfare of the Establishment, or take a view of the numerous sects of Dissenters which have emanated amongst us, we may, in some measure, trace the origin of these and similar evils to the want of those chapels, the erection of which your correspondent has shewn to be so absolutely necessary.

Many and cogent are the reasons which might be adduced in favour of the erection of Parochial Chapels : they are indispensably necessary in

bordering on these newly-inclosed fens, and so scattered the habitations, that even now (“ tell it not in Gath !”) hundreds of the villagers live as if they were without churches and ministers, without a God to worship or a soul to save ; and scarcely ever enter into a place of any denomination dedicated to the service of Religion from one year’s end to another, except it be to attend a wedding, a christening, or a funeral !

It is real cause of grief and alarm to think how much these serious evils will be increased when the boundaries of the parishes are so greatly enlarged. And the Legislators of this kingdom, whose high and responsible office it is to watch over the interests both of Church and State, are imperiously called upon by every motive, whether drawn from a sense of religion or from policy, to follow the bright example of Queen Anne, of pious memory, and to take care that the erection and endowment of Churches and Chapels keep pace with the increasing population of the country.

large and extensive parishes, in whatever light they are considered : the Minister derives essential benefit from them ; as, by their assistance, he is enabled to execute the divine offices with greater ease to himself, and more to the satisfaction of the parishioners ; the inhabitants participate in the good effects which result from them, as they give them an opportunity of attending divine service with more convenience than they formerly could ; the cause of religion also derives a considerable degree of support from them, as they prevent the parishioners from absenting themselves from public worship, under those vague and frivolous pleas which they frequently urge when the Church is at a considerable distance from their houses. Various other arguments might be brought forward in support of these chapels ; but I feel that, if I were to make use of any more than I have already done, I should be insulting the good sense and perception of your numerous readers—the utility of these edifices being so palpably obvious.

I rejoice that the subject has been recently taken up by a nobleman, than whom no one, perhaps, is more competent to do it justice ; and I flatter myself that, before another session of Parliament closes, something effectual will be done by the Legislature.

Yours, &c. J. STOCKDALE HARDY.

ON A PLAN FOR IMPROVING THE CONDITION
OF THE CLERGY.

[*Published in the Gentleman's Magazine.*]

Leicester, Oct. 5, 1810.

MR. URBAN,

I AM extremely glad that several important subjects, nearly connected with the Ecclesiastical Establishment of the Country, have become the topics of public discussion in your Miscellany, as the communications of your correspondents may do considerable good; and, by reason of the extensive circulation of your publication, be rendered eminently serviceable to the projects of those noblemen and members of the Legislature whose sentiments upon these important points are in unison with those of your able contributors.

“A Country Rector” called the attention of your readers to these momentous considerations; and I rejoice that his letter was not suffered to lie dormant. I rejoice that the hints which he threw out were not disregarded, and I think that he deserves the thanks of the public in general, and of your readers in particular, for his conduct. The reform which this Rev. Gentleman has proposed to be made in our Ecclesiastical Government would, if practicable, be an excellent one; but I very much doubt whether it could be carried into effect in all its parts, without making too great an innovation

upon the present system.* I am not one of those who think that, because a certain system or plan has been in use for time immemorial, it should not be changed for a better, provided such an one could be devised; but I am afraid lest, by disturbing the old fabric, we should bring more of it down than we intend, and that, if we begin to make a great repair, we shall be obliged to prosecute it much further than we at first intended.

The first and fourth propositions of your correspondent would, in my humble opinion, be very difficult to carry into execution, and could not be rendered of any essential use without a considerable alteration in our Statute Laws: these propositions are extremely good, provided their sugges-

* The Plan of "A Country Rector," published in the Gentleman's Magazine for July 1810, comprises the following propositions:—

1. All livings to be raised to 150*l.* per annum (were I to say 200*l.*, it is but a bare competency for the times) by a grant from the Crown.

2. A Resident Clergyman in every parish, with service twice on a Sunday.

3. A further grant, or a fund established by subscription, for the building, repairing, or purchasing houses in those parishes which have not already a habitable residence for a clergyman.

4. Where a Curate is employed, a stipend of 100*l.* per annum to be allowed him.

5. The commutation of tithes for land (the only means of conciliating the minds of the farmers, and averting their hatred from the clergy).

6. Care to be taken that the churches are kept in a decent and comfortable state of reparation.

tions could be adopted; and the present Ministry (the members of which have on several occasions evinced a praiseworthy regard for the welfare of the indigent clergy,) will, most probably, do every thing which lays in their power to introduce either your correspondent's regulations, or else some other of the same nature, to the notice of Parliament.

It seems to me, that the first part of the second proposition of your correspondent is rendered unnecessary on account of the ability of the existing laws to remedy the evil: the Act of Sir William Scott (43 Geo. III. c. 84) was intended to enforce the residence mentioned by your correspondent; and, although it has partially failed in its design, yet, if it were strictly enforced, it would, in all probability, be found sufficient to answer the purposes which its highly-esteemed projector intended it should; indeed it would bear extremely hard upon the beneficed clergy if the laws relative to clerical residence were rigorously put into execution, or rendered more minute than they at present are.

The third suggestion of this Rev. Gentleman has not been overlooked by our Legislators; the Acts of the 17th Geo. III. c. 5, and of the 43rd Geo. III. c. 108, were made to assist the Clergy in the erection and reparation of parsonage-houses, &c.; and, by taking away some of the difficulties which the Statute of Mortmain produced, to excite the generous to lend a helping hand in so laudable an un-

dertaking. But, notwithstanding these Acts, something more is certainly required with regard to this particular, especially when the emoluments of benefices are trivial, and the parsonage-houses, &c. in a bad state, or when there are none; in such cases as these, the proposal of your correspondent might be useful; but it must be admitted under certain restrictions, as in cases where the profits of benefices are sufficient to erect, repair, or rebuild the parsonage-houses, &c. which are either gone to decay or extremely dilapidated.

In the fifth proposition of your respectable contributor, I think every friend to our most excellent Establishment will perfectly coincide; the propriety (nay, the almost absolute necessity) of the Commutation of Tithes must be evident to every discerning man. That tithes have done immense damage to the Church cannot be denied; that they have rendered the exertions of clergymen nugatory, and alienated the affections of parishioners from their ministers, is equally clear: ever since they were invented they have been the occasion of innumerable evils; they have sown the baneful seeds of dissension in many parishes, and by so doing brought many of the clergy into contempt; they have embroiled numberless incumbents in vexatious and troublesome suits, occasioned much uneasiness, and done more harm than an age will completely repair; the sooner, therefore, they are destroyed, the better, and, until that destruction

occurs, it is in vain to expect peace and amity to subsist between the clergy and laity.

The sixth suggestion of "A Country Rector" is very seasonable; it is a pity that the reparation to which he refers is not more attended to than it is; it is certainly a part of the minister's duty to see that his church or chapel is kept in sufficient repair; but I apprehend that the churchwardens are the persons who ought to superintend these repairs: and, if churchwardens did but seriously consider the solemn oaths which they take at the visitations of their Ordinaries, the importance of their stations, and the heavy punishments to which they expose themselves in case of neglect of duty, we should not see so many of our churches and chapels in that ruinous state in which we have now sometimes the misfortune to find them.

Yours, &c. J. STOCKDALE HARDY.

ON THE COMMUTATION OF TITHES.

[*Published in the Gentleman's Magazine.*]

March 5, 1811.

MR. URBAN,

THE propriety of the Commutation of Tithes having been recently agitated in your Miscellany, I beg leave to offer a few observations on the subject. A considerable portion of my life has been

spent in the study of our municipal laws; and, upon a retrospect of my professional experience, I feel no hesitation in saying, that if any one portion of our legal code has occasioned more trouble and vexation than another, that relating to tithes has been the one.

I perfectly coincide with "Clericus Surriensis"* as to the right of the Clergy to Tithes in kind;—it is a right which they have possessed for ages, and which it would be most ridiculous to call in question—it is a right secured to them by the laws of the land, and one which I would be the last man in the universe to take away from them, without giving them a suitable equivalent: but there are some parts of your respectable correspondent's letter to which I must beg leave to express my dissent. He seems to be conscious of (nay, he frankly confesses) the great inconvenience which invariably attends the taking of tithes in kind; and indeed it would have been the height of absurdity to have denied that inconvenience. Now, I would ask, as this inconvenience (to call it by no harsher an appellation) is known to exist; as it is known to produce the most baneful and pernicious consequences; should not some remedy be devised to stop its progress?—Your correspondent seems to think that "a lasting equivalent could not be provided for an ever-varying value."—But have not equivalents been substituted for things of as vary-

* Gentleman's Magazine, vol. LXXXI. i. 36.

ing a value as tithes? and does your correspondent suppose that the average value of the tithes of a parish could not be ascertained, and an equivalent for those tithes regulated accordingly? I am convinced that by far the majority of the clergy would gladly accept such an equivalent, rather than be perpetually harassed by the trouble and attention which must necessarily attend the taking of tithes in kind.

I know several incumbents who take tithes in specie, at the present day; and most certainly they lead as uncomfortable lives as it is well possible to conceive. If a friend comes in to see them, a farmer sends to say that he means to reap in the course of the day, and would be glad if Mr. ——— would come or send some one to see his tenth fairly ascertained. Another sends an angry message, and refuses to pay his demand, and tells him he may recover it as he can. This message terminates in a suit, and I need not tell your readers what a tedious species of proceeding a tithe-cause is—I need not tell them the amazing expenses which it occasions, and the endless anxiety and trouble which arise from it.

Mr. Stockdale Hardy (page 301) has drawn a very correct and affecting portrait of the evil consequences resulting from tithes; and I perfectly coincide with this gentleman in opinion, as well as with your other correspondents who have written on this subject. I once knew a clergyman who was compelled by necessity to institute a suit for

tithes against several of his parishioners, which lasted for several years, and in which suit he finally succeeded. With the commencement of this action the domestic happiness and comfort of this worthy clergyman ceased, his church was neglected, or, if not so, the forbidding aspect of his congregation rendered his pulpit a place of indescribable uneasiness; he felt that his influence was lost, his reputation diminished, and his character as a parish priest disregarded. Every advantage was taken of his failings, his faults were exaggerated; and his parishioners, in return and revenge, had recourse to legal remedy for every trivial circumstance which they could possibly discover about his conduct; at last his situation was rendered so uncomfortable, that he was obliged to leave his preferment, and shortly afterwards died in an obscure village perfectly insolvent. I dare say that, if the history of tithes were to be looked into, many such instances as the preceding might be adduced; but, however, the above is quite sufficient to illustrate the truth of Mr. Hardy's assertion, viz. "that tithes have rendered the exertions of clergymen nugatory, and alienated the affections of parishioners from their ministers." I am confident that the farmers would sooner agree to contribute towards the raising of an equivalent for the clergy, than suffer them to take any part of the produce of their lands or cattle; and, if such an equivalent were once raised, the evils resulting from tithes in kind would cease, and the clergy

would have nothing to do but receive, at the stated time of satisfaction, that recompence which had been provided for them, instead of having their peace of mind disturbed through the whole of the year by taking their tithes in their primitive state.

Yours, &c. BRITANNICUS.

ON THE MARRIAGE OF COUSINS.

[*Published in the Gentleman's Magazine.*]

Leicester, Oct. 8, 1817.

MR. URBAN,

YOUR Correspondent * has justly remarked that "there is a prevailing idea that a law exists by which *second* cousins are forbidden to marry, but

* N. remarks, "There is a prevailing idea that a law exists by which *second* cousins are forbidden to marry, but none to prohibit the marriage of *first* cousins; and the reason given for the prohibition in one case and not in the other, is, that it was not thought needful to forbid what, on account of the nearness of kin, no one would think of doing. We find no prohibition in the Prayer Book to cousins of any degree; but, as many, both *first* and *second* cousins, marry with at least a *doubt* upon their minds as to the lawfulness of what they are doing; and as others more scrupulous refrain from what they *fear* may be wrong, it would be rendering no trifling service to the community if some one of your Correspondents conversant in the law would take the trouble to set the matter in a clear light, both as it regards the law of God and the law of the land."—*Gentleman's Magazine*, vol. lxxxvii. ii. 194.

that there is no law to prohibit the marriage of *first* cousins." This notion has been prevalent for centuries, and originated in the confusion which necessarily arose when the rules which keep the Canon and Civil laws distinct were not so accurately understood as they now are. The Canon law threw a great number of impediments in the way of matrimony, in order to promote dispensations, and thus fill the coffers of the Roman Pontiffs. If we refer to Ayliffe's *Parergon*, p. 364, we shall find what a numerous train of particulars were required to be observed by the Canon law in order to render a marriage effective; but it is curious to observe that almost all these *essential requisites* could be rendered *non-essential* by that dangerous and domineering power which in those days of monkish superstition reigned triumphant over both prince and people.

The Civil law looked upon marriage in a very different light from the Canon law; the one regarded it as essential to the interests of the State, the other as an instrument of emolument and consequence to the Church. In judging, therefore, of the degrees of consanguinity and affinity, the law of England has very properly adopted the computation of the Civil law; and it is from this circumstance that the idea as to the illegality of the marriage of second cousins, and the legality of that of first cousins, originated.* The two laws

* Gibson's Codex, pp. 498—500.

compute the degrees of relationship (as to collaterals) differently; the Canon law making those to be only in the second degree of relationship which the Civil makes in the fourth. I cannot in the course of a letter like the present explain to your Correspondent the minutiae of these different computations, but he may form a very good idea of them by referring to Wood's Civil Law, p. 116, or to Christian's Blackstone, vol. ii. p. 206.

The Statute 32 Hen. VIII. c. 38, abrogated, in a great measure, the Canon law with respect to marriages, by declaring all marriages good which were not contrary to God's law; this Act did away with dispensations by rendering them unnecessary, and placed the subject where it ever ought to stand—on the revealed word of God. By a train of decisions made subsequent to this Statute, the law of England (following the Civil law) has fixed upon the fourth degree of relationship amongst collaterals as the one in which marriage may take place; by the Civil law cousins-german are in the fourth degree, and therefore allowed to marry;* second cousins (or, to speak more correctly, cousins-german once removed,) are in the fifth degree, and of course have the same privilege; and second cousins † being in the sixth degree,

* “*Duorum autem fratrum vel sororum liberi, vel fratris et sororis, conjungi possunt.*”—Just. Institutes, de Consobrinis, lib. 1. tit. x. s. 4

† “The children of a cousin-german are generally considered as second cousins; but this is an error, they are cousins-german

and still further removed, are also permitted to intermarry. This arises (as I observed before) from the English law adopting the computation of the Civil instead of the Canon law; had it adopted the computation of the latter, cousins-german could not have been permitted to marry, because they would only have been in the second degree of relationship from each other; and cousins-german once removed and second cousins could not, because they would only have been in the third. The one law fixed upon the fourth, and the other the fifth degree (according to their several computations), as the point at which marriage might be solemnised: and the law of England prefers the computation of the Civil to the Canon law in matrimonial cases, not only because it gives a wider scope, but more particularly because it does not interfere with the Levitical law; for it is difficult to account for the preference in any other way, since it rejects the Civil law computation, and adopts that of the Canon, with regard to the descent of real property. From what has been observed, your Correspondent will gather that the marriages of first and second cousins are perfectly legal.

I cannot conclude, Mr. Urban, without express-

once removed. A cousin-german once removed is the relation of the child of A to B, who is A's cousin. The relation of second cousin is that of the child of A to the child of B. Cousin-german must necessarily be sprung from the same grandfather; second cousins from the same great-grandfather."

ing the pleasure which I feel in witnessing the change which has taken place in this kingdom relative to the degree of esteem in which the professors of the Civil law are holden. There was a time when it was matter of serious regret that so little candour existed between the professors of the Common and Civil laws, that "what a Common lawyer vouched for the Church, and a Canonist or Civilian against it, was for that very reason of so much the greater authority;"* but this period is now passed, and the line of distinction between the two jurisdictions is now so fully understood and agreeably recognised that they act in unison, and form conjointly a system of jurisprudence which is the pride of our country and the envy of surrounding nations—a system which calls in the aid of a jury in those cases wherein such assistance is requisite, but supports the opinion of an individual in those where a popular appeal would be improper.

J. STOCKDALE HARDY.

This communication was followed in the same Magazine by these remarks from another writer :

MR. URBAN,

Oct. 4, 1817.

IN answer to the interrogatories of your Correspondent N. respecting the lawfulness of the marriage of *first*, as also of *second* cousins, I submit the following remarks.

By the 32 Hen. VIII. c. 38, all marriages contracted between persons not prohibited by God's law are declared lawful.

* Preface to Dr. Burn's Ecclesiastical Law, p. 20.

And by the 99th Canon it is ordained, "that no person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year 1563; and all marriages so made and contracted shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated. And the aforesaid table shall be in every church publicly set up, at the charge of the parish." Before the said statute of the 32 Hen. VIII. c. 38, *other* prohibitions than God's law admitteth were invented by the Court of Rome, the dispensation whereof they always reserved to themselves; as, for instance, in kindred and affinity between cousin-germans, and so to the fourth degree. But now by this Act all persons are declared to be lawful to contract matrimony that be not prohibited by God's law to marry; and that no reservation or prohibition (God's law excepted) shall trouble or impeach any marriage without the Levitical degrees.

By the Civil law first cousins were allowed to marry; but by the Canon law both first and second cousins (in order to make dispensations more frequent and necessary) were prohibited. Therefore when it is vulgarly said that first cousins may marry, but second cousins cannot, probably this arose by confounding these two laws. Wood, Civ. L. 118, 119. Ayl. Par. 364.

But now by the aforesaid statute of the 32 Hen. VIII. c. 38, it is clear that both first and second cousins may marry.

"And what need I," says Bishop Hall, "to urge the case of Zelophehad's five daughters, Num. xxxvi. 11, who, by God's own approbation, were married to their father's brother's sons; yea, this practice was no less current among the civiler heathens of old than amongst the Jewish people. I could tell you of Cluentia (by Cicero's relation) married to her cousin Marcus Aurelius; of Marcus Antoninus, the wise and virtuous philosopher, marrying his cousin Faustina; and a world of others, were not this labour saved me by the learned lawyer Hotoman, who tells us how universal this liberty was of old, as being enacted by the laws of the Roman empire, and, descending to the laws of Justinian, confidently affirms, that for five hundred years all Christian people

(*magno consensu*) allowed and followed these imperial constitutions concerning matrimony." And though such marriages were opposed and condemned by many of the Latin Fathers and the Court of Rome, yet why? (adds Bishop Hall) "but for the sweet and valuable gain of dispensations? for which considerations we have learned not to attribute too much to the judgment or practice of the Roman courtiers on this point; and since these marriages are allowed both by Civil laws, and by the judgment of eminent divines, and not anywhere forbidden, either *Jure Cæsareo* or *Apostolico*, by God's law or Cæsar's, let the persons therefore so married enjoy themselves with mutual complacency and comfort, not disquieting themselves with needless anxieties."—[See Bp. Hall's Cases of Conscience.]

Hoping that these authorities will satisfy the doubts and scruples of your Correspondent N.

I remain,

Yours, &c. SCHOLIASTES.

The Editor also acknowledged communications from a Correspondent who called himself *A BIT OF A CIVILIAN*, for a citation from Burn's Ecclesiastical Law, tit. Marriage; to J. C. for another from Dr. Grey's Ecclesiastical Law (extracted from Gibson's Codex), p. 137; and to *CLERICUS*, for extracts from Mr. Wheatley's Book on Common Prayer, and Mr. Johnston's "Clergyman's Vade Mecum;" where the subject is in like manner fully and satisfactorily stated.

ON THE LEGALITY OF THE REMARRIAGE
OF A WOMAN WHEN DESERTED FOR
SEVEN YEARS.

[*Published in the Gentleman's Magazine.*]

Leicester, April 10, 1818.

MR. URBAN,

IN reply to the question proposed by CLERICUS,* I beg to observe, that I am not aware of any power being given to a Surrogate by the Act of the 1st Jac. c. 11,† to grant a licence in the case he mentions. The Act certainly excepts a person, situated as your Correspondent has described, from its penalties; but does not interfere with the general law which existed before it, and by which every second marriage, celebrated during the existence of a former marriage, was merely void:‡ it leaves this law precisely as it found it; and therefore if a party coming within the exceptions of the Act marry a second time, his second marriage will be just as void as if the Act had never been made,

* CLERICUS submits the following query: "When a man has been absent from his wife for seven years, and never heard of during that time, or per contrà,—is a Surrogate justified in granting the remaining party a licence to intermarry with any other person upon the authority of the statute 1 Jac. c. 11?"—*Gentleman's Magazine*, vol. LXXXVIII. i. 194.

† This Act has been since explained and amended by the statute 35 Geo. III. c. 67.

‡ 3 Inst. 88.

provided the first marriage were not dissolved at the time of such second marriage. This being the case, I cannot see how any Surrogate can properly or legally grant a licence to an applicant coming under the exceptions referred to. The Church surely should not lend her authority in a case where such an indulgence would be contrary to her Canons; besides, how could any applicant of the above description make the usual affidavit? Could he safely swear himself to be a *widower*?

I am not aware that the question has been ever regularly argued, and it is one upon which a difference of opinion may arise. Were I a Surrogate, I should refer the applicant to the Registrar's Office.

Yours, &c. J. STOCKDALE HARDY.

ON THE RESIDENCE OF THE CLERGY.

[*Published in the Gentleman's Magazine.*]

Leicester, Sept. 14, 1818.

MR. URBAN,

I HAVE read with considerable attention the correspondence which has passed between "Pasquin" and "Clericus Surriensis;" and, as the subjects under discussion are of great importance, you will probably allow the insertion of another letter thereon in your miscellany.

Every one who venerates the Establishment, and

feels an interest in its prosperity, must wish for clerical residence to be increased; and that this wish has deeply pervaded the Episcopal Bench is evident from the pains which have been taken to promote that most important object. It was one of the principal designs which the late comprehensive and most excellent Consolidation Act had in view; and, from the benefits which have already resulted from that wise and salutary measure, I have no doubt the auspicious period is approaching, “when” (to use the words imputed to the Archbishop of Canterbury) “there will be few parishes in England without a resident minister.”

It should ever be recollected that the powers vested in the Bishops by the late Act are powers of no inferior magnitude—requiring due caution in the execution of them, and an administration accompanied by a broad view of the particular circumstances attending each individual case. It is certainly *possible*, under this Act, that there may be six contiguous parishes in which only two curates are resident; but it is as certain that such a case can never occur except under very special circumstances—under circumstances, calling not for an arbitrary or strict administration of the law, but for a dispensation tempered with a due regard to domestic concerns, and, perhaps, domestic misfortunes.* I have no doubt the prelate within whose diocese the benefices alluded to by your Correspondent are locally situate has exercised a

* 57 Geo. III. c. 99, § 59.

wise discretion ; but that prelate is certainly not bound, nor would he be justified in publishing the reasons for his conduct to the world ; and it is scarcely fair to comment on that as a neglect, which, were the sufficient information afforded, would probably prove to have been a wise and moderate execution of a most important part of episcopal jurisdiction. “ Pasquin ” will excuse these remarks ; I give him the fullest credit for his motives, but I really must enter my feeble protest against the too prevalent practice of holding up public men as neglectful of their duty, and of undervaluing the efforts of those men to remedy existing evils. A complicated machine cannot produce all the effects for which it is intended instantaneously : neither ought its powers to be pushed to their utmost limits, except upon some extraordinary and imperious emergency. For the same reason we must not expect the great objects which the Consolidation Act had in view to be accomplished speedily, nor would it be advisable for the Bishops to exert the authorities confided in them by it to their utmost boundaries, excepting in cases of the most glaring and impudent derelictions of duty. What the state of things in “ Pasquin’s ” neighbourhood may be, I know not ; I can only say that hereabouts the number of resident Clergymen has increased, is increasing, and is likely to continue doing so ; and I cannot avoid hoping that the same causes will eventually produce the same effects elsewhere.

Although, as I said before, I am ready to give "Pasquin" the fullest credit for his motives, yet I cannot approve of the *manner* in which he has introduced the subject to the attention of your readers. Your Correspondent has evidently chosen to exhibit the worst state of things, and in some instances has relied upon a matter of argument as forcibly as if it were a matter of fact. With the greatest possible good-humour, and not in the least intending either to offend or wound, I shall take the liberty of making a few cursory remarks upon the principal matters contained in your Correspondent's two letters.

Your Correspondent wishes it to be understood, that there are really so many loopholes for a beneficed clergyman to creep through, when wishing for a licence of non-residence, that the objects of the law are almost entirely defeated. Now really, Mr. Urban, let us for a moment refer to the Consolidation Act itself; it would occupy too large a portion of your columns to recite the clause relating to this part of our subject; * but allow me to refer your Correspondent to Mr. Hodgson's late most useful and valuable publication, † in which he will find a complete copy of the late Act; and also, at page 118, a schedule of the different rea-

* 57 Geo. III. c. 99, § 15.

† "Instructions for the use of Candidates for Holy Orders, and of the Parochial Clergy, &c. By Christopher Hodgson, Secretary to the Archbishop of Canterbury." Reviewed in the Gentleman's Magazine for January 1818, p. 46.

sons for which the Episcopal Bench are empowered to grant licences of non-residence. I would intreat "Pasquin" to peruse that schedule with attention; I am confident he will find that the number of reasons for which licences can be granted will fall very far short of the estimate which he has made of them, and that he will not be inclined to designate those as "evasions," the major part of which are required to be verified by affidavit. As to considering them as "indulgences" and "excuses," that is out of the question; their Lordships the Bishops have, in these particulars, not a judicial but a ministerial power, and cannot grant a licence to any clergyman upon any plea, except one contained in the 15th clause of the Act, without the strictest proof of the peculiar facts constituting the peculiar case—the direct sanction of the Metropolitan—and the indirect sanction of the Privy Council. Would "Pasquin" call such a licence as this an "indulgence" and "excuse?"—Let us, however, look at the subject in another point of view. Licences for non-residence are certainly not granted in the dark; they do not issue from the palace of the Bishop, and find their way into the *escrutoire* of the soliciting incumbent, without the parishioners of such incumbent, the neighbouring clergy, and the public at large, being apprised of the grounds upon which they were issued. A copy of every licence is required, by the 21st section of the late Act, to be transmitted by the spiritual person obtaining it, to

the churchwardens of the parish upon which he is excused residence, within one month after the grant of such licence, to be by them deposited in the parish chest; another copy is required to be publicly read at the visitation immediately succeeding the grant; and another is required to be filed in the public registry of the diocese, to which all persons may have access upon paying a moderate fee. What is the reason of all these enactments, if not to guard against "shifts" and "evasions"? Is it reasonable to suppose that "shifts" and "evasions" could (were the Act less express than it is) frequently occur without detection, with all these *Marplots* standing in the road? Every one is made acquainted with the causes for which the incumbent is excused residence; and if no one complains, what is the fair inference? Why, that the causes are just—falling within the express provisions of the Act of Parliament—and that proper arrangements have been made for the due celebration of Divine Service during the existence of the non-resident licence.

Your Correspondent intimates, that he does not perceive any progress making towards enforcing a general Residence of the Clergy. Really, Mr. Urban, I cannot conceive that "Pasquin" has paid much attention to what has been going on in the Ecclesiastical world, if this be his fixed opinion. I defy your Correspondent to search the Statute-book, and find a work of more labour, of more extensive usefulness, and yet of more

dignified consideration, than the late Act. It is a Statute worthy of an English Legislature; it tempers the exercise of power with the exercise of forbearance, at the same time that it does not suffer the latter so far to infringe upon the former, as to render its energies ineffectual. Clergymen, Mr. Urban, are not to be treated like beasts of burden. As the law now stands, their superiors have a just, sufficient, yet equitable control over them; and that control is not subject, as it was formerly, to be obtruded upon by a common informer. Formerly, the law was in the air; a clergyman was never secure; now he is placed under the jurisdiction of his Ordinary, and not exposed to the malicious and mercenary vengeance of an informer, except in a case of gross misconduct or neglect. Will "Pasquin" say that this is not a better state of things than existed some years ago? Will he say that the Consolidation Act is incapable of producing any benefit—that it has not produced benefit—or is not doing so? Let your Correspondent apply to his "authentic sources," and I shall be much surprised if he does not find that twice the activity, double the caution and particularity, to what existed formerly, pervade the offices of the Bishops' secretaries; and that a most admirable system of order is established, or at least is establishing, with respect to the local concerns and circumstances of incumbents and curates, in those offices. Are not these improvements; and are they not eminently con-

ducive to the extension of clerical residence? Will "Pasquin" say that curates are not far better provided for now than formerly?—There was a time, and that but a few years since too, when a curate never could insure either the amount of his salary or the recovery of it; now, both the salary is definite and the mode of recovery certain. Is this not an improvement, and one highly tending to promote the regular performance of parochial duties?—There was a time, and that too not long since, when the residence of the curate of a non-resident incumbent could not be enforced in a parish, except under very peculiar circumstances;—now, the Bishops have not only the power of requiring such residence, but, generally speaking, cannot dispense with it excepting under very special circumstances, and in which even the curate must be required to reside in some near and convenient place.—Until lately, their Lordships were obliged to resort to a most circuitous, tedious, and expensive process, in order to promote the due performance of Divine Service in any churches or chapels in which the resident incumbent either neglected to perform it or was incapable of doing so; now, they are empowered to insist upon the nomination of a fit and sufficient curate by such incumbent to assist him, and in default to nominate one themselves, and enforce the due payment of his stipend, as if such curate had been nominated by the incumbent himself. Can "Pasquin"

say that these are not improvements—that their enactment as laws was not dictated by a fervent desire and wish to promote the due performance of Divine Service by a competent person, and by a person resident on the spot where such service is to be performed? It would be tedious to go through the various emendations and additions which have been made to the laws, as applying to the question of clerical residence, within the last few years. I trust, however, I have instanced sufficient to shew, that the Bishops “in their wisdom” have done some good—that something more than “speeches have been made”—or “pious sentiments” uttered by a “Metropolitan!!”

