THE

INDEPENDENCE

OF THE

UNIVERSITIES AND COLLEGES

OF

OXFORD AND CAMBRIDGE.

BY

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Can the State Legally or Constitutionally interfere with the Universities and Colleges of Oxford and Cambridge?

The following is a summary of the points raised.

I. What are the powers of the Crown over the Universities?

II. What are the powers of the Crown over the Colleges?

III. What are the powers of Parliament over both, or either?

IV. What are their inherent rights upon the principles of the Constitution?

QUESTIONS.

1. The Universities are civil lay Corporations, the Visitorship of which belongs to the Crown politically, to be exercised ordinarily through the Court of Queen's Bench, or in cases of trust through the Court of Chancery. Can therefore such office of Visitor be legally exercised by Special Commission appointed by the Crown, without the authority of Parliament?

That it cannot will I think sufficiently appear by reference to the following authorities.

References.—See Blackstone's Comm. vol. i. p. 481.

The Mayor of Colchester *v.* Lowten. 1 Vesey and Beames Rep. 244.

Rex *v.* Vice-Chancellor of Cambridge. 3 Burrowes, 1656.

The case of Richard Farmer, (Pres. of Magdalen Coll.) temp. Jas. II. State Trials, (Hargrave) vol. iii. See also Blackstone's Comm. vol. iii. p. 41.

The Act for abolishing the Court of Star Chamber, 16 Car. I. c. 11. and an account of same, Neale's History of the Puritans, vol. ii. p. 474, &c. Also the Bill of Rights, 1 and 2 Wm. and Mary, c. 2.

Dictum.—(Per Lord Mansfield.)—"There is a vast deal "of difference between a new Charter granted to a Corpora- "tion who must take it as it is given, and a new Charter "given to a Corporation already in being, and acting under "a former Charter, or under *prescriptive usage.* The latter "are not obliged to accept a new Charter in toto, and to "receive all or none of it. They may act partly under "it, and partly under their own Charter or prescription. "*Whatever might be the notion in former times, it is most* "*certain now, that the Corporations of the Universities are* "*lay Corporations, and that the Crown cannot take away* "*from them any rights, that have been formerly subsisting* "*in them under old Charters or prescriptive usage.*" Rex *v.* Vice-Chancellor of Cambridge, 3 Burrowes, 1656.

(Sir E. Coke.)—"Legal commissions have their due forms "as well as original writs, and none can be newly framed "without Act of Parliament, how necessary soever they seem "to be, as in this case," (the case of the Conservators of Salmon Fisheries,) "it was necessary that such a commission "should be granted, yet could it not be newly raised "without Act of Parliament. *But commissions of new* "*inquiries and of new inventions have been condemned by* "*authority of Parliament and by the common law.*" Coke's 2d Institute, c. 47.

(Blackstone.)—"The King is not, neither by law is he em- "powered, to determine any cause or motion but by the "mouth of his judges, to whom he hath committed *his*

" *whole judicial authority.*" Blackstone's Comm. vol. iii. p. 41.

(High Commission Court.)—A short statement of the progress of the law relating to the Courts of High Commission may be useful.

By 1 Elizabeth, c. 1. sec. 18, (the Act of Supremacy,) the Crown was authorized " to appoint such persons as " it should think fit to exercise under the Crown all man- " ner of jurisdictions, privileges, and pre-eminences, in any " wise touching or concerning any spiritual or ecclesiasti- " cal jurisdiction within the realm ; and to visit, reform, " redress, order, correct, and amend all errors, heresies, " schisms, abuses, contempts, and enormities."

Under this authority the High Commission Court was established, and several Commissions issued under the Great Seal. The last, and that which gave the most exorbitant power to the Court, was that of 1584, (copied in Neale's History of the Puritans, vol. i. p. 410.) and part of the Commission runs thus :

" *And we do farther empower you, or any six of you,* " *whereof some to be Bishops, to examine, alter, review,* " *and amend, the Statutes of Colleges, Cathedrals, Gram-* " *mar Schools, and other public foundations, and to pre-* " *sent them to us to be confirmed.*"

We need not refer particularly to the tyrannical usurpations of the High Commission Courts, nor to the discontent excited by them. There is no doubt that these, together with the Court of Star Chamber, gave rise, in a great measure, to the disturbances of that period, and in part laid the foundation of the subsequent Revolution. In 1641 the public feeling against them compelled their abolition, which was effected by the 16th Car. I. c. 10 and 11. The concluding section in the latter Act (that relating to the High Commission Court) very forcibly expresses the abhorrence in which it was held, and its highly objectionable nature in a constitutional light. This section may indeed be said to contain a great fundamental principle of

constitutional policy. It directs, "that, after a day "named, *no new Court shall be erected, ordained, or ap-* "*pointed within the Realm of England or Dominion of* "*Wales, which shall or may have the like power, jurisdic-* "*tion, or authority as the said High Commission Court* "*now hath or pretended to have.*" It farther declares, "*that all Commissions, &c. of this kind, and all acts done* "*under colour thereof, shall be absolutely void.*"

It is a remarkable fact to observe, that this Declaration clearly purports not merely to bind the executive from creating without authority of Parliament any new Courts of this kind, for this power the Crown neither had nor pretended to have, the High Commission Court being itself founded upon an Act of Parliament; but it professes to restrain *the State*, as well legislatively as executively, from introducing any such new jurisdiction. It is worthy of serious attention, how far this fundamental principle of constitutional law affects the present High Commission Court, lately re-established under the name of The Ecclesiastical Commission.

The Bill of Rights, 1 Wm. and Mary, Sect. 2. c. 2. (which may be regarded as a second great Charter,) recites in its preamble, as one of the means by which King James II. endeavoured to subvert the liberties of the nation, the re-establishment of the High Commission Court; and then expressly enacts and declares, "that the Com- "mission for erecting the late Court of Commissioners "for Ecclesiastical Causes, *and all Commissions and Courts* "*of a like nature, are illegal and pernicious.*" See Hallam's Constitutional History of England, vol. i. p. 271. See also the proceedings against the University of Cambridge, for not admitting Alban Francis to degree, 3 James II. Hargrave's State Trials, vol. iv. p. 225.

Observation.—The following remarks may be applicable to the question. Subject to their being visited by the Courts of Queen's Bench and Chancery in the regular

course of their ordinary jurisdiction, upon the specific allegation of some visitable matter and not otherwise, it is a necessary and inseparable incident to the Universities as civil Corporations, that they should have perfect powers of internal government, by making Statutes or bye laws at their will, which are binding on their members unless contrary to law. (Blackstone's Comm. vol. i. p. 476.) An infringement of this right by any external authority would be repugnant to one of the essential conditions by which they subsist, and consequently destructive of their being as Corporations. Nor could they be in any way constituted as Corporations without such a power; and any condition annexed to a Charter restraining them from such a right would be void. (Ibid.) It follows, that the Crown cannot force Statutes or bye laws on the Universities, or alter their existing Statutes or bye laws, without their consent, *except by destroying their very being.* The insufficiency of the power of the Crown alone to do this will appear more strongly when it is considered, that the Universities subsist under the sanction of an Act of Parliament, 13 Eliz. c. 29. (King *v.* Miller, 6 Term Rep. 277.) Even in Corporations subsisting merely by force of Royal Charter, the Crown cannot compel the acceptance of new Charters in destruction of old ones: nor seize them as forfeited under any pretext whatsoever. (Rex *v.* University of Cambridge, 3 Burr. 1656.) Whether in case of gross misdemeanours they may be subjected penally to such an infliction, as a kind of "summum supplicium," is a question not needful to be discussed, as no such case is alleged in the present instance. Nor are they otherwise capable of destruction, or dissolution, except by the loss of some essential elementary part of their constitution. These points are sufficiently established (Rex *v.* Ponsonby, 1 Vesey jun. 8. Rex *v.* Amery, 2d

Term Rep. 515, reversed by the House of Lords, 2d Brown's Parl. Cases, 336. See also Hume's History of England, c. 69. A. D. 1683.

Of the power of Parliament over corporate bodies of this nature it is becoming to speak with more diffidence; but it seems clear, that Parliament cannot, as regards them, overturn fundamental principles of law and general rules of public policy, (the very bases of the constitution itself,) without violating the express purposes of its constitution, and the conditions on which its power rightfully rests. A contrary doctrine must inevitably lead to the establishment of an absolute despotism; despotism not less real and tyrannical, by reason of the governing body being in part composed of popular representatives.

From these considerations will be derived a more clear conception of the nature, legality, and constitutional right of a Commission for inquiring into the Universities, founded, as such a Commission must be, upon an assumed right, to alter and reconstitute those bodies; in other words, to seize their Charters, confiscate their property, and destroy their being, in order (it may be) to build up on their ruins other institutions, whether for better or worse it is not material to inquire. Without the assumption of such a right, and in order to such an end, a Commission of this nature must be vexatious, frivolous, unconstitutional, and illegal, leading to no result but that of an invidious harrassing inquisition, oppressive to the parties subjected to it, and by its precedent and example dangerous to public liberty.—See 42 Edw. III. c. 3 and 4. and various Statutes relating to proceedings by Quo Warranto, Commissions, and Inquisitions.

2. The Colleges of Oxford and Cambridge are private communities, for purposes of religious education, or, according to legal definition, "*ad oran-*

"*dum* et studendum," endowed by private benefactors, governed by rules imposed according to the will of their respective founders, and subject to correction by appointed Visitors. It is a point beyond dispute, that the law considers them as *private corporations of an eleemosynary nature.* Is there or can there be any distinction in law between the rights of such bodies and those of private persons?

References.—See Blackstone's Comm. vol. i. p. 483. Philips *v.* Bury, Second Term Rep. p. 346. Ex parte Wrangham, Second Vesey jun. p. 623. King *v.* The Bishop of Ely, Second Term Rep. p. 290. King *v.* St. Catherine's Hall, Fourth Term Rep. p. 234. Attorney Gen. *v.* The Governors of Harrow School, Second Vesey jun. 551. King *v.* Chester, First Wm. Blackstone, 85. &c. &c.

3. The office of Visitor is a judicial office. In Colleges and other foundations of a like nature it is vested by law in the founder, his heirs or appointees. If the founder makes no appointment of a Visitor, or an imperfect one, the Visitatorial office, or so much of it as may be left unappointed, devolves upon the heir of the founder. In default of an heir, it devolves to the Crown as *ultimus hæres.* In such cases, and in others in which the Crown itself has Visitatorial rights as founder, the Visitatorial office attaches to the Crown *personally*, not *politically*, (as in the case of public civil Corporations,) and is to be exercised ordinarily through the Lord Chancellor, but may be exercised through special

Commissioners. But can the jurisdiction of proper Visitors in other cases be legally superseded or incroached upon by a special Commission emanating from the mere power of the Crown, without the authority of an Act of Parliament? And in those cases in which the Crown has Visitatorial rights, must they not be exercised according to law, and in accordance with the governing rules of the bodies over which it is Visitor?

See Cases cited above. Ex parte Kirkby Ravensworth Hospital, 15 Vesey jun. p. 311. &c. See also proceedings against the President of Magdalen College for not electing Anthony Farmer President, June, 1687, 3 Jac. II. Hargrave's State Trials, vol. iv. 263. &c. &c.

4. The office of Visitor consists of several parts or functions, one of which is that of inquiry into abuses; would not a Commission restricted merely to such an inquiry be in fact a Visitatorial Commission; and being an usurpation of part of the Visitatorial office, be equally an infringement of right as if it were an usurpation of the whole?

Same Cases.

5. The legislature, or any branch of it, except the House of Lords as a court of appeal in certain cases, and as a court of criminal jurisdiction in certain others, has no judicial authority whatsoever. Can they therefore properly meddle with or take cognizance of Visitable matters relating to the Universities, cognizable before the Court of Queen's

Bench, or Visitable matters relating to Colleges cognizable before the respective Visitors thereof?

See Blackstone's Comm. vol. i. p. 154. Burdett *v.* Abbott, 14 East, p. 1.

6. A legislative inquiry into the Universities and Colleges must embrace two parts ;—one relating to the conduct of those bodies under their present rule of government ; the other relating to such rule of government itself, its nature and constitution, and the expediency of altering or abrogating it. As to the first, is not the right of inquiry excluded by the proper jurisdiction of Visitors in such matters ? As to the second, must it not proceed upon an assumed right of imposing on them some rule of government other than their own,—an assumption contrary to the general policy of law, repugnant to the oaths of existing members of Colleges, and derogatory to the private rights of Visitors and their successors, and Founders and their representatives ?

7. Is there any sufficient authority or precedent for a proceeding of this nature, carefully distinguishing the cases of public civil Corporations, as Municipal Corporations and the like, and the cases of ecclesiastical bodies over which the State has at certain periods assumed a disputable control as parts of the Church, such as the "religious houses" and the like ; and observing the fact, that during a long period the Universities and Colleges were

(though they have long ceased to be) regarded and treated as ecclesiastical bodies—and this farther fact, that every invasion of the rights, even of corporate bodies of the latter description, has been founded on assumptions (whether true or false) of the voluntary consent of such bodies, or of their gross and incorrigible abuses?

References.—As to the interference with the Universities as ecclesiastical bodies.

See Tanner's Notitia Monastica, Preface, p. 39, and the Acts of Henry VIII. and Edward VI. there referred to.

The Act of Supremacy, 1 Eliz. c. 1. and the High Commission Courts founded thereon,

Neale's History of the Puritans, vol. i. p. 412. and p. 535. and vol. ii. p. 85. Also the 16th Car. I. c. 11.

And as to the resistance of the Universities. See an account of the proceedings upon the Parliamentary Visitation in 1647, 8, in Wood's Annals, and Walker's Sufferings of the Clergy.

See also the 1st and 2d William and Mary, c. 2, (The Bill of Rights,) and Blackstone's Comm. vol. i. p. 48.

As to the pleas on which the State justified its interference. See Preambles to the Acts of Parliament suppressing the Religious Houses, temp. Henry VIII. and Edward VI.

The substance of the whole is this: All the visitations of the Universities which have ever taken place had reference to the fact of their being ecclesiastical bodies, which they no longer are. They were made under Acts of Parliament, which have been repealed, and the reenactment of which has been expressly prohibited. And even in the very worst days of the most arbitrary tyranny known under our present constitution, the State never dared to violate the rights either of ecclesiastical or lay communities, ex-

cept upon the assumption of their voluntary acquiescence or of their gross incorrigible abuses and superstitions.