We now, Mr. Urban, come to the “hovel” and “pigsty” part of the case; and here I must observe, that your worthy Correspondent has fixed the almost entire blame of the dilapidations, of which he complains, upon the Archdeacons. Now, it is well-known that archdeaconries, generally speaking, are amongst the worst species of Church preferment. Their emoluments scarcely answer the expenses of general visitations; and no archdeacon (except he be a man of considerable private property) can frequently undertake the personal inspection of his jurisdiction, without subjecting himself to an expense which would take the profits of his office for some years to repay. I am free to admit that this part of our Ecclesiastical polity has not been sufficiently considered; and I trust that,

ere long, it will attract legislative attention, if it has not done so already.* As far, however, as Clerical Residence is concerned, it has not been overlooked; no beneficed clergyman can now obtain a licence of non-residence on the ground of a parsonage-house being unfit for his residence, except such unfitness has not been occasioned by his neglect; and even should it have been owing to the neglect of the prior incumbent, still he cannot have his licence, except he undertake to keep it in repair to the satisfaction of the Bishop. This certainly will go a great way towards preventing the dilapidation too frequently observable in parsonage-houses where incumbents are non-resident; and where they are resident, they are not allowed to reside out of the parsonage-house, although they may live in the parish, without properly satisfying the Ordinary as to the repairs of such house and premises.

The observations of "Pasquin" relative to the erection of new churches are such as I am confident he could not, and would not, have written in a serious moment. The obvious necessity of the erection has been seen and acknowledged for years, and almost centuries past. I fully accord with the observations which "Clericus Surriensis" has addressed in reply upon this part of our sub-

* There was an intention of introducing a clause to remedy the above defect into the Bill for regulating the building of the New Churches; whether it was eventually introduced or not I am not aware.

ject ; and I have no doubt "Pasquin" felt convinced by those observations, since he has very properly not adverted to the subject in his second letter. This I admire ; as it shews that, although he has imbibed some different ideas on these subjects to what others have, he has not suffered the adoption of them to blind his judgment, or shut his eyes against conviction ; and I candidly tell him, I am not without hopes of performing a successful operation upon him, in removing, either entirely or partially, a certain species of *cataract* which appears to have obstructed his visual powers.

Such, Mr. Urban, are the observations which have suggested themselves to me, upon a careful perusal of "Pasquin's" communications. Your Correspondent appears very anxious to be considered as a well-wisher to the Establishment, and I am not inclined to say he is not. I believe him to be so ; but I believe, at the same time, that he has been induced, from some cause or other, to look upon the subjects which he has undertaken to discuss with a jaundiced eye. It is impossible to read your Correspondent's letters without coming to the conclusion that he considers our Ecclesiastical officers guilty of gross neglect, from the metropolitical throne at Canterbury to the "gaping churchwarden" who attends a "Country Visitation ;" and, as he professes to gather his information from "authentic sources," I am perhaps taking too much upon myself in making the obser-

vations which I have done. Let "Pasquin," however, be who or what he may, he must expect to have his arguments and assertions commented upon when he comes to plead in your court. In the spirit, therefore, not of an angry disputant, but of a fair opponent, I trust I have met him upon the arena; and, in the hope that he may not live to see his apprehensions verified, and that I may live to see my expectations on these subjects realized, I remain,

Yours, &c. J. STOCKDALE HARDY.

DEFENCE OF THE LAW AS TO MAKING WILLS.

[*Published in the Gentleman's Magazine.*]

Leicester, Feb. 16, 1822.

MR. URBAN,

YOUR Correspondent "Julian," (vol. xci. i. p. 589) has commenced a letter on the importance of accuracy in Wills with the expression of a regret that more frequent alterations are not made in our legislative system, and has intimated a wish that a spirit of *Justinian* revision should more extensively actuate the proceedings of an English Parliament. So far as alterations can be made for the *better*, I agree with your Correspondent; but, fully convinced as I am that there is a sufficient spirit of innovation abroad, I cannot at all coincide in the

wish, that "less reluctance should be manifested than at present exists in overthrowing old established enactments, and more especially those which in the slightest degree, or in any sense, affect or bear upon the liberty of the subject." The value of our old laws is very frequently not discovered until they are tampered with; and, when an alteration has taken place, inconveniences arise which were never thought of, and which our ancestors guarded against when bending under the influence of the inconveniences themselves. As to the "liberty of the subject," I am one who would wish it to be kept within proper bounds, and I view it as a privilege to be restrained whenever it has exceeded them; but a strong and convincing case ought to be made out before any restraint is imposed, and upon this principle I, for one, am well satisfied that the House of Commons has always acted.

I shall now proceed to make a few cursory remarks upon the more immediate subject of your Correspondent's letter. "Julian" * seems to anticipate that there will not be "much" difference of opinion in pronouncing the exception contained in the Statute of the 44th Geo. III. c. 98 (allowing others than professional men to draw Wills), as impolitic. I am fearful he will be mistaken in this particular. The Legislature would *probably* never have made the exception without due con-

* See the Gentleman's Magazine, 1821, vol. xc1. i. 589.

sideration, and I am quite confident your Correspondent will see that, without a great distinction had been made between the formalities of conveyance and the loose manner in which a Will is allowed to be drawn up, a crying injustice would have been committed upon the community. Wills are considered as being frequently made *in extremis*, and therefore the technical niceties necessary to the reality of a conveyance are not required as essentials with respect to a testamentary disposition. And let us for a moment look at what would ensue in case the drawing up of Wills were restricted to the profession! Many wealthy testators live in secluded villages and in lone houses, far removed from professional assistance, who never think of settling their worldly affairs until death is upon them—nay, so far is this principle carried amongst the vulgar and illiterate, that an apprehension frequently gets abroad that the making a Will is a species of death warrant, and this not unfrequently operates as a reason for postponing what ought always to be done in health, and in the possession of full mental energies. Where, therefore, in such cases as these, would be the policy of your Correspondent's suggestion? I will admit that inconveniences may arise from improper persons drawing Wills, but is not your Correspondent aware that some of the ablest lawyers have made some of the greatest mistakes in Wills? It is known that in

making their own wills some of our greatest men have committed the greatest blunders.*

Although I am one who will ever contend that distinctions ought to be observed, and that illiterate and improper persons ought to be excluded from the profession, I never will admit that it should be rendered indispensably requisite for "technical niceties" to surround the couch of dissolution, or for that just privilege to be in the least atom infringed upon, which has hitherto allowed the attendant friend or the sedulous minister to put upon paper the dying instructions of the companion of his youth, or the attentive hearer of the precepts delivered from his pulpit. I quite agree with your Correspondent, that a man of property would do well, when settling his worldly affairs, to consult those who generally have been his legal advisers.

I am not arguing against this; I am only arguing against the enactment of any law which should *positively* oblige his Will to be drawn by those advisers. Supposing such a law were to pass, the man of property would still not be secure; for your Correspondent tells us that even Wills prepared by professional men "not unfrequently afford evidence of a want of skill, and display great poverty of legal intelligence, seldom failing

* Vide Sugden's Letters to a Man of Property, on the Sale, &c. of Estates, p. 105.

to escape the critical observation of those who experience disappointment under them." I find, Mr Urban, I have extended my letter to an unreasonable length ; before I conclude, however, let your Correspondent understand that I am not the advocate of unauthorised obtruders upon the profession ; but that I am the advocate of that mild construction which has hitherto been put upon conveyance by Will—which never would have been put had it been supposed that Professional Men alone were to draw Wills, and which I should be sorry to see exploded.

Yours, &c. J. STOCKDALE HARDY.

ON THE CURFEW BELL.

[*Published in the Gentleman's Magazine.*]

Leicester, Jan. 7, 1824.

MR. URBAN,

I FANCY your Correspondent " Viator," * will find that the custom of ringing the " Curfew" bell is more general than he imagines. In this place it is regularly rung at eight o'clock in the evening at the churches of St. Mary and St. Margaret. The foundations of both these churches were deeply indebted to Norman munificence ; and I have an idea it would turn out, were a sedulous

* In the Gentleman's Magazine, 1823, vol. xciii. ii. 506.

inquiry instituted, that, in many instances where an immemorial custom of ringing the Curfew has prevailed, the establishments wherein it has been retained have been considerably indebted to the Conqueror's influence or regard, exerted either personally or through his baronial favourites. At St. Mary's the third bell is rung as the Curfew, and at St. Margaret's the seventh. At the former church, also, the fourth bell is rung at six o'clock in the morning during the winter months, and at five during the summer. The eighth bell is also rung at the same time at St. Margaret's, and the day of the month used to be tolled, as alluded to by your Correspondent; but this practice has been discontinued for many years. The customs, &c. as to ringing in cases of deaths and burials are much the same here as stated by your Correspondent to be prevalent at Dorchester.* There is no distinc-

* "In the town of Dorchester, in the county of Dorset, the sexton of St. Peter's church (I should add that there is in the tower a fine peal of eight bells) regularly rings the seventh bell precisely at eight o'clock in the evening, for about ten minutes, and afterwards tolls the same bell to as many strokes as correspond with the day of the month. Another custom, I do not know how peculiar it may be to this town, prevails, of the sexton of this same parish ringing the first bell regularly at six o'clock in the morning from Lady-day to Michaelmas, and at seven o'clock from the latter to the former period, being the winter six months; and at one o'clock at noon during the whole year, Sundays excepted; thus serving as a summons for the different classes of mechanics and labourers to begin their daily work, commence after their dinner hour, and finally conclude at the warning sound of the Curfew."—Gentleman's Magazine, Dec. 1823, p. 506.

tion, however, made here between the rich and the poor; the *largest* bell belonging to the church of the parish in which the party dies being tolled at every funeral.

With respect to the "Curfew," I differ from "Viator" in considering the recollection of its origin as an unpleasing retrospect under present circumstances. On the contrary, I view it as a most gratifying reflection to every English mind, that what once only proclaimed the arbitrary will of a foreign Conqueror, is now the welcome summons for rest and enjoyment to those numerous classes of mechanics and labourers which are their country's boast, and no inconsiderable supporters of her consequence and strength. Instead of this knell being, as it once was, the dreary signal for darkness and despair—for brooding over lost liberties, and cursing the galling yoke of a foreign potentate—it is now the glad signal for the husbandman or the mechanic to "trim the cheerful hearth," and, surrounded by those pledges of affection upon which no adequate value can be placed, to return his thanks to heaven for the blessings he enjoys under the mild and beneficent sway of a thoroughly-English Monarch, giving effect to a Constitution, the pride of the land over which it sheds its genial influence, and the admiration of surrounding states. A custom instituted as a badge of subjection and slavery is now kept up for a most useful purpose; and a Constitution, lacerated and disjointed by foreign pride, revenge, and in-

trigue, has now, as far as the necessary innovations of time have rendered practicable, reassumed that form, and the exercise of those functions, which the wisdom of our Saxon ancestors projected and gave effect to.

J. STOCKDALE HARDY.

ON THE PERSONIFICATION OF DEATH.

[*Published in the Gentleman's Magazine.*]

Leicester, Dec. 5, 1825.

MR. URBAN,

IT is really astonishing that nearly all the attempts which have been hitherto made to personify Death should have proceeded on the assumption that the "potent Conqueror" is a skeleton—one of his own victims! An old acquaintance of mine, Mr. Bisset of Leamington, once told me, that, when a boy, and residing in his native country (Scotland), he was asked by a relation what he thought of Death?—and that his answer was, that if Death were what he was represented to be in his book of pictures, young as he then was, if he had his "golf club," and was attacked by a score of such fellows, he would batter their skulls to atoms, and break every bone of their ribs! This anecdote most forcibly struck me, and has led me to my present communication.

The finest ideas on record as to Death are those

contained in the admirable Burial Service of our National Church—a service principally extracted from that fountain of light and truth, the Holy Bible. Now what are these ideas? Why, that Death, so far from being a “Skeleton,” is the “last enemy to be destroyed,”—one that can only be destroyed by Him who shall “put all things under his feet,”—when at the last day, through the Divine Atonement, he shall, at length, to the righteous, lose his “sting,” and claim no further “victory.” Can any representation therefore be correct which depicts this hero as a chop-fallen and *fleshless* spectre—which depicts him as a shadow, who, the Bible tell us, is to “reign until ‘*flesh*’ shall be no more?”

Death rides throughout the world dispensing happiness and misery, but he rides not as a skeleton, but as an illustrious conqueror;—his steed, though “pale,” is fiery, and recognises no distinctions—with one foot on Royalty, another on Shakspeare, a third on Pitt, and a fourth on Byron, he “wings his way,” while his rider flourishes a sword above his head entrusted to him by Omnipotence, and reads to all who now tarry in this earthly passage a lesson of humility and of truth, which is too often disregarded, but which conscience and reflection will sometimes enforce.

“Mors ultima linea rerum est,”

was the sentiment of the ancient bard, and the idea was perfectly correct; and who could be more capable of forming it than one who indulged every sensual appetite in this world, and who would

therefore be the more cautious and reserved his allusions to a state, the anticipation of which to him could afford no pleasure?

I am quite aware that my ideas on the subject are liable to criticism; that, however, I invite, for, although a lover of antiquity, I never can allow that predilection to induce the advocacy of a practice which (as I view it) outrages common sense, and, what is of far more consequence, insults the Deity.

J. STOCKDALE HARDY.

This Letter produced the following Reply, which was inserted in a subsequent Magazine:—

“ MR. URBAN,

Leicester, Feb. 11, 1826.

“ I AM sorry I cannot coincide with your intelligent Correspondent, Mr. J. Stockdale Hardy, in his thesis on the Personification of Death. My ideas on a subject so important are decidedly counter to his own. Now, although I do not insist either upon his fallacy, or the cogency of my own assumptions, yet I venture to offer, through your medium, a few suggestions why I approve of the mode in which it is customary to personify the visible Death, in other words, to ‘pin my faith on the sleeve of the whole world.’ Mr. Hardy must be aware that he has arrayed against him (with perhaps one or two eminent exceptions) the paintings, sculpture, and poetry of all ages and nations. Indeed he seems to admit that his position is liable to refutation. Genius, and the noblest works of art, both ancient and modern, portray the ‘illustrious Hero’ what to our very imaginations he is depicted, viz. *one of his own VICTIMS*,’ potent, and *invulnerable*; a ‘King of Terrors,’ who, driving his ploughshare o’er Creation,’ dispenses, not ‘*happiness*’ certainly, but misery and desolation throughout the earth. Give to Death an arm of flesh, and, however muscular, you make him vincible, however powerful, liable to be opposed, however illustrious, subject to defeat and possible annihilation.

“ Portray Death as one of his victims, I mean endow him with flesh and blood, and, though you arm him with thunders, you despoil him of his immortal prerogatives, his terrors, his invulnerability. Depict him a living Spectre, a Skeleton, and you present to our ideas the very thing we imagine; an Hero, all-conquering and all-mighty; not to be stemmed in his strides, nor averted in his recognitions. You invest him with a tyranny over our minds, as well as with one over our bodies; whence, imagination immediately recognises in his ‘grim visage’ the absolute monarch of unlimited dominion. Death is insatiable, never cloyed with his victims, nor replenished with the hosts on whom he feeds; all-devouring, he is ever lean; and, though his banquets are hourly and momentary, and kings and statesmen his most dainty food, still does he not fatten with satiety, nor is he appeased with the vastness and variety of his repasts. On these grounds, then, I take it, is Death correctly and classically presented to the eye as a Spectre or Skeleton. I cannot think, with Mr. Hardy, there is the least presumption in such a personification; nor do I see that it can possibly offend the majesty of God!! It is an assumption not warranted by the greatest theologians of the age. I wish further elucidation of that passage. Besides, on the same grounds might Mr. Hardy question the authority why the Devil is painted black, or an Angel fair; why? but to convey to our ideas, under these symbols, their approximation, the one to divine perfection, the other to deformity and evil. Your Correspondent evidently, though erroneously, grounds his thesis on the Revelations of St. John. It must be admitted that West, however, is a powerful auxiliary in his behalf. I will not now attempt to combat the authority of so great a master, and am aware I have only yet seen the ‘advanced guard’ of Mr. Hardy’s position; no doubt he will defend it abstractedly; but, for these reasons, I protest against it. Perhaps I am in an error, and only wish some older and abler Correspondent would dissect the matter.

Yours, &c.

WM. LIEVRE.

After this letter Mr. Hardy returned to the subject in another communication:—

Leicester, June 8, 1826.

MR. URBAN,

I HAVE perused with attention the letter of Mr. Lievre in reply to mine on the Personification of Death. Your Correspondent remarks, "that I have arrayed against me (with one or two eminent exceptions) the paintings, sculpture, and poetry of all ages and nations;" and certainly, if this assertion be correct, the maintenance of the thesis I have ventured to introduce is rather a formidable task. This consideration, however, will not deter me from entering into the question, and I shall therefore proceed to do so in as brief a manner as it will allow me. The propriety of any efforts to depict sacred objects, or objects the precise natures of which are wisely concealed from the limited scope of terrestrial vision, may indeed be disputed; into that inquiry, however, I do not enter, and all I contend for is, that, if such attempts be made, they should be in unison with the light (be it great or small) which has been thrown upon the particular subjects by Divine Revelation.

Nothing appears to me more absurd than the Personification of Death as a skeleton. When once Death has struck the body his functions are at an end, and he cannot have the slightest connexion with what subsequently happens to the lifeless corpse. The change of the corpse to a skeleton is produced by natural causes alone, over which

Death has no control, and which take effect long after he has been called into action upon myriads of the surviving inhabitants of this ever-perishing world. To treat the question more familiarly:—would your Correspondent, if asked to represent an executioner, give us *the picture of a man hanging upon a gibbet*?—or, if requested to paint us a tyro playing on the “wry-neck’d flute,” feast our eyes with the dignified importance of a drum-major, bearing his silver-mounted staff of office, and preceding a host of trumpeters and blowers on the bassoon? Would not Mr. Lievre’s better judgment induce him to put upon canvas, in the first instance, the representation of an executioner in the very last act of his official duty; and, in the second, a youth surrounded by those sylvan beauties which the ideas connected with his occupation would naturally convey? An *effect* can never be an adequate representation of a *cause*, nor (as in the case of the skeleton) can a *consequence* convey to us the idea of an event necessarily precedent to, but not *immediately* connected with, the consequence itself.

I consider the painting of “Death on the Pale Horse,” by the late celebrated and respected President of the Royal Academy, as one of the most powerful efforts of the human pencil. It should, however, be recollected, that this admirable production of art must not be viewed as a representation of Death in general, but as a representation of him under very especial circumstances. The

subject of the picture is limited to a particular description of Death in Holy Writ, as revealed to St. John, and this revelation was confined to a personification of the "potent conqueror" under remarkable dispensations of famine, battle, and pestilence. Theological historians have generally treated the prophecy as commencing with the sway of the Emperor Maximin, and continuing to the time of Diocletian, a period of about fifty years, during which nothing but wars and murders, invasions of foreign armies, rebellions of subjects, famine and pestilence, extended over the greater part of the Roman empire. To give an idea of Death under such circumstances, Mr. West has represented him as a "King of Terrors," but no one can survey the picture, and not perceive that the highly-gifted artist felt the absurdity of representing his subject as a skeleton. Out of compliment (we are told) to the visionary Death of Milton, the painter has "endowed the central figure with the appearance of superhuman strength and energy, and depicted the King of Terrors with the physiognomy of the dead in a charnel-house, but animated almost to ignition with inexhaustible rage;" the arms, however, are muscular, and with gigantic force are hurling darts in all directions. It is impossible to account for what (at least at first sight) appears a contradiction, except upon the ground that the artist felt the impropriety of representing the annihilating thunderbolts of the "potent conqueror" as proceeding from a lifeless

and fleshless source,—alike incapable of action or power ; and this opinion derives considerable support from the circumstances of the painter having “ clothed the figure with a spacious robe of funereal sable,” and having given bandages to the feet. One of the principal differences I could have wished to have seen in the picture was, that, instead of the figure bearing the physiognomy of the dead in a charnel-house (though animated with rage as it appears), it had been represented as an invincible earthly assailant, executing the divine purposes of an Almighty Director.

I confess I do not see the force of Mr. Lievre’s remark as to a skeleton or spectre conveying an idea of insatiableness ; nor is Death insatiable, further than the Divine Majesty ordains ; the possessor of his “ keys” can limit his operations. The personification of Death too by an object of flesh and blood does not and cannot interfere with his invincibleness, provided care be taken so to depict him as to impress upon the spectator the utter impossibility of successful conflict, in the ordinary acceptation of the term, and with reference to the inferior objects which ought to surround him.

Your Correspondent appears surprised at the assertion that Death can *ever* dispense “ happiness,” and certainly to only one class can he be said to do so ; the impropriety, however, of *always* representing him as an object of terror I must assert. It is true he puts an end to mortal existence, and to earthly vision rides triumphant

through the world, but surely he does not invariably usher in the soul to a state of misery. As the agent of the Almighty, and bound to obey his commands, Death is *alone* the King of Terrors to the wicked, — the righteous, God sustains through the very portal, and delivers them from all “fear” of the conquering hero, by taking from them that “guilt of sin” which alone makes Death terrible. If the Christian in the field of duty can meet Death with magnanimity, cannot the Christian with such an Almighty Leader and Guide? The body will naturally shrink at the direct approach of the victor, but the flutter is momentary to the Christian, as in the very instant that the attack is made Elysium beams upon his view,—the anticipation sustains his mental energies, and peace, hope, and joy shed a glorious lustre over even his departing vision! It is only by taking all the allusions made in the Scriptures to Death, and treating them as a context, that an accurate idea of the subject can be formed. The Atonement was made in vain if it did not, so far as it was intended, transform Death from an object of terror into an harbinger of joy, if it did not enable the dying Christian to exult in the prospect of Eternity, and say to his soul in the lines of the celebrated poet :—

“ Hark ! they whisper, angels say,
 Sister spirit, come away !
 What is this absorbs me quite,
 Steals my senses, shuts my sight,

Drowns my spirits, draws my breath,
Tell me, my soul, can this be Death?"

Upon this latter part of my subject, too, I feel that I am in some measure supported by the great artist to whom I have before alluded. Although his inestimable picture, as I have observed, is confined to a representation of Death under very appalling circumstances of terror and bloodshed, and is not in the least applicable to the peaceable couch of the dying believer, he has not omitted to convey to the "mind's eye" a glimpse of that glorious region in which appear "the souls of them that had been slain for the Word of God, and for the testimony which they had held," in the awful times of persecution to which the subject of the picture relates; and thus a powerful contrast is formed to the misery and desolation which meet the eye in every other direction.

In conclusion, I have only to observe, that, notwithstanding the ingenuity displayed by your Correspondent, my conviction of the impropriety of representing Death as a skeleton remains unaltered; and I must also think, that, in any attempt at a general personification of the subject, it should not be forgotten that, although Death is an exclusive and uncompromising object of terror to the wicked, and invincible so far as respects all mortal opposition on behalf of either the righteous or the wicked, yet that he is the immediate precursor of a crown of life to the former, who are sustained even in the hour of his victory by "im-

mortal arms." It cannot, therefore, be correct to represent his appearance as accompanied with the same *effect* upon both the righteous and the wicked.

I had entertained hopes that an abler pen than mine would have undertaken the task of defending the thesis which Mr. Lievre has attacked ; that, however, not having been the case, I have ventured to offer some of the reasons which have induced me to take the view of the subject I have adopted.

Yours, &c.

J. STOCKDALE HARDY.

ON A ROMAN PAVEMENT FOUND AT
LEICESTER IN SEPTEMBER, 1831.

THE greatest curiosity, connected with former ages, which has been recently discovered in this place, is the Tessellated Pavement on premises belonging to Mr. Rollings in Jewry-wall Street, near St. Nicholas' church. This relic of ancient grandeur measures twenty-one feet in length, and seventeen in breadth ; it is composed of tesserae of half an inch square and of a great variety of colours. The general appearance of the Pavement is that of a splendid floorcloth, exhibiting several most beautiful patterns. "The largest figures" have been described as "octangular, inclosing circles of small triangles and other devices,

in the centre of which are beautiful stars or knots of various hues. The interstices are supplied with smaller figures, which, as well as the larger ones, are encircled with elegant wreaths; a broad hexagonal border runs round the whole, and forms externally a square." Dr. Clarke conjectures that pavements of the above description were first brought from Persia,—that they succeeded the painted floors invented by the Greeks, and were introduced at Rome under Sylla in the 170th year before Christ.

To form any adequate conception of this venerable relic it must be seen. The mathematical precision with which the several patterns are executed is astonishing, and the *coup-d'œil* is singularly novel and imposing. To avail myself of an observation made by a most interesting authoress, and one resident amongst us, it may with truth be observed, with respect to the great curiosity to which I have directed the attention of your readers, that "the looms of modern Brussels, in elegance and beauty of pattern, cannot fairly outvie the mosaic carpets of the ancient Romans."* In viewing these mosaic works, the mind is involuntarily led to contemplate the immense labour which the Romans underwent in the progress and completion of them. When the number of stones and fragments of composition used in their construction is considered, and that these were of

* Vide "Walk through Leicester," p. 30.

various sizes and shapes, and so arranged as to give the best effects of light and shade, some faint idea of the toil which the Roman slaves or *pavimentarii* employed in their formation underwent may be entertained. For ages praise or censure has been alike to them—their haughty taskmaster has ceased to insult or betray; and the chieftain, who, perhaps, on this very spot was engaged in conspiracies against English liberty, may have left no other record of his existence than the ingenuity of his meanest and most cruelly oppressed vassals.

The Pavement undoubtedly formed a portion of some considerable Roman building, and boasts the antiquity of at least 1500 years. The absence of any figures upon it induces me to suppose that it was not connected with the principal apartment of a Roman house, and it may have been a bath; but I cannot learn that any of the usual appendages to Roman baths have been discovered near it. It is situate either within, or immediately adjoining to, the station of *Rata* mentioned in the Itinerary of Antoninus, at a short distance from that celebrated antiquity the Jewry Wall, (by some supposed to have been the gate of the ancient city, and by others a place of sacrifice,) and in a neighbourhood where almost innumerable Roman coins have been discovered. The river (a Roman labour spanned by the West Bridge) flows at a short distance below, and a little further is the Bow Bridge, which formerly led to the ancient city, and to

which bridge a *via vicinalis* from the fosse has been supposed to have extended. This part of our town is well worth the attention of all lovers of antiquity—there are few spots of greater interest—and it gives me the sincerest pleasure to learn that, with reference to the curiosity to which I have more particularly referred in this letter, the proprietor of the premises upon which it was found has taken the most effectual measures to secure it from either injury or abuse.*

* The Editor takes the opportunity of preserving in this place the following memorandum with respect to another of the tessellated pavements which adorned the Roman houses at Ratæ :—

“On Monday, November 5, 1849, that most interesting relic of Roman Leicester, the pavement supposed to represent Diana and Actæon, which has been kindly presented to the Museum by Mrs. Worthington, was fixed on a frame on one of the walls of the large room of the Institution, where it will be very conspicuous, and attract the eye of every visitor. This pavement was discovered in the year 1675, on the site of the premises now occupied by Mr. Bolton, High-cross Street.”—*Leicester Chronicle*.

ASHBY DE-LA-ZOUCHE.

To the Editor of the Leicester Journal.

SIR,

PLACES and scenery which would be deemed most deserving of attention, if at a distance, are frequently slighted or left unexplored by parties resident in the vicinity of them. I have been induced to make this remark—commonplace enough, I admit—by a recent visit to the Ivanhoe Baths at Ashby. Considering the literary and historical associations with which the spot is honoured—the tournament so beautifully described by the inspired pen of the great Chronicler of the North—the Baronial Castle, whose lofty and decorated halls oft resounded, in the days of its prosperity, with the boisterous mirth of both nobles and vassals, and the hospitalities prevalent in which were as unbounded as the political intrigues once carried on within it—and last, not least, calling to mind the eminent and devoted characters who were connected either with the place or its neighbourhood, I cannot avoid expressing my regret, that Ashby has not attracted a larger share of local public attention and support.