8. Properly speaking, there is no connection whatever between the Colleges and Universities in any way affecting their condition as independent communities. Can any argument be drawn from their mere accidental relation to each other in favour of the right of the State forcibly to interfere with either?

9. Is the mere social character of such bodies as communities, united for common purposes, and governed by common rule, a ground for State interference with them? If so, must not the same principle carried to its legitimate lengths place all associated bodies in every form and degree under the direct power and subject to the forcible control of the State; so that the most trifling associations for ordinary purposes of charity, amusement, &c. could not exist except under such conditions? and would not such consequences tend to an arbitrary State tyranny?

Observation.—A Corporation is a community recognized and dealt with by the law as one aggregate person, and having as incidental to its legal character certain legal rights. The term Corporation is strictly technical. Communities acquire this character by favour or act of the State, either by grant from the Crown, by way of Charter, or by Act of Parliament. Their legal rights are sufficiently defined and settled. These need not be further discussed. Some of them have been adverted to in the

preceding questions and remarks. Their inherent rights deserve farther consideration. By inherent rights are meant those which necessarily exist by the primary and fundamental conditions on which our social system and government rests.

Society does not consist (according to a popular and prevalent notion) of a mere aggregation of individual persons bound down by the force of a supreme governing power. The slightest observation will convince any one that its machinery is of far more intricate and delicate contrivance. It will be observed that the nature and necessities of man, as well physical as moral, compel him to associate himself in various forms with his fellow-men. He is scarcely able of his own individual powers to do any thing even for the bare supply of his mere animal wants. He is unable to advance his moral condition in the slightest degree; and if completely disunited from the great human family would sink down nearly to the level of the brute creation. To meet his necessities he is endowed by Providence with what may be termed a social instinct, consisting in fact of a mutual sympathy between man and man, incapable of being exactly defined, but which is an essential element of the human character. It exhibits itself in an abundant variety of forms, and if we were engaged in a metaphysical discussion would afford an interesting field for investigation. Our present business is to consider it merely with reference to the political relations of men. For out of it spring all the various forms of association which exist in civil society. It manifests itself in our pursuits of commerce, amusement, learning, religion, in short, in every transaction of our lives in which we act in conjunction with our fellow-men. Hence arise partnerships in trade; societies for charity, recreation, and learning, schools and colleges for education; and without entering upon any religious topic, we may be assured that upon this disposition of the human mind is grafted the religious prin-

ciple of Church community. The social instinct of man is indeed part of his nature; and those acts in which it necessarily exerts itself, are as truly and properly natural as the commonest exercises of his mere physical powers. Who can therefore deny the right of men to associate themselves for the purpose of supplying the common demands and innocent desires of their nature; and as a consequence, their right to enjoy all the means by which that object is to be attained, the possession namely of property and the power of self-government? Even regarded *as one of the first rights of nature it is unquestionable*, and the State cannot interfere with or encroach upon it without itself violating its own fundamental laws. Nor is the form and mode in which the principle developes itself at all material. Whether communities are formed by the voluntary association of men governing themselves by rules agreed on by their common will, or the idea and pattern of such an association be first framed by one individual, and then adopted and assented to by members voluntarily uniting themselves under it, (as in the case of Colleges and other like Foundations,) the reason of the case is no-wise altered; nor can any distinction be made between the respective rights of the two classes.

But it may be observed, that some communities are derived out of, and are subordinate to, others. For it happens ordinarily that the objects of any society of men cannot be altogether accomplished by the one simple body which constitutes the whole mass. Out of it therefore are formed minor and subordinate bodies for separate and subordinate purposes; which bodies are in themselves capable of farther subdivision. But all of these have in themselves perfect and complete rights of independent action in the several spheres in which they are appointed to operate. Like the exploded fragments of solar bodies which are supposed to revolve round their original centre, and to become the nucleii of separate worlds, although determined

in their orbit by the centre from which they are projected, they are purely independent in the laws of their own government. They may however remain subject to a certain degree of control, reserved to their parent body in their original formation. Civil society is itself one great political community, existing by the same laws and subject to the same conditions as others of an inferior scope. Of this great community the State is the will and organ; but, like others, it is incapable of exercising all its proper offices completely in itself. It throws off therefore various inferior bodies having their separate functions to fulfil, and in the execution of such functions admits their proper separate rights of independent action. The degree of control which the State has and may lawfully exercise over these varies, and depends principally (indeed we may say altogether) on the extent to which the right of control is reserved in their original constitution, and that degree of control ought properly to be determined by the nature of the offices to be performed. Over some the State properly reserves to itself a nearly unlimited power, as in some of its officers, (which in their political capacities are properly to be regarded, and in some instances are considered in the light of communities and corporations, termed in law Corporations sole.) They may be by the very conditions of their existence, almost absolutely subject to the governing will, always assuming that will to be exercised according to fundamental rules of right and justice. Over others the control which the State reserves to itself is more partial, as in the case of judges, whose independence within certain limits is admitted to be one of the most admirable features in our civil polity; or as in the case also of some great corporations and public bodies of commissioners. In some of these the right of independent action is restricted by limiting their functions, or circumscribing the space within which they may act, as in some respects in the case of the Bank of England; or by limiting their

duration in point of time, or by reserving a right to interfere partially with their internal management, as in the case of the East India Company. But there are others, over which the State at the time of their institution abandons all control, except that of the general preservative influence, which is at the same time extended over every other part of the political community. And it is reasonable that it should be so. For as in the case of the Universities, which are appointed as the great organs for diffusing sound learning, in subservience to the still higher office of preserving and perpetuating the one uniform standard of religious truth, recognized by the Church, an almost unlimited freedom of action, and permanence of duration, are essential to the due fulfilment of their appointed functions. These bodies are therefore so constituted, *and although they may be regarded as having derived their existence purely from the State, their rights as independent communities are in no degree affected thereby.* This fact must be determined by the language of their Charters and Acts of Incorporation.

These ideas are obviously inconsistent with the notion of the State being a supreme governing power, to which every part of the political system is arbitrarily subjected. The true light in which it is to be regarded is as the great centre of that universe of social bodies, of which the entire community consists, exerting, like the great centre of the physical universe, proper influences and attractions to preserve in proper subordination the independent movements of the several parts: correcting and controlling all irregularities which might disturb their harmony and order, but abstaining from any interference beyond this. There must be a manifest subversion of all order and all liberty, when the State departs from this its appointed central position, abandons its quiescence and repose, (in truth its proper attributes,) sets forth in a spirit of restless officiousness and mischievous zeal, known in the present

day under the jargon of Reform, to meddle with and interrupt the free agency of its different members. For such is the undoubted character of the present attack projected against the Universities and Colleges of Oxford and Cambridge. For it is not pretended that any harm is done to the community by these institutions, or that they have been guilty of any misconduct which can properly call for censure or correction. Nay more, it is not denied that they produce most excellent and salutary effects, even in their present alleged defective state. But it is said that they may be improved; or at least that upon a searching inquiry into them something wrong may be found. At any rate that they must be *liberalized* and according to modern phraseology brought into harmony with the spirit of the age, by violating their civil and religious liberty.

And where is this to stop? When the State has invaded the liberty and sanctuary of private Collegiate establishments, and violated the chartered rights of the Universities, the searching and penetrating spirit of reform will not assuredly here stop short in its career. Let every private banking company look to its books, and every political club cast up its accounts—its day of reckoning is at hand. From thenceforth no institution, no community of private persons, however small or insignificant, can be safe from the impertinence and tyranny of State intrusion. Our Constitution is dead—there is an end of all law and all liberty.

10. It not being alleged that the property of the Universities or Colleges is held in such quantity or applied in such manner as to become matter of public inconvenience or contrary to general rules of public policy, is their mere possession of property a ground for State interference with them? If so, will not the same rule apply to all other associa-

tions; any even in a like predicament to private individuals, and so lead to like dangerous and tyrannical consequences?

Observation.—The cases of the Universities and Colleges and of the Church generally, in this particular, so much resemble each other, that they may be treated of together. No doubt the accumulation of enormous wealth in the hands of any individual or community might become a matter of serious public inconvenience, either by raising up a dangerous power within the State, or by producing a monopoly of property. The early Statutes of Mortmain however, it should be observed, were passed simply to protect the selfish interests of the great landholders entitled to seigniorial rights. But the case must be an extreme one in which the State would be justified in stepping in to restrain an individual or community from any further aggrandizement of its property, and still stronger to justify it in taking to itself any portion of the wealth so concentrated, particularly in this country, where enormous fortunes are accumulated by private persons. In the present case, it is a fact notorious and admitted, that the Church and the Universities are poor, with reference to the functions which they have to perform.

But it will be said, how can the Church or the Universities and Colleges, who have derived their property in some measure from State usurpations on the possessions of the Romish Church, set up an independent title? Now the Church is an independent community like the Universities and Colleges, or like any other of a strictly private nature. It has its own rights of independent action, as it has its own peculiar independent offices to fulfil; and considering the nature of those offices, an independence of the very highest possible degree is absolutely essential to its due working. But the State, wisely perceiving the danger of allowing a com-

munity having such an influence to act quite separately, and being besides anxious to consecrate itself, by investing itself with a religious character, by sundry wise contrivances, interfering as little as possible with the independence of each body, united the Church to itself. The precise mode in which this union was formed would require deeper investigation and greater space than can here be afforded. My object by these remarks is simply to bring attention to the fact, that the union of the Church with the State in no way impeaches its right to be considered as a perfectly independent community. Now the answer to the Question proposed is so simple and obvious, that it is wonderful how any perplexity should have arisen upon it.

The right of acquiring and holding property is a necessarily inherent right in all persons, and all communities in a state of society. The mode and form in which titles to property are determined must, however, be settled by general maxims of conventional law. In this country, as in every other having any right notions respecting property, there are two principles which lie at the foundation of all others. One is, *that the decision of a competent tribunal is an absolute establishment of right*[a]; another is that of *right by prescription*[b].

Now without entering into any other question whatever, (and there are a variety of others which would conclude to the same effect,) the right of the Church, the Colleges and Universities, to their property may be rested upon these two.

Assuming (which I beg distinctly to be understood as by no means admitting) that the real state of the question between the Romish and the Reformed Church as regards Church property was that of opposite contending parties,

[a] "Interest reipublicæ res judicatas non rescindi." Coke's Maxims of law.

[b] "Melior est Conditio possidentis." Ibid.

each insisting on a separate title; or going even this farther length, and admitting, for the sake of argument, that the cause of the Reformed Church was less rightful than it was; in either of these cases, (put I think unfavourably enough,) *the State has decided between them.* Upwards of 200 years ago the question was settled by a perfectly competent tribunal. It might have been a *lis mota*, it is now a *lis composita.* There must be some end of controversy. The State adjudged the Reformed Church to be the true Catholic Church, and it cannot now permit any argument to be urged in opposition to its own decree. If there was wrong done to the Romish Church, the guilt and the sin lies with the State; but it is a maxim of law as of common sense and common honesty, that no man shall be permitted to take advantage of his own wrong. In this case the State rests its claim on the injustice of its own decision. For observe what is the present mode in which the question is again mooted. It is not that the Romish Church puts forward its claims, and appeals a second time to the State, the same tribunal which before decided against them; such an appeal would no doubt be heard with scorn and treated with contempt. But the State, the judge between the two, having made its decree and settled the question, comes down on the party in whose favour its award was made with a demand not unaccompanied with threats, using as its true language, "I was the judge in "your cause upwards of two hundred years ago; I was "guilty of an unrighteous judgment in determining it in "your favour,—therefore your property is mine."

Their title also rests safe, as upon a rock, upon *prescription.* The law has settled the period of prescription as conclusive of all rights at twenty or in some cases thirty years. Till within these few years past, sixty was the term. The alleged blot in the title to Ecclesiastical, University, and Collegiate property is of a date upwards of 200 years back. Corporations are entitled to the benefits of the

same law of prescription as individuals, for prescription is a rule founded on general principles of policy applicable to all cases alike. And let not an attempt be made to perplex the question by looking to the magnitude of the bodies whose title is brought into dispute, or the high nature of their offices, or the extent of their revenues. The principle is one founded on no partial basis; and if there be any one instance in which, more than another, its application would be imperatively required, it would be that of communities so important, involving the interests of so many men, and so vitally connected with the cause of true religion and learning.

And let people beware of unsettling first principles of this description. The Duke of Devonshire should remember, that the Romanists of Ireland are looking with a discontented eye towards the forfeited estates. And Lord John Russell may be wise in bearing in mind, that Woburn is a large possession, and that Covent Garden Market very much resembles a public institution.

But it will be said, the Church and the Universities and Colleges derived their property from the State, and that therefore it is State property. The fact is denied. But what language to hold! What a spectacle of political morality! "We gave, and therefore we will take away,"—grounding the right to despoil on the very act of donation!

But it was a temporary gift, a kind of tenantcy at will, which was the interest conveyed.—Look to the language of the instruments by which the conveyance is said to have been effected. Will it be found other than this? The King by his Charter, for himself, *his heirs, and successors*, and the State by legislative acts, containing no conditions or restriction, no powers of revocation, no limitations or remainders over, reserving no reversion to itself, *but absolutely and for ever*, endows the Church, the Universities and Colleges, *and their successors for evermore.* It uses language of this kind, as in Magna Charta,—"We have granted to God,

" and by this our present Charter have confirmed *for us* " *and our heirs for ever*, that the Church of England " shall be free, and shall have her whole rights and liberties " inviolable." It denounces as in the 25th Edw. I. c. 1. and again in the 34th Edw. I. Stat. 4. c. 4. *curses and excommunication on all "who shall by deed, word, or counsel, violate these liberties.*" And it appointed them to be read in Cathedrals and Churches, thus solemnly calling God to witness the truth and sincerity of its engagements. It is to be remembered also, that it is the same State, preserved as one body politic by continual succession, affected by no lapse of time or alteration of its members, which having made these declarations and these denunciations, is now claiming the property of the Church as its own; as if its voice speaking in Magna Charta was not the same as in an act of yesterday. I leave to the Romanists in the legislature their power of papal dispensation, and to the Dissenters the dispensing power of their lax and easy consciences, and to that portion, I fear not a small one, which holds all religion, and consequently all religious obligations, as matter of indifference, the omnipotence of their own will, to absolve them from the bond of these engagements and these vows. But the wise and good men in the legislature, and I believe they are many, will look with some alarm at the peril in which they stand, if with the curses of their own body hanging over their heads, except upon the stringency of some great necessity, they dare to violate the liberties of the Church, " by deed, word, or counsel." A claim of this nature can only be maintained by stamping upon their own solemn acts the character of an impious lie. Is it not a gross and monstrous wickedness, such as in the case of lesser offenders at the Old Bailey is visited with condign punishment, for men to hold such language or act upon such principles? And is it not revolting to every right feeling to reflect, that the men who say and do these things are placed in authority over us?