The ruins of the Castle, “splendid in decay,” meet with no competitor in the county; they yet frown with majestic grandeur upon the plains be-

neath, once the possessions of the Castle's potent Lord—William the first Baron Hastings, of Ashby—the favourite of our fourth Edward—the protector, after that monarch's death, of the unfortunate, but frail Jane Shore—and one of the earliest victims to the regal designs of the tyrant, the hypocrite, and the usurper, Richard III. The ascent to the summit of the Great Tower is now rendered quite safe and commodious—the visitor can enjoy the extensive scenery which arrests his attention, and is enabled with ease to trace the extent of the once mighty pile, which eventually fell a sacrifice to the intrepid and undeviating loyalty of the noble descendants of the chieftain, who might be justly designated its founder. The ruins of the Chapel attached to the Castle are well deserving of minute inspection, and in a Chapel connected with the adjacent parish Church will be found some magnificent sepulchral monuments of the illustrious family of Hastings. The most conspicuous of these is one erected to the memories of Francis the second Earl of Huntingdon (who built the chapel), and of Katharine his wife, granddaughter of the Prince George Plantagenet, Duke of Clarence, brother of King Edward the Fourth. This is a most sumptuous monument, and ranks amongst the foremost in the kingdom for style and architectural design; “on the top of it are recumbent statues of the earl and countess; and on the sides, in niches, are small statues of their sons and daughters, with their names underneath,

according to seniority." There is no monument erected to the memory of the celebrated Selina Countess of Huntingdon, but a beautiful representation of her appears on the tomb of her Lord, Theophilus, the ninth Earl. This tomb is also enriched with an inscription from the masterly pen of Lord Bolingbroke. In speaking of the dead, too, it ought never to be forgotten that the pious and devoted Bishop Hall drew his first breath within the parish of Ashby: he was born July 1st, 1574; his father was an officer to Henry Earl of Huntingdon, then President of the North, and in the public school of this place did the Bishop receive the rudiments of his education. The troublous times which embittered the latter days of the venerated prelate prevented any tomb being raised to his memory—his works, however, have constituted a more perennial monument than sculpture could have effected. He died on the 8th September, 1656, and was buried in the churchyard of Higham, near Norwich.

The Castle of Ashby is peculiarly and affectingly connected with the history of the royal, but ill-starred, family of the Stuarts. Within its walls, in 1569, was confined the beautiful—the faithful to her creed—but infatuated Queen of Scots. Here, for a short time, was she, by command of Elizabeth, placed in the custody of Henry the third Earl of Huntingdon. In this Castle, in 1603, George the fourth Earl entertained in almost more than regal splendour Prince Henry, the

grandson of the royal captive, and his mother, Anne of Denmark, the consort of James I., on their journey from Scotland to London—the one to share with her husband the honours of an English throne, the other to gratify, by his presence, the Court of a doating father, and a recently elevated English sovereign. Here, in 1617, was King James himself most expensively feasted by Henry the fifth Earl of Huntingdon, during that weak and pèdantic monarch's "Progresses"—and into this fortress did James's unfortunate son—the honest though misguided and imprudent Charles I.—enter, with buoyant spirits, when advancing to the siege of Leicester in May 1645—spirits as elevated as they were afterwards depressed, on his re-entering its gates on the 25th of the subsequent month, after the fatal conflict at Naseby. From this friendly asylum, broken-hearted and almost deserted, did his Majesty retire into Wales. The Castle shared the fortunes of the unhappy monarch; after having been besieged by the Parliamentarian forces for several months, it was surrendered by Lord Loughborough (younger son of Lord Huntingdon, and who, in 1643, had been called to the peerage for his loyalty), and was dismantled, by order of the House of Commons, in 1648, being styled the "Maiden Garrison," from the circumstance of its never having been actually conquered.

"The Ivanhoe Baths," says the Rev. Mr. Curtis, in his very useful "Topographical History of the County of Leicester," "are situate on the west

side of the town of Ashby." The building is peculiarly elegant, being of Grecian architecture, in the pure Doric order, surmounted by a dome, which gives light to a very spacious pump-room, used also as a ball-room. This room is fitted up in the Grecian style, and accords well with the general character of the building; it is 52 feet in length and 27 feet in breadth. There are twelve baths. The waters are strongly impregnated with active saline ingredients, and confer the acknowledged benefits of sea-bathing upon a very populous midland district. At the south end of the baths is erected the Hastings Hotel, a structure also of the Grecian Doric order, and opening at the back-front into the pleasure-grounds. These grounds are very extensive, retired, and laid out and planted with great taste. To the invalid sighing for the restoration of health—to the man either of business or literature, wishing to relax from the fatigues of duty, or to pursue some important subject relieved from the inconveniences of interruption, a resort to Ashby may be safely recommended. The immediate scenery of the Hotel is interesting, the attentions paid highly deserving of encouragement, and the seats of the nobility and gentry, at short distances, well worthy of observation.

The road from Leicester to Ashby is (if I may be allowed the expression) studded with historical reminiscences. The traveller may so proceed as to pass the inn where the monster Richard rested (if rest were allowed him) on the night before

the battle of Bosworth Field. In his progress, he may skirt the confines of the Abbey where the once haughty and powerful Wolsey breathed his last, and begged a resting-place for his bones—a short distance onwards, he approaches, at Groby, the mansion where once resided the beautiful Elizabeth Woodville, who, after the death of her first husband, Sir John Grey, became the Queen of King Edward IV. and was the mother of the infant princes so cruelly murdered in the Tower—at the same moment, Bradgate, the birthplace of the amiable and ambition-martyred Lady Jane Grey, is descried—and at almost every point, owing to the different impulses which dictated the line of conduct pursued by several neighbouring influential county families during the civil wars of the seventeenth century, the way is associated with events connected with those lamented struggles. Thus the contemplative mind is kept in a state of “sweet excitement,” until the stately ruins of the Castle of Ashby burst upon the view, and lead to further interesting inquiries.

I remain, yours, &c.

ANTIQUARIUS.

Leicester, March 31, 1834.

AN ATTEMPT TO APPROPRIATE a MONUMENT
now remaining in the Chapel of the TRINITY
HOSPITAL in Leicester, to the Memory of MARY
DE BOHUN, COUNTESS OF DERBY, and Mother
of King Henry the Fifth; with some Account
of the Castle and Newarke of Leicester, and of
the Earls and Dukes of Lancaster, previous to
those Titles merging in the Crown.

[Published in 8vo. 1836.]

TO THE READER.

I AM quite aware that the manner in which the subject of this pamphlet has been treated too nearly approaches an abstruse antiquarian dissertation, to be acceptable to the general reader. In the absence, however, of inscription, shield, or badge on the monument I have attempted to describe, I have been necessarily led into detail much more than I could have desired; but, without going into detail, any effort at appropriation would have utterly failed. My object was, and I am not ashamed to avow it, to invite the attention of my fellow-townsmen to the rich stores of chivalrous recollection, and historic elucidation, which exist in and about Leicester, to prevent any ruthless

deseccration of interesting remains, and to instil feelings of regard and protection towards them, into the minds of those who may succeed us.

I should account myself guilty of gross ingratitude, were I not to acknowledge, with sincere thanks, the attentive and most valuable replies which I received from the gentlemen whose names I subjoin, to various communications I addressed to them, on the subjects discussed in the following pages :—

Rev. Bulkeley Bandinel, D.D., F.S.A., Bodleian Library, Oxford.

George Frederick Beltz, Esq. F.S.A., Lancaster Herald.

Alfred John Kempe, Esq. F.S.A., New Kent Road.

Matthew Holbeche Bloxam, Esq. Rugby.

John Gough Nichols, Esq. F.S.A., Parliament Street.

J. S. H.

Leicester, Feb. 24, 1836.

INTRODUCTION.

In elucidation of the subject of this pamphlet, *extracts* from the pedigree of the royal and illustrious House of Lancaster, with some historical notes, are here given.

KING HENRY III. — ELEANOR, daughter of Raymond Count of Provence.

EDMUND, second son, born 1245, created Earl of Leicester on the death and forfeiture of Simon de Montfort. He was also created Earl of Lancaster and Derby, and High Steward of England. He died at Bayonne 1295, and was buried in the Abbey Church of Westminster, under a splendid tomb on the north side of the high altar.

BLANCHE, daughter of Robert Count of Artois, and widow of Henry de Champagne, King of Navarre, and Countess Palatine of Champagne and Brie.

THOMAS, second Earl of Lancaster, Leicester, and Derby, and High Steward of England. He was chief of the nobles that combined against Gaveston and the Spencers, the unhappy favourites of Edward II. The Earl, with his confederates, raised an army with which they marched Northward; the movement, however, was an unsuccessful one, and they were compelled to retire before the King's party, and soon afterwards the Earl was beheaded near Pontefract, and his estates confiscated. He died without issue.— N.B. It has been supposed that the vast number of coins found in the bed of the river at Tutbury, about four years since, belonged to the army raised by this Earl at the period above mentioned, and were thrown into the river when the army was pursued by the King.

HENRY, third Earl, and High Steward of England. In 1 Edw. III. the attainder of Thomas second Earl was reversed, and this Earl succeeded to the titles and estates of his father and brother. This Earl resided much at the Castle of Leicester, whereto he took great delight. In 1331 he founded the Trinity Hospital in the Newarke of Leicester. *The Earl died at Leicester 1345, and was buried in the Newarke there, where a monument was erected for him in the Collegiate Church.*

MAUD, daughter of Sir Patrick Chaworth.

a

HENRY DE GRISMOND (so called from the Castle of Grismond in Monmouthshire, the place of his birth), fourth Earl and first Duke, and High Steward of England, K.G. He was a renowned warrior, and one of the chief in the warlike reign of Edward III.; served in Flanders, France, and Scotland, was the King's Lieutenant for the North parts of England, and General of his Army against the Scots; served too in Gascony. At the institution of the Order of the Garter, he stood next to the Black Prince as a Knight Companion. In 23d Edw. III. he was made Earl of Lincoln; soon after which he was constituted the King's Lieutenant and Captain General in the parts of Poitiers. In this year he marched into Gascoigne with 30,000 men, and took 42 towns and castles. Being already Earl of Lancaster, Leicester, Derby, and Lincoln, the King advanced him to the Dukedom of Lancaster, and made him a Count Palatine, with a separate Chancery, &c. and also Admiral of the King's Fleet from the Thames westward. He retired to his castle of Leicester to spend the evening of his days, and died of a pestilence which then prevailed on the eve of the Annunciation of our Lady, March 24th, 35 Edw. III. anno 1361. (Dugdale, vol. I. p. 780.) *He was buried in the Collegiate Church of the Newarke on the north side of the High Altar.*

ISABEL, daughter of Henry Lord Beaumont; she was buried in the Collegiate Church of the Newarke of Leicester; she survived her husband.

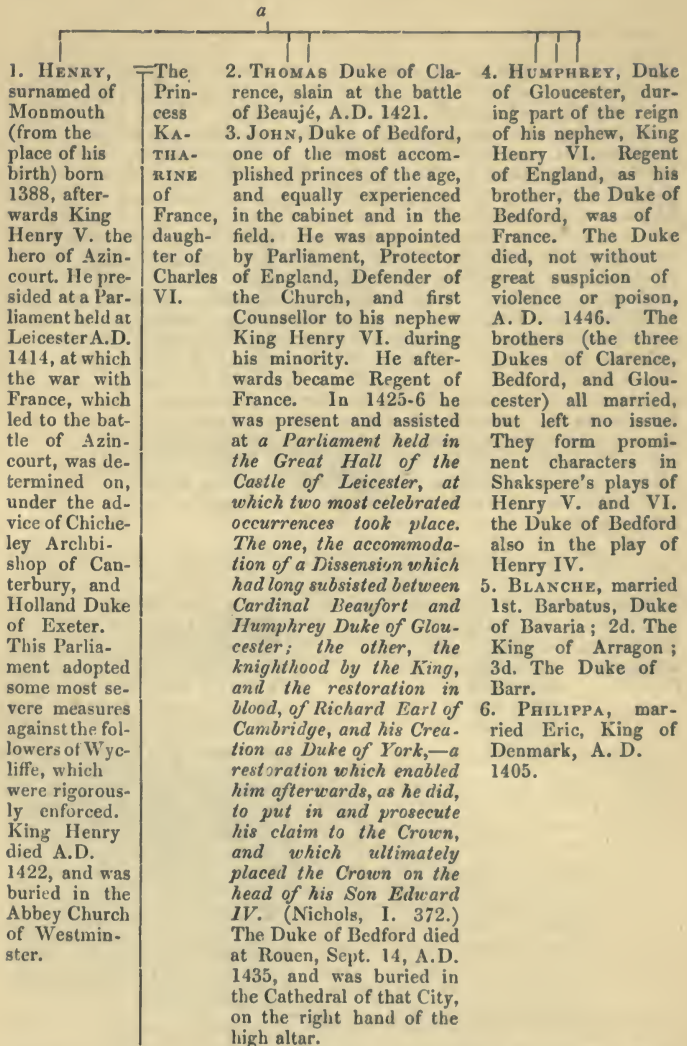
1. MAUDE, died without leaving any issue.
 1st. RALPH, son and heir of Ralph Lord Stafford; and 2dly, William Duke of Zeeland.

2. BLANCHE. JOHN OF GHENT, Earl of Richmond, &c. fourth son of King Edward III. created after the death of his father-in-law Duke of Lancaster, &c. died at Ely House, Holborn, and was buried in Old St. Paul's, as was his wife Blanche, where a splendid monument was erected to their memories. It is almost needless to mention that this Duke was one of the most celebrated men of his time. He was a favourer of the doctrines inculcated by Wycliffe; he protected that great and good man from the violence of his enemies, and procured for him the Rectory of Lutterworth.

HENRY, surnamed of Bolingbroke, Earl of Derby, afterwards Earl and Duke of Hereford, and eventually KING HENRY IV.; died 1413, and was buried in the Cathedral of Canterbury.

1. MARY DE BOHUN, younger daughter and coheirress of Humphrey de Bohun, Earl of Hereford, Essex, and Northampton, Constable of England, &c. *She died at Leicester on the Monday next after the feast of St. Peter and St. Paul, A.D. 1394, and was buried in the Collegiate Church of the Newarke.*

a



King HENRY VI.
(see next page, b.)

b

KING HENRY VI. in whose reign commenced the wars of the Houses of York and Lancaster, commonly called the Wars of the Roses. The White Rose was the symbol of the House of York, and the Red that of the House of Lancaster. Henry died A.D. 1471. The wars of the Roses were a succession of bloody engagements, which were terminated by the battle of Bosworth, A.D. 1485. This contest seated Henry Earl of Richmond—then the representative of the Lancaster family—on the English throne, and by his prudent marriage with the Princess Elizabeth, daughter of King Edward IV. the legitimate representative of the House of York, the interests of the Houses of York and Lancaster became so blended as ever afterwards to be incapable of distinction. *The restoration in blood of Richard Earl of Cambridge, at the Parliament held at Leicester by King Henry VI. in 1426, might (by recognising him as the heir of Lionel Duke of Clarence, who was third son of King Edward III. and thus enabling him to assert his claim to the Crown in preference to the reigning Monarch, who was the great-grandson of John of Ghent, the fourth son of the same King,) be said to have commenced the Wars of the Roses, as the Battle of Bosworth, fought in the County of Leicester, by uniting the conflicting interests, as certainly terminated them.*

MAR-
GARET
OF
AN-
JOU.

AN ATTEMPT, &c.

THERE are no provincial sites more intimately associated with the history and alliances of the illustrious house of Lancaster than are the Castle and Newarke* of Leicester. The former was for many years a favourite residence of several members of that royal line, and the scene of some of the most interesting events of their lives; and within the precincts of the latter are deposited the remains of Henry the third Earl of Lancaster (the grandson of King Henry III.); of his son, Henry the first Duke of Lancaster, the father-in-law of the renowned John of Gaunt (or Ghent in Flanders, the place of his birth); of Constance (daughter of Peter King of Castile and Leon), the second wife of that celebrated character; and last, not least, of Mary de Bohun, the first wife of King Henry IV., the mother of the hero of Azincourt, and of the renowned princes and regents, John Duke of Bedford, and Humphrey Duke of Gloucester. †

It is true, the majestic towers of the Castle of Leicester are levelled, and the beautiful collegiate church of the Newarke has disappeared; yet still,

* *i. e.* the new work, an addition to the ancient castle.

† Vide "Introduction."

to the contemplative mind, the spirit of departed greatness "lingers" within the district, and inspires a "most bewitching" and "luxuriant" melancholy.

The Castle and Newarke of Leicester have been so accurately and particularly described by various historians (especially by my late venerable friend Mr. Nichols, in his "History of Leicestershire"), that I shall merely make such a reference to them as may be necessary to elucidate my present subject. The Castle was of Saxon foundation, but was rebuilt and remodelled at the period of the Norman Conquest; no remains of it exist, except its great hall (now appropriated to the assizes, &c.) the mound of its keep, one of its vaults, two of its gatehouses,* and portions of its outer wall. Of the Newarke, a very slight remain of its collegiate church, two of its chantry houses (one occupied by the Rev. Dr. Fancourt, the other by Mr. Pratt), the oratory of its hospital, portions of the latter, and of the boundary walls, are all that are left to "tell the tale" of its ancient magnificence. The

* One of these, separating the Newarke from the Castle, became so dilapidated a few years since, that it was necessary to take down a great part of it; in its ruined state it is still very interesting. The other remains "a noble monument of the House of Lancaster," and forms the principal entrance into the Newarke. Portions of it, however, are in a bad state, and the whole requires attention. I trust I shall not be deemed impertinent in thus soliciting towards this—decidedly one of the most richly associated and complete feudal remains in the county—the notice of the proper authorities.

Castle was situate on the north side of the Newarke; and the latter, with its appendages, might be considered as stately appurtenances to it. They were raised, enlarged, and maintained by the munificence of Henry the third Earl, and of Henry and John the first and second Dukes of Lancaster. The hospital of the Newarke, with its oratory, were founded by the third Earl; whose son, the first Duke, materially extended its sphere of usefulness, and placed it under the superintendence of the Dean and Canons of a collegiate establishment, erected in the immediate vicinity, which had been commenced by his father, and was continued and completed under the fostering care of himself and the successive members of his royal and noble house. The church attached to this establishment appears to have been a cathedral in miniature, and to have excited the admiration of all visitors. It has been described by an ancient tourist as "the most beautiful abbey in England." Here, in 1345, was Earl Henry buried, King Edward the Third and his Queen, with many of the Bishops, Earls, and Barons, attending his funeral. The Earl's son, Henry the first Duke, after the untimely end of an only son, removed from his seat at Kempford in Gloucestershire to his Castle of Leicester, where his study appears to have been to complete the extensive works in and about the Castle and Newarke, which his father had begun. He died at the Castle in 1361, and was buried in the colle-

giate church of the Newarke, to the altar of which he had presented a most precious relic.*

From his extensive benevolence, and his attention to the comforts and interests of the people of Leicester, he was called the "Good Duke of Lancaster." John of Gaunt, "time-honour'd Lancaster," married for his first wife, Blanche, daughter of this Duke, who, by the death of her sister Maude without issue, became sole heiress to her father; and her husband, having been created Duke of Lancaster, made the Castle of Leicester one of his principal places of residence. The will of this Duke is dated from his Castle of Leicester (February 3rd, 1397); and by some he is supposed to have died there.† The better opinion, however, is, that he died at Ely House in Holborn; and it is certain that he was buried at Old St. Paul's, beside his first wife Blanche, in compliance with a direction contained in his will.‡ Henry of Boling-

* This Duke, in a tournament with the Duke of Brunswick, on the latter submitting to the arbitrament of the King of France, was desired to select what he pleased out of many precious relics. He chose a thorn, said to have been taken from the crown of Jesus, and brought it to Leicester, where it was placed before the altar of the collegiate church of the Newarke. The will of the Duke was proved at Leicester 3 kal. April, 1361, and in London 7 ides of May following.

† Archæologia, vol. xx. p. 180.

‡ Vide Sir H. Nicolas's "Testamenta Vetusta," vol. i. p. 140. There is a singular inadvertence in Dugdale with regard to this point. In the "Baronage," (vol. ii. p. 118,) Constance, the second

broke being the son of Duke John by his wife Blanche, the Castle of Leicester vested in the Crown, as parcel of the Duchy of Lancaster, on that Prince becoming King Henry IV. This leads me to my more immediate subject.

Leland, who visited Leicester when the collegiate church was in its splendour, gives this description of it. I choose to copy his quaint and antiquated style:—

“The collegiate chirch of Newarke, and the area of it, yoinith to another peace of the castelle ground. The college chirch is not very great, but it is exceding fair. There lyith on the north side of the high altare Henry Erle of Lancaster, withowt a crounet, and two men-childern, under the arche, next to his hedde. On the southe side lyith Henry, the first Duke of Lancaster; and yn the next arch to his hedde lyith a lady, by likelihod his wife.

“Constance, daughter to Peter King of Castelle, and wife to John of Gaunt, liith afore the high altare in a tumbe of marble, with an image of [brasse] like a quene, on it.

wife of John of Gaunt, is stated as having been buried at Leicester. In the *next page* he says the Duke was buried at St. Paul's, with *Constance* his *second* wife. However, the List of Chantries kept at St. Paul's, and printed in the “Appendix” to his History of that Cathedral Church, shows that it was the Duchess *Blanche*, and not *Constance*, who was there buried. It is singular that the three wives of John of Gaunt should have had three different places of sepulture; the first at St. Paul's, the second at Leicester, and the third (Katharine Swynford) at Lincoln.

“ There is a tumber of marble in the body of the quire. They told me that a Countess of Darby lay buried in it; and they make her, I wot not how, wife to John of Gaunt, or Henry the 4. In deede, Henry the 4, wille John of Gaunt livid, was caullid Erle of Darby. In the chapelle of St. Mary, on the southe side of the quire, ly buried two of the Shirleys,* knights, with their wives; and one Brokesby, an esquier. Under a pillar yn a chapelle of the south crosse isle, lyith the Lady Hungerford,* and Sacheverel her seconde husbnde.

“ In the southe side of the body of the church lyith one of the Bluntes,* a knight, with his wife.

“ And on the north side of the church ly 3 Wigestons, great benefactors to the college. One of them was a Prebendarie there, and made the free grammar-schole.

“ The cloister on the south-weste side of the

* The families of Shirley, Hungerford, and Blunt (or Blount), were all zealous and distinguished partisans of the house of Lancaster. Sir Hugh Shirley, with several of the Blounts, fell early in the wars of the Roses. In Shakspeare's “ Henry the Fourth,” the Prince of Wales is made to exclaim—

“ The spirits of valiant *Shirley*, *Stafford*, *Blount*,
Are in my arms.”

Sir Ralph Shirley (son of Sir Hugh) gloriously distinguished himself at the battle of Azincourt, and was buried in the Newarke church, A. D. 1443. (Vide Nichols's Leicestershire, tit. “ Staunton Harold.”) He married Elizabeth, the daughter of Sir John Blount, who fell at the siege of Rouen. Walter Lord Hungerford was Lord Treasurer of England temp. Henry V.: and he, as well as Sir John Blount, were advanced to the dignity of the Garter by that monarch. Vide Godwin's Henry V. pp. 208, 347.

chirch is large and faire, and the houses in the cumpace of the area of the college for the Prebendaries be al very praty.

“ The waulles and gates of the college be stately.

“ The riche Cardinal of Winchester * gildid al the floures and knottes in the voulte of the chirch.

“ The large Almose-house standith also withyn the quadrante of the area of the College.”

Leland's Itinerary, vol. i. pp. 17, 18.

That in early life Henry the Fourth was called Earl of Derby is quite clear, † indeed it had been a title borne by several of his ancestors. He afterwards became Earl and then Duke of Hereford. While Earl of Derby, he, with the consent of his cousin King Richard II. (A.D. 1381,) married Mary de Bohun, the younger daughter and coheiress of Humphrey de Bohun, late Earl of Hereford, Essex, and Northampton, and Constable of England, by Joan daughter of Richard Earl of Arundel and Surrey. A distant relationship previously existed between the parties, inasmuch as the mother of the Countess of Hereford was Alianor, daughter of Henry the third Earl of Lancaster. ‡ The elder daughter and coheiress of the Earl of Hereford (Alianor de Bohun) had been previously married

* Cardinal Beaufort, natural son of John of Gaunt by Katharine Swynford, before his marriage with her.

† Cal. Rot. Pat p 215, m. 5.

‡ Vide Sir H. Nicolas's Test. Vet. vol. i. pp. 89, 95 ; and Pedigree of the De Bohuns, in Harding's " Antiquities of Westminster Abbey," p. 24.

to Thomas of Woodstock, Duke of Gloucester, the paternal uncle of the Earl of Derby. These ladies shared between them their father's large possessions, consisting of upwards of forty lordships, and which were afterwards made the subject of divers arrangements.* The Earl of Hereford died when they were very young,† and they were both early married. Alianor died a widow in 1399, and was buried in the chapel of St. Edmund the King, in the abbey church of Westminster, where a large monumental slab, placed upon a low tomb of the altar kind, inlaid with exceeding rich brass-work, and bearing on the ledge of the monument an appropriate inscription, marks the place of her inter-

* In the Parliament prorogued from Leicester to Westminster, temp. Henry V., A.D. 1414, it was enacted, without opposition, that all the estates within the King's dominions which descended to the King in right of his mother, Dame Mary, (one of the daughters and coheirs of Humphrey de Bohun, Earl of Hereford, &c.) as son and heir of the said Dame Mary, should be dissevered from the Crown of England, and annexed to the Duchy of Lancaster. (Vide Sir R. Cotton's Parl. Rolls, p. 541.) It is no less singular than true, that the disappointment, in a subsequent reign, of the Duke of Buckingham, in not receiving at the hands of Richard the Third the Hereford estates, in return for the part he had taken in elevating that usurper to the Throne, led to the first attempt of the Earl of Richmond upon the Crown, and eventually to that successful effort at Bosworth which placed it on his head. (Vide Buck's Richard the Third, p. 34; and Hutton's Bosworth Field, p. 13.)

† A.D. 1373 (vide Test. Vet. vol. i. p. 89). The Countess of Hereford survived until the year 1419. (Vide Dugdale, vol. i. p. 187.)

ment.* Her younger sister, Mary Countess of Derby, died at the Castle of Leicester, the residence of her father-in-law, in the year 1394, and was buried in the collegiate church of the Newark, in a tomb situate, according to Leland, "in the body of the quire." Her husband and father-in-law were at the time both engaged in France, negotiating a treaty of peace with the Dukes of Berri and Burgundy; and it is a singular circumstance that her father-in-law should have lost his Duchess (Constance) at the same period, she having died at the Castle of Leicester within a day of the Countess. She was, as before stated, interred in the same church. †

The following curious particulars relative to the marriage of the Earl of Derby with Mary de Bohun are extracted from "Froissart's Chronicles," Johnes's edit. A.D. 1806: they are taken from an article headed, "Two additional Chapters, *which are only in one of my MSS.* and not in any printed copy."

"There fell out about this time in England an event which gave great displeasure to the Earl of Buckingham, when he heard of it. I will explain to you what it was. Humphrey Earl of Hereford and Northampton, and Constable of England, was

* She died in the Abbey of Barking, having, after her husband's tragical death at Calais, taken the veil. (Vide a plate and description of her tomb in Harding's "Antiquities of Westminster Abbey," p. 20.)

† Knyghton, Coll. 274.

one of the greatest lords and landholders in that country; for it was said, and I, the author of this book, heard it when I resided in England, that his revenue was valued at fifty thousand nobles a year. From this Earl of Hereford there remained only two daughters as his heiresses; Blanche the eldest, and Isabella her sister.* The eldest was married to Thomas of Woodstock, Earl of Buckingham. The youngest was unmarried, and the Earl of Buckingham would willingly have had her to remain so, for then he would have enjoyed the whole of the Earl of Hereford's fortune. Upon this marriage with Alianor, he went to reside at his handsome castle of Pleshy, in the county of Essex, thirty miles from London, which he possessed in right of his wife. He took on himself the tutelage of his sister-in-law, and had her instructed in doctrine; for it was his intention to have her professed a nun of the order of St. Clare, which had a very rich and large convent in England.† In this manner was she educated during the time the Earl remained in England, before his expedition into France. She was also constantly attended by nuns from this convent, who tutored her in matters of religion, continually blaming the married state. The young lady seemed to incline to their doctrine, and thought not of marriage.

* This is an obvious error; their names were Alianor and Mary.

† This was in London, near the Tower, at the spot now called the Minories.

Duke John of Lancaster, being a prudent and wise man, foresaw the advantage of marrying his only son Henry, by his first wife Blanche, to the Lady Mary; he was heir to all the possessions of the House of Lancaster in England, which were very considerable. The Duke had for some time considered he could not choose a more desirable wife for his son than the lady who was intended for a nun, as her estates were very large, and her birth suitable to any rank; but he did not take any steps in the matter until his brother of Buckingham had set out on his expedition to France. When he had crossed the sea, the Duke of Lancaster had the young lady conducted to Arundel Castle, for the aunt of the two ladies was the sister* of Richard Earl of Arundel, one of the most powerful lords in England. This lady Arundel, out of complaisance to the Duke of Lancaster, and for the advancement of the young lady, went to Pleshy, where she remained with the Countess of Buckingham and her sister for fifteen days. On her departure from Pleshy, she managed so well that she carried with her the Lady Mary to Arundel, when the marriage was instantly consummated between her and Henry of Lancaster.† During their union of twelve years, he had by her

* This should be "wife:" the Countess of Arundel was Elizabeth, daughter of William de Bohun, Earl of Northampton, grandfather of the heiresses. The Earl of Arundel himself stood in the like relationship to them, being their maternal uncle.

† There is some reason to believe that the young lady had com-



four handsome sons, Henry, Thomas, John, and Humphrey, and two daughters, Blanche and Philippa. The Earl of Buckingham had not, as I said, any inclination to laugh when he heard these tidings, for it would now be necessary to divide an inheritance which he considered wholly as his own, excepting the Constableness, which was continued to him. When he learned that his brothers had all been concerned in this matter, he became melancholy, and never after loved the Duke of Lancaster as he had hitherto done."