But it will be said, if the State has no right of control over Ecclesiastical, University, or Collegiate property, what is the connection between Church and State? Since the repeal of the Test and Corporation Acts, and the admission of Papists and Dissenters to Parliament, it is a question which may well be asked. But I am not now proposing to enter upon such a discussion. It would require greater space, more time, and higher ability, to investigate a subject so complicated. All that it is my business to do, is to point out what is a clear, unquestionable truth, immutably founded on the first principles of society, that the possessions of the Church belong to her as an independent community; and that so far from the State having a right of interfering with them without her consent, it is bound by the most solemn compacts ever entered into between men, by the most awful denunciations against a breach of those compacts, (denunciations proceeding from the mouth of the State itself,) to protect and defend them. And the State cannot violate those compacts, except by a breach of all moral law and all political obligations, adding to these also the crime of perjury and the sin of sacrilege.

I have argued this question simply with reference to the right to Church property. The right to University and Collegiate property strictly falls under the same rules, so obviously, that it would be superfluous to treat it separately.

11. Are the chartered privileges of Colleges a ground for State interference with them? and were such privileges intended to operate as conferring on the State any right or dominion over them? On the contrary, were they not given simply for the purpose of enabling them more conveniently to effect the proper objects of their Founders;

and as a kind of seal or sanction from the State of all their rightful privileges and immunities, and a pledge for their inviolability ?

See Blackstone's Comm. i. 467. Pollexfen's argument, Harg. St. Tr. vol. iii. 624. Case of Magd. Coll. Harg. St. Tr. vol. iv. 463.

Observation.—The previous notes will, I think, suggest something of the true character and constitution of social communities, and will lead to a right conception of the true nature and effects of corporate charters. Social communities may and do exist without being derived from the State. But the State in its regard for the general good distinguishes and favours such as are of the most useful kind. It does this by removing out of their way certain formal impediments to their working, and for this purpose gives them *in the eye of the law* a recognized existence, and perpetual succession, facilitates the exercise of the power of self-government, confers on them legal unity of action by a common seal, and enables them more easily to receive and transmit property. But it never interferes with the principles or essential conditions of their existence as independent communities. Their unity of action—and will—their powers of self-government and of acquiring and transmitting property, subsist without the authority of the State. Charters and Acts of Incorporation merely facilitate and confirm them. To suppose therefore, that Charters and Acts of Incorporation abridge or defeat these rights, or in any way sanction State interference with them, is in itself an absurdity and self-contradiction. What would be said if the State were to usurp a dominion over the private management of a Chartered Insurance Company, simply on account of its chartered rights?

12. Is not the power of cancelling such privileges the *extreme* power which the State possesses over these bodies? And if this were done, either would not their property revert to the donors, or would not the bodies themselves nevertheless continue subsisting, unaffected as to their property, and subject to the same laws and entitled to the same rights and remedies as they might have had if they had never received such privileges? Or in fact would they lose more by such a privation than their mere corporate character and certain legal privileges incidental thereto?

13. Are there any but extreme cases in which the State can or ought to resume these privileges once conferred?

The right of the State to do this must be determined by the nature and terms of the Charters themselves. But there is no such precedent except in cases of voluntary surrender, or gross incorrigible abuses, or superstitions. See King *v.* Amery. Second Brown's Parl. Cases, 336. and the Preambles to the Acts suppressing the Religious Houses, temp. Henry VIII. and Edward VI. Even the destruction of the old municipal corporations cannot be drawn into a precedent, as it was attempted to be justified by the incorrigible abuses of those bodies.

14. It is a principle of our constitution, that under it all persons, whether individuals or lawful communities, are entitled to the free exercise of their proper social rights without interruption from the State, so long as the exercise of those

rights is in no way directly repugnant to the public welfare. Does not this principle necessarily impose a limit to the power of Parliament applicable to the present case, it not being possible to contend that the mode in which the Universities or Colleges at present exercise such rights either in the disposition of their property or in their rules of government, is in any way directly repugnant to the public welfare, or can be so, as long as they neither teach nor practise any thing to the public detriment?

It may be instructive to mark the progress which despotic principles of government are making amongst us. During the early periods of our history, the whole power of the State, both legislative and executive, was undoubtedly with slight qualifications vested in the Crown. We may watch its struggles to assume to itself arbitrary and unrestrained authority, and the gradual restrictions with which it became tied and bound by popular resistance, till its powers assumed their present limited form. During the Stuart Dynasty, its last efforts were made, and we may date the complete establishment of our constitution from that period. From thence until about the French Revolution, the idea of Government being a limited constitutional power was quietly acquiesced in. But there is a tendency in States, as in all human institutions, to be perpetually fluctuating, and passing to opposite extremes, which extremes in most instances, as in the present, lead to similar results. The struggle now going on is on the part of the legislative to assume absolute unrestrained powers; and whereas hitherto it has been constantly placed in resistance to the aggressions of the executive, and by that law which preserves all things in right order by means of opposite resistances, has been kept under due control;

so now, having reduced the executive into a state of complete subjugation, it is itself stretching its authority to similar lengths. The French Revolution probably gave the first impetus to this new tendency to tyranny, which in fact has resulted from the same fundamental heresy in politics as well as in religion, which in all ages has led to fatal results, the absolute supremacy of the human will and individual reason. It would be extremely curious to trace its gradual developement, if space permitted. At present it is in full and vigorous operation, and is the real quarter from which to look for danger to our liberty and constitution. The same arbitrary power is now arrogated to parliamentary privilege, which was before insisted on by the advocates for royal prerogative. The same absolute dominion is assumed by Parliament, which before was exercised, and in a milder form, by the Crown. The same usurpations on the rights of persons, are now committed by Parliament, which before were resisted, when done under colour of royal authority. Since the accession of the Whig Government to office, this most dangerous and destructive character has been visibly impressed upon our legislature. The destruction of the old Municipal Corporations, and the re-establishment of the High Commission Court, under the name of the Ecclesiastical Commission, strikingly resemble similar acts of usurpation in our former history. The projected attack upon the Universities is of the same kind; and no doubt the poison once introduced will speedily spread and corrupt, until, as in the case of the French Revolution, it will destroy the whole body politic. I would venture to suggest a few reflections on the subject. The executive and legislative offices compose together the one person of the State, bearing a strict analogy to the offices of human will and human action in the natural person. He who insists on the arbitrary power of the one, must maintain also the absolute power of the other. If the legislature or will of the State