The Plate represents a monument now standing under the north window of the Chapel of the Newarke Hospital, which I believe, for the reasons hereafter assigned, to be the one described by Leland, in his notice of the collegiate church, as the tomb of the Countess of Derby.

It should be stated, that the Chapel of the Trinity (or Newarke) Hospital is situate within an hundred yards of the collegiate church, the site of which latter is identified, not only by Leland and other writers, but also by several arches of the vault of the church still remaining, underneath a mansion erected over it.* The church was in a great measure destroyed at the Reformation, and with it perished all its monumental treasures, except the one which I conjecture to have been so singularly preserved. Leland, who visited the

menced her novitiate; and the suddenness, as well as craft, with which her abduction was effected, countenances the opinion.

* Now the residence of Richard Warner Wood, Esq.

hospital as well as the collegiate church, is silent as to any monument existing in the chapel of the former; but Mr. Wyrley, who visited the chapel some years after the destruction of the church (circa 1590), noticed in it "a very fayr and statlie monument of a ladie, curiosly wrought;" he, however, appears not to have made any particular inquiry respecting it, for he adds, "but of noe note or marke."* It is evident, therefore, that in Mr. Wyrley's time this was, as at present, the only monument in the chapel. It is time, however, to speak of the monument itself. It is a tomb whereon is sculptured a female figure, the appearance of which denotes that *its subject had not attained the middle age*.† The female is represented in a veil and mantle, with a standing cape, necklace, and jewel pendant, long sleeves, reaching down to her wrists, a garment folded over her feet, angels at her head, under which are two cushions, the undermost tasselled. The tomb has an em-

* Vide Wyrley's MSS. now remaining amongst the archives of the Heralds' College. Mr. Wyrley was a herald, and a native of Nether-Seile, in Leicestershire.

† The Countess of Derby must have died very young; her death occurred, I have before stated, in 1394. 3d Sept. 5 Ric. II. (A.D. 1382,) John of Gaunt issued his warrant to his Receiver in the County of Lincoln, to pay to Joan Countess of Hereford 100 marks per annum, for the wardship and costs of *his daughter-in-law, Mary Countess of Derby, until she should arrive at the age of fourteen*. (Vide Nichols's Leicestershire, vol. i. p. 247, where Regist. Johannis Ducis, &c. is referred to as the authority.)

battled moulding, and four plain shields on the south front.

It will be observed, that the costume of the figure is in accordance with that prevalent at the close of the fourteenth century. There are no vestments or symbols of widowhood discernible on the figure. There is not the slightest tradition as to any interment of note in the chapel of the Hospital at this early period, nor, indeed, was it likely there should, the collegiate church being then standing, and the chapel the oratory of a "Bede-house;" and as monumental effigies, after the thirteenth century, were generally regarded as containing portraits of a deceased party (Gough, p. 97), it may be remarked that nothing can be more in accordance with the character, as to costume, of a young married female of the fourteenth century, than the one which this effigy presents.

The embattled moulding is also characteristic of the period referred to. It appears very conspicuously in the woodwork of the roof of the south aisle of the adjacent church of St. Mary de Castro, which was a gift of the Duke of Lancaster, circa 1385. An animal, in all likelihood a dog, has lain at the foot of the figure. This was probably destroyed when the tomb was removed; the space, however, which it once occupied is quite apparent. There is also great reason to believe that the jewel pendant was first adopted in or about the reign of Henry IV. The effigy of Philippa, Queen of Edward III. (who died in

1369,) has neither collar nor necklace; and I believe it will be found that, with the exception of the tomb I am describing,* the earliest instance where the collar of SS appears on the effigy of a female, is on that of Joan of Navarre, the *second* wife of the Earl of Derby (then King Henry IV.) who died in 1437, and was buried with her husband in the cathedral at Canterbury. It may, too, be remarked that the brass-inlaid effigy in Westminster Abbey, of the before mentioned Alianor Duchess of Gloucester (who died in 1399), represents her habited in a very similar dress to that appearing in the Leicester case, viz. a loose gown or robe, mantle, and veiled head-dress. The duchess of Gloucester, however, having died a widow, is represented also with the barb, which covers the neck and chin: this, of course, her sister, the Countess of Derby, who died in her husband's lifetime, would not have. (Vide engraving of this monument in Harding's Westminster Abbey, p. 20.) The cape of the inner vest, in the Leicester effigy, is slightly turned back; in Strutt's "Dresses," vol. ii. plate 93, is the figure of a lady of rank of the latter part of the fourteenth century, who is represented in a robe with a similar cape; and, although there is more simplicity in the general features of the Leicester tomb than are usually attendant on tombs of the latter part of the fourteenth century,

* There is no collar of esses in the present case, nor is the remark which follows correct.—EDIT.

yet instances are not wanting of tombs of that era being as unembellished. In the church of Meriden, in Warwickshire, there is a monument of this period the sides of which are quite plain, with the exception of three shields, which are similar to those on the Leicester monument, the habiliments on the effigy of which evidently bespeak exalted rank. A ring appears on the "fourth finger of the left hand" of the figure on the Leicester monument, which, taken in conjunction with the absence of the barb, establishes the fact that the subject of the monument died a married woman. The dilapidated state of the tomb, together with the obvious abridgment of its proportions to suit its present position, are strong proofs of its removal from some other situation; tradition for nearly two centuries corresponds; and I am much inclined to think that it did not *always* occupy the situation it now does, *even* in the Trinity Hospital chapel. I perfectly remember, when quite a boy, seeing a drawing of it, (made by Mr. Throsby when the chapel and hospital had not been exposed to modern curtailment,) in which the embattled moulding was shewn completely surrounding it; an ornament now in a great measure hidden by the wall and screen against which it rests. During Cromwell's usurpation, the chapel and hospital were for a considerable period consigned to the "tender mercies" of Parliamentary Commissioners; and this circumstance, taken in conjunction with the addi-

tional one, that about sixty years since (as just hinted at) both the chapel and hospital underwent very extensive alterations, render it matter of surprise that so much of the tomb is left as now exists. The tomb of Bishop Penny, in the church of St. Margaret, is a striking instance of the "hard fate" (if I may be allowed the expression) which has frequently attended relics of this description. Tradition has it, that this memorial once occupied a central situation in the chancel of that beautiful church; it was then removed into what is called the "Vicar's Chancel," at the east end of the north aisle; an engraving of it, during its occupation of this site, is given in Mr. Nichols's book; and from this it appears that six massive columns (three on each side) were appendages to it. Some years since an extensive reparation of the church took place; it was again removed; its columns, owing probably to serious but unintentional injuries then sustained, have disappeared; and its remains are now placed against the north wall of the church, much in the same manner as are those of the tomb of the Countess of Derby in the Trinity Hospital Chapel. The monument of Bishop Penny, a very considerable benefactor to the place, of which he was once the Abbot, now stands a melancholy spectacle of departed splendour!

But to return:—The narration of Leland shews that, if the tomb be one which once graced the collegiate church, it *must* be that of the Countess of Derby, for to none other will his description

apply: it was a tomb with *neither brass nor inscription*, standing "in the middle of the quire." It is true there were other females besides the Countess interred in the collegiate church, but only *two* connected with the House of Lancaster; one Leland supposes to have been the first Duchess, and describes her as lying on the south side of the high altar, in the next arch to her husband's head. Now, putting aside the fact that this lady could not die *very young*, and was probably a *widow*,* and that the appearance of the figure on the tomb in Trinity Hospital could in no way apply to her, is it at all probable that such a divorce from the remains of her husband, as the removal of her tomb would have been, was likely to have been attempted? The other female connected with the Lancaster family, who was buried in the collegiate church, was Constance, the second wife of John of Gaunt; her monument, however, is out of the question, inasmuch as Leland expressly describes it as having "an image of brasse like a queene on it." It may be observed, too, that the tomb of the Countess of Derby was one

* The will of her husband, before mentioned, dated in the year of his death, shews that his wife was then living; and the expressions used in it, "that he wished his wife to be *invited* to his funeral," would almost sanction the belief that the husband and wife were separated before the death of the former. At all events she could not have been a *very young woman*, her husband's "Inquisition post mortem," 35 Edw. III. shewing that their eldest daughter Maude was then (A.D. 1361) *twenty-six years of age*.

standing alone, and capable of easy removal. There is only one other female *connected with the Lancaster family* whose monument this might be conjectured to be; she is one not mentioned by Leland. I allude to Maude, the wife of Henry the third Earl of Lancaster, and the daughter of Sir Patrick Chaworth. The "Inquisitiones post mortem," however, shew that such an appropriation cannot be sustained. Her father died 11 Edw. I. (A.D. 1283,) and she is described as being then above a year old. The Newarke Hospital was not commenced until 1331, and probably not completed for several years afterwards; so that, at its first foundation, this lady would be about fifty years of age,—quite out of character with the juvenile appearance of the figure on the monument I am describing. Besides, there is no tradition of this lady having ever resided with her lord at Leicester. The estate of Kempsford, in Gloucestershire, from whence her son Henry removed to Leicester, as before mentioned, was her inheritance. There is still another female, whose tomb the one I am now alluding to might be supposed to be; I intend the Lady Mary Harvey, a considerable benefactress to the Trinity Hospital. To adopt "legal phraseology," she is, however, quite "out of court." She was an "*aged widow*" temp. Henry VI. (vid. Rot. Parl. 12 and 13 Edw. IV. p. 49,) and there is every reason to believe she was interred at her manor of Southorp, in Gloucestershire.

The collegiate church was originally evidently set apart as *a burial place for members of the Lancaster family*, their alliances, and distinguished adherents, and it remained so as long as the adjacent Castle was in their possession ; and it is highly probable that the Countess of Derby was the last, directly associated with that family, who was interred therein. But to return. Leland only notices four other interments of females in the collegiate church, and it is to be remarked that they were all *married women, and interred by the sides of their husbands*. The first of these, the lady of Sir Thomas Shirley (who died circa 1362), survived him many years, and was a grandmother at her death ; so that the youthful appearance on the tomb I am describing could not apply to her. The remains of a second (the lady of Sir Ralph Shirley) were removed in 1443, from the church of Ratcliffe-upon-Soar, in Nottinghamshire, to the Newarke church, and there interred with those of her husband, whose remains had been brought from France, where he died. The state of monumental architecture at this period renders the tomb in question quite out of the case, with respect to this lady. That the Blounts were connected with the latter Shirleys, is clear, from the intermarriage before mentioned ; and I think, therefore, it may be fairly inferred, that the interment of a third lady (the lady of Sir —— Blount) in the Newarke church, did not take place until about the period

last mentioned; indeed, the brother of this lady (Walter Lord Mountjoy) did not die until 1476.* With regard to the fourth lady mentioned by Leland (the Lady Hungerford), she could have been interred a very short time only previous to his visit, as she died temp. Henry VIII.†

It may, I think, be gathered from Leland's description that all the monuments he mentions, with the exception of those connected with the Lancaster family, had inscriptions; for, with respect to the former, he was at no loss in appropriating them, whereas, with regard to the latter, he was evidently obliged to have recourse to conjecture, or collateral information.

That tombs were preserved, amid the reckless and sacrilegious fury which disgracefully characterised the dissolution of religious houses, is clear. We have several instances in this county. The tomb of Bishop Penny was removed from Leicester Abbey to the church of St. Margaret; that of Roesia de Verdun, the foundress of the nunnery at Gracedieu, was, at the dissolution of that establish-

* Vide "Shirley Pedigree," in Nichols's Leicestershire, tit. "Staunton Harold."

† Vide Throsby's "Leicester," p. 221. Lady Hungerford was daughter and heir of Sir Thomas Hungerford, son of Robert, son of Walter Lord Hungerford, and was married to Edward Lord Hastings, who died Nov. 8th, 22 Henry VII. leaving issue by her, George the first Earl of Huntingdon. She married afterwards Sir Richard Sacheverell, who died 25th Henry VIII.

ment, removed to the neighbouring church of Belton, where it still remains.* It is impossible to

* Nichols's "Leicestershire," tit. "Belton." The tomb of Roesia de Verdun is a striking instance of the correctness of the opinion long entertained, that the descriptions of monuments given by early tourists and annalists are not invariably to be relied on. The tomb in question is described by Mr. Wyrley as being composed of marble. Mr. Burton's description of it might easily mislead: he calls it, "a very ancient monument of stone raised, with a proportion of a woman neatly carved and painted." The tomb is composed of alabaster. The monument erected by King Henry the Seventh to the memory of Richard the Third in the Grey Friars' church at Leicester, is described by Buck (who appears to have derived his information from some early author) as having been composed of "mingled-coloured marble;" whereas Burton, borrowing no doubt also from some other early chronicler, describes it as "an ordinary alabaster monument." The truth is, some descriptions of alabaster, especially the white, are so nearly assimilated to marble, that an observer *en passant* does not always detect the difference, especially if the tomb be viewed at a considerable period from its erection. Tombs, too, of both alabaster and marble, were formerly so bedizened with paint, as frequently to disguise the features of the material. The tomb of Bishop Penny at Leicester is composed of dark-brown alabaster; it was erected just previous to Leland's visit, who calls it "alabaster." In his time there was "a faire quarre of alabaster stone about a 4 or 5 miles from Leircester, and not very far from Beumaner." (Itin. vol. i. f. 22.) The absence of any carved work on the shields of the tomb I am commenting upon shews that it was formerly painted, and it is composed of white alabaster; it has, however, been repeatedly described as marble,—a description given by Leland.

While on this subject, I cannot avoid noticing a most singular error of Burton. Under "Leicester," he says, speaking of St. Margaret's church, "Upon a marble monument of John Middle-

dive into motives; but when we recollect *who Mary de Bohun was*, that she was the mother of one of England's brightest and royal heroes, and the wife of a Prince who completed the religious and eleemosynary establishments in Leicester which his ancestors had commenced,—that she was frequently resident at Leicester, forming part of the household of a Prince an avowed favourer of Lollardism,—and that she died there,—reasons

ton, Bishop of —, is graven quarterly, Fretty — and a canton, and three greyhounds currant." Instead of a Bishop, Mr. Wyrley appropriates the monument to a John Middleton, who was Mayor of Leicester A.D. 1578; and Mr. Wyrley was undoubtedly correct, the remains of no other prelate than the Bishop of Carlisle (Penny) having ever been removed to St. Margaret's church, nor those of any prelate having been ever interred there, as least since Leicester ceased to be a bishopric. Mr. Wyrley says, there "is a *mural* monument to the memory of John Middleton, Mayor of Leicester in 1578, who died in 1588. Arms, quarterly, 1 and 4 . . . fretty . . . and a canton; 2 and 3, . . . three hounds currant in pale or." It is singular, too, that Burton should not have noticed the then splendid tomb of Bishop Penny, and that he should have confounded that of the Leicester Mayor with the Bishop's, considering their *extreme dissimilarity*. But let me not be misunderstood. I do not wish, by making these remarks, to withhold that meed of grateful acknowledgment which ought ever to be paid to the efforts and labours of our early tourists and annalists; and deeply should I regret were I suspected of not cherishing towards their memories a most subdued and venerated feeling! Without their exertions, where would have been the materials for any work approaching to the character of a History of our beloved Country,—of a detail of the usages of its former inhabitants,—or of a reference to the memorials of its early splendour?

are not wanting why her monument should have been preserved. I rest, however, my conjecture as to the tomb in Trinity Hospital Chapel being that of the Countess of Derby more on its own intrinsic evidence than on any other ground, although I trust I may be considered as having adduced some auxiliary evidence in support of my conclusion. The subject, I confess, is a perplexing one, in the absence of shields or badges to aid the inquiry, and it would be absurd to assume an air of certainty; whether, however, I am correct or not in my appropriation of the tomb, an opportunity has been given my feeble pen, of rescuing from "somewhat like oblivion," the memory of a Lady so "nobly allied," but so little "chronicled."

I am aware that the subject did not escape Mr. Nichols, and that he was of opinion that some other appropriation of the tomb must be sought for. This opinion, however, is only given in a brief note; and it is clear that my venerated friend had not given the subject any marked attention, or considered it in detail. I am aware, also, that it was affirmed by Weever, and repeated on his authority by Sandford, that the Countess of Derby was buried in the cathedral at Canterbury, and that on that account her husband selected Canterbury as his place of sepulture; and that a monument in the cathedral at Hereford has been also assigned to her.* All these conjectures,

* More recent antiquaries, with greater plausibility, consider

however, vanish before the united testimonies of Knyghton * and Leland ; and Mr. Gough, alluding to the subject in the 2nd vol. p. 35, of the " Sepulchral Antiquities of Great Britain," says, " Had Henry IV. died Earl of Derby, it is probable he would have been buried among his ancestors *in the collegiate church of their founding at Leicester ; so that it is no improbable conclusion that his wife, who died Countess of Derby, was actually carried thither, to his family, rather than to her own, especially as the conjectures about her do not deposit her among any of her very near relations, if they were at all related to her.*"

As remarked by Mr. Gough, her parents and ancestors were interred at Walden, in Essex ; where their family monuments did not escape the violence exercised at the dissolution of religious houses. Her sister and mother both survived her—the Duchess of Gloucester dying in 1399, and the Countess of Hereford surviving until 1419. †

It may be urged, as matter of surprise, that one so nobly born and allied as Mary de Bohun was, should have been scarcely noticed in history ; and that Shakspeare, considering the intimate relation in which she stood to the principal characters in

this to be a " Statue of St. Ethelberta," taken from a pedestal near the high altar. (Vide Britton's " Hereford Cathedral," p. 59.)

* Knyghton was a canon of Leicester, and was born at Knyghton in the parish of St. Margaret, Leicester. His means, therefore, of local information were unquestionable.

† Test. Vet. vol. i. p. 147 ; and Dugdale's Baronage, vol. i. p. 187.

his plays of Richard II., Henry IV., and Henry V., should have made no allusion to her.* When, however, the particular circumstances under which the Countess was placed are considered, surprise will cease. It must be recollected that she married when very young, and died leaving her children quite infants, and legacies to the relations of her husband. Her eldest son, Henry V. was only born in 1388.† She had five other children, and died

* Alianor, her elder sister, is referred to several times in the play of Richard II. In Act 1, scene 3, is the interesting and well-known dialogue between John of Gaunt and the Duchess of Gloucester, wherein the latter urges Gaunt to avenge the murder of her husband; and in Act 2, scene 7, the death of the Duchess, in 1399, is thus noticed:—

“*York.*—The Nobles they are fled, the Commons cold,
And will, I fear, revolt on Hereford’s side.
Go thee to Plashie, to my sister Glo’ster.
Bid her send presently a thousand pound—
Hold, take my ring.

Servant.—My Lord, I had forgot
To tell to-day I came by and called there,
But I shall grieve you to repeat the rest.

York.—What is ’t?

Servant.—*An hour before I came the Duchess died!*

York.—Heav’n for his mercy! what a tide of woes
Come rushing on this woeful land at once,” &c. &c.

† Henry V. was brought up the palace of King Richard II. (who appears to have been much attached to him,) and received the early part of his education at Queen’s College, Oxford, where he was placed under the care of his uncle, Cardinal Beaufort. He quitted his academical studies for a time, to join the army of Richard II. in Ireland: he was then only in his 11th year, and was thus early knighted by that monarch. He probably continued at

in 1394. Her short life was evidently one of care and trouble ; and her large estates, together with the intrigues which were set on foot to obtain possession of them, must have occasioned her much uneasiness. She was intended, as we have seen, for a sacrifice on the altar of cupidity ; and, when the selfish and unworthy design failed, the estrangement which her marriage, under the circumstances detailed by Froissart, could not fail of producing between herself and her only sister,—an estrangement aggravated too, by the influence of Katharine Swynford, coupled with the unsettled public times in which her lot was cast,—proved, in all probability, too much for her constitution, and consigned her to an early grave.

In the chapel of a “Bede-house,” where aged poverty bends the knee in solemn devotion before a common and Almighty Creator, rests, as I conjecture, the monumental effigy of one of England’s richest heiresses, and the mother of one of England’s most renowned sovereigns ! While the remains of her husband have for centuries reposed

Oxford after he became Prince of Wales, as little or no mention of him is made until about 1402. The Commons, at the beginning of his reign, petitioned, on account of his youth, that he might not go out of the kingdom, and it is said he was sent for to court from Oxford, and placed under the tuition of the veteran, Sir Thomas Percy. After the death of his governor, against whom he fought at Shrewsbury, he acquired much experience in arms under the Duke of York in Wales. The Irish expedition was, however, the first campaign in which the future conqueror of France unsheathed his sword.—*Archæologia*, vol. xx. pp. 29, 30.

in the Cathedral of Canterbury; and those of her son and her sister rested in sepulchral magnificence, amid the splendour of the Abbey of Westminster; while the sigh of the brave has heaved o'er the corse of the hero of Azincourt, and the genealogist and artist, as well as the votary of Shakspeare, have visited the tombs of her husband, her sister, and her son; it has been the lot, according to my belief, of what was *once* "the Countess of Derby," of what was *once* the *mother* and *consort* of royalty, to slumber "unnoticed and unknown," beneath the humble shelter of an eleemosynary foundation!

Dr. Johnson has a beautiful remark, expressive of his contempt for that man who could tread on a spot consecrated either to religion or history, without experiencing corresponding emotions. How aptly does this observation apply to the Castle and Newarke of Leicester! Whether our reflections are directed to the noisy carousals which resounded along the halls of the former, during the earlier stages of the feudal system, or to the more polished entertainments given there during the sway of the kind and beneficent Dukes of Lancaster—whether we ascend its ancient keep, and from thence take a survey of the once "dark frowning" forest of Leicester, depicting to ourselves its vassals trembling as they approached the residence of their potent lord—whether, in "fancy's eye," we see kings, bishops, and nobles, attending to that "bourne from which no traveller returns" the

corses of those whom they respected in life and revered in death—whether the same eye varies the scene, and depicts the illustrious Wycliffe, the “morning-star of the Reformation,” protected from the violence of his enemies by the effective temporal shield of a Duke of Lancaster, or the followers of that transcendently eminent man, persecuted “even unto martyrdom,” under the authority of a parliament sitting in the same spacious hall where once the honest ecclesiastic received a cordial and sincere welcome from a noble patron—whether, after the dissolution of religious houses, we fancy the “stillness of death” coming over a district once teeming with the din of state business and royal hospitality, and suppose that “stillness” reigning, until the unhallowed cannon of civil war obtruded upon its deep repose—who, I ask, would wish to suppress a sigh, who would desire to withhold a tear?—WHO, but the heartless creature, so appositely described by the immortal Johnson, “whose patriotism would not gain force upon the plains of Marathon, and whose piety would not grow warm among the ruins of Iona?” In taking a survey of the Castle and Newarke of Leicester, in their present state, the contemplative inquirer is naturally led to exclaim—Whither has the once imposing grandeur of this district fled?—WHERE? “Alas! Echo only resounds, WHERE?” How truly and beautifully did the unobtrusive, neglected, and prospect-blighted Kirke White, write

“ Where is *Rome* ?

She lives but in the tale of other times ;
 Her proud pavilions are the hermit's home,
 And her long colonnades, her public walks,
 Now faintly echo to the pilgrim's feet,
 Who comes to muse in solitude, and trace,
 Through the rank moss reveal'd, her honour'd dust ! ”

NORMAN PISCINA AND SEDILIA IN ST.
 MARY'S CHURCH, LEICESTER.

[*Published in the Gentleman's Magazine.*]

Leicester, January 9, 1843.

MR. URBAN,

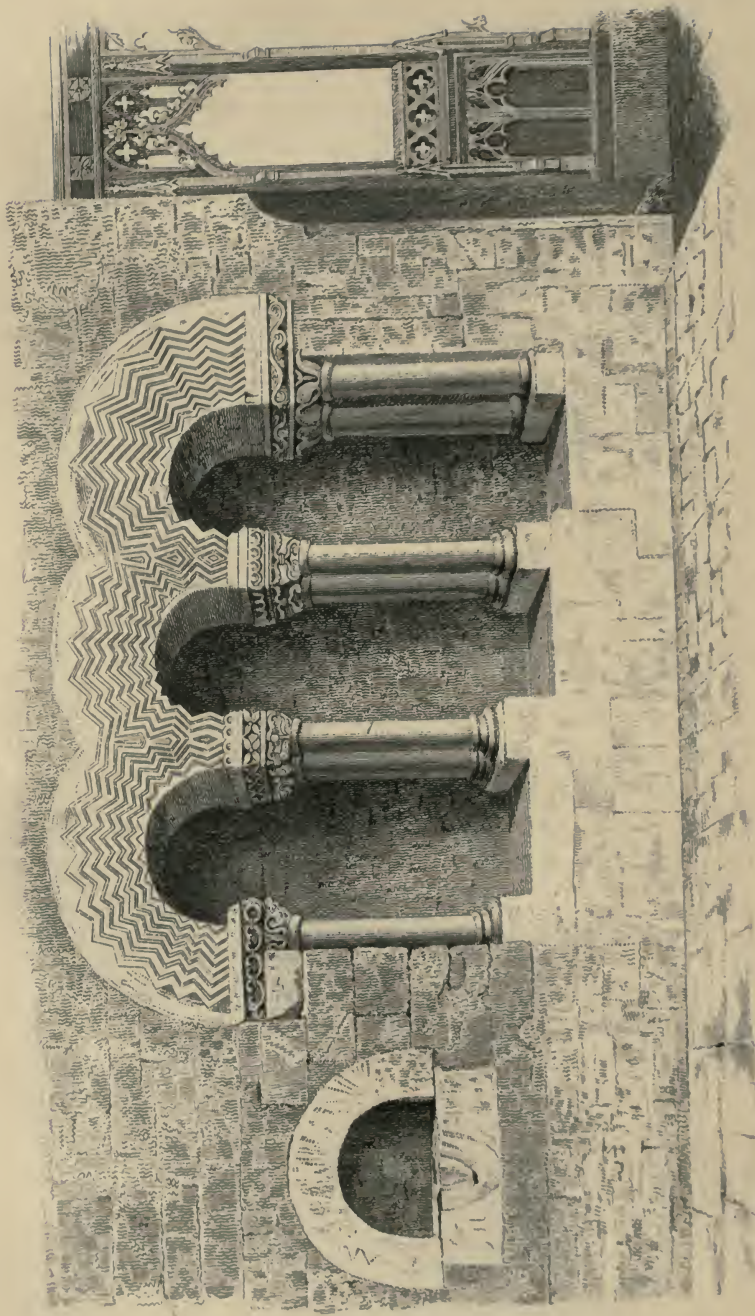
I SEND you drawings of a Piscina and of some Sedilia situate in the north (or what is usually termed the old) chancel of St. Mary's church in this place ; they are from the talented and careful pencil of Mr. T. F. Lee, a resident here, and one of the masters attached to the Leicester Proprietary School.

The church of St. Mary is one of no common character or interest ; immediately adjacent to the Castle of Leicester, it was either a partaker in the prosperity, or a partner in the adversity, of that renowned baronial and princely edifice. Almost every description of architecture may be found in and about the church ; and this diversity was doubtless chiefly occasioned by the reparations,

restorations, and additions, periodically rendered necessary by the altered circumstances of the castle, or the pious influences which pervaded the minds, and controlled the actions, of the royal and noble possessors of that splendid establishment.

It would seem that in the time of the Saxons there was a church upon or near the site of that of St. Mary; and that, this having been destroyed, or at least very considerably damaged, at the Norman invasion, was restored about the year 1107, and dedicated to the Virgin Mary, by Robert de Bellomont, Earl of Mellent and Leicester, who placed in it a Dean and twelve secular Canons, and endowed them with ample possessions. This collegiate church did not however long maintain its property and immunities: in the year 1137, it was transferred by Robert Bossu, Earl of Leicester, (the son of its founder,) to the Abbey of St. Mary de Pratis near Leicester, which he had that year established.

Earl Bossu, however, that he might not appear totally to destroy his father's foundation, with the consent of Richard the first abbot of Leicester, placed eight canons in the church of St. Mary de Castro, one of whom was at length made dean. These were all instituted by the Abbot, except one that was afterwards called vicar of the parish, who was instituted by the Bishop; but this regulation was changed A.D. 1400, when, with the consent and under the advice of Bishop Beaufort, the ab-



EXTERIOR OF THE CHURCH AND ADELPHIUM IN ST. MARY'S CHURCH LEICESTER.

T. F. L. del.

bot and convent ordained, that for the future either the dean or the sacrist should also be the vicar.* St. Mary's thus became both a collegiate and parochial establishment; it eventually settled down into an exclusively parochial one, and is now a vicarage in the patronage of the Crown.

The present building may be said to consist of two distinct churches; the north portion of it contains the remains of the church erected by the Earl of Mellent and Leicester, the decided characteristics of which are, of course, Norman; the south portion exhibits some very valuable specimens of the early-English and later styles of architecture, and presents a clerestory and splendid wood roof, generally understood to have been raised towards the close of the fourteenth century, by the munificence of John of Ghent, Duke of Lancaster, one of the lords of the castle, and a frequent resident there. The exterior windows and termination of the Norman church, as well as the commencement of the early-English one, are clearly to be traced: the Norman portion, however, has been lamentably disfigured by miserable and tasteless encroachments, which have destroyed many of its interesting features.

The Piscina and Sedilia shewn in the engraving are situate in the chancel attached to the Norman part of the church. The Norman character of the Sedilia is obvious; but the Piscina exhibits an ap-

† Nichols's "History of Leicestershire," vol. i. part 2nd, p. 303

pearance of a somewhat different description, and has led to the conjecture that it is of a more remote date than the Sedilia. I am aware some have contended for a more remote period being assigned to Piscinas than to Sedilia.* With reference to either, however, those of a Norman description are amongst the most ancient now existing in this country, and but few are found of an earlier date than the thirteenth century.† In that century they became very general, owing, in all probability, to the constitution of Archbishop Langton, promulgated in the year 1222, by which it was decreed, that in every church which had a large parish there should be two or three priests, according to the largeness of the parish and state of the church.‡ This constitution, too, accounts in a great measure for varieties in the number of Sedilia—some churches having two—some three (the usual number), and some four and five. In Chalk church, Kent, there is only one seat, § and there is a beautiful single Sedile in Fulham church, Middlesex. ||

The Piscina in the Leicester case had been hidden for years by a tombstone placed in front of it.

* *Archæologia*, vol. xi. p. 392.

† *Glossary of Architecture*, vol. i. p. 163.

‡ *Archæologia*, vol. xi. p. 343, containing a quotation from Johnson's "Ecclesiastical Law."

§ Vide plate in *Archæologia*, vol. xi. p. 343.

|| Faulkner's *History of Fulham*, p. 75, where an engraving of the Sedile is given.

This stone having been recently removed, the interesting relic presented itself, denuded in a great measure (as I conjecture) of its distinctive Norman character, which had been destroyed in order to permit the stone to be placed against the wall of the chancel. My impression is, that the Piscina was of the same date as the Sedilia; I see no reason for supposing it to have been erected at an earlier period, nor any grounds for regarding it as of Saxon origin. I am one of those who have arrived at the conclusion that the remains of Saxon architecture in this country are but few and scattered, and I cannot detect in the church of St. Mary any acknowledged indications of such remains. It is indeed doubtful whether the present church occupies the site of the Saxon church, although, for several reasons, I am inclined to think it does. With reference to Leicester, Leland says, "There was afore the Conqueste a collegiate chirch of prebendes *intra castrum*: the landes whereof gyven by Robert Bossu, Erle of Leircestre, to the abbey of chanons made by him withoute the walles. A new chirch of the residew of the old prebendes was erected *without the castelle*, and dedicate to St. Marie, as the olde was." From this it would almost appear that the collegiate church founded by the Earl of Mellent and Leicester did not occupy the site of the Saxon church. Reverting, however, to the Piscina and Sedilia, and regarding them as Norman, they may

certainly be considered as among the earliest at present existent in this country.

The screen to the right of the Sedilia now separates a part of the Norman chancel of St. Mary's from the more modern one, and is a beautiful and elaborate specimen of the Perpendicular style of architecture. Its proportions have been, in my opinion, abridged, and some years since it extended considerably further into the church than it now does; and, as its original length has been ascertained, and that length precisely agrees with the width of the south aisle, there can be little doubt it once separated the south chancel from that aisle.

The situation of the parish church of St. Mary is combined with reminiscences of no ordinary description. Immediately adjacent to it, (as was before observed,) stands "what is left" of the once far-famed Castle of Leicester—a domain and domicile of the turbulent, but brave—the ambitious, daring, and imperious—yet highly popular, Simon de Montfort; and, in subsequent years, a favourite residence of some of the most celebrated members of the royal and noble house of Lancaster. At the south-west termination of the parochial cemetery of St. Mary, is an arch, beneath which "what was mortal" of Henry Earl of Lancaster (son of Edmund Crouchback, Earl of Lancaster, the second son of King Henry III.); of his son, the warlike but politic Duke of Lancaster

(father-in-law of John of Ghent, and grandfather of King Henry IV.); of Mary de Bohun, Countess of Derby (the mother of King Henry V.); and of Constance, daughter of Peter, King of Castile and Leon, (the second wife of John of Ghent,) were borne in solemn funereal procession from the Castle of Leicester to the neighbouring collegiate church of the Newarke. At a short distance, too, the splendid Gate House which formed the private entrance of the Lancaster family to their princely residence rises in baronial dignity, and, though rapidly "verging to decay," evidences the once magnificent character of the castellated palace to which it was a prelude. The church of St. Mary, with its associations, affords ample scope for the indulgence of those luxuriant yet melancholy flights of the imagination, which, exciting as they may be, yield a sublime gratification, connecting, as the sensation does, the past with the present, portraying in vivid colours by-gone scenes of the deepest interest, and furnishing to the contemplative mind a lesson replete with instruction and benefit.

Yours, &c.

J. STOCKDALE HARDY.

STATEMENT RELATIVE TO THE NEWARKE,
AT LEICESTER.

A PROJECT is in contemplation to make a new entrance into Leicester, from Hinckley and Birmingham. There are three lines of approach suggested, two of which would be almost unopposed; but the third (and which there is reason to fear will be the line taken) is intended to pass through a district in or near Leicester, called the "Newarke," which is occupied, in a considerable measure, by an Hospital founded by the Earl of Lancaster in 1331—by Prebendal Houses, once attached to a collegiate church which existed in the Newarke previous to the Reformation—by mansions erected on the sites of other prebendal houses, and by a magnificent Gateway which formed one of the principal approaches to the Castle of Leicester. The Newarke adjoins the Castle, which, in the reigns of Edward the Third and Richard the Second, constituted one of the chief residences of the illustrious house of Lancaster. The gateway is a noble specimen of the architecture of the period in which it was erected, and has nothing to vie with it, in its particular line, within a circuit of many miles.

The projected road will completely traverse the "Newarke," entering one of the streets in Leicester at the gateway abovementioned, and will either

render necessary the demolition of a part of the hospital, or that of one of the prebendal houses. This prebendal house was legally appropriated many years since by a benevolent individual as a residence for the vicar of the adjacent parish of St. Mary de Castro, to which church no parsonage-house is attached; the benefice of St. Mary's is very limited as to emolument, and the house in question is most eligibly situated with respect to the church, and is large enough for the accommodation of pupils—a circumstance of valuable consideration with the clergymen who may be appointed to the benefice. It may too be observed, that the projected road would, independent of the destruction of the ancient close of the collegiate church, most seriously injure a large outlay of property which has been made in the erection of residences. It is true this last consideration cannot be allowed to impede the attainment of a public advantage; and that it must be admitted that the present approach to Leicester from Hinckley and Birmingham is both objectionable and dangerous. When, however, there are two other lines which might be taken to remedy the evil, and with respect to which little difficulty would occur in obtaining the requisite property, (inasmuch as the value of the remaining property would be rather enhanced than otherwise by the formation of the road,) whereas, in the case of the "Newarke," the dissents would be almost universal, and the remaining property materially depreciated—when a spot,

associated with so many interesting recollections as the "Newarke" is, would, in a great measure, be desecrated, by the progress through it of a road connected with all description of traffic—it is earnestly hoped that the Legislature will pause before they sanction a line fraught with the objections stated.

THE BLUE BOAR INN, LEICESTER.

[*Published in the Gentleman's Magazine.*]

Leicester, May 19, 1837.

MR. URBAN,

THE house of which I forward you a drawing has been recently taken down, and was the one generally supposed to have been occupied by Richard the Third and his suite, a few nights previous to the battle of Bosworth. I send also a representation of the apartment in which the King is said to have slept. Both drawings are from the able and accurate pencil of Mr. Flower, an artist resident in this place. The building, from its antiquity and associations connected with it, was an object of great local interest, and its demolition is much regretted: as remembrances of it, portions of its timber-work and ornaments have been eagerly sought after by the inhabitants. A range of tenements has been erected upon its site, by some individuals who purchased the property about two years since.

The dilapidated state of the castle of Leicester



THE BLUE BOAR, LEICESTER.



Interior of the Principal Chamber.

at the period of the battle of Bosworth, did not allow Richard to be accommodated there. The house above-mentioned was then the principal inn in Leicester, and was known by the sign of the White Boar; it fronted the then principal street, and was in the direct line of the march from Nottingham, through Leicester, to Bosworth.

Richard arrived in Leicester from Nottingham on the evening of Tuesday the 16th of August, 1485; he appears to have travelled in great pomp—the crown on his head—and his army so disposed, as to show his power to the greatest advantage. Hutton* conjectures that the forces were arranged in so diffuse a manner as to have covered the road for about three miles, and to have been at least an hour in entering the town. The King slept at Leicester, and with his troops proceeded next morning to the village of Elmsthorpe, about ten miles distant. Here Richard and his army remained for the night, and then marched to Stapleton, (a place in the immediate vicinity of Bosworth Field,) where they must have tarried several days, as a camp was pitched in the lordship, and a considerable earthwork cast up. No better situation for observation could possibly have been selected, as no enemy could approach unseen. †

* History of Bosworth Field.

† See Hutton's "Bosworth Field," pp. 46—50. [I have appended hereafter, p. 407, some remarks to show that all this conjectural march of king Richard is unsupported by historical evidence.—EDIT.]

Richmond slept at Atherstone on the night of Saturday the 20th of August, in a house yet remaining, then and still called the "Three Tuns;" and in the immediate vicinity of this house the conference which proved fatal to the cause of Richard is generally supposed to have been held between the Earl and the Stanleys.* Henry's forces advanced from Atherstone to Bosworth Field, and on Monday the 22nd was fought the battle—the last of the thirteen conflicts between the Houses of York and Lancaster—a battle which deprived Richard of his life and ill-acquired sovereignty, and led to the union of the Red and the White Roses.

The body of Richard was brought to Leicester, and buried in the chapel of the Grey Friars; this was situate nearly in the centre of the place, and in the immediate vicinity of the parish church of St. Martin. No traces of the chapel exist, and the only parts of the monastic establishment remaining are slight and dispersed portions of the boundary walls; the chambers of a few houses in what is still called the "Friar Lane" now rest upon some of these.

It has been said, that the remains of Richard were, on their arrival at Leicester, exposed to public view in the Town-hall; but in the Harl.

* It is conjectured that a piece of ground which for centuries has been called "Consultation Close," and is situate at a short distance from the "Three Tuns," is the site whereon the above-mentioned memorable conference was held.

MSS. 542, fol. 34, it is stated, that they were exhibited to the populace in the Newarke of Leicester.* However this might be, it is certain they were interred in the Grey Friars Chapel, and that King Henry the Seventh caused an alabaster monument to be erected near them; this monument was destroyed at the dissolution of religious houses. The coffin which contained the remains of the king was dug up, and, it has been conjectured, was used for a long interval as a drinking trough for cattle, at an inn in the town.

On the fall of Richard, the *Blue Boar* was almost universally substituted for his cognizance—the *White*; and there can be no doubt the house in which he slept at Leicester underwent this change in appellation, as the side street, or rather lane, in which it partially stood, is still called “Blue Boar Lane.” When the house ceased to be an inn, is not precisely known.

Some circumstances connected with the bedstead appertaining to the bed on which Richard slept, are interesting. According to Throsby (a Leicester historian) the inn was kept in the reign of Elizabeth by a person named Clarke, whose wife hastily making the bed, and disturbing the bedstead, a piece of gold dropt from the latter; this led to the discovery of a considerable quantity of coin, which had been concealed in an inclosure formed in the bedstead. Clarke suddenly grew rich, and became mayor of the town; his

* Hutton, p. 218.

wife survived him, and fell a victim, in the year 1613, to a conspiracy formed amongst her servants, who robbed and murdered the defenceless woman. The miscreants underwent the punishment due to their crimes, and suffered the extreme penalty of the law. The bedstead was afterwards repeatedly sold, but does not appear to have been removed from Leicester until about the year 1797, when it was presented, as an object of great curiosity, to Thomas Babington, Esq. of Rothley Temple in this county, by his relative the Rev. Matthew Drake Babington, whose property it became on the death of his maternal grandfather, Mr. Alderman Drake of this place; it is scarcely necessary to add, that the bedstead still remains at Rothley Temple.

For centuries, the name of Richard the Third was never associated except with acts of a dark and vile description—no redeeming feature was allowed him—while the traditions as to his person, as well as the catalogue of his crimes, partook of an exclusively horrid and unnatural character. Well might our great dramatic poet describe him—

————— “ Seal'd in his nativity,
The slave of Nature, and the son of Hell.”

No doubt can exist as to his having been an unprincipled and a cruel man: but a doubt may very fairly exist, whether the sentence to which his memory has been subject, considering the semi-barbarous age in which he lived, has not been one

of too unqualified a description. It should be remembered that Richard fell when it was the interest of the reigning family to treat his name with every species of contumely, and to brand him with the commission of every description of crime—that he fell too, at a period, when the art of printing, although in its infancy, had yet become sufficiently prevalent to induce great neglect among chroniclers in recording passing events. It may be fairly doubted, whether he had any concern with some of the heinous crimes laid to his charge; enough, however, attaches to him to load his memory with no ordinary degree of infamy; but it must be confessed, that few have been weighed in such strict scales as he has been. Had he succeeded at Bosworth, (and but for the most insidious treachery he would have succeeded,) his character would, in all probability, have been conveyed to us as that of one of our greatest heroes and ablest sovereigns; his crimes would have been in a great measure lost in the splendour of his glories, and his admitted sound policy and good government with relation to matters of a civil and of a municipal description would have been held up as bright patterns for example. He lived, as I before observed, in a semi-barbarous age; was surrounded by enemies who were no strangers to violence; and, having grasped a sceptre to which he had no just right, he had to encounter—what had uniformly fallen to the lot of an usurper—the deadly hostility of those whose un-

principled and selfish exertions had assisted him in attaining a "bad eminence." I trust, however, I shall not be misunderstood; I should regret being considered the apologist of a heartless prince, who allowed nothing to impede the progress of his wicked ambition; the sacred cause of truth and of justice however requires, (and for some years it has been in process of accomplishment,) that more should not be laid to his charge than is strictly due, and that the atrocities perpetrated by those whose names have descended to posterity almost bereft of censure, and with the bright concomitants of heroes and of statesmen, should be placed by the impartial historian in the odious light they unquestionably deserve.

Yours, &c.

J. STOCKDALE HARDY.

THE EDITOR is induced to insert here some remarks of his own with respect to the brief sojourn of King Richard the Third in Leicester previously to the field of Bosworth, as they will supply what he believes to be the only existing evidence on that subject, in contradiction to the fictitious narrative composed by Hutton, which has been implicitly followed by Mr. Stockdale Hardy in the preceding essay, by Miss Halsted in her *Life of King Richard the Third*, and to a certain extent in the valuable volume on the historical annals of Leicester recently published by Mr. James Thompson, 8vo. 1849.

" KING RICHARD'S BEDSTEAD."

[*Published in the Gentleman's Magazine, July 1845.*]

Its story, or legend, is an old one ; but it has been heightened by successive writers, and has at last received the summit of its romance from the pen of Miss Halsted, whose description of it I beg in the first place to introduce :

" The most ordinary incidents in other men's lives with him seemed fated to be alternately the subjects of romance or of tragedy. Even the inn where he abode during his brief sojourn at Leicester, even the very bed on which he there reposed, are not exempt from the tales of horror which are associated with the memory of this prince. On his departure for Bosworth it appears from the result that he must have left many articles of value, either too cumbersome to be removed, or in themselves ill-suited for a temporary encampment, at the house of entertainment where he had been abiding, and which, as being the chief hostelry in Leicester, was distinguished by the appellation of Richard's badge, ' the Silvery Boar ; ' but, on his defeat and death, and the dispersion of his followers, the victorious army, with the infuriated rage which in all ages accompanies any popular excitement, compelled the owner of the inn to pull down the emblem of the deceased king, and to substitute the Blue for the White Boar. The apartments which the King had occupied were pillaged and ransacked, and the hangings of the richly carved bed on which he had slept during his stay in the town were torn off, and either carried away as booty with other portable articles, or were destroyed on the spot. The bedstead, however, being large and heavy, and apparently of no great value, was suffered to remain undisturbed with the people of the house ; thenceforth continuing a piece of standing furniture, and passing from tenant to tenant with the inn ; for, King Richard and his secretary being both slain, and all his confidential friends executed, imprisoned, or exiled, it could not be known that the weight of the bulky wooden framework left in his sleeping apartment arose from its being in reality the military chest of the deceased monarch. It was at once his

coffer and his couch. Many years, however, rolled on before this singular fact became known, and then it was only accidentally discovered, owing to the circumstance of a piece of gold dropping on the floor when the wife of the proprietor was making a bed which had been placed upon it. On closer examination a double bottom was discovered, the intermediate space between which was found to be filled with gold coin to a considerable amount. The treasure thus marvellously obtained, although carefully concealed, helped in time to elevate the humble publican, ' a man of low condition,' to the proud station of chief magistrate of his native town. But at his death the vast riches that accrued to his widow excited the cupidity of menials connected with her establishment ; and the wilful murder of their mistress, in 1613, led to the execution of her female servant, and of seven men concerned with her in the ruthless deed ; thus adding another tragedy to the many of higher import which are inseparably connected with the recollection of this unhappy prince.

" The inn itself, rendered so remarkable as the last abiding-place of the last monarch of the Middle Ages, ' a large, handsome, half-timber house, with one story projecting over the other, remained for upwards of three centuries unchanged, an interesting relic alike of the architecture of its period as of the remarkable epoch which it perpetuated. But in the year 1836, although undecayed, uninjured, and defying the ravages of time, this venerable fabric was razed to the ground, to the regret of all who hold sacred such historical memorials, and hallow the relics which link bygone ages with the present time. Its site, with the appellation of an adjoining thoroughfare to which it formed an angle, and which still retains the name of " Blue Boar Lane," together with the description and delineation of its picturesque appearance, are now all that connects King Richard with this interesting memorial of his last days at Leicester.

" Not so, however, the Bedstead. That appendage to the inn, although three hundred and fifty years have elapsed since it was used by the sovereign, is still in existence, and in the most perfect state of preservation. Richly and curiously carved in oak, with fleurs-de-lys profusely scattered over it, its panels inlaid with black,

brown, and white woods, the styles consisting of Saracenic figures in high relief, it proves, from the singularity of its construction, the true purpose for which it was designed, every portion of it but the body being fabricated to take to pieces and put up at will ; so that for travelling it speedily became transformed into a huge chest, although ingeniously framed for the two-fold purpose which led to its preservation.

“ Through the courtesy of the present owner of this valuable relic, the Reverend Matthew Babington, the author was permitted thoroughly to examine it, and was further favoured with many interesting particulars connected with its preservation and the peculiarity of its construction. It seems, that after the murder of Mrs. Clarke, in 1613, the bedstead still remained at the Blue Boar Inn, and continued to do so for the space of 200 years, when it came into the possession of a person whose rooms being too low to admit of its transit, the feet were cut off ; they were two feet six inches long, and each six inches square. It was purchased some years after by Mr. Drake, an alderman of Leicester, grandfather to the present proprietor, and by him held in great estimation, and very carefully preserved. Two of the richly carved panels are said to represent the Holy Sepulchre ; the tester is carved and inlaid with different coloured woods in various patterns ; the posts are very massive in parts, and very taper in others, and their construction is said to be most ingenious. Modern feet have been added ; but in all other respects this very remarkable piece of antique furniture remains in its pristine state, excepting that the rich gilding mentioned by Sir Roger Twysden was unfortunately removed by the carelessness of the person employed by Mr. Drake to cleanse it, after it was purchased by him.”

In reviewing this statement, I must first take leave to remark that the fact is assumed, unsupported by adequate authority, that King Richard had been “ abiding ” at Leicester, whether in the “ chief hostelry ” or elsewhere. He had been really abiding for some time in the castle of Nottingham, and it was there or at Lutterworth that his army was to muster.* From Nottingham,

* Baker, in his Chronicle, states that the Duke of Norfolk, the

as all authorities agree, he marched to Leicester on hearing of the near approach of the Earl of Richmond.

The account of the movements of the King's army which Miss Halsted has herself adopted, makes him anything but stationary at Leicester. She states that Richard left Nottingham on the 16th of August, and entered Leicester at sunset; that, because the castle of Leicester had become ruinous, he "took up his abode at the chief hostelry of the town;" that on the 17th he marched to Hinckley, and fixed his camp at the village of Elmsthorpe; and on the 18th removed to some rising ground at Stableton [Stapelton]. We are next told that "the 19th and 20th appear to have been passed by all parties in collecting their utmost strength, in watching the movements of their opponents, and placing their camps as desirably as circumstances admitted."

But, after all this, in the next page, Richard is still at Leicester: "although he had sent away his army . . . he appears to have made Leicester his head-quarters."

The style of this authoress is best expressed by the term "dove-tailing;" her plan is to form a sort of "harmony" of all previous writers, both ancient and modern; and, as was justly remarked by your reviewer,* the latter appear to be of equal authority to her with the former.

This *modus operandi* is combined in Miss Halsted with that love of profuse ornament which appears generally characteristic of female historians. Every incident must be romantic or melodramatic, and, like the romance or melodrama, accompanied by pageantry. King Richard leaves Nottingham "gorgeously attired in the splendid armour for which the age was remarkable," and "riding upon a milk-white charger," and the march of the army along the road "was so *imposingly* arranged" that it covered

Earls of Northumberland and Surrey, with Sir Thomas Brackenbury, Lieutenant of the Tower, were ordered to bring their forces to the King at Lutterworth; Grafton, that the Duke of Norfolk was ordered to come to Nottingham.

* See the Gentleman's Magazine for September 1844, p. 273.

the road for three miles. On his departure from Leicester, he rode out of the town “in the same *royal* state in which he had made his entry, with his *royal* crown upon his helmet, and borne on a *noble* war-steed, whose *costly* trappings accorded with the *rich* suit of polished steel armour worn by its *accomplished* rider fourteen years before at the battle of Tewkesbury.” (!)

All this absurdity is from no higher authority than Hutton’s “History of Bosworth Field,” published in 1788, and the same writer is followed in the narrative of the King’s movements.

Hutton states that the King “would have marched on Monday August 15, but, that day being the Assumption of our *Lády*, he deferred it to the 16th.” Miss Halsted says, “it was *the eve* of the Assumption of the Virgin Mary, and the superstition of the age rendered Richard averse to marching on that day;” an expression at least ambiguous, if not incorrect. The assertion is founded on a passage in a letter of the Duke of Norfolk in the Paston Letters, “that the King would set forth as upon Monday [Aug. 15], but only for our *Lády* day; but for certain he goeth as upon Tuesday.” That letter may prove the King’s intention; but, as it was written so far off as Suffolk or Norfolk, it cannot be received as proof of the course subsequently taken.

For the next stage Hutton only says that the King “probably” arrived at Leicester the same day. Miss Halsted converts the probability into history.

Hutton afterwards states that Richard marched out of Leicester on the 17th, and arrived that night at Elmsthorpe; and that on the 18th he turned towards the right, to Stableton, and pitched his camp on “the Bradshaws.” As it was not Hutton’s practice to append any authorities, it may be presumed that these movements were imagined to suit the claims of certain localities, to which some vague traditions were attached.

But I only find two contemporary accounts of Richard’s march from Nottingham to Bosworth Field, one of which mentions his entrance into the town of Leicester, and the other his departure from it; the former of which is deficient in any date, but the latter has a very precise one.

The former is that of Polydore Vergil, * who says, that the King's army came into Leicester a little before the sun set, about the same time that Henry removed from Lichfield to Tamworth. This account is that which was copied in Hall's Chronicle, and so in Holinshed, Stowe, and Speed. Whether Richard had been only one day in marching from Nottingham, or on what day he entered Leicester, is not stated; but from the other account to which I have alluded, and which is that of a monk of Croyland, I should conclude that it was only two days before the battle, viz. on Saturday, Aug. 20, that he came to Leicester.

The Croyland historian relates that, on account of the rapid approach of the enemy, it was judged necessary that the royal army, though not entirely assembled, should move forward from Nottingham to Leicester. Then, after stating that a very large army was congregated at Leicester, the writer immediately proceeds to describe the King's departure out of that town on the Sunday, adding that he encamped at eight miles distance, † and that the battle was commenced at a very early hour on the following morning :—

* Polydore Vergil, in describing King Richard's departure from Nottingham, says that he arranged his forces "agmine quadrato," meaning nothing more than "in marching order," or (as in the Elizabethan version printed for the Camden Society) "he comandyd the armye to marche forward in square battayll." But, from some misapprehension or other, this phrase was translated by Hall, "he made his battels to set forward, five and five in a ranke;" which extraordinary description of the march has been adopted by the various retailers of the story down to the recent historian of Leicester.—J. G. N. 1850.

† He adds, "near Merevale Abbey;" but, as it was customary with monastic writers to adopt that mode of pointing out the situation of places—by naming some neighbouring house of religion, we can only ascribe his mention of Merevale to a compliance with such practice; for Merevale was beyond Atherstone, and more than twice the distance of Bosworth Field from Leicester.

“ ——— festinantibusque inimicis, ac dirigentibus vias suas nocti et die recte in faciem Regis, opus erat omnem exercitum, licet nondum integrè congregatum, à Nottinghamia dimittere, venireque ad Leicestriam. Ibiq̄ue compertus est numerus hopugnatorum parte Regis, major quàm antea visus est unquam in Anglia pro una parte.

“ Die autem dominico ante festum Bartholomei apostoli, Rex maxima pompa, diadema portans in capite, cum duce Norfolchie Johanne de Howard, ac Henrico Percy comite Northumbriæ, cæterisque magnificis dominis, militibus, et armigeris, populariumque multitudine infinita, opidum Leicestrense egressus, satis per intercursores edoctus ubi hostes sequenti nocte de verisimili manere volebant, juxta abbatiam de Mirivall castrametatus est.”

Instead, therefore, of King Richard “abiding” at Leicester, for some time previous to his last struggle for the crown, we find that he merely passed through it with his army, making as great a show of his strength as possible. Leicester, I conceive, having always been an appanage of the house of Lancaster, could not have been politically well-affected to Richard and his house. This would be a reason for his being accompanied there with all his forces, and for his not making it a place of long sojourn.

As affecting the subject proposed for discussion, the question for consideration now is, whether King Richard slept in Leicester on the night of Saturday the 20th of August, 1485. And thus we come to the traditional story from which all other statements respecting his lodging in Leicester are derived. It appears to have been first committed to paper by Sir Roger Twysden in the reign of Charles the First, in the following terms :—

“ When king Richard III. marched into Leicestershire against Henry earl of Richmond, afterwards Henry VII. he lay at the Blue Boar Inn, in the town of Leicester, where was left a large wooden bedstead, gilded in some places, which after his defeat and death in the battle of Bosworth, was left, either through haste, or as a thing of little value (the bedding being all taken from it) to the people of the house: thenceforward this old bedstead, which was boarded at the bottom (as the manner was in those days), became a piece of standing furniture, and passed

from tenant to tenant with the inn. In the reign of Queen Elizabeth this house was kept by one Mr. Clark, who put a bed on this bedstead; which his wife going to make hastily, and jumbling the bedstead, a piece of gold dropped out. This excited the woman's curiosity; she narrowly examined this antiquated piece of furniture, and, finding it had a double bottom, took off the uppermost with a chisel, upon which she discovered the space between them filled with gold, part of it coined by Richard III. and the rest of it in earlier times. Mr. Clark (her husband) concealed this piece of good fortune, though by degrees the effects of it made it known, for he became rich from a low condition, and, in the space of a few years mayor of the town, and then the story of the bedstead came to be rumoured by the servants. At his death, he left his estate to his wife, who still continued to keep the inn, though she was known to be very rich, which put some wicked persons upon engaging the maid servant to assist in robbing her. These folks, to the number of seven, lodged in the house, plundered it, and carried off some horse-loads of valuable things, and yet left a considerable quantity of valuables scattered about the floor. As for Mrs. Clark herself, who was very fat, she endeavoured to cry out for help, upon which her maid thrust her fingers down her throat and choaked her; for which fact she was burnt, and the seven men who were her accomplices were hanged at Leicester, some time in the year 1613.*

That King Richard slept on the night of August 20 in the castle of Leicester I shall not attempt to affirm, because I never can perceive any use in conjectural statements; but that the castle was not, as Miss Halsted states, "too ruinous for occupation at this momentous period," may be inferred from these two facts: first, that Edward the Fourth dated certain letters patent "at his castle of Leicester, June 2, 1464;" † and, second, that Leland, ‡ in the reign of Henry VIII. found "lodgings" remaining there. Adjoining to the castle was another walled inclosure

* Nichols's History of Leicestershire, i. 380. Whence this narrative of Sir Roger Twysden was derived is not stated.

† Nichols's Leic. i. 374.

‡ Itin. i. fol. 16.

called the Newarke (new work), the principal feature within which was a magnificent collegiate church, the burial place of the house of Lancaster. To this spot the body of the slain monarch was brought from the field of battle.

“They brought King Richard thither [to Leicester] that night, as naked as ever he was born, and in the Newwarke was he laid, that many a man might see.” (MS. Harl. 542, f. 34.)

The body was exposed, no doubt, in the church of the Newark, as that of Henry the Sixth had been in St. Paul’s at London; but Miss Halsted * is so unfortunate as to suppose that it “was lodged at a fortified tower, entitled Newark, one of the chief entrances of the town;” an explanation derived, it may be presumed, from some print of the gateway now standing, (called by a modern name, The Magazine), but which was never an entrance to the town, but the principal entrance to the Newark, itself an area of four acres.