be arbitrary, the executive must be of the like power, not indeed as independent of the legislature, but as its minister and agent. The subjection, however, of the action to the will, the executive or active powers of the State to its will or directing powers, is in fact implied in every form of government whatsoever, and in no way alters this positive truth; *that when both are arbitrary, the result is a perfect form of tyranny;* no matter whether the governing power be centered in one individual as in a monarchical tyranny, or in many persons, as in an oligarchical or democratic tyranny. The arbitrary and unrestrained power of Parliament is the true corner stone of the radical theory of politics; and of this sect of politicians the Whigs are a corrupt branch. The Radical, affirming that society itself exists, not by the arrangements of a Divine wisdom, but by the act of human reason, and the omnipotence of the human will, takes his ground upon the first principle of the natural equality of man; his idea of that equality being merely confined to an equality of the simplest kind of rights, such as personal freedom, independence of opinion, and the like. All social rights, such as rank, property, and the like, and which are in truth as natural as any others, are consequently subjected to the supreme governing will of society; for he admits none such as existing antecedently to the formation of what he terms the social compact. His idea of the supreme governing will of society, which by the necessities of his condition he is compelled to endure, is that of a brute mechanical force, to be impelled by his own will, and to be restrained by no other law. It will be interesting to trace how the great points of his political creed necessarily flow out of these doctrines; he persuades himself that by virtue of the representative system, he himself composes part of the governing body. The belief is a delusion, but the fact is so. Hence he upholds the arbitrary and unrestrained power of Parliament, conceiving it to be in part his own,

and trusting implicitly to the purity and excellence of his own will, for a right exercise of this unlimited authority. But no matter how excellent his theory, he is visited with strange misgivings and suspicions. He is deluded, but his delusion does not make him insensible to the danger of trusting an absolute despotic authority in any hands whatsoever, even the most virtuous and excellent. He sees the necessity of keeping over such a power a strict and rigid control, and with perfect consistency and unanswerable conclusiveness of argument, maintains the absolute necessity of binding his governors, whom he miscalls his representatives, by absolute pledges of obedience to his will. He asserts the right of universal suffrage, and the necessity for annual, or even shorter parliaments; and insists upon the removal of all irresponsible parts of the government, such as the monarchy and peerage, as being absolutely indispensable for the security of the people. These are the chains and fetters with which he proposes to bind the monster of his own creation. These chains and fetters are indeed but slender; as the right of shifting our governors once a year, or oftener, will be but a bad preservative against tyranny, if whilst they are in authority their powers are unlimited; nor would it help the matter much, if each individual of the community had a voice in their selection. Still these contrivances appear to offer something like a protection; and if the arbitrary power of Parliament be established, these must be resorted to as the only means of popular self-defence.

But our constitution is founded on no such principles. We will not consent to the creation of a power which we can bind by no obligations of conscience or settled rules of right; more especially as we see lying at the root of this doctrine a sceptical distrust of a Divine Providence, and a denial of the solemn sanctions of religion upon the consciences and actions of men. Else why this jealous apprehension of permitting any man however good and under

whatever conscientious ties to use any particle of authority over us? The true idea of a constitutional government as opposed to that of a tyranny is that of the State being both in its will and actions, *both in its legislative and executive capacities, limited by certain rules which it cannot transgress.* Our history and law demonstrate the fact, that such is the very essence and life of our own constitution. The State in the person of the Crown, which, as has been before observed, in earlier periods united in itself nearly the whole legislative and executive offices, bound itself from time to time as in Magna Charta and in many of the acts of the first Edwards and Henrys by solemn declarations renouncing all claim to such despotic authority. The Bill of Rights in a later period is of the same character, a solemn declaration by the State, or it may be considered a kind of compact between the State and the nation, not merely guarding against any arbitrary authority in the Crown, but declaring the essential and inherent rights of the nation. Its language in this sense cannot be mistaken.

But it may be asked, What is to determine the powers of Parliament, and what appeal is there from its judgment? None, if it be meant to ask what regular and appointed tribunal of appeal there is; for the supposition of such a tribunal would be opposed to the very idea of a supreme power which somewhere must exist. But there is in the dispensations of Providence an appeal against all governments, one incapable of being defined, acting under the immediate rule and guidance of the supreme Governor of the Universe, invisible, and having no settled place or form of judicature, but exhibiting its judgments sometimes in the downfall of a country, and sometimes in the vengeance of a nation against bad and corrupt rulers. History will supply us in abundance with the judgments and reported cases of this solemn tribunal.

We believe that we have laid these principles deep and

immoveable in our constitution, binding them by the conscience of the Crown, as by a kind of sheet anchor in the coronation oath. For it is a miserable sophistry to argue, that the coronation oath is intended to bind the Crown only in its executive capacity. As the executive it can do no wrong. It cannot transgress the law. Its ministers are responsible to the country, and it is capable of being restrained from any unconstitutional excesses by the power of Parliament. There was no need of any farther law to guard against its usurpations in this capacity; indeed it would have been great and almost profane presumption, impossible to be imputed to the institutors of this solemn obligation, to have required so high an appeal as to the Deity itself in matters properly lying within the control of human authority. In such a light the oath itself cannot be justified, nay more, it could not be observed; for if it were held competent to the legislative will to conceive tyrannical purposes, the executive must execute them. But viewed as a limit and restriction upon the excesses of the will of the whole State, placed in an apparently irresponsible position, and therefore only capable of being controlled by being brought sensibly under immediate subjection to the Divine power, what can be a more rational or admirable expedient? What more full of strong obligation, and at the same time of reasonable liberty? Such must be the true construction of the coronation oath. It was intended to limit and guard against an assumption of arbitrary legislative power, and the oath was imposed upon the Crown as the visible impersonation of the State. Hence it is, that at the great ceremony of the coronation, the King does not go before the House of Commons, or House of Lords, and there swear, in obedience to the sovereign will, faithfully to execute the law, like a sort of chief constable of the realm; but it goes to the temple of God, and summons round it the nation at large,—all orders and degrees of men, and there swears to preserve inviolate the liberties of the country.

Viewed in this light, the splendour of such a ceremony and its costly pomp are trifling, compared with the high purposes which it answers. If it be merely the occasion of swearing in the first officer of State, it is an idle pageant and a solemn mockery. And indeed this construction of the oath is absolutely needful to secure the permanence and stability of our constitution. If let loose from all higher sanctions than the caprices of human will, what is there which could endure but for a day? Our ancestors, with a wisdom which ought to strike us with admiration, foresaw and guarded against such a danger, the very danger which now overhangs us. It seems that the doctors of the modern school dislike the coronation oath. It is undoubtedly a stumbling block in their way, and if rightly interpreted must mar many of their schemes. It closely resembles the oaths taken by members of Colleges to observe their Statutes, the object of such oaths being, not as is alleged to bind them by a religious obligation to the minute and scrupulous observance of every particular injunction however trifling, for this would be impossible from the mere frailty and imperfection of our nature, besides being superfluous, because otherwise sufficiently capable of enforcement. But having founded excellent institutions on wise principles, our ancestors thus guarded against any alterations in their substance or spirit, or the admission of any different rule of government, through the temporary caprice of the sovereign will. And it is painful to see these very men, who have for years past been tampering with the conscience of the Crown, in the very highest matters involved in the coronation oath, now affecting a virgin prudishness and horror at that construction of the oaths of members of Colleges, which "juxta animum imponentis" can alone be its right and true one.