Another amusing instance how Miss Halsted is determined to combine every existing story whether right or wrong, and to incorporate into her narrative errors as well as facts, is her statement that King Richard’s body was begged by the nuns of Leicester, and buried in their chapel there; for which she cites “the county historian,” Nichols’s Leicestershire, vol. i. p. 298. There, it is true, the word “nuns” occurs, but in a quotation, and immediately corrected in the very same line. In fact the writer with whom it originated, namely Wren, in his *Parentalia*, does not absolutely say nuns, but (in uncertainty) nuns or friars, and the passage thus stands in Mr. Nichols’s work;

“The wicked and tyrannical prince King Richard III. being slain at Bosworth, his body was begged by the nuns [friars] at Leicester (*aliter* Grey friars), and buried in their chapel there.”

It so happens that there were no nuns in Leicester.

Wren goes on to say that in the year 1612 he saw in Alderman Robert Heyrick’s garden in Leicester a handsome stone pillar, three feet high, bearing this inscription, “Here lies the body of Richard III. some time King of England.” The supposed spot

* Vol. ii. p. 471.

of the king's burial, being the "chapel" or church of the Grey Friars, then formed part of the alderman's garden. This circumstance, it may be remarked, related on respectable testimony, is sufficient to throw great doubt upon another story,* though a contemporary one, that the usurper's coffin was converted into a horse-trough.

The house in the High Street of Leicester, which recently went by the name of the Blue Boar, whether so old as the reign of Richard III. or not, was a fine relic of ancient timber-building; but when King Richard passed through the town it probably had many equals. Leland says, "The hole toune of Leircester at this tyme is buildid of tymbre, and so is Lughborow after the same rate."

Besides the two views of this building in Nichols's Leicestershire, (the second derived from Throsby,) there are others in the Antiquarian Cabinet, 1811, also a large lithographic print by Mr. Flower of this town, and a reduced copy of the same, accompanied by an interior view of the principal room, in the Gentleman's Magazine for July 1837. At the latter date the house had been recently taken down. It is also shown in a vignette of Knight's "Pictorial Shakspeare."

To accommodate the presumed connection of "The Blue Boar" with Richard III. it has been stated that the sign must have been the White Boar (his cognizance) in his time, and afterwards changed to the Blue. It is rather an impediment to the reception of this story, that the sign was once, not a Boar at all, but the Blue Bell †

A list of the streets of Leicester in the reign of Richard III. happens to be preserved, and the adjoining lane was then, not Blue Boar Lane, but the Mayres-hall Lane.‡

* ——"The stone chest wherein his corpse lay is now made a drinking-trough for horses, at a common inn at Leicester."—Baker's Chronicle. In Carte's time, about 1720, a portion (only) of such a trough remained, at the White Horse Inn; and it appears as if some ancient stone coffin had been really degraded to that purpose, and the vulgar chose to call it King Richard's.

† Nichols's Leic. i. 380, note. ‡ Nichols, i. 380, 532.

With respect to the innkeeper, Clark, who is said to have become suddenly rich by finding King Richard’s gold, it appears that there were two if not three of that name, who were mayors of Leicester during the reign of Elizabeth. Jacob (or James) in 11 Eliz. Thomas in 25 Eliz. and James, “the second time,” in 27 Eliz.* The widow murdered in 1613 might possibly (though not probably) have been wife of the latter James, mayor in 1585; but it is scarcely likely that her husband was the mayor sixteen years before that, or forty-four years before 1613. In 1587 Mr. James Clark was chosen one of the two assessors of victuals, “for that he is a butcher and an *innkeeper*.”† This appears to coincide with Sir Roger Twysden’s story.

So far, so well. No doubt tradition was right that there had been an innkeeper named Clark, who had grown rich, and there is no reason to object to the fact of the murder of the widow,‡ to which a precise date is assigned. But, admitting this, and most of the other particulars of the story, even that the riches of Clark were derived from the gold accidentally found in a bed, and that such gold was of the coinage of Richard III. and his predecessors, that it was even his treasure-chest and his bedstead,—the story of Sir Roger Twysden there stops short. He says nothing of “this antiquated piece of furniture” being still preserved, either at the Blue Boar or elsewhere.

It was reserved to Mr. Alderman Drake, who was mayor of Leicester in 1773, and somewhat, we may presume, of a virtuoso,

* Nichols’s Leicestersh. i. 398, 403, 404. † Ibid. p. 404.

‡ Since the above was written, Mr. James Thompson has discovered the full particulars of the murder of Mrs. Clarke, and they are related at length in his History of Leicester. It took place in the year 1605, not in 1613. The robbers “opened three coffers, one containing linens, the second being full of writings, and the third having six or seven bags of gold and silver therein.” Nothing is said of King Richard’s treasure-chest, which perhaps was not to be expected, even if the innkeeper had become enriched by the discovery of any such long-hidden hoard, rather than by the ordinary profits of his business.—J. G. N. 1850.

to make the discovery. The bedstead which is now preserved at Rothley Temple, and is called King Richard's Bedstead, "before it came into the hands of Mr. Alderman Drake, had been many years in the Redcross Street, where it had been cut to make it fit for a low room." So says Mr. Throsby, who first published this discovery in his "History and Antiquities of Leicester," and he then adds, "It is not probable that the King would carry such a bed about with him; but it seems more likely that he was put on the best bed in the house; and that the money was secreted, in some convenient and obscure part of the bedstead, till his return after the battle, or, in the hurry of the preparation next morning, it might be forgotten."

Now we have arrived at the truth. The aldermanic virtuoso found the bedstead in Redcross Street, and merely imagined its connection with the old timber-house called the Blue Boar. Hutton's assertion "that it continued there 200 years after he (Richard) left the place," is mere fiction.

The process therefore, of naming "King Richard's bedstead" was according to the approved rule with virtuosi and curiosity-mongers. The alderman bought a bedstead; then looked for some historical anecdote to which to attach it; and afterwards proceeded to amend the anecdote, in order to suit the relic. It is no longer the king's travelling bedstead, but the best bedstead of the inn, before his arrival. With a romantic historian like Miss Halsted, it becomes everything in turn, the very best bed of the very best "hostelry," the most rich and curious work of art, and the most ingenious piece of mechanism.

But the only true test in questions of this kind is to be derived from comparison with other examples. From the perfection to which chronological knowledge has arrived in architecture, ancient buildings can generally be appropriated with confidence to within a period of fifty years; and we speak without doubt of the era of churches, castles, or monuments, which, a century ago, were in the utmost chronological confusion, because those who then ventured to judge of them founded their conclusions upon some vague tradition, or misapplied historical statements, rather than the inherent evidence of style.

With a little research we may restrain other matters as well as architecture within the like chronological limits, and Mr. Shaw’s “Specimens of Ancient Furniture,” though not a very large collection, is one quite sufficient to test the Rothley bedstead.

In the first place let the beds of the fifteenth century in plate xxxv. be examined. They have not four posts, and are not at all like the Rothley bedstead.

Plate xxxvi. represents a four-posted bed of the time of Henry VIII. but its carvings resemble Gothic tracery, and we still find no resemblance.

Plate xxxvii. represents “The Great Bed of Ware” in Hertfordshire,* mentioned by Sir Toby Belch in Shakspeare’s Twelfth Night. And now we arrive at several features which are identical with the bedstead at Rothley; and the reader may at once compare it, as figured in the works of Throsby and Nichols. The dorser has the same demi-savages or *termini*, described by Miss Halsted as “styles consisting of Saracenic figures in high relief,” and between them are the same “richly-carved panels,” said to represent the Holy Sepulchre, or any other temple you please. There are no fleurs de lys; but, what is very remarkable, considering what Miss Halsted has said on that point, accompanied by half a page of note, with which I have not troubled you, neither has the Rothley bed any fleurs de lys (apparent in the print of it). Further, the fashion of the posts, swelling into bulbs, “very massive in parts, and very taper in others,” is also to be seen in both beds. The bed of Ware is pronounced by Sir Samuel R. Meyrick, the author of the letter-press of Mr. Shaw’s work, to be “a fine specimen of a bedstead of Queen Elizabeth.”

Again let the reader refer to plate xxxiv. of the same volume, and he will find a Napkin-press at Goodrich Court, standing on four legs of the same fashion as the bedstead at Rothley, and one of its mouldings much resembling its cornice. This again, we are told, “may be assigned to the latter part of Queen Elizabeth’s reign.”

* Another view of the bed of Ware may be seen in Clutterbuck’s History of Hertfordshire, vol. iii. p. 285.

There is also shown, in plate xxvi. an oak cabinet at Conishead Priory, Lancashire, which has posts or balusters of the same bulbous design, and "this article of furniture is undoubtedly of the time of Elizabeth."

Still more, plate xx. represents a table standing on four such legs, at Leeds Castle, Kent, and of that we are told that its "architectural ornaments of the Grecian style, intermingled with foliage, are distinguishing marks of the Elizabethan style."

The testimony, therefore, is conclusive, that the bedstead formerly belonging to Mr. Alderman Drake, and now to Mr. Babington, could not have been King Richard's, because it was not made until the reign of Elizabeth. Nor is it very likely to have been ever in the Blue Boar inn. No doubt its early possessors were people of wealth; and, if it was not brought into Leicester from some of the country mansions in its vicinity, it may have yielded repose to the weary limbs of some of the most eminent mayors of the town, or it may have even belonged to the furniture of "the Lord's Place," which was a winter residence of the Earls of Huntingdon.

J. G. N.

ROTHLEY AND THE KNIGHTS TEMPLARS.

[*Read before the Literary and Philosophical Society of Leicester, in 1841.*]

ROTHLEY, or, as it is written in ancient documents, Roel, Rodolei, and Rotelie, is a very extensive parish in this county, and includes the chapelries of Gaddesby, Wykeham and Caldwell, Grimstone, Keyham, and Wartnaby. At the compilation of Domesday Book the king held the manor. In the reign of Stephen, it appears to have been granted to Ranulph the fourth earl of Chester; there is every reason to believe, however, that the earls were possessed of it at an earlier period, and that the grant made by Stephen was merely one of confirmation. From the earls of Chester it passed to the Harcourts, who were Crusaders, and it became the property of the Knights Templars, as a community, about the year 1230, through the gift of a John de Harcourt, who died in the Holy Land. On the suppression of the order of Knights Templars for alleged enormities and peculations, it devolved upon the Knights Hospitallers, who held it until the dissolution of religious houses; it then passed to Edward Cartwright, who sold it to Humphrey Babington. The advowson came to the Babingtons in the year 1567 by purchase of Sir Ambrose Cave, Chancellor of the Duchy of Lancaster, in the reign of Elizabeth.

I am apprehensive I shall be deemed tedious ; but my present subject is so intimately allied in all its details as to be incapable of separation, and hence I may be compelled to obtrude myself on the attention of the society at a much greater length than I could have wished.

The church at Rothley is dedicated to Saint Mary—a favourite designation of the Templars—and is situate in a delightful glen, which, viewed from an adjacent summit, is boldly relieved by the interesting scenery of the park of Bradgate, and the romantic hills and rich geological treasures of the forest of Charnwood. It is a vicarage in the patronage of the Babington family, whose seat (the Temple), formerly a preceptory belonging to the Knights Templars, is in the immediate vicinity of the village. There is nothing striking in the architecture of the church, nor can it boast of any considerable antiquity ; it was evidently erected on the site of a former religious edifice. The early-English and Perpendicular styles are most prominent, and, in common with the majority of parochial churches, it has suffered severely from alterations and additions made at various periods without any regard having been evinced either to its original symmetry or character. Most truly has it been observed, that “this is the dragon which Saint George has not subdued, while all other beasts of monstrous forms have disappeared.” In the interior there are some interesting memorials of the dead ; the most curious is one to the

memories of Bartholomew Kingston esquire and his lady. Mr. Kingston died in 1488, and his arms (Azure, a cross or between four leopard's heads argent) were, in Burton's time, in a south window in the church. What renders this tomb an object of interesting peculiarity is, the circumstance of the will of the deceased appearing upon it. The historian of Leicestershire (Mr. Nichols) thus describes the tomb:—"In the north chapel, adjoining the north wall of the church of Rothley, is a very large altar-tomb about three feet high, with the effigies of a man in armour, with long straight hair, head on cushion, sword and dagger, and large spur rowels, a greyhound at his feet, looking back. His lady, who sits on a cushion, has a veil head-dress: at her feet a dog (apparently a spaniel), looking up; over their heads, the arms of Kingston, and the inscription, which on the tomb is reversed."

The will engraved on the tomb contained special directions for the keeping of an obit for Mr. Kingston and his lady, his father and his mother, on the Monday next after the feast day of Saint Simon and Saint Jude in each year; it designates the especial form to be observed, and the prayers to be used, and describes the particular lands, the rents of which were to be applied to defray the expenses of the officiating priests and the other officers. The lands appear to have been situate in the lordship of Quorndon

Sir Harris Nicolas in his valuable book, the

“*Testamenta Vetusta*,” has noticed the above curious tomb, and given the inscription. Among the ancients, the wills of deceased parties were sometimes inscribed on tombs.* The figures of the greyhound and spaniel on the Rothley tomb are worthy of notice; they probably designated some leading characteristics of the deceased parties. Among the Romans, the figures upon tombs were sometimes arbitrary, but frequently had reference to the habits and the predilections or the pursuits of the deceased. Trimalchio in Petronius desired (amongst other things) that the likeness of his favourite dog should be formed at the feet of his statue. Generally speaking, the dog was a symbol of fidelity. In Egypt the dog was a symbol of vigilance.† In the Rothley case, the greyhound might denote an ardent attachment to field-sports; the other dog, a spaniel, might be used as a symbol of fidelity and affection. “The figure of a spaniel,” says Mr. Fosbroke in his *Encyclopedia of Antiquities*, “was by no means an unfrequent appendage to the tomb of an English female, assimilated as it may be to the favourite lap-dog of the Greek and Roman ladies, the Maltese shock; one of these was represented on the tomb of Fortunata, the wife of Trimalchio above mentionèd, and the animal was symbolical of fidelity and steady affection.‡ I have been

* Fosbroke, vol. i. p. 70, where is quoted Lubin in Juvenal, 639.

† Ibid. vol. i. p. 68.

‡ Ibid. vol. ii. pp. 720, 721.

more particular in referring to these ancient customs than perhaps was necessary, or may prove acceptable to my audience; it is however always curious, as well as instructive, to endeavour to connect the customs and practices prevalent in our country with those of the renowned nations of antiquity, and it may with truth be asserted, that many—very many—of our most frequent customs—aye, the most trifling, and some of the amusements resorted to by very children—originated with the Greeks and the Romans during the most illustrious periods of their history. The Rothley tomb is exceedingly curious, inasmuch as it is demonstrative of the adoption of two customs in this country connected with sepulchral matters which were prevalent among the ancients—the engraving of a will on the tomb of a deceased party, and the representations of favourite and domestic animals thereon. The latter may be found in very many instances, but the former is almost *unique*; at all events, both the will and the animals appearing on the same tomb, and at so early a period as the fifteenth century, I fancy is so.

The branch of the family of Kingston which came into Leicestershire did not long reside there. One of the family (George Kingston), who died in 1545, and was buried in the church at Rothley, intermarried with one of the ancient family of Skeffington of Skeffington. The arms of Kingston impaling those of Skeffington appear on his monument.

In the reign of Henry the Eighth and Edward the Sixth, branches of the Kingston family possessed estates in Leicestershire, Berkshire, and Gloucestershire. Sir William Kingston, K.G. Comptroller of the Household to King Henry the Eighth, Constable of the Tower of London, and one of that monarch's privy councillors, died seized of estates in Berkshire, A.D. 1539. This sir William was employed in several embassies and other important services, and married Mary, daughter and coheirress of sir Richard Scrope of Upsall knight, younger son of Henry lord Scrope of Bolton. This lady was the widow of sir Edward Jerningham (ancestor of the present Lord Stafford) and sister of Mary countess of Oxford, who by her will, dated the 30th of May, 1537, gave to her brother sir William Kingston her Jesus of diamonds set in gold, and to her sister, dame Mary his wife, a basin and ewer of silver.* Sir William Kingston, as Lieutenant of the Tower, was charged with the custody of the unfortunate queen Anne Boleyn, and afterwards with that of cardinal Wolsey.† The George Kingston before mentioned was brother of sir William Kingston, and died seized, as before observed, of the manor of Rothley, about the year 1545.

Sir William Kingston appears to have borne the

* Testamenta Vetusta, pp. 674, 676, 698; vide also the *Excerpta Historica*, part i. p. 59.

† Sir Henry Ellis's *Letters illustrative of English History*, vol. ii. p. 52.

character of a stern, unfeeling man, and the letters illustrative of English History given in sir Henry Ellis's valuable book are not calculated to impress the reader with any respect for his memory. During the period he had Queen Anne Boleyn in custody, it is obvious that he combined the functions of a spy with those of a jailor. Every unguarded expression of the unhappy prisoner appears to have been noted down, and conveyed to Secretary Cromwell. Cardinal Wolsey, too, on being delivered into sir William's power, seems to have known his man. Upon Kingston making all those professions of homage and respect to which the ill-fated ecclesiastic had been accustomed in his prosperous days, he only observed, "Mr. Kingston, all the comfortable words you have spoken to me, be spoken but *for a purpose, to bring me into a fool's paradise; I know what is provided for me!*"

The standards borne in the field temp. Hen. VIII. by both the Kingston and Babington families are described in the "Excerpta Historica," pp. 59, 316, 330. The motto on the standard of sir William Kingston was "*Sans changere,*" and the one on the standard of sir Anthony Babington, "*Foy est tout,*"—the motto at present borne by that ancient family. The descriptions in the compilation I have just adverted to are copied from a MS. in the College of Arms, compiled between the years 1510 and 1525. It appears from Lodge's "Illustrations of British History," that one of the Ba-

bingtons was in considerable favour with Cardinal Wolsey A.D. 1516, and was concerned in some important negotiations with that celebrated character, in which the then Earl of Shrewsbury (George the fourth earl) was personally interested. This earl was Steward of the Household to King Henry the Eighth, at the period the negotiations referred to took place. It should seem that, in consequence of domestic troubles, the Earl felt himself unable to attend his duties at court, and Babington (one of his chaplains) appears to have been commissioned, in conjunction with another priest (sir Thomas Alom), to speak to Wolsey to intercede with the King to excuse his lordship's attendance. Their endeavours were successful, at least, in procuring for the earl a respite; but Babington appears to have been a more skilful negociator, and to have had a far clearer insight into Wolsey's disposition, than the clerical knight. A few years afterwards, the haughty, but unfortunate and ill-used Cardinal, whom the earl was so anxious to interest in his favour, became his prisoner for a time at the castle of Sheffield, and it is only justice to his lordship's memory to add, that, although he was a subscriber to the articles preferred against Wolsey in December 1529, yet all writers agree in representing him as having treated the cardinal, whilst in his custody, in the kindest and most delicate manner. It was during his sojourn at the castle of Sheffield that Wolsey was attacked by the disease which proved fatal to him

at the abbey of Leicester. Within the walls of that monastic edifice, did dire necessity compel him who had controlled monarchs and reveled in more than regal splendour to crave a final resting-place for his bones, and it was within those precincts, and to the sir William Kingston before mentioned, that the fallen cardinal uttered or rather repeated the sentiment immortalized by Shakspeare—

“Had I but served my God with half the zeal
I served my King, he would not in mine age
Have left me naked to mine enemies !”

Thus closed the life of one of the most extraordinary men this country ever produced—a life a proper study for the courtier—a beacon for the avaricious public character—a warning to the vain and arrogant ecclesiastic ; but an encouragement to the ingenuous and kindly-disposed dignitary to “pursue the even tenor of his way,” to continue in a course free from the shoals and quicksands which invariably beset the passage of the unprincipled and ambitious, and as invariably lead to their degradation and ruin !

The figure of a Knight Templar, which had for many years lain in the churchyard at Rothley, exposed to the vicissitudes of the weather and the rude attacks of the villagers, was some years since removed into the chancel of the church. The wish of the venerable historian of Leicestershire (Mr. Nichols), as to this particular, has been strictly fulfilled, and the remains of a tomb of (probably) an influential member of that com-

munity will now be preserved to mark a spot where doubtless, in all the paraphernalia of office, he frequently attracted the gaze, and received the homage, of trembling villeins and vassals.

There are a number of remembrances of the Babington family in the church at Rothley; the most remarkable is one to the memory of the lady of Matthew Babington esquire. This monument is placed against the south wall of the chancel, and is a work of considerable merit and labour. Mrs. Babington died in the year 1648, and we cannot therefore be surprised at the monument developing, in its more prominent features, the debased style of sepulchral architecture prevalent during the seventeenth century.

Members of the Babington family have at several periods represented the county and borough of Leicester in Parliament. Matthew Babington esquire (whose lady's monument has been mentioned) was one of the Members of Parliament for the county of Leicester at the Restoration; his descendant Thomas Babington was one of the Members of Parliament for the borough of Leicester at the Revolution; and the late greatly esteemed and venerated head of this ancient family sat in Parliament for the borough, from January 1801 to June 1818. It is memorable in the history of the late Mr. Babington's parliamentary life, that he occupied the Chair of the House of Commons at the moment the weapon of an assassin terminated the existence of Mr. Perceval, the First Lord

of the Treasury and Chancellor of the Exchequer. On Monday the 7th of May 1812, the Commons had just resolved themselves into a Committee for the day of the whole House (Mr. Babington in the Chair), to continue the examination of witnesses with respect to certain Orders in Council, which it was contended had most seriously affected our nautical mercantile interests, when Mr. Perceval fell under the murderous attack of the determined and infatuated Bellingham.

The manor and soke of Rothley have some most singular and especial privileges appertaining to them, and conjointly form one of the most complete instances of exemption from general civil and ecclesiastical jurisdiction in the kingdom. The Saxon term, *soc*, or *soca*, signifies a peculiar power, authority, or liberty to administer justice and exercise laws within itself, and likewise the circuit or territory wherein such power is exercised. *

The manor and soke extend over Rothley and the south end of Mountsorrel, in the hundred of West Goscote, and over the following places and portions of places in the hundred of East Goscote, (videlicet,) Gaddesby, Grimstone, Wykeham and Caldwell, Wartnaby, Newbold, and parts of Baresby, South Croxton, Keyham, Somerby, and Saxleby. The manor is ancient demesne, and the estates within it are freehold, but of gavel-kind tenure,

* Morant's "Essex," tit. Thorp de Soken.

and held of the lord by fealty and suit of court. The oath of fealty taken to the lord is almost as stringent as the oath of allegiance taken to the sovereign. The sokemen (being tenants of ancient demesne lands) are entitled to pass toll-free at all fairs and markets throughout England, on production of a certificate from the steward of the manor that they are tenants. The Court Baron is held from three weeks to three weeks, and tenants are there personally, or by attorney, admitted: this court has also power to hold pleas in ejectment, and is a court of oyer, terminer, and jail delivery. On the death of a tenant or sokeman, without will, his real estate does not descend to his eldest son, as it would do according to the general law of England, but to all his sons equally, and, in default of sons, to all his daughters equally. Previous to a recent Act of the Legislature, fines and recoveries having reference to real estates within the soke could alone be passed in the lord's court—at least, if reference were had to the Court of Common Pleas, great confusion, trouble, and expense were occasioned. Two fines passed in the king's court rendered the lands frank-fee, and hence some estates, though situate in the manor of Rothley, are not now subject to the lord's court. One fine only *suspended* the lord's jurisdiction, and he had the power of reversing it by bringing a Writ of Deceit, and, until this was done, the title was imperfect—the land being neither gavel-kind nor

frank-fee. I believe some doubt is entertained whether the recent Act of Parliament annihilates the jurisdiction of the court as to fines. If the tenant leave a widow, she is entitled to the whole estate during her widowhood, but if she marry again she takes according to the common law—that is, one-third of the estate for life. If a female tenant die leaving a husband, he is entitled to the whole estate for his life, whether there be issue of the marriage or not. These customs, however, do not prevail against a devise, but the tenant may dispose of his estate by will.

Every non-sokesman, that is to say, every one who has not been already admitted to property within the soke, is liable to pay, and is always obliged to pay, a poundage of one shilling in the pound upon his first purchase; but if a man is actually seized in possession of property in the soke, by devise or by descent, and without having been admitted to it makes a *purchase*, he is entitled to be admitted *first* to the former description of property, and, being then constituted a sokesman, pays no poundage on his purchase. With regard to a first purchase, every thing is considered a *first* purchase for the purpose of poundage which has been either bought, or contracted for, previous to *admission*, and, whatever may be the number or amount of purchases a man has made before he has been admitted to *one*, he pays poundage upon *all*, and on admission he takes an oath that he has

“not contracted or agreed for any further or greater purchase within the manor or soke of Rothley.” This regulation was evidently adopted to prevent the lord being surreptitiously deprived of his poundage.

The forms of holding Courts Leet and Baron at Rothley are as under :—

A precept is issued by the steward, to the bailiff of the manor : this document runs in the following form :—

“Manor of Rothley, } To the Bailiff of the Manor of
with the Members. } Rothley aforesaid, or his lawful
deputy there, greeting.

“These are to authorise and require you immediately on sight hereof, to summon and give notice to all resciantes, suitors, and inhabitants of and within the said manor, that they personally be and appear at the Court Leet and Court Baron of the Reverend John Babington, clerk, and George Gisborne Babington, esquire, lords of the said manor, at the Cross in Rothley aforesaid, on Friday the day of next ensuing, by eleven of the clock in the forenoon of the same day, then and there to inquire between our Sovereign Lady the Queen and the lords of the said manor of all such matters and things as shall be then and there given them in charge, and be you then there in your proper person to do and perform all such matters and things as to your office appertain and belong. And what you shall have done in

The form of opening the Court Leet and Court Baron at Rothley is as follows :

Proclamation is made as under :—

“ All manner of persons that have been summoned to appear or have any thing to do at this Court Leet and Court Baron of the Reverend John Babington, clerk, and George Gisborne Babington, esquire, lords of the manor of Rothley, draw near and give your attendance, for now this court will proceed.

“ Essoigns and Proffers of Suits and Pleas,

“ Essoigns and Proffers of Suits and Pleas,

“ Essoigns and Proffers of Suits and Pleas.

“ If any person will enter any action in any cause whereof this court holds plea let him come forth and tender the same, and it shall be received.

“ Bailiff of this manor of Rothley, return the precept to you directed and returnable here this day, that the court may proceed thereon.”

The steward then proceeds to call over the Suit Roll of the inhabitants of Rothley, and, if any do not answer, orders the bailiff at the door of the Court House, to call out his name, which is done as follows :—

“ A. B. come into court, and do your suit and service, or you will be amerced.” If no answer is given, the steward proceeds to the next. If a signing penny is paid for the absentee, the steward records it in the Suit Roll ; but he must be careful not to suffer a juryman summoned to essoign, lest there should be a deficiency in that body—a list

of which the bailiff gives him. When the whole Suit Roll has been called over, the steward orders the bailiff to make this proclamation :—

“ You good men that have made default, even now answer to your names, and save your amer-ciements.”

The steward then calls over the names of the defaulters, and, if they still do not answer or pay, he makes a minute of the circumstance in the Court Roll, unless a sufficient reason is given for their non-attendance, in which case he notes down that they are excused.

The bailiff then makes proclamation—

“ You good men that are empanelled and returned to inquire for our Sovereign Lady the Queen, and the lords of this manor, answer to your names, and save your amerciements.”

The steward then calls over the list of the Rothley jury (given in by the bailiff), and notes down those that appear: he then calls upon the thirdboroughs of the other towns, and those they bring with them, and records their names.

When a competent jury for Rothley has been formed, and the foreign jury also, the following oath is administered to the foreman of the Rothley jury :

“ You, as foreman of this inquest for our Sovereign Lady the Queen and the lords of this manor, shall diligently inquire, and true presentment make, of all such matters and things as shall be here given you in charge; the Queen’s counsel, your fellows’, and your own, you shall keep secret ;

you shall present no one out of envy, hatred, or malice, nor leave any one unpresented through fear, favour, affection, gain, reward, or the hope thereof, but in all things according to the several articles here given you in charge you shall present the truth, the whole truth, and nothing but the truth: So help you God."

The other Rothley jurors are then sworn as follows:—

"The same oath which your foreman has taken on his part to observe you and every of you take on your and every of your respective part and parts to observe: So help you God."

The foreign jury are then sworn in a similar manner, after which the steward addresses both juries in the shape of a charge. The Court is then adjourned by proclamation, as follows:—

"All manner of persons that have anything further to do at this Court Leet and Court Baron may from hence depart, and give their attendance at the house of _____ immediately, when this Court will further proceed.* God save the Queen, and the lords of the manor."

Every householder in the soke is liable to do suit and service, which he acknowledges by appearing at the Lords' Court, and answering to his name when called; but a custom has prevailed immemorially of allowing them to *essoign*, in lieu of appearing,

* When at the place notified, the court is again opened by proclamation: viz. "All manner of persons adjourned over to this time and place may give their attendance, for now this court will further proceed."

which is done by sending a penny to be delivered in when the name of the party is called, and the pence thus paid are called *essoign pence*. The same principle applied to the householders in the village of Rothley extends to the householders in all the other parishes in the soke; but the mode in which it is carried out is, merely for convenience' sake, rather different, for, instead of calling out their names at the cross, the thirdborough of each parish goes round a few days before the court day, and collects the *essoign penny* from all who do not mean to attend the court; but those who have business (an admission, for instance) which obliges them to attend the court do not pay the penny, as they attend in person. Each thirdborough delivers in a suit roll, and with it the pence of those who have not appeared. Thus it will be seen that the penny is not a *payment due* to the lord, but is a *token* or acknowledgment that the party is liable to *appear*, and do suit and service. In case of any of these parties being reported by the thirdborough as refractory and refusing to pay the penny, the steward calls their names in open court, and, upon their not answering, returns them to the jury as defaulters, to be fined at their pleasure.