But the proposition, that Parliament is limited in its powers by fundamental constitutional rules, may seem

strange, particularly to ears which have been poisoned with the modern doctrines of the French revolutionary school. And it is astonishing as well as alarming to see how widely and deeply they are spreading. In fighting against such adversaries, there is a difficulty in choosing weapons. In the conceit of their own ignorance and self-sufficiency, they will listen to no authority of men better and wiser than themselves. In the impious plenitude of their own omnipotence, they will hear nothing of God as of a supreme governor of the universe. They are a sect who will be taught by nothing but scourgings. Punishment and the rod are the only tutors for such a school. But even for these there are lessons which they may read with some hope of instruction. What brought Strafford to the scaffold? What brought his unfortunate master Charles I. (suffering more for the sins of his predecessors than his own,) to the same unhappy fate? What cast out James II. an exile from his own dominions? And to bring the case home to them more closely, What was the true cause which brought France into a state of misery so great, of slavery so abject, that the history of man cannot afford another like example? What but the assumption by its rulers of arbitrary unfettered power. These men seem to imagine, that there is a superstitious force in the name of King; that none but monarchs can be despots; at least that arbitrary power is safe in no other hands than their own. *Quem Deus vult perdere prius dementat.* God grant that our own rulers may not be blinded with this strong delusion!

But if they will listen to the voice of reason; if they will believe that other men have lived wiser and better than themselves, or at least as wise and good; that this age does not transcend all that have gone before, so far as to make all the precepts and examples of history, philosophy, and religion useless, like the pages of an old Almanack;—let them consult authorities. I challenge them to produce

any on their side of the question, except out of the bloody pages of the French Revolutionists. I will venture on my part to refer to every great writer and standard authority, beginning from the Bible downwards, in support of my position. I may refer to Bacon, Coke, Hale, Bracton, Burke, and Blackstone, (these I have just at hand.) Sir James Mackintosh has happily treated the question in his Discourse on the Law of Nature and Nations. And every thing which may be found in scattered passages of some writers of later day as to the omnipotence of Parliament, would be found perfectly consistent, if only care were taken to compare the whole argument. The whole perplexity in the case has arisen from confounding the idea of power to be exercised under right rule, with power to be exercised without rule. In the former sense it may be properly said, that in this country every man has complete power over his own actions. In the latter sense every man can murder, can steal, can burn, or do any other act in violation of laws human and divine. God is omnipotent, though, from the perfection of his own attributes, he cannot do wrong. And wherever power is spoken of as belonging to any man, or body of men, it is power to be exercised under certain fundamental conditions, which are its own laws, incapable of being transgressed without punishment, either by some appointed human tribunal, or under the dispensations of Providence, as the Supreme Governor of all things.

These fundamental conditions or laws, by which Parliament itself is governed, are in fact that which we term the spirit of the constitution. I may be asked, Where is it to be found? The same sceptical question was asked by the Romanist in the case of the Church—Where was the Church before Luther? and it was answered by the production of the thirty-nine Articles. And just as the true spirit of Catholic Christianity lay embedded amongst the Fathers of the Church, and even amongst

the corruptions of Romanism itself, so the spirit of the constitution is to be found in that general mass of laws, customs, decisions of judges, and authorities of learned men, which are in fact always regarded as containing the science of the law. And in like manner, as the true doctrines of the Catholic Church were brought out and embodied in the thirty-nine Articles, so the Articles of the British Constitution are capable of being reduced into a like visible form, if to such a task could be brought the same deep learning, capacious judgment, and profound reverence for antiquity, which operated in the case of the Church to produce that excellent work. My only business is with that one fundamental condition or article, asserted as a proposition in my question. And I challenge any person, after due inquiry into proper authorities, to deny its truth, or the inevitable conclusion to which it leads.

But I may perhaps be told, that the whole matter is concluded in the well known and somewhat dangerous maxim of *salus populi suprema lex*, a maxim which under severe restrictions is indeed sound, but which, if trusted to arbitrary discretion, is most dangerous, and productive of most disastrous results. It in fact comprises the general dispensing power of the State. Under what extreme case of necessity its application may be permitted, cannot be defined; but the case must almost resemble that put in our law books as an extreme illustration of justifiable homicide. Two men struggling in the waves on a single plank, which can only save one,—it is then lawful for either to cast the other into the sea. But how fearful a responsibility to exercise! and until destruction appeared otherwise inevitable, who could dare to undertake it? Upon how light and frivolous an occasion this great ark of the Constitution is now brought forward, I need not dwell. A trumpery case of expediency, suggested by ignorant conceited men, totally unacquainted with the real uses of the thing they are dealing with, is all that is pretended.

Alas! that we should be reduced under the authority of such governors!

15. The object of Collegiate institutions is that of religious education. Can any argument be founded on this in favour of the right of the State to interfere with them, except by assuming to the State an absolute control over all the education of the country, both public and private—a thing so monstrous and frightful, as to be impossible to be thought of without horror?

If it were so, no private tutor in the kingdom could be free from the surveillance of the State. We should undoubtedly be next debarred from teaching our children any religion, at least we should only be permitted to use the expurgated edition of the Bible approved of by the National Board.

16. Could the State confiscate or forcibly alter the appropriation of College property or their established rule of government, without renouncing the fundamental principles of law applicable to all charitable endowments whatever? and would not such a course of proceeding operate as a great discouragement to the foundation and continuance of such institutions, and so be contrary to sound public policy?

This question must be determined by a careful consideration of the various decisions in our law books, the dicta of judges, and the principles of our statute law relating to charities. No person can give them the slightest attention, without coming to a perfect conviction of their being founded on fundamental principles, not upon

any mere rules of conventional policy. Nor can he entertain a doubt, that the moment the right of interference now contended for is conceded, there is an end to all foundations of this or a like description.

The preceding questions and notes seem to embrace all the material points relative to the subject, though they might be advantageously enlarged upon if space permitted.

It will be evident that the object has been to include in them the main principles which they involve, reducing them by the form of questions to plain and evident conclusions.

I will venture to sum up the points thus:

First, as to the Universities, the Crown, of its own mere power cannot visit them by Special Commission, or in any other way than by regular proceeding in the King's Courts.

Nor can it appoint a Commission even for the limited purpose of inquiring into them.

Nor can it crush them by depriving them of their charters.

As to the Colleges, it has still less authority; for over these their Visitors are absolute judges.

Nor can it usurp the office of such Visitors by way of a Commission of Inquiry or otherwise.

What the legislature may do of its arbitrary will, or, as it is termed, its transcendent authority, cannot be defined. But according to the fundamental laws of the Constitution, it has no greater right in this matter than the Crown; and any assumption of such right would in fact be a violation of the Constitution itself. And as Parliament cannot be presumed to be capable of doing wrong, particularly wrong of so high a description, it may properly, and without derogating from the dignity of Parliament, be affirmed, that it cannot do this.

Consequently neither Parliament, (that is, the whole

legislature,) nor a portion or any separate branch of it, can institute any enquiry into the state of the Universities or Colleges, founded on the assumption of such a right.

As to the course proper to be pursued by these bodies, fitting to their own dignity, and to their position, as entrusted with the high office of vindicating the constitution itself, it may seem presumptuous to offer an opinion. This must be determined by the advice of some eminent constitutional lawyers, under whose guidance they will of course place themselves.

Should the attempt be made under colour of a Royal Commission, this will it is presumed be treated as a nullity; its proceedings resisted; and its authority submitted to the test of our Courts of law. The judges will assuredly protect them. Whether it would be decorous in the first instance, and upon the probable expectation of such an attack, to address the Crown by way of petition and remonstrance, would be a fit subject to be considered.