The form of the *estreat of fines and amerciaments* imposed is curious, shewing, as it does, the jurisdiction of the Lords' Court :

Manor of Rothley, with } The Estreat of the Fines and
 the Members. } Amerciaments set and im-
 posed by the jury or homage of Rothley at the
 Court Leet and Court Baron of the Reverend John
 Babington, clerk, and George Gisborne Babington,
 esquire, lords of the said manor, held the
 day of 1840.

A. B. of Rothley, for not appearing at the said Court to do his suit and service	s.	d.
	0	3
C. D. of Rothley, for the like	2	6
E. F. of Rothley, for the like	0	6

Manor of Rothley, with } To the bailiff of the manor of
 the Members. } Rothley aforesaid, or his lawful
 deputy there, greeting :

These are to authorize and require you, immediately on sight hereof, to ask and demand of the several persons above named the several sums of money set opposite to their respective names, for the several offences by them respectively done and committed as above mentioned ; and if they or any of them shall refuse to pay the same sums respectively, you are hereby authorised and required forthwith to levy the same by distress and sale of the goods and chattels of such of the said persons as shall so refuse, rendering the overplus (if any there be), after deducting reasonable charges for distraining, to the said persons respectively. And for your so doing this shall be your sufficient warrant. Given under my hand and seal, this
 day of 1840.

COLIN C. MACAULAY,

Steward of the said Manor.

With respect to ecclesiastical jurisdiction, the lord of the manor of Rothley, through his especial commissary, exercises exclusive power within the soke. Neither the bishop of the diocese, nor the archdeacon of the archdeaconry, can (except with reference to certain particulars conceded of late years by the Legislature) interfere within its boundaries; marriage licences, probates of wills, letters of administration, having reference to marriages or effects within the manor and soke, run in the name and under the seal of the commissary, and he holds visitations of the clergy officiating within the manor and soke, in the church at Rothley, where also the churchwardens and chapel-wardens of Rothley and its appendant chapels attend to be admitted into office, and to make presentments. An impression of the seal of this peculiar ecclesiastical jurisdiction is on the table.* The Honourable and Reverend Henry David Erskine, clerk, Master of Arts, is the present Commissary of the Peculiar; † and the humble individual who has now the honour of addressing this meeting is the Registrar.

The peculiar customs prevalent within this soke demonstrate its high antiquity. Those relating to the descent and alienation of lands, dower, courtesy,

* Engraved in Nichols's Leicestershire, vol. iii. pl. cxxx.

† Mr. Erskine is now (1850) Dean of Ripon. He still holds the office of Commissary of Rothley Peculiar, under the present lord of the manor, James Parker, Esq. Q.C. who married one of the daughters of the late Mr. Babington, and purchased this property of the Babington family, in the year 1845.—EDIT.

subjection to the manorial lord, are most singular, and (taken in the aggregate) are not to be met with elsewhere in the kingdom. It is remarkable, too, that the manor should consist of villages so dispersed throughout the county, and at such great distances from each other, having apparently no connection beyond their subjection to the soke and church of Rothley. The tenure by gavel-kind is not prevalent in any part of the adjacent country: this tenure is undoubtedly of very remote origin, and the continuance of it in such a limited district as the manor and soke of Rothley, beyond the period of their possession by the Crown, is an incontestable proof of the great influence at one time possessed by the local lords of the soil, in being enabled to have such a privilege retained to them, which it was one of the great objects of the Conqueror and of his followers to destroy, as being at complete variance with the system of primogeniture fostered, and in a great measure established, by him, on his assumption of the English sceptre.

Somner says, that "primogeniture came in at the Conquest, and that William consented to the succession of the eldest son alone, partly for his own and the realm's better defence and strengthening, and partly for the upholding and maintenance of genteel families." Others, and I think with greater reason, are of opinion, that primogeniture existed in some degree before the Conquest. Sir Edward Coke says, that "in King Alfred's time, knights' fees descended to the eldest son," and assigns this

as the reason—"that by division of such fees between males, the defence of the realm might be weakened." Socage fees were however divisible amongst the males, and this was therefore the general custom throughout the realm. The truth probably is contained in what is well observed by Judge Doddridge in his "Treatise of Nobility." (p. 119.) The judge says, "It was anciently ordained that all knights' fees should come unto the eldest son by succession of heritage; whereby he, succeeding his ancestors in his whole inheritance, might be the better enabled to maintain the wars against the king's enemies, or his lord's, and that the socage fees should be partible among the male children to enable them to increase into many families, for the better furtherance and increase of husbandry." Let what however might be the general tenure of lands before the Conquest, it is quite evident that the tenure of gavel-kind was perfectly at variance with the feudal exactions, impositions, and system of tyranny which were established by the subtle and arbitrary William, and which (with a few exceptions) parcelled out the fair fields of Britain amongst his creatures, priests, and followers—a distribution which was not divested of its intended and especial consequences until the tenure by fee and common socage, or by copy of court roll, according to the custom of a manor, became general throughout the kingdom.

It has been observed before, that the ancient

demesne tenants of this manor are exempted from toll at all fairs and markets throughout England, on production of a certificate from the steward of the manor that they are tenants. The document I hold in my hand is one of these certificates, and is called a "Charter;" it runs in the following form :

" These are to certify all whom it may concerne, that, whereas by the ancient common law of this realme the tenents in antient demesne of the crown of England ought to be free and quit of all pontage, passage, murage, tolls, and other customes whatsoever in all fairs, markets, and places throughout the whole kingdom of England, that the bearer hereof, Jonathan Leake, of Rodelie, in the county of Leicester, is farmer to Thomas Babington esquire, of certaine lands in Rodelie, which said lands are antient demesne, and therefore the said Jonathan Leake ought to be free and quit of all pontage, passage, murage, tolls, and other customes whatsoever, by whatsoever name the same are called or known, in every market, faire, town, or city, throughout the realme of England; all which at the request of the said Jonathan Leake I certify as aforesaid. In witness whereof, I have hereto set my hand the twentieth day of April in the first year of the reign of our Sovereign Lord James the Second, by the grace of God of England, Scotland, France, and Ireland King, Defender of the Faith, &c. Annoque D'ni 1685.—(Signed,) NATHⁿ. WRIGHTE,* Steward of the Manor of Rodeley."

To return however to Rothley.—In the church-yard stands an ancient and most curious Pillar or Cross (see the Plate). I am inclined to attribute far more importance to this Cross than it has yet been deemed worthy of, and believe it to have been

* Afterwards Sir Nathan Wrighte, Lord Keeper to Queen Anne.—EDIT.



J. Swaine

CROSS OR PILLAR AT ROTHLEY CO. LEICESTER.

erected in commemoration of the immunities and privileges so profusely conceded to the manor and soke of Rothley. It is unnoticed by Leland, Burton, and early historians, and Mr. Nichols merely bestows on it a passing remark. "In the churchyard of Rothley," he says, "is a handsome runic cross, but there is no tradition respecting it." The existing church at Rothley was evidently erected considerably after this cross [the font still remaining in the church is somewhat assimilated in architecture to the cross]; and, as I have just observed, I am inclined to think that the erection of the latter is not to be ascribed to those causes which generally led to the placing of crosses or pillars in churchyards—as memorials of the benefits vouchsafed by the cross of Christ, or as sepulchral mementoes—but to the especial privileges conceded or retained to the manor or soke wherein it is situate. Our Saxon ancestors invariably confirmed their charters and most solemn acts by the sign of the cross; and crosses may be considered and described as objects of antiquity—as relics of peculiar customs, and as monuments of art. Some were erected as designations of boundaries, or objects of demarcation for property, parishes, or sanctuary; others were sepulchral, others memorials of battles, murders, or fatal events; some were erected to designate places of public business, prayer, and proclamation; while others commemorated the grant of especial privileges and the maintenance of particular customs within a district.

Some years since, the great majority of these crosses were ascribed to the Saxons or Danes, and their inscriptions and carvings almost universally pronounced as composed of the runes connected with those people; the validity of this theory, however, has been latterly doubted, and the question is now considered an open one.

I am far from doubting the existence of Saxon, Danish, or even pillars of an earlier date, in this country; and those possessed of *runes* almost speak for themselves by the characters displayed on them. I believe, however, the number of these pillars to be very limited, and chiefly congregated in particular and remote sections of the kingdom. The pillar at Rothley has been called runic, but, for reasons I shall hereafter state, I am not inclined to assign to it an earlier date than the institution of the religious military orders; and, mention having been already made of one of those orders—the Knights Templars—as the once possessors of the manor and soke under our review, perhaps an especial allusion to them at the present stage of the lecture will not be considered inappropriate. It has been truly observed, they were a body once eminent for wealth and power, but destined to be better remembered in after times, for the lesson of the instability of human grandeur bequeathed by them to history, in their sudden downfall. The order of Knights Templars was one of those grotesque confederacies of military monks which grew out of the Crusades. Its founders were nine of the

followers of Godfrey of Bouillon, who, soon after the conquest of Jerusalem, united themselves by a vow to defend the holy city and its devout visitors from any outrages. It has been said they were known to each other by certain signs and symbols—arrangements which might become requisite in consequence of their avocations rendering progresses necessary through various, and at times hostile, districts. The zeal of these pious chevaliers rapidly obtained imitators ; and, many of the other Christian warriors having joined their company, King Baldwin II. at a very early period of the twelfth century, granted the society a building for their residence, contiguous to the Temple, whence the name by which they were afterwards known. They wore a white cloak, with a red cross on the left shoulder. The defence of the Holy Land against the infidels and the protection of pilgrims in travelling thither, were their grand duties ; and throughout the long and fluctuating struggle between the Cross and the Crescent, which fills the history of the twelfth and thirteenth centuries, the Templars are found amongst the foremost of the brave wheresoever danger was to be encountered. “ Clothed in simple attire, and covered with dust,” says the eloquent Saint Bernard, in one of those addresses by which he so powerfully promoted the second crusade, “ they present a visage embrowned by the heat of the sun, and a look haughty and severe : at the approach of battle, they arm themselves with faith within, and with iron without : their weapons are their only ornament, and these

they use with courage in the greatest perils, fearing neither the number nor strength of the barbarians ; all their trust is in the God of Armies ; and in combating for his cause, they seek a sure victory, or an holy and honourable death. Oh ! happy mode of life ! in which death is waited for without fear, desired with joy, and received with assurance of salvation !”

Many noblemen in all parts of Europe became brethren of the order, and built temples in most of the cities and great towns The Temple in Fleet Street, London, was their chief house in England ; and, after having established their order on what they deemed a permanent basis, they, like many other societies, forgot their primitive simplicity, and the holy duties for the performance of which they were instituted, and feasted monarchs and foreign ambassadors in splendid entertainments, receiving in return those favours and immunities from feudal exactions which were almost invariably concomitants of their domiciles and estates.

It is needless to enter into the justice or otherwise of the charges brought against them, and which led to their disgrace and destruction. Too frequently has the page of history inculcated the moral—sustained the appalling truth—that when an order of men become powerful, they become suspected, envied, and hated. That the Templars were men possessed of both power and genius, is evident from the edifices they reared, the immunities they enjoyed, and the shelter they extended

to incipient science and literature. A time-serving Pope, fostering the vices of an avaricious prince, suddenly hurled them from the eminence they had attained, and compelled them to drink to the very dregs the contents of a cup of misery and degradation. Their edifices were desecrated—their chief officers placed in irons—and they were branded as very monsters of iniquity, whose words were enough to pollute the earth and infest the air. The most agonizing tortures were resorted to, to extort confession from them, suborned evidence was had recourse to, and some of their leaders perished at the stake, denying the charges alleged against their order. The remembrance of their once happy and prosperous state rendered existence insupportable, and their spirits, depressed by the recollection, and wounded by injury, sank under a load of accumulated misery and heart-rending excitement. How truly and beautifully did the Bard of Avon write :—

“ Give sorrow words : the grief that doth not speak
Whispers the o'erfraught heart, and bids it break.”

* * * * *

“ When sorrows come, they come not single files,
But in battalions ! ”

The Rothley pillar is composed of stone brought from Derbyshire, called mill-stone grit, a material, I believe, invariably found in connection with coal measures : it is profusely carved, and its distinguishing features, in my view, are Norman. Rothley, as we have seen, came into possession of the Norman Earls of Chester, shortly after the esta-

blishment of the Knights Templars in this country, probably about the period of the erection of their first temple in London, which was situate in Holborn, near Southampton Buildings, and was erected many years before the one in Fleet Street, which was consecrated in the year 1185 by Heraclius, Patriarch of Jerusalem: hence the latter edifice was called the New Temple. The earls of Chester were early patrons of the Crusades, contributing to their purposes or erecting edifices in support of them, and several of them greatly distinguished themselves in the Holy Land. There is no precise evidence that they were Templars, but there is every probability some of them were so, the ecclesiastics of the day strongly patronizing that order as necessary to the very existence of the Crusades. It is notorious many of the nobility were members of the order; but, so loosely were the records kept, that out of the knights whose effigies now grace the Temple church, only one, the Earl of Pembroke, can be precisely identified as having belonged to the order.

Some have attributed the erection of the Rothley pillar to the Templars, after their possession, as a body, of the manor. I cannot acquiesce in this opinion, inasmuch as, when they became seised of Rothley, which was not until about the year 1230, the lancet or early-English arch had in a great measure superseded the semi-circular, and as the earliest portions of the existing church at Rothley and the chapel at Rothley temple—their precep-

tory—edifices which there can be no doubt were originally erected by them—contain not a vestige of architecture anterior to the early-English style. When the Templars erected round churches, they, in general, dedicated them to the Holy Sepulchre, hence Saint Sepulchre at Northampton, Cambridge, &c. ; when their churches were built in the ordinary form, they were dedicated to Saint Mary. The church at Rothley, as I before observed, is dedicated to Saint Mary. The Knights Hospitallers dedicated their churches to Saint John the Baptist, and hence arose the distinction between the orders. My idea is, that the pillar was erected when the soke and manor came into possession of the Earls of Chester, and that it was commemorative of the retention of the privileges associated with them in the Saxon era. I am not inclined to attribute to it an higher antiquity^r; for, if raised to perpetuate especial privileges, it is not probable it would have been erected at a period when those privileges were the common law of the land, nay, when the common law exceeded them. After the Norman Conquest, the contrivance of the Saxon custom of gavel-kind amongst sons, and the other customs I have mentioned as prevailing within the manor—the majority in direct derogation of the then common law—would form a valid reason for its erection.

So long as the property remained in the Crown, there could exist no reason for its erection; the Crown required no local assertor of its right; but,

when the demesne was granted to a subject, such an assertor, might, in those troublous times, be necessary. Like many other ancient crosses, it has been injured, mutilated, and broken; and probably, like those at Sandbach and other places, it was thrown down at the Reformation, being then regarded as having been originally erected for superstitious purposes, or rather as being possessed of superstitious and objectionable emblems. I am of opinion it did not always occupy its present situation, and that it has been removed from another site, probably from some point of termination of the manor, its original design being to designate the manorial boundary, and show where the custom of the soke ended, and the Norman common law began to prevail. It is placed in a bed of cement, no steps leading up to it; and some large blocks of stone surround it, apparently as a protection.

It is generally supposed that the pillars in the churchyards of Eyam and Bakewell in Derbyshire were demarcations of boundary, and removed to their present situations from the neighbouring hills, upon which some similar pillars are yet remaining.

The Templars' privileges in Rothley affected, as we have seen, matters of ecclesiastical as well as civil jurisdiction; and the exemption of this district from the jurisdiction of the bishop of the diocese and the archdeacon of the archdeaconry, was not conceded until they came into the possession of

the Templars as a community. This is proved by a point of ecclesiastical law. Had Rothley been a royal peculiar, like Battle in Sussex, or Wolverhampton, the exemption from ecclesiastical jurisdiction would have extended to the period of the Conquest, when the Bishop and the Earl ceased to preside in the county court,—in other words, when the ecclesiastical courts were separated from the civil; and an appeal from the court of the Commissary of the Peculiar would, under the statutes passed at the Reformation, have gone to the Crown in Chancery, and not to the court of the Archbishop of the province. Now any appeal from the court of the Commissary of Rothley lies to the Arches Court of the Archbishop of Canterbury, and not to the Crown in Chancery—or rather now, the Judicial Committee of the Privy Council; and Laud, in his archiepiscopal visitation of the province of Canterbury in the year 1633, visited the peculiar of Rothley, inhibited its officers from exercising jurisdiction during his visitation, and held correction courts in its churches and chapels. These facts show that Rothley was not an ecclesiastical peculiar prior to its possession by the Templars as a community, and the pillar is therefore not inappropriately placed adjacent to the church erected by them as a memorial of the retention of civil privileges, allowed by the Crown to that religious military order, and of the original grant of exemption from the jurisdiction of the local ecclesiastical authorities. It is worthy too of remark, that King

Edward the First, in the twelfth year of his reign, granted a fair and market at Rothley to the Templars: fairs and markets were then usually held in churchyards, and crosses were there placed to remind those who came to buy and sell of their holy religion, and of the necessity of being just and true in their worldly dealings. The pillar in this view would answer two purposes—constitute a memento of the especial immunities, ecclesiastical and civil, connected with the district, and operate, according to the view taken in those times, as an incitement to honesty and propriety in transactions of sale and purchase. Had the pillar been a sepulchral one, doubtless others would have been found, as it was the usage, when pillars were erected as memorials of the dead, to place one at the head and the other at the feet of a deceased party. “Crosses or pillars,” says Hawkins, “were especial landmarks of the Templars and Hospitallers, and crosses were placed on their houses as demonstrative of their especial privileges.” Early Norman architecture was so devoid of ornamental decoration and sculptured mouldings, as to have been frequently mistaken for Saxon, and I am not inclined to embrace the opinion that there is much of the latter now existing in the kingdom. When the repeated ravages of the Danes, and the deadly antipathy which the Normans bare to the Saxons are considered, I cannot think we have any legitimate reason for believing that many remains of Saxon architecture

would be suffered to exist after the Conquest. Some may indeed be found in remote, isolated, or, comparatively speaking, unfrequented districts, but I take them to be chiefly sepulchral, and in general of the plainest character. May it not be fairly asked, if the aversion of the Normans to the very appellation of Saxon or of Dane induced them to destroy, as it is now pretty generally allowed on all hands they did, almost all the churches and monasteries existing in England at the period of the Conquest, is it likely they would have extensively spared columns, crosses, and pillars, raised, not in connection with divine worship, or for religious purposes, but to commemorate victories, grants of property, concessions of privileges, or other exciting reminiscences having reference to their abominated predecessors?

Mr. Kemble, in an able paper read before the Society of Antiquaries in the course of their last session, has illustrated Anglo-Saxon pillars and runes at Hartlepool, Dover, Bewcastle, Bridekirk, and Rothwell on the Scottish border; and says he has now examined, in detail, all the runic inscriptions which are clearly Anglo-Saxon, making a very large majority, nearly all, in short, known to exist in the kingdom. The original meaning of the Saxon word *run* is, says Mr. Kemble, *mysterium*, "a secret;" and the Saxon verb *rynan*, which is derived directly from it, means "to whisper, to tell secrets"—a sense which we still retain, under the corrupt form, to "*round* in one's ear."

So also the word *runa* denotes "a whisperer;" but in its far earlier and true use "a magician." "*Run* (substantive) is, with some little variation," says Dr. Bosworth, "common to all the Germanic languages. It means, first, a letter, magical character, mystery; second, a council, a conference; hence *Rune-mede*."

With respect then to the idea that the Rothley pillar bears a strong resemblance to those which have been considered Saxon or runic, and that it is clearly connected with some especial topic or theory, may not the inquiry be instituted, whether, if under Saxon sway the mysterious runic column operated as a successor, however distant, to the freemasonry of Egypt, the Crusades and religious military orders might not embellish their churches and pillars and crosses with symbols connected with the religion they professed, or the purposes for which they were instituted?

The reticulated mouldings of the Norman era have been considered by some as having been derived from the mysterious *vesica piscis* (a figure of *s*, or a combined figure of two *ss*, forming the arithmetical figure 8), the far-famed love-knot so venerated by Egyptian architects and builders. However this may be, the mouldings to which I have referred are generally characteristic of buildings erected by the religious military orders during the prevalence of Norman architecture; and Mr. Clarkson, in an essay introductory to Mr. Billings' History of the Temple Church, says, that the

ground plan of that splendid pile forms a *vesica piscis*, and that the church itself abounds with ornamental triangles, squares, circles, angles, taus, and oblongs or double squares.

The lands in the manor of Great Bowden in this county are ancient demesne; but no cross—no pillar—no memorial—no gavel-kind exist there; hence, I think, it may be reasonably surmised that the pillar at Rothley had reference to the retention of the manorial privileges conceded to the Norman earls of Chester, when the estate was granted them by the Crown, and at a later period extended to the Templars as a community, on their becoming possessed of it through the bounty of John de Harcourt, who probably became entitled to the property by the Crown sanctioning grants of it made by the earls of Chester to brother Templars and Crusaders. At the time of the first crusade, *circa* 1100, there can be no doubt the excitement was immense; the nobility and leading families were compelled to sanction it by the powerful priesthood of the day. It is true many of these did not visit Palestine; but they either built churches in honour of the Crusades, or subscribed largely towards their general purposes—actions which entitled them to be represented on their monuments as if they actually had fought in Palestine—as knights with their legs crossed. The order of Templars was established about the year 1118, and settled in England about ten years later.

To conclude.—It has been justly observed, that the Crusades, with reference to the especial objects they had in view, must be considered by all as exhibiting a lamentable instance of mistaken zeal and fruitless exertion; the energies, however, which they called forth were decidedly advantageous to architectural science and general information; and, although it must be lamented that so much of the best blood of Europe should have been poured out in vain on Asiatic ground, yet probably at the particular period of the sacrifice a vent was wanted for military achievement and demonstration, which, had the Crusades not supplied, might have endangered the balance of European power, and the then policy of the Roman Catholic Church. At all events, speaking historically, and I beg to be understood as speaking historically only, without any reference to polemical points, in any allusions to the Holy Wars, the utmost latitude ought to be extended to the exercise of candour. Those who engaged in them acted from good, though perhaps erroneous, motives; they abandoned their hearths and domestic comforts, and periled their lives and their fortunes, in advancement of a cause which they believed had the especial approbation and support of the Almighty:

“ Thrice arm'd and mounted went the Pilgrim Knight,
To meet the Saracen in Acre's field,
The Cross was on his shoulder and his shield,
And on his banner and his helmet bright:

He knew not how to truckle, or to yield,
But valiantly for his dear Lord did fight,
For on his heart was this high purpose seal'd—
To see Jerusalem!—Oh glorious sight!
To quench his thirst at Siloa's sacred fount,
To bathe in Jordan's stream without control,
To stand on Calvary's thrice-honour'd mount,
And there the standard of the Cross unroll."

Yes! the standard of the Cross floated in the breeze, and was fought under by many a brave knight from no mercenary motive; a religious fervour imparted to him a super-human energy, and he felt that if he fell he fell in the most glorious of conflicts, and exchanged a transitory existence for a happy immortality! Ocean too, was made to recognise the holy standard—not only in the field, but on the sea was the sacred ensign unfurled: on the stern of the vessel was the Cross in the ascendant, and still, but for a far different purpose, is it characteristic of the ships of Britain. At length success crowned the exertions of the holy warriors; the Saracen was expelled, and the adventurous maintainer of the Christian faith—Godfrey of Bouillon—

" Followed with impetuous haste,
And on the wall the holy standard placed;
The conquering banner, to the breeze unroll'd,
Redundant stream'd in many a waving fold,
The winds with awe confess'd the heavenly sign,
With purer beams the day appear'd to shine!"

ON ANCIENT INVENTORIES.

[*Prepared for the Gentleman's Magazine, but not communicated.*]

Leicester, October 4th, 1836.

MR. URBAN,

I AM happy to find from your review of one of the recent publications issued by the "Surtees Society," that the attention of the members composing that valuable institution has been drawn to the mass of useful information to be gathered from the Inventories filed in the Registries of the several Ecclesiastical Courts. With reference to these I have long entertained an opinion, that, in the hands of those of adequate leisure and taste, great advantages to the public might be derived from a careful digest—a digest proceeding on the principle of adequate intervals being allowed to intervene between the dates of the selected documents. You justly state, that these Inventories "carry us through every room and office of a testator's dwelling," and give us a complete view of the arrangements adopted by, and of the nature of the furniture, &c. belonging to, the deceased. They not only accomplish these useful purposes; but they furnish us from time to time with the price of every description of stock and of merchandise, and with the nature of the stores, and almost the

* Wills and Inventories, illustrative of the History, Manners, Language, Statistics, &c. of the Northern Counties of England; derived from the Registry at Durham. 1836. Svo. Reviewed in the Gentleman's Magazine for August, 1836, pp. 170—172.

method for conducting business. The statistical information to be gleaned from them is of no ordinary value ; and I attempted some years since to make an abstract of those lodged in the Registry here, on the principle I have mentioned—that of allowing an interval to elapse between the dates of the Inventories sufficiently extensive to mark the variance in price of the different goods, &c. in which the testators dealt, and the alterations with respect to domestic arrangements which might have taken place. My avocations, however, would not allow me to proceed with my scheme, but I fancy the prosecution of such a design in the various districts might be attended with considerable good ; it must, however, from the very nature of it, be exercised locally, and by those fully acquainted with the especial circumstances of the districts forming the subjects of investigation.

There is another point connected with these Inventories deserving of attention. It was the usual practice for the effects of a deceased party to be appraised by three or four influential and intelligent neighbours ; the names of these persons are generally stated in the Inventories, and thus information most serviceable in cases of pedigree might be frequently obtained ; besides the means of shewing who were the parties in and about the various towns and villages principally concerned in matters of agriculture and commerce at the dates of the documents.

Yours, &c.

J. STOCKDALE HARDY.

In exemplification of his ideas on this subject, Mr. Stockdale Hardy made extracts in an abstract form from some of the Inventories deposited in his own Registry; which may be here appended, in confirmation of his remarks, and as contributing some curious particulars towards a Chronicon Preciosum of the county of Leicester, though not at such distinct intervals of time as Mr. Hardy proposed.

1586.—WM. MAUBIE, OF LEICESTER, GROCER.

Description of house:—In the hall; in the buttery; in the kitchen; in the chamber over the buttery; in the chamber over the shop; in a little chamber; in another chamber; in another chamber; in the parlour; in the brewhouse; in another chamber; in the closet; in the shoppe; plate.

In the hall.—Goods to the amount of £10.

	<i>£</i>	<i>s.</i>	<i>d.</i>
3 frame tables, 2 cupboards, 3 chairs, 6 buffet stowles, 1 form, 2 pewter basons, 2 ewers, 3 pewter pots, a laver, a fireiron, a handiron, a pair of handirons, a spatterne, 2 pair of tongs, with benches, &c. &c. valued at	8	15	3
7 watching bells		7s.	0d.
2 Bibles and a service book	12		0
A pair of tables	2		6

In the buttery.

3 hundred and a half of pewter, at 6 <i>d.</i> in the pound	9	15	0
Brass pans, at 9 <i>d.</i> in the pound.			
Old brass, at 7 <i>d.</i> in the pound.			
Brass pots, at 3 <i>d.</i> in the pound.			

In the kitchen.

A handiron, 8 spitts, 2 pair racks, 4 pair pot-hooks, shelves and implements	0	50	0
A lead	0	11	8
4 bacon hooks	0	30	0

£ s. d.

In the chamber over the buttery.

A bedstead, a press, and a coffer with implements 0 20 0

In a little chamber.

Bedstead with implements 0 28 0

In the chamber over the shop.

2 bedsteads with testers, 2 featherbeds, 3 coverings, 2 bolsters, 9 pillows, 2 mattresses, with 2 pairs of curtains and furniture 12 0 0
 3 chests 0 20 0
 8 cushions 0 21 0

In another chamber.

A bedstead, a feather bed, a mattress, 2 bolsters, a quilt and blanket, with furniture 0 52 0
 3 carpets, 2 of Turkey-work 4 0 0
 5 gownes (one scarlette), 2 doublets, 3 paire of hoase, 2 jackets, with rest of apparel 12 0 0

In the brewhouse.

Wood and coals about the house and yard 4 0 0
 Hay 3 0 0

In the stable.

A gelding and 2 nags 9 0 0

In the parlour.

2 featherbeds, with furniture and implements 7 0 0
 Sheets, towels, and drapery 10 0 0

In another chamber.

2 bedsteads, a mattress, a featherbed with furniture, 2 coffers with implements 0 50 0
 Old iron, with other implements 3 0 0

£ s. d.

In another chamber.

Certain boards, &c.

In the closet.

Stuffe and implements, &c.

In the shop.

In grocery wares	10	8	2
In linen cloth	11	7	8
Mercerie wares	18	5	0
Haberdashery wares	14	0	0
Hats	20	7	0
Hemp, soap, packthread, honey, &c.	8	0	0
5 Morters, weighing 2 hundred weight and 10 lb., and brass weights 47 lbs. at 4 <i>d.</i> in the pound	5	12	0
Leads and other weights	1	10	0
11 chests, shelves, and implements, in the shop	16	0	0
7 paire of balances	1	0	0
Item, a great iron beame and scales	0	13	4

Plate.