If such an attempt is to be made by Parliament, it will probably originate in the form of a Committee of the House of Commons appointed to make an enquiry, in fact constituted as a visitatorial body. The question is a serious one, how far the House of Commons, having abandoned in its own constitution all connection with the Church, has thereby incapacitated itself from judging in a matter so vitally connected with it, as the constitution of the Universities and Collegiate bodies; the fact being indisputable, that although strictly and properly lay bodies in the eye of the law, yet the objects of their institution are essentially ecclesiastical. The Society for promoting Christian Knowledge is of the same species; a lay body, having ecclesiastical objects, and subordinate to the Church. This question would, however, branch out into a discussion as to the principles of the connection between Church and State. But it is obvious, that of all tribunals to sit in judgment upon the Universities, the House of Com-

mons would be the most unfit, composed as it is, partly, if not principally, of their open and avowed enemies and accusers. At any rate a legal resistance to such an attempt would put to the test this question, whether upon an usurpation of the judicial office by the House of Commons, the King's Courts are competent to interfere and restrain them. The point might be raised in this way; the Universities, or some member of them, by resisting the mandate of the House, would of course be declared guilty of a breach of privilege, and his personal liberty invaded. This would fairly bring the matter before the Court of King's Bench, by a proceeding by Habeas Corpus.

As to the mode in which the legislative authority of Parliament should properly be brought into question, this would also require careful consideration. It might be thought proper to address the respective Houses, or at least that one from which the attack may originate, praying that the Universities and Colleges might be heard by counsel. This would probably be conceded, and their case would then at least be heard. Should this be unattended with success in stopping further proceedings, an appeal may be made to the Crown, which would properly be heard before the Privy Council; and in which much stress would necessarily be laid upon the imperative force and obligation of the Coronation oath, as binding the Crown *in its legislative capacity* to protect the rights of the Universities, not less than those of the meanest subject of the realm.

If all this should be unavailing, and the legislature should nevertheless choose to commit so high an act of usurpation, I fear that no farther remedy remains legally or constitutionally, it being obvious that open and forcible resistance, even if justifiable, would be idle and fruitless. The case must then be left to another judgment; the judgment of a ruling Providence; which will assuredly visit the offence, probably through human means and in-

struments, with a severe but appropriate punishment. It may be that the country itself may suffer the penalty of this great transgression of their rulers, through the introduction of a corrupt and vicious principle of legislation, speedily destructive of all national liberty.

But the existing members of the Universities will of necessity feel themselves bound, by every law of conscience, to refuse compliance with the new order of things. They have sworn to observe their statutes, in spirit and substance, and to keep sacred their founders' wills. They cannot in their own persons submit to the re-constitution of their communities, in direct opposition to, and subversion of, this will, without a manifest violation of their oaths. And these would equally bind them, in the case of the smallest invasion of that will forcibly, by the external power of the State, as in the most complete remodelling of their constitution. For their oaths were expressly intended to bind them to this, to admit no master, no governor, no controlling will, whether in the State or any other authority, except that of their founders[c]. As to the dispensing power of the State it is fit only to be mentioned in terms of reprobation and horror. Indeed as the interference of the State was that most to be dreaded, it may be said that the oath was more particularly directed against any submission to this. They swore each of them to his own community, and thus the whole community to their founders, pledging themselves in the sight of God that they would keep sacred their will. They cannot be permitted to violate so solemn an obligation. It would be a spectacle of public immorality not to be endured without corrupting society itself. There is no language too strong to be used to rouse them to a due sense of this, their true position, and they cannot escape from it. It would, indeed, be as high an act of treachery and baseness in them

[c] See Letter from King Charles I. to Henderson. Works of King Charles I. fol.

to enter into the service of the State, as of a new master, which has usurped the rightful possessions of their ancient and true one, their founders, as for a subject who has sworn allegiance to his Sovereign, instantly to accept an office under an usurper. And so instantaneous a transfer of their obedience would render such an act the more shameless and degrading.

As the members of the Universities are mostly men of high principle, they will be guilty we may naturally suppose of no such unworthy conduct. They will therefore surrender their possessions to the force which overpowers them, and voluntarily disband themselves—quitting their homes and emoluments, which will indeed then have become comparatively worthless, being held only by the flimsy tenure of the capricious will of an arbitrary and tyrannical legislature, and leave their place to be occupied by the mixed body which is waiting without, and in whose favour the great work of spoliation will have been done.

Whether the country would endure a spectacle of this nature,—the wise, the good, the learned, the religious, some of the very best members of society, martyrs indeed for conscience sake, in the great cause of civil and religious liberty, driven by a tyrant power from their rightful possessions, and outlawed from their proper homes, may indeed be doubted. It is probable that under such provocation the spirit of the nation would rise up, and demand on the one side restitution to the injured, and on the other the punishment of their oppressors.

Note to page 32.

" By the Constitution of a State, I mean *the Body of those written and unwritten fundamental laws which regulate the most important rights of the higher magistrates, and the most essential privileges of the subjects.*" Mackintosh's Introd. Treatise, p. 50.

" Privilege in Roman jurisprudence means the exemption of one individual from the operation of a law. Political privileges, in the sense in which I employ the terms, mean those rights of the subjects of a free state, which are deemed so essential to the well-being of the Commonwealth, that they are *excepted* from the ordinary discretion of the magistrate, and guarded by the same fundamental laws which secure his authority." Ibid. note to p. 50.

" Philosophers of great and merited reputation have told us, that it (*the Government of England*) consisted of certain portions of Monarchy, Aristocracy, and Democracy, names which are in truth very little applicable, and which, if they were, would as little give an idea of this Government, as an account of the weight of bone, of flesh, and of blood in the human body would be a picture of a living man. Nothing but a patient and minute investigation of the practice of government, in all its parts, can give us just notions on this important subject." Ibid. p. 53.

" It is indeed difficult, perhaps impossible, to give limits to the mere *abstract* competence of the supreme power, such as was exercised by parliament at that time; but the limits of a *moral* competence, subjecting, even in powers

more indisputably sovereign, occasional will to permanent reason, and to the steady maxims of faith, justice, and fixed fundamental policy, are perfectly intelligible, and perfectly binding upon those who exercise any authority, under any name, or under any title, in the State. The House of Lords, for instance, is not morally competent to dissolve the House of Commons; no, nor even to dissolve itself, nor to abdicate, if it would, its portion in the legislature of the kingdom. Though a king may abdicate for his own person, he cannot abdicate for the monarchy. By as strong or by a stronger reason, the House of Commons cannot renounce its share of authority. The engagement and pact of society, which generally goes by the name of the Constitution, forbids such invasion and such surrender. The constituent parts of a state are obliged to hold their public faith with each other, and with all those who derive any serious interest under their engagements, as much as the whole state is bound to keep its faith with separate communities. *Otherwise competence and power would soon be confounded, and no law be left but the will of a prevailing force.*" Burke's Works, vol. v. p. 107.

" And whereas the Laws of England are the *birthright of the people thereof;* and all the Kings and Queens who shall ascend the throne of this Realm, ought to administer the government of the same according to the said Laws, and all their officers and ministers ought to serve them respectively according to the same; the said Lords Spiritual and Temporal and Commons do therefore further humbly pray, That all the Laws and Statutes of this Realm for securing the established Religion and the rights and liberties of the people thereof, and all other Laws and Statutes of the same now in force, may be ratified and confirmed. And the same are by his Majesty, by and with the advice and consent of the Lords Spiritual

and Temporal and Commons, and by the authority of the same, ratified and confirmed accordingly." 12 and 13 William III. c. i. and ii. Read also to the like effect, Bacon on the Amendment of Laws, and the Preface to Coke's 4to. Reports.

THE END.

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