In silver plate, 64 ounces at 5 <i>s.</i>	16	0	0
Parcel gilt, 46 ounces at 5 <i>s.</i>	11	10	0
Double gilt plate, 84 ounces at 6 <i>s.</i>	25	4	0
Spoons, 38 ounces at 5 <i>s.</i>	9	10	0

Grain and cattle, &c.

2 quarter of pease	1	10	0
3 swine	1	0	0
2 kine	6	6	8

Tot. of Inventory, £359 0*s.* 0*d.*

Taken by John Herrick, Robt. Herrick, Roger Corbitt, John Norman, John Ley.

1586 (No. 44).—WM. ALLISON, OF LOUGHBOROUGH, GLOVER.

Description of house :—An hall, butterye, parlor, shop, yard and chamber ; their furniture tallying much, though in a minor degree, with that of Maubye's (before described).

	£	s.	d.
<i>In the chamber.</i>			
$\frac{1}{2}$ hundred lamb skins	0	7	0
2 dozen of cunney skins with fyrchers	0	5	0
7 ston of woll, valued at	0	40	0
$\frac{1}{2}$ buckskine lether	10	0	0
3 dozen of calves lether	1	4	0
2 hundred and $\frac{1}{2}$ of calves lether undrest	7	0	0
1 hundred of sheep's lether undrest in the lime pits	0	6	8
4 score of doe skines undrest	5	0	0
2 dozen of dog skins	0	4	0
One horse, prized at	0	10	0
2 pigs	0	4	0

Tot. £43 2s. 8d.

Prayed by Barth. Tyslaye, George Cawdwells, Wm. Tomlinson, John Wells, Thos. Smartwood, Wm. Shetton.

1586 (No. 138).—JOHN RISTE, OF LOUGHBOROUGH,
INNHOLDER.

Description of house :—Insett house, over parlour, neither parlour, dark parlour, chamber over the inset and the over parlour, butterie, kitchen, yard, barn, and backside.

In the insett (inter alia).

A table, a cubboard, 2 chaires paynted, a handiron, &c.
[Equivalent, I fancy, to a hall.]

	£	s.	d.
<i>In the over parlour.</i>			
Flok bed, bedstead, coverlits, pillows, &c. &c.	2	6	8
The testator's apparel	2	6	8

	£	s.	d.
Money in his purse, with the purse	1	13	4
[The above being the room where he slept.]			

In the nether parlour.

A carved and framed bedstead, counterpayne, a coverlit, a feyther bed, a bolster, 2 pillowes, and 2 wyndeshetts under the feather bed

	4	0	0
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[This evidently the best bed room.]

In the darke parlour.

2 bedsteads and 2 flok beds, bolster, &c. 2 spinning wheels, 3 shep skinnes, a saddle and other stuffe

	2	0	0
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1 barrel of tar and another of pitch

	0	18	0
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[This evidently servants' room and lumber room.]

In the chamber over the inset and the over parlour.

Bedstead, feather bed, &c.	2	2	8
7 quarters of malt	6	0	0
6 strike of wheat	1	0	0

Tot. £76 2s. 10d.

Praysed by Thos. Dowman, Nich^s. Wollands, Glyce Shawe, Thos. Clayesone.

1586 (No 201).—JOHN SARSON, OF LOUGHBOROUGH, TANNER.

Description of premises:—Hall, butterye, yoyle house, milke house, chamber over the milke house, chamber over the hall, servants' parlour, chamber over the great parlour, seyled parlor, the parlor next the entrye, the mayden's parlor, the kitchen, the boultinge house, the tan yard, the barne yard, the stable, debts owing him (*specifying the names and places of residence of the different debtors*).

In the hall.

	£	s.	d.
Long table-joined stooles, one square table with a frame, &c.	2	16	7

£ s. d.

In the chamber over the milke house.

Seven quarters of rye	7	0	0
Two quarters of barley	1	12	0

In the chamber over the hall.

Two stone of wooll	0	13	0
A side saddell with the furniture	2	0	0

In the chamber over the great parlour.

7 quarters of malte	7	0	0
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His apparel.

8 shirts and 6 handkerchiefs	2	13	4
4 doublets, 3 jerkyngs, two cootts and tow gouns, 5 payer of hoase, tow hats, tow paire of boots, a payer of spencers, one fawchen, and purse and gyrdell, and 20s. in that, and a ringe of gould	15	0	0

In the tan yard.

12 deckers of cloute lether and a half a decker, at £8 10s. the dicker	106	5	0
18 decker of lether, prized at £6 the decker in toto			
20 dozen of calve skinns	7	0	0
The barke, prized at	4	0	0

In the barne yard.

6 oxen, valued at	21	0	0
5 kyne, valued at	7	10	0
Towe shippe, prized at	0	10	0
4 geldinges and a mare	8	0	0
One fillye	1	6	8
One yearlinge coult	1	0	0
A swyne	1	10	0

1600 (No. 49).—RICHD. PABODY, OF ASHBY PARVA, YEOMAN.

Prayed by John Thorneton, Wm. Higginson, John Cuttle, John Smithe.

	£	s.	d.
His apparel	2	10	0
11 kyne	15	10	0
2 bullocks, 2 yearlings, and 3 calves	3	0	0
58 sheep	10	0	0

Sum total £109 15s.

1600 (No. 18).—HENRY HUDSON, OF MELTON, HUSBANDMAN.

Description of premises :—Hall, dry buttery, drinke buttery, one parlour, another parlour, the kitchen, bolteing house, one chamber in another chamber, barne, chamber over the stable, stable, 2 hovels.

	£	s.	d.
Purse and apparel	2	0	0

In the hall.

9 pewter platters, 4 candlesticks, 2 saltes and a plate	0	15	0
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The paynted clothe, a joyned chaire, and six buffet stools	0	8	4
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8 cushins and a chafing dish	0	7	0
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In the butterye.

5 brass pans, &c.

In the drinke butterye.

3 tubs, 14 platters, &c.

In one parlour.

10 pillows, and 12 pillow beers (no bed).

In another parlour.

A saw and other implements (no bed).

In the kitchen.

A paire of quernes, a lead, and other brewing vessels	3	0	0
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£ s. d.

In one chamber.

A bedstead, with bed, &c.	2	0	0
Another feather bed, a coverlit, and a blanket	2	6	0
A mattress and 4 other coverlits	1	13	4

In another chamber.

Six bacon fliches	1	10	0
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In the chamber over the stable.

6 quarters of barley	6	0	0
2 quarters of pease	2	0	0

In the stable.

15 horses and colts	38	0	0
25 sheep	6	0	0
10 swyne	3	8	4
60 acres of corn	15	0	0

Sum total £314 8s. 8d.

Prayed by Wm. Trigge, Thos. Spencer, John Bealy, Hugh Kellam, Rich. Kellam, and others.

1600 (No. 20).—WM. RAWLINS, OF WOODHOUSE, YEOMAN.

£ s. d.

4 yearling calves	2	0	0
4 draught cattle and a foale	6	10	0
28 sheep	6	0	0
2 swyne	0	13	4

In the hall.

All the pewter, candlesticks, &c. &c.

In the old parlour.

One fether bed, &c.	2	0	0
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In the new parlour.

One fether bed, &c.	1	13	4
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In the butterye and dairy house.

In the kitchen.

A brueyng lead, a spit, a payre of cobirons,
1 dripping pan, &c.

In the chambers.

	£	s.	d.
2 bedsteds, 4 coffers, 3 window sheets, 1 blanket,			
3 tubs, 3 bacon fliches, with other rumble	2	0	0
Sum total	£87	16s.	8d.

Praysed by Vincent Foulds, Walter Griffin, Christ. Smalley.

1600 (No. 84).—ROBT. SMALLEY, OF EARNESBY.

Description of premises :—Stable, cow house, hall, kitchen, parlor, butterye, chamber.

In the hall.

	£	s.	d.
Pewter, brasse, with a table and formes, stools, chairs, cupboard, paynted clothes, fireirons, and cushions	0	20	0

In the kitchen.

Pots, panns, tubbes, payles, codles, bordes, bacon, and treen ware	3	0	0
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In the butterye.

Bowls, cans, potts, with bordes and shelves	0	10	0
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In the parlor.

Bedding, bedsteds, coffers, linnens, woollens, paynted clothes, and his apparel, and money in his purse	4	0	0
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In the chamber.

One bedsted, with mattress and other implements	0	16	0
Sum total	£66	8s.	4d.

Praysed by Thos. Wyatt, John Loosbye, Chris. Wyatt, Rich. Mamsfield.

1600 (No. 80).—THOS. JOHNSON, OF GREAT PEATLING.

	£	s.	d.
15 sheep and three lambes	2	5	0
Four kine and a heifer	6	0	0
Praysed by Richd. Burdett, Anth'y Gilbert, Nich. Johnson.			

1600 (No. 99).—JOHN NICHOLSON, OF CASTLE DONNINGTON.

Description of premises :—Hall, parlor, kitchen, chamber.

	£	s.	d.
9 acres of peese	6	0	0
$\frac{1}{2}$ an acre of oates	0	3	4
A rood and $\frac{1}{2}$ of barley	0	6	8
6 hands of winter corne	2	10	0
	<hr/>	9	0
	<hr/>	<hr/>	<hr/>
2 quarters and $\frac{1}{2}$ of malt	2	5	0
3 quarters and a bushell of barley	2	13	0
A yoke of oxen, and a bullock of 2 year old, 4 3-year old heefers, 4 calves of a year old, and 3 young calves—£14; and 5 kyne—£8 6s. 8d.	22	6	8
Total £70 6s. 6d.			

Praysed by Thos. Fox, John Twells, Thos. Oldenshawe, John Barlowe.

NOTE.—The following detail of the number of Wills proved in, and of Letters of Administration granted by, the Archdeaconry Court of Leicester, for several years, from the commencement of the troubles in the reign of King Charles the First until the Restoration, was communicated to Mr. Hollings's "History of Leicester during the Great Civil War" by Mr. Stockdale Hardy,

as a statistical test of the state of public opinion with reference to the security of property during that memorable period:—

A. D.	Wills.	Administrations.	Total.
1639	182	85	267
1640	152	61	213
1641 Commission of Array issued by King Charles I.	139	78	217
1642 Civil Wars	81	54	135
1643 Do.	34	13	47
1644 Do.	26	23	49
1645 Siege of Leicester	10	20	30
1646	85	65	150
1647	84	62	146
1648-9 Execution of King Charles	48	37	85
1649	75	43	118
From 1649 to 1660, no Wills proved in, or Administrations granted by, Diocesan or Archidiaconal Courts.			
1660 The Restoration	360	203	563
1661	343	214	557

APPEAL FOR THE ANTIQUITIES OF
LEICESTER.

[*Addressed to the Leicester Journal, 1840.*]

SIR,—It is well observed by Mr. Hollings, in his able and interesting Lecture, “The History of Leicester during the Great Civil War,”* that “it would be little to the credit of Leicester, if, while enriched by objects of interest to all in any degree versed in the history of their country sufficient to distinguish to the place from most other towns in the empire, its inhabitants should at the same time acquire the not very desirable distinction of being among the least able to appreciate their possession.” I fear the inquiries may be fairly instituted—have not the inhabitants of Leicester pursued a course leading to this “not very desirable distinction?” Have they not, in too many instances, suffered memorials of the “olden time” to disappear from the streets, the fields which they traverse, without making any efforts to save them—nay, without indulging any expressions of regret at their destruction? I trust, however, that the portion which may be allotted us of the general diffusion of science and literature—a diffusion, now

* Delivered at the Leicester Mechanics’ Institute, November 4, 1839, and published in 1840, 8vo.

progressing with giant strides throughout the land—will preserve from ruthless desecration and attack what still exist of those invaluable monuments of antiquity with which we are surrounded; I indulge the hope that it will render certain the preservation of the remains of the Roman *Cursus*—no further interference with the Roman *Janua* and *Temple*—the continuance inviolate of our antique tessellated pavements—not only the preservation, but the effectual repair of the magnificent *Gate House* at the entrance into the *Newarke*—the retention of the walls of the *Newarke*—and the sustenance, as works of art, and models for imitation, independent of the special purposes for which they were erected, of our venerable churches and public edifices. “Where,” triumphantly asks Mr. Hollings, in the work to which I have adverted, “where, throughout a land abounding in historical associations of absorbing interest, shall we find a region ennobled to a greater degree by recollections of the past than that which lies immediately around us; or to what era of our existence as a nation can we refer which has not left its visible traces either within our walls, or along the course of that quiet river which, as well from its unobtrusive beauty as from the luxuriant pasturage which it mirrors, might be termed, without any aid from imagination to substantiate its claim to the title, the *Clitumnus* of England? In no county is the long extinct dominion of the earliest conquerors of our island recorded by more numerous or

more legible signs. Our fields are yet furrowed by the entrenchments of their legions; our dwellings rest upon the very same foundations which formerly supported villas constructed with truly Roman magnificence, and decorated with all the refinements of Roman taste. The most considerable and best authenticated remnant of the civil architecture of that once mighty race stands in massive and mysterious stateliness in the midst of our teeming population; and the same path continues to thread our meadows which more than sixteen centuries ago witnessed the imposing march of the legate or tribune at the head of his invincible array. The Danish standard has floated ominously at our gates, and the loud revelry of the Saxon thane, and the chant of the Saxon monk, have been heard on the spots which now return the busy sounds of an honourable industry, the results of which are distributed to every part of the habitable globe. And passing from the period of barbaric power, and even from the gorgeous visions of feudal pomp and splendour, the name of John of Gaunt, "time-honoured Lancaster," brings with it a host of recollections connected with himself and his princely line,"—a frequent resident as he was at his castle of Leicester, and from his chamber in which his testamentary dispositions were made.

The above are admitted truths; and I hope that the production of Mr. Hollings, a stranger to the place, will arouse the spirit of the inhabitants, in

defence and explanation of several local objects of antiquity, which have been either inadequately elucidated or altogether disregarded. Cannot we, almost with certainty, discover the site of the abbey church, and with it the precise spot of Wolsey's interment? Ought the once splendid, and still interesting, monument of Bishop Penny—a considerable benefactor to the place of which he was the Abbat—to occupy its present incongruous cell in the prebendal church of St. Margaret? I trust a "translation" of this latter prelate to a more appropriate situation will soon be effected, and feel assured that the support of the vicar and other constituted authorities, will be cheerfully given in aid of the design.

To recur, however, to the subject of Mr. Hollings's book.—I do not think a more instructive study than the history of this country, during the civil wars of the seventeenth century, can be pursued. Those wars were produced, partly by a mistaken assertion of prerogative, but principally by the restless vigour of ardent and active minds, impelled by the applause of a multitude fond of change and jealous of monarchy. It has been well observed, that had "Elizabeth been the sovereign of the seventeenth century there would have been no civil war; the people would have found, as their forefathers had done, that the wisdom of the ministers guided public opinion, and that the latter was as little disposed to dictate in civil matter to the Queen, Burghley and Walsingham, as

French Jacobinism would have been in military affairs to Buonaparte and his marshals." For some time previous to the civil wars, the Crown could not be considered as possessed of any responsible advisers, and the sudden transition from almost imperial power to plebeian dictation, produced by those wars, operated with fatal effects upon a mind constituted as was that of Charles. Let the character of King Charles I. be contrasted with the characters of some of the sovereigns who either preceded or followed him—let it be contrasted with the character of the cruel and disgusting Henry VIII.—the weak and bigoted Mary—the pedantic and vindictive James—the ungrateful and profligate Charles II.—or with that of the obstinate and priest-ridden monarch whose infatuated conduct occasioned the glorious Revolution—and who can avoid feeling that Charles's lot fell in evil days—that he was the most amiable prince of his line, and paved the way for his own destruction, by an infirmity of purpose, chiefly originating in a desire to prevent bloodshed—a vacillation which induced him at some periods to cling to the oak, at others, to intrust the willow—on some occasions to command, on others to supplicate—until those who were opposed to him, or with whom he was in treaty, found his death necessary for their own safety. While the course taken by Charles shows that a most estimable man and conscientious prince may err in ideas of prerogative, and in the assertion of privileges which,

except he had determined to adopt a particular principle, and felt convinced the people would sanction that adoption, he ought neither to have entertained nor insisted upon, the history of Cromwell guards us against the shoals and quicksands of that popularity which no sooner elevates than it renders its possessor an object of envy and suspicion to the very men who have been the instruments of his advancement. The tree of liberty can alone flourish under the genial influence of a limited monarchy; in other soils it may appear luxuriant, but its luxuriance is ephemeral, and the certain precursor of its decay. Those who ought to watch its growth and trim its branches are too busily engaged in schemes of personal aggrandisement and influence to regard it, and it eventually falls a prey to the dominion of a faction, the members of which are not unlikely to employ it in the erection of a scaffold, or as an auxiliary in the construction of a guillotine.

I cannot conclude without again referring to Mr. Hollings's book: in a notice of it some weeks since you recommended a general perusal, and I cordially agree in that recommendation. Mr. Hollings has evidently bestowed great pains upon his subject, and in the application of his materials; an admirable impartiality, too, pervades his treatise, which, considering the exciting reminiscences of Cavaliers and Roundheads, is no trivial enhancement of its merit. There are several points connected with the siege of Leicester satisfactorily

elucidated which were previously enveloped in great obscurity, and others which had escaped the observation of all previous annalists: the precise situation of Prince Rupert's battery—the embrasures and sally-port in the south Newarke wall, and the details with respect to the breaches in that wall—the localities of the points of assault upon the town—the establishment of the position, that there were two distinct batteries on the south—the circumstance that cannon and other shot lodged in a portion of the northern wall of the Newarke, a wall now faced and hidden from observation by the new buildings forming part of Trinity hospital,—are among these, and may now be considered as particulars decidedly sustained.

The Petition to the House of Commons from the committee, gentry, and other inhabitants of the county of Leicester, (4to, London, 1648,) furnished by Mr. Hollings, is not to be found in the works of our local historians; the extracts given from the two pamphlets in the British Museum, and the list of the Parliamentary Committee which sat during the actual time of the siege, are also novel information.

Begging to apologise for so long an obtrusion on your attention, I remain, yours, &c.

BRITANNICUS.

Leicester, 16th June, 1840.

LETTER OF
 DAME DOROTHY HASTINGS, OF BRAUNSTON,
 A RECUSANT, IN THE YEAR 1619.

[*Communicated to the Gentleman's Magazine.*]

Leicester, December 1836.

MR. URBAN,

THE letter of which I send you a copy was written under circumstances of considerable interest. The writer was Dame Dorothy Hastings, the first wife of Sir Henry Hastings, of Braunston, near this place. Sir Henry was the son of Major-general Walter Hastings, the sixth son of Francis the second Earl of Huntingdon, and the commander of the chosen Leicestershire men who formed a part of Tilbury camp; the General married Joyce, the daughter of William Roper, Esq. of Well Place, in the county of Kent. Lady D. Hastings was the daughter of Sir Edmund Huddlestone, of Sawston, in the county of Cambridge, Knt., and she, with her mother-in-law, were zealous Roman Catholics. Sir Henry, by his first marriage, had six sons and six daughters.*

The letter is dated in the year 1619; a period somewhat remote from the discovery of the horrid

* Nichols's "History of Leicestershire, vol. iv. p. 627.

plot against James and his Parliament, but when the effects produced by that appalling *éclaircissement* had not altogether subsided, and suspicions with respect to the existence of dark intrigues against the state rendered it necessary that a watchful eye should be still kept upon the conduct and proceedings of Roman Catholics. Lady Hastings, with her daughters and mother-in-law, had been repeatedly presented to the ordinary as recusants, and at length her ladyship and daughters were cited to appear before the Ecclesiastical Court. The following is a copy of a letter which her ladyship wrote while the proceedings were in progress; it was addressed to Edward Clarke, M.A. the Commissary of the then Bishop of Lincoln for the archdeaconry of Leicester, and bears internal evidence of deep and cautious consideration; the probability is, that it was written under legal and (perhaps) priestly dictation:—

“ Goode Sir,

“ I ame to request at yo^r hands y^t you would please to grant mee a further time to consider myself, and for the better preparinge my minde, havinge all my life time bine bread in a contrarye religion, w^{ch} in soe short a time I cannot well resolve myselfe to alter, till further reasone be shewed, w^{ch} I will indeavour to lerne out and know, if I may be afforded a time requisitt for y^e alteration of a matter soe weighty; therefore I must crave yo^r

lawfull favour herein, and that you would be pleased to restore mee from y^e excommunication for a time, wherby I may in peace seeke y^e quiett of my conscience. I have allready taken y^e oath of aleagence, w^{ch} sheweth my loyallty both to my Prince and contrie. I only desire but to be settled in my conscience, and then I doubt not but to geeve good content to yo^r selfe, and all that wishes my welfare. This lawfull request I hope you will out of good meaninge to all Christians afford mee, for w^{ch}, wth my faithfull love, I will be requitfull, and soe wth my best wishes to yo^r selfe and wiff, I comitt you to God.

“ Yo^r trew frend,

“ DOROTHE HASTINGS.

“ Branston, y^e last of
January 1619.

“ Allsoe I am to intreat you in y^e behalfe of my daughters y^e same time for ther conformitye.”

(Endorsed.)

“ To my very lovinge frend Mr. Edward Clarke, at y^e Castill in Leicester, these.”

It does not appear what became of the proceedings; but Lady Hastings, with her daughters, continued to be presented as recusants for several years after the date of the letter. Her husband

had early distinguished himself as a firm supporter of the reigning monarch, and had received the honour of knighthood from King James very shortly after his accession to the throne.* After the fall of the unfortunate Charles, Sir Henry was severely punished for his attachment to the royal cause, having to pay no less a sum than 2,072*l.* for the redemption of his estates from the "tender mercies" of the Parliamentarians.

Yours, &c.

J. STOCKDALE HARDY.

* Sir Henry was knighted at Belvoir Castle on Saturday the 23rd April 1603. (See Nichols's "Progresses of King James I." vol. i. p. 91, note 5.)

P O E T R Y.

LINES WRITTEN ON THE
DEATH OF THE PRINCESS CHARLOTTE OF WALES.

A. D. 1817.

AH ! so it is ! thou lovely fair !
That solemn knell proclaims thy doom,
Britannia mourns her fav'rite child,
A people's grief adorns thy tomb !

That heart which Pity claim'd as hers,
That eye which wept for others' woe,
That hand, which kindly lent its aid,
Have ceas'd to shed their gifts below !

The cypress claims the myrtle's place,
The heartfelt sigh supplants the smile ;
The mother droops—the infant dies,
The hope and pride of Britain's Isle !

The sire will weep—the hero pause,
When memory points to CHARLOTTE'S bier,
And children, yet unborn, confess—
That England's hopes were buried there.

Yes ! thou art gone, benignant soul !
Thy spirit seeks its kindred skies,
And seraphs, as they guide its way,
Proclaim its triumph as they rise !

J. S. H.

EPITAPH ON AN INFANT.

Translated from the Latin of Mr. Macaulay, 1821.

ADIEU ! sweet babe ! thy sleep enjoy,
 While zephyrs round thee gently play ;
 Completely free from earth's alloy,
 Thy heavenly soul was call'd away.

Aurora's car shall bear it on
 To scenes of bliss above the skies,
 And seraphs, as they taste the morn,
 Shall chant its triumph as they rise !

 LINES ADDRESSED TO AN INCONSTANT.

AND is it so ? and does thy heart still rove ?
 And are thy passions still in no one's power ?
 Hast thou ne'er felt the force of constant love,
 But chang'd thy fancy with each fleeting hour ?

Ah ! truly so !—that eye, though heavenly bright,
 Lacks all its lustre in its varying gaze ;
 And palls upon, not gratifies the sight,—
 When *all* can boast the splendour of its rays !

Oh ! what is beauty but an empty name,
 A bud that blossoms but to droop and die—
 And what the conquests which extend its fame,
 If only made to torture and destroy ?

Adieu ! sweet maid, another path pursue,
 Nor flatter hopes that ne'er were meant should last ;
 Go—shed the tear to fond Affection due,
 And change thy course and deprecate the past !

London, June 1, 1820.

BRITANNICUS.

A SONG,

WRITTEN FOR THE CELEBRATION OF

MR. PITT'S BIRTH DAY,

And sung at the City of London Tavern, on the 28th May 1822.

The Music by Mr. Clifton.

FOR PITT ! the patriot dear,

Once more a grateful lay

Commemorates the year

Which hail'd his natal day—

And as we chant the song

May spirits hov'ring round

Convey the strains along,

And upwards bear the sound.

Chorus.—Illustrious name ! enroll'd on high !

Thy Country still will pay

A tribute to thy mem'ry

On this, thy natal day !

For Pitt ! his Country's pride,

His Country's saviour too—

To each endearing thought allied—

To ev'ry friendship true !—

A garland now we'll wreath,

Though cypress strews the way,

And o'er his tomb we'll breathe

Once more a grateful lay.

Illustrious name, &c.

For Pitt ! his Country's friend,

And guardian of her name,

Britannia long will send

A tribute to his fame ;

And bending o'er his grave

As Britain's Genius mourns,

The stanza we will have

Whene'er this day returns.

Illustrious name, &c.

To Pitt ! Rebellion's foe,
 And Order's stedfast friend,
 Who laid the standard low
 Which menac'd England's land !
 We'll dedicate this hour,
 When Albion's sons combine !
 And grateful incense pour
 Around the Patriot's shrine.
 Illustrious name, &c.

FRIENDSHIP.

[*Published in 1823.*]

FRIENDSHIP ! why, what is a friend ?
 One who soothes another's woe ;
 And strives to cheer
 The desert drear
 Which once in beauty smil'd,
 And many an hour beguil'd,
 When blest with those we lov'd below !

Friendship ! can'st thou e'er be cold ?
 Can'st thou lose thy genial heat ?
 Can'st thou ever
 From thee sever
 Those who, bent with cares and grief,
 Stand in need of thy relief,
 And ask assistance at thy feet ?

Friendship ! can the widow's tears,
 Can the infant's lisping pray'r,
 Unheeded be
 By one like thee,
 Where once Affection's smile
 Cheer'd a faithful husband's toil,
 And dwelt with pleasure there ?

Oh, no! in gloomy times like these,
 Thy social influence thou wilt spread;
 The tortur'd mind thou'lt strive to ease,
 The widow cheer—the infant lead.
 'Tis now, as Mem'ry calls thee back
 To scenes once blooming—now forlorn,
 Thou'lt scorn engagements to forsake,
 Which on thy altar once were sworn.

 LINES

ADDRESSED TO COLONEL AND MRS. H*****,
 ON BEING RESTORED TO EACH OTHER AFTER A LONG
 AND PAINFUL SEPARATION.

WELL may ye mourn the cruel fate
 Which disunites each social tie,
 Attends the poor unfortunate,
 And seals his wretched destiny!
 For such indeed hath hover'd round
 The dreary vale where ye have been,
 And though ye were in spirit bound,
 The jealous Hydra stepp'd between!
 But, faithful pair! the clouds are fled
 Which held such dark dominion,
 The scene is bright'ning over head,
 And borne on Love's swift pinion—
 Again shall kindred souls unite,
 And now be sever'd never,
 The green-ey'd elf has lost his right,
 And clos'd his reign for ever!
 As sorrows past do joys increase,
 So floods of tears shall heighten yours;
 Thrice blest with happiness and peace,
 Your future path is strew'd with flow'rs!
 The eye so long suffus'd with woe,
 At length shall beam with sacred joy,
 And Charles and Anna now shall know
 Domestic life without alloy!

Leicester, August 9, 1824.

LINES ON THE DEATH OF
HIS ROYAL HIGHNESS THE DUKE OF YORK.

ALAS, Britannia ! one more wreath is lost
Which once inclos'd thy silken hair,
The chaplet fled—its precious cost
Thy scatter'd locks too plain declare !

Yes—nurs'd in Freedom's purest soil,
A foe to Superstition's reign,
A friend to England's laws and isle,
Thy FREDERICK did his rank maintain.

Thrice Royal Name ! to mem'ry dear !
While passing to the silent tomb,
A Nation's grief adorns thy bier,
As incense wafts a sweet perfume,

And as Britannia mourns thy fate,
And veils herself in deepest woe,
Her banners hang disconsolate
Oe'r ONE who once ador'd them so !

Bright Star of Brunswick's Royal Line,
Firm Champion of a people's rights,
Long shall thy proud exemplar shine,
From Scotia's isles to Dover's heights !

Illustrious Prince ! enjoy repose !
Thy mantle is o'er Albion spread,
For as thy lofty spirit rose,
And left the chambers of the dead—

Down on the land it lov'd so true
A glance of stedfast hope it shot—
A glance which Royal Frederick knew,
Would never, never be forgot !

Leicester, Jan. 10, 1827.

DISTINCTION AND LIFE.

WHAT is Distinction but a toy
For ever tost by envious spleen,
Alike unknown to peace and joy,
And soon as if it ne'er had been?—

The summit gain'd—a frightful waste
Is all that meets the weary eye,
Nor can the bravest chief at last
Behold the wreck without a sigh!

And what is Life?—a “boisterous sea,”
Capricious as its varying wave,
An “ocean” full of misery,
Which bears us to a “common grave?”

Should stedfast Hope the prospect cheer,
And point to realms of endless day,
'Tis true, indeed, that Friendship here
Will sooth the dark and dreary way!

Leicester, June 7, 1828.

JOHN BOWYER NICHOLS AND SON,
25, PARLIAMENT STREET, WESTMINSTER.

